

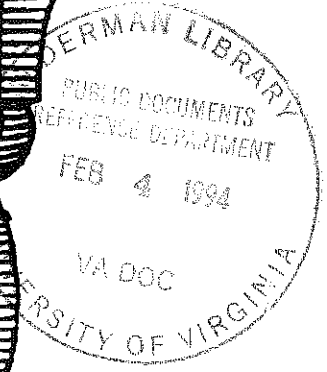
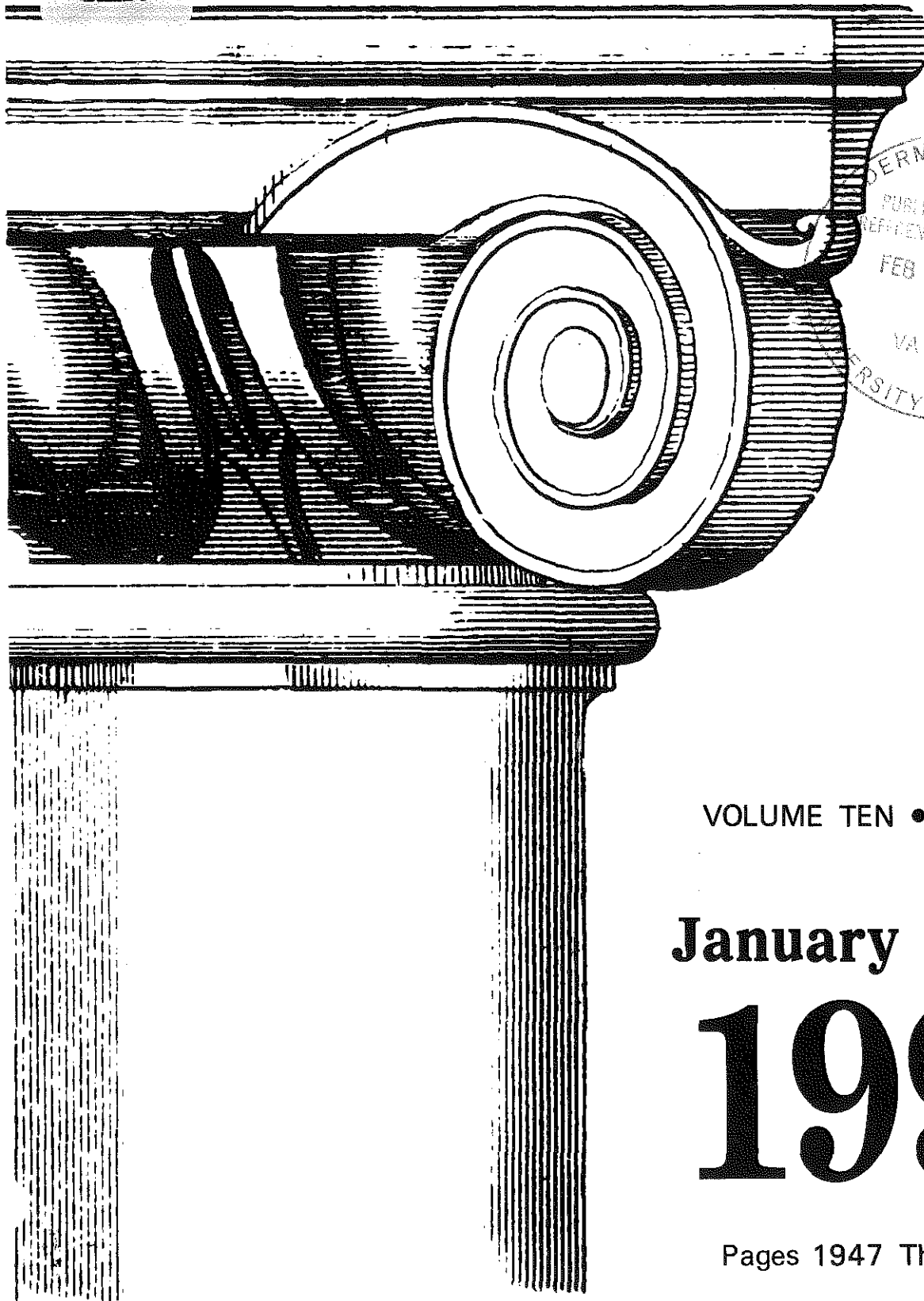
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THE VIRGINIA REGISTER

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OF REGULATIONS

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REF.



VOLUME TEN • ISSUE EIGHT

January 10, 1994

1994

Pages 1947 Through 2334

VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

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

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VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

October 1993 through December 1994

MATERIAL SUBMITTED BY PUBLICATION DATE
Noon Wednesday

Volume 10 - 1993-94

Sept. 15	Oct. 4, 1993
Sept. 29	Oct. 18
Oct. 13	Nov. 1
Oct. 27	Nov. 15
Nov. 10	Nov. 29
Nov. 24	Dec. 13
Dec. 8	Dec. 27
Index 1 - Volume 10	

Dec. 22	Jan. 10, 1994
Jan. 5	Jan. 24
Jan. 19	Feb. 7
Feb. 2	Feb. 21
Feb. 16	Mar. 7
Mar. 2	Mar. 21
Index 2 - Volume 10	

Mar. 16	April 4
Mar. 30	April 18
April 13	May 2
April 27	May 16
May 11	May 30
May 25	June 13
June 8	June 27
Index 3 - Volume 10	

June 22	July 11
July 6	July 25
July 20	Aug. 8
Aug. 3	Aug. 22
Aug. 17	Sept. 5
Aug. 31	Sept. 19
Final Index - Volume 10	

Volume 11

Sept. 14	Oct. 3
Sept. 28	Oct. 17
Oct. 12	Oct. 31
Oct. 26	Nov. 14
Nov. 9	Nov. 28
Nov. 23	Dec. 12
Dec. 7	Dec. 26
Index 1 - Volume 11	

TABLE OF CONTENTS

NOTICES OF INTENDED REGULATORY ACTION

Notices of Intent 1949

PROPOSED REGULATIONS

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Regulations of the Board of Audiology and Speech-Language Pathology. (VR 155-01-2:1) 1956

BOARD FOR BRANCH PILOTS

Branch Pilot Regulations. (VR 535-01-01) 1970

BOARD FOR CONTRACTORS

Public Participation Guidelines (REPEALING). (VR 220-01-00) 1972

Public Participation Guidelines. (VR 220-01-00:1) 1972

BOARD OF DENTISTRY

Public Participation Guidelines. (VR 255-01-2) 1974

DEPARTMENT OF FORESTRY

Public Participation Guidelines (REPEALING). (VR 312-01-01) 1978

Public Participation Guidelines. (VR 312-01-1:1) 1978

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Resident Trainee Program for Funeral Service. (VR 320-01-04) 1981

BOARD OF HEALTH PROFESSIONS

Public Participation Guidelines. (VR 365-01-1:1) 1991

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Administrative Regulation for the Virginia Occupational Safety and Health Program. (VR 425-02-95) 1995

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

State Plan for Medical Assistance Relating to Utilization Review of Case Management for Recipients of Auxiliary Grants. 2010

Case Management Services (Supplement 2 to Attachment 3.1 A). (VR 460-03-3.1102) 2012

Standards Established and Methods Used to Assure High Quality Care (Attachment 3.1 C). (VR 460-02-3.1300) 2023

BOARD OF NURSING HOME ADMINISTRATORS

Regulations of the Board of Nursing Home Administrators. (VR 500-01-2:1) 2043

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Adoptee Application for Disclosure of Identifying Information on Birth Family in a Closed Adoption Record. (VR 615-43-4) 2057

DEPARTMENT OF TAXATION

Guidelines for Public Participation in Regulation Development and Promulgation. (VR 630-0-1) 2061

Corporate Income Tax: Definitions. (VR 630-3-302) .. 2064

Corporate Income Tax: Foreign Source Income. (VR 630-3-302.2) 2068

Corporate Income Tax: Report of Change of Federal Taxable Income. (VR 630-3-311) 2077

Corporate Income Tax: Limitations on Assessments. (VR 630-3-312) 2079

Corporate Income Tax: Excess Cost Recovery - Taxable Years Beginning Before January 1, 1988. (VR 630-3-323) 2081

Corporate Income Tax: Excess Cost Recovery. (VR 630-3-323.1) 2085

Corporate Income Tax: Telecommunications Companies. (VR 630-3-400.1) 2096

Corporate Income Tax: Determination of Virginia Taxable Income. (VR 630-3-402) 2110

Corporate Income Tax: Additions in Determining Virginia Taxable Income. (VR 630-3-402.1) 2120

Corporate Income Tax: Subtractions and Adjustments in Determining Virginia Taxable Income. (VR 630-3-402.2) 2124

Corporate Income Tax: Net Operating Losses. (VR 630-3-402.3) 2132

Corporate Income Tax: Additional Modifications for Savings and Loan Associations, Railway Companies and Telecommunications Companies. (VR 630-3-403) 2142

Table of Contents

Corporate Income Tax: Property Factor. (VR 630-3-409)	2145
Corporate Income Tax: Average Value of Property. (VR 630-3-411)	2148
Corporate Income Tax: Railway Companies; Apportionment. (VR 630-3-420)	2150
Corporate Income Tax: Energy Income Tax Credit - Taxable Years Beginning Before January 1, 1988. (VR 630-3-431)	2150
Corporate Income Tax: Accounting. (VR 630-3-440)	2153
Corporate Income Tax: Prohibition of Worldwide Consolidation or Combination. (VR 630-3-443)	2156
Corporate Income Tax: Consolidation of Accounts. (VR 630-3-445)	2157
Corporate Income Tax: Foreign Sales Corporations (REPEALING). (VR 630-3-446.1)	2160
Corporate Income Tax: Supplemental Accounts. (VR 630-3-449)	2161
Corporate Income Tax: Extension of Time for Filing Returns. (VR 630-3-453)	2162
Corporate Income Tax: Declarations of Estimated Income Tax Required. (VR 630-3-500)	2164
Corporate Income Tax: Instructions for Filing Estimated Taxes. (VR 630-3-503)	2166
Corporate Income Tax: Failure to Pay Estimated Income Tax. (VR 630-3-504)	2168

FINAL REGULATIONS

STATE AIR POLLUTION CONTROL BOARD

Regulation for the Control of Motor Vehicle Emissions. (VR 120-99-03)	2173
---	------

DEPARTMENT OF HEALTH (STATE BOARD OF)

Rules and Regulations Governing the Licensing of Commercial Blood Banks and Minimum Standards and Qualifications for Noncommercial and Commercial Blood Banks (REPEALED). (VR 355-27-01)	2201
--	------

BOARD OF HISTORIC RESOURCES

Evaluation Criteria and Procedures for Designations by the Board of Historic Resources. (VR 390-01-03)	2202
--	------

DEPARTMENT OF HISTORIC RESOURCES

Evaluation Criteria and Procedures for Nominations of Property to the National Register or for Designation as a National Historic Landmark. (VR 392-01-02)	2211
--	------

DEPARTMENT OF STATE POLICE

Public Participation Policy. (VR 545-00-01)	2222
Motor Vehicle Safety Inspection Rules and Regulations. (VR 545-01-07)	2223
Regulations Governing Purchases of Handguns in Excess of One Within a 30-Day Period. (VR 545-01-11)	2226
Regulations Governing the Creation of a Criminal Firearms Clearinghouse. (VR 545-01-12)	2233
Regulations Relating to the Standards and Specifications for Regrooved or Regroovable Tires. (VR 545-01-13)	2235
Regulations Relating to Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles. (VR 545-01-14)	2235
Regulations Relating to Standards and Specifications for Back-up Audible Alarm Signals. (VR 545-01-15)	2237
Regulations Relating to Standards and Specifications for Overdimensional Warning Lights. (VR 545-01-16)	2237
Regulations Relating to Standards and Specifications for the Safety Lights for Farm Tractors in Excess of 108 Inches in Width. (VR 545-01-17)	2238

VIRGINIA WASTE MANAGEMENT BOARD

Virginia Hazardous Waste Management Regulations. (VR 672-10-1)	2239
--	------

VIRGINIA TAX BULLETIN

Interest Rates - First Quarter 1994. (93-11)	2240
--	------

GOVERNOR

EXECUTIVE ORDERS

Establishing the Virginia-Middle East Peace Commission. (81-93)	2242
Proscribing Those Persons Who Have Received Notices From Governor Elect George F. Allen To Submit Their Resignations From Responding To	

Table of Contents

Such Notices. (82-93) 2243

GOVERNOR'S COMMENTS

STATE AIR POLLUTION CONTROL BOARD

Regulations for the Control and Abatement of Air Pollution (Revision HH - Rule 5-6, Regulated Medical Waste Incinerators). (VR 120-01) 2243

Regulation for the Control of Motor Vehicle Emissions. (VR 120-99-03) 2243

ALCOHOLIC BEVERAGE CONTROL BOARD

Procedural Rules for the Conduct of Hearings Before the Board and the Hearing Officers and the Adoption or Amendment of Regulations. (VR 125-01-1) 2243

Advertising. (VR 125-01-2) 2243

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

Public Participation Guidelines. (VR 370-01-000:1) 2244

Rules and Regulations of the Virginia Health Services Cost Review Council. (VR 370-01-001) 2244

Regulations to Measure Efficiency and Productivity of Health Care Institutions. (VR 370-01-002) 2244

Virginia Health Services Cost Review Council Patient Level Data Base System. (VR 370-01-003) 2244

STATE LOTTERY BOARD

Guidelines for Public Participation in Regulation Development and Promulgation. (VR 447-01-1) 2244

Instant Game Regulations. (VR 447-02-1) 2244

On-Line Game Regulations. (VR 447-02-2) 2244

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

State Plan for Medical Assistance Relating to Transfer of Assets and Treatment of Certain Assets. (VR 460-03-2.6109) 2245

DEPARTMENT OF STATE POLICE

Regulations Governing Purchases of Handguns in Excess of One within a 30-Day Period. (VR 545-01-11) 2245

Regulations Governing the Creation of a Criminal Firearms Clearinghouse. (VR 545-01-12) 2245

VIRGINIA WASTE MANAGEMENT BOARD

Regulated Medical Waste Management Regulations. (VR 672-40-01:1) 2245

LEGISLATIVE

Commission on Equity in Public Education. 2246

HJR 532: Joint Subcommittee to Study the Electoral Process. 2248

SJR 217: Joint Subcommittee on Campaign Finance Reform, Lobbying, and Ethics. 2249

HJR 645: Joint Subcommittee Studying the Mine Safety Law of 1966. 2250

HJR 100: Joint Subcommittee Studying the Use of Vehicles Powered by Clean Fuels. 2251

SJR 240: Select Committee to Review the Transportation Trust Fund. 2252

SJR 207: Joint Subcommittee Studying Pollution Prevention. 2253

HJR 466: Joint Subcommittee on Enhancing End-use Markets for Recycled Materials. 2254

SJR 249: Joint Subcommittee to Develop Criteria for Evaluating Sales Tax Exemption Requests. 2255

SJR 195: Joint Subcommittee Studying Virginia's Current Bingo and Raffle Statutes. 2256

SJR 279: Joint Commission on Management of the Commonwealth's Work Force. 2257

HJR 712: Blue Ridge Economic Development Commission. 2258

HJR 444: Select Committee Studying the Game Protection Fund. 2259

Coal and Energy Commission. 2261

GENERAL NOTICES/ERRATA

DEPARTMENT OF MOTOR VEHICLES

General Notice. 2264

VIRGINIA CODE COMMISSION

Notice of intent to award contract for the publication of the Virginia Administrative Code. 2264

Table of Contents

Notice of mailing address. 2264

Forms for filing material on dates for publication. .. 2264

ERRATA

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Aid to Families with Dependent Children (AFDC) Program - Fifth Degree Specified Relative. (VR 615-01-43) 2264

CALENDAR OF EVENTS

EXECUTIVE

Open Meetings and Public Hearings 2265

CHRONOLOGICAL LIST

Open Meetings 2332

Public Hearings 2333

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key †

† Indicates entries since last publication of the Virginia Register

AUDITOR OF PUBLIC ACCOUNTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Auditor of Public Accounts intends to consider promulgating regulations entitled: **Public Participation Guidelines**. The purpose of the proposed action is to provide interested parties with an opportunity for input in the formation and development of regulations adopted by the Auditor of Public Accounts. Public hearings will not be held.

Statutory Authority: §§ 2.1-164, 8.01-582, 15.1-166, 15.1-167, and 15.1-1003 of the Code of Virginia.

Written comments may be submitted until January 31, 1994, to Auditor of Public Accounts, P. O. Box 1295, Richmond, VA 23210.

Contact: William H. Cole, Jr., Deputy Auditor, P. O. Box 1295, Richmond, Va 23210, telephone (804) 225-3350.

V.A.R. Doc. No. R94-345; Filed December 8, 1993, 11:22 a.m.

CHILD DAY-CARE COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider amending regulations entitled: **VR 175-08-01. Minimum Standards for Licensed Child Day Centers Serving Children of Preschool Age or Younger**. The purpose of the proposed action is to incorporate therapeutic recreation requirements and to review the existing standards for appropriateness and clarity. The council does not intend to hold a public hearing on the proposed amendments after publication; however, oral comments will be accepted at 10 a.m. at the council's regular meetings.

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

Written comments may be submitted until January 13, 1994, to Peg Spangenthal, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

V.A.R. Doc No. R94-278; Filed November 16, 1993, 2:24 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider amending regulations entitled: **VR 175-09-01. Minimum Standards for Licensed Child Day Centers Serving School Age Children**. The purpose of the proposed action is to incorporate therapeutic recreation requirements and to review the existing standards for appropriateness and clarity. The council does not intend to hold a public hearing on the proposed amendments after publication; however, oral comments will be accepted at 10 a.m. at the council's regular meetings.

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

Written comments may be submitted until January 13, 1994, to Peg Spangenthal, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219, telephone (804) 692-1820.

V.A.R. Doc. No. R94-279; Filed November 16, 1993, 2:24 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 promulgating regulations entitled: **VR 230-01-005. Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility**. The purpose of the proposed action is to promulgate regulations which govern the form and review process for proposed agreements between the Director of the Department of Corrections and public or private entity to operate a work program in a state correctional facility for inmates confined therein. A public hearing will be held on these regulations after publication of proposed regulations. The date, time, and location of the hearing will be published at a later date.

Statutory Authority: §§ 53.1-5 and 53.1-45.1 of the Code of Virginia.

Notices of Intended Regulatory Action

Written comments may be submitted until January 12, 1994.

Contact: Amy Miller, Regulatory Coordinator, Board of Corrections, P. O. Box 26963, Richmond, VA 23261, telephone (804) 674-3262.

VA.R. Doc. No. R94-277; Filed November 22, 1993, 3:42 p.m.

DEPARTMENT FOR THE DEAF AND HARD OF HEARING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard of Hearing intends to consider repealing regulations entitled: **VR 245-01-01. Public Participation Guidelines**. The purpose of the proposed action is to repeal existing guidelines so that new guidelines may be promulgated for the involvement of the public in the development and promulgation of regulations of the Department for the Deaf and Hard of Hearing. The agency intends to hold a public hearing on the proposed repeal after publication.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on January 12, 1994, to Clayton E. Bowen, Acting Director, 1100 Bank Street, 12th Floor, Richmond, VA 23219.

Contact: Leslie G. Hutcheson, Manager, Special Projects, Department for the Deaf and Hard of Hearing, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 225-2570 or toll-free, 1-800-552-7917.

VA.R. Doc. No. R94-297; Filed November 24, 1993, 11:31 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard of Hearing intends to consider promulgating regulations entitled: **VR 245-01-01.1. Public Participation Guidelines**. The purpose of the proposed action is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Department for the Deaf and Hard of Hearing. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on January 12, 1994, to Clayton E. Bowen, Acting Director, 1100 Bank Street, 12th Floor, Richmond, VA 23219.

Contact: Leslie G. Hutcheson, Manager, Special Projects,

1100 Bank Street, 12th Floor, Washington Building, Capitol Square, Richmond, VA 23219, telephone (804) 225-2570 or toll-free 1-800-552-7917.

VA.R. Doc. No. R94-297; Filed November 24, 1993, 11:31 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard of Hearing intends to consider amending regulations entitled: **VR 245-02-01. Regulations Governing Eligibility Standards and Application Procedures for the Distribution of Technological Assistive Devices**. The purpose of the proposed action is to more equitably apply the sliding fee scale mandated by the Code of Virginia. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on January 12, 1994, to Clayton E. Bowen, Acting Director, 1100 Bank Street, 12th Floor, Richmond, VA 23219.

Contact: Bruce A. Sofinski, Manager, Communications and Technology Programs, 1100 Bank Street, 12th Floor, Washington Building, Capitol Square, Richmond, VA 23219-3640, telephone (804) 225-2570 or toll-free 1-800-552-7917.

VA.R. Doc. No. R94-295; Filed November 24, 1993, 11:31 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard of Hearing intends to consider amending regulations entitled: **VR 245-03-01. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing**. The purpose of the proposed action is to: (i) establish the minimum requirements to attain a Virginia Quality Assurance Screening (VQAS) level; (ii) establish a method to maintain an individual's standing as a "qualified interpreter," and (iii) incorporate a consumer input tool, which includes grievance procedure regarding alleged violations of the Code of Ethics. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on January 12, 1994, to Clayton E. Bowen, Acting Director, Department for the Deaf and Hard of Hearing, 1100 Bank Street, 12th Floor, Richmond, VA 23219.

Contact: Bruce A. Sofinski, Manager, Communications and Technology Programs, Department for the Deaf and Hard of Hearing, 1100 Bank Street, 11th Floor, Richmond, VA 23219-3640, telephone (804) 225-2750 or toll-free 1-800-552-7917.

Notices of Intended Regulatory Action

VA.R. Doc. No. R94-296; Filed November 24, 1993, 11:31 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: **VR 270-01-0058. Regulations Governing Alternative Attendance Programs.** The purpose of the proposed regulations is to comply with § 22.1-269.1 of the Code of Virginia which includes the requirement that the Board of Education provide for the voluntary participation of Virginia school divisions in alternative attendance programs. The agency intends to hold public hearings on the proposed regulations after publication.

Statutory Authority: § 22.1-269.1 of the Code of Virginia.

Written comments may be submitted until January 27, 1994.

Contact: Dr. Judith Douglas, Principal Specialist, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2771, toll-free 1-800-292-3820, or FAX (804) 225-2831.

VA.R. Doc. No. R94-346; Filed December 6, 1993, 10:16 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **VR 320-01-03. Regulations for Preneed Funeral Planning.** The purpose of the proposed action is to amend current regulations for update and to incorporate legislative changes. There will be no public hearing since amendments reflect change in federal law.

Statutory Authority: § 54.1-2820 of the Code of Virginia.

Written comments may be submitted until February 25, 1994.

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, Va 23230, telephone (804) 662-9907.

VA.R. Doc. No. R94-347; Filed November 30, 1993, 2:50 p.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 promulgating regulations: **VR 460-02-4.1710. Estate Recoveries.** The purpose of the proposed action is to comply with federal mandate in OBRA 93. This section requires states to seek recovery of payments for nursing facility services, home and community-based services, and related hospital and prescription drug services, on behalf of persons age 55 or older when they received the assistance. States also have the option to recover payments for all other Medicaid services provided to these individuals at age 55 or older. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 32.1-325, 32.1-326.1 and 32.1-327 of the Code of Virginia.

Written comments may be submitted until February 9, 1994, to Jesse Garland, Department of Medical Assistance Services, Fiscal Division, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R94-425; Filed December 20, 1993, 10:11 a.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend or delete §§ 1.1 B, 1.2, and 2.2 A 3 a through d pertaining to definition of foreign medical schools, and sections otherwise pertaining to above sections. There will be no public hearing unless requested; the amendments are being promulgated to reflect changes which influence medical licensure.

Statutory Authority: §§ 54.1-2400 and 54.1-2900 of the Code of Virginia.

Written comments may be submitted until January 14, 1994, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Russell Porter, Assistant Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎ .

VA.R. Doc. No. R94-302; Filed November 24, 1993, 10:13 a.m.

Notices of Intended Regulatory Action

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend § 4.2, licensure to practice acupuncture; § 7.1 B, examination fee for podiatry; and sections otherwise pertaining to §§ 4.2 and 7.1 B. There will be no public hearing unless requested; the amendments are being promulgated to comply with statutory changes and increased costs for podiatric examinations.

Statutory Authority: §§ 54.1-2400, 54.1-2900, 54.1-2929, and 54.1-2930.

Written comments may be submitted until January 14, 1994, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Eugenia Dorson, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎ .

V.A.R. Doc. No. R94-281; Filed November 16, 1993, 2:16 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider repealing regulations entitled: **VR 465-02-2. Regulations for Granting Approval of Foreign Medical Schools and Other Foreign Institutions that Teach the Healing Arts and Guidelines for Completing Application.** The purpose of the proposed regulation is to repeal the regulations which were never promulgated as final regulations. There will be no public hearing unless requested; the emergency regulations which became effective on December 2, 1985, are being repealed because they were never promulgated as final regulations.

Statutory Authority: §§ 54.1-2400 and 54.1-2900 of the Code of Virginia.

Written comments may be submitted until January 14, 1994, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Russell Porter, Assistant Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎ .

V.A.R. Doc. No. R94-294; Filed November 24, 1993, 10:13 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-03-1. Regulations Governing Physical Therapy.** The purpose of the proposed action is to conduct a regulatory review of the regulations to be consistent with national guidelines and statutory changes. A public hearing will be held on the proposed regulations after publication.

Statutory Authority: §§ 54.1-2400, 54.1-2900, 54.1-2942, 54.1-2943, 54.1-2944, 54.1-2945, 54.1-2946, 54.1-2947, and 54.1-2948 of the Code of Virginia.

Written comments may be submitted until January 14, 1994, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Eugenia Dorson, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎ .

V.A.R. Doc. No. R94-280; Filed November 16, 1993, 2:16 p.m.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **VR 470-03-01. Rules and Regulations to Assure the Rights of Residents of Hospitals and Other Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to assure regulations on the rights of clients are current and adequately protect the rights of the residents served. This regulation will be incorporated into and superseded by VR 470-03-04, Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The task force will meet regularly throughout the state in hopes of completing the process in 12 months and will conduct public hearings.

Statutory Authority: § 37.1-84.1 of the Code of Virginia.

Written comments may be submitted until January 12, 1994, to Elsie D. Little, State Human Rights Director, P. O. Box 1797, 109 Governor Street, Richmond, VA 23214.

Contact: Rubyjean Gould, Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Administrative Services, 109 Governor St., P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3915.

V.A.R. Doc. No. R94-291; Filed November 22, 1993, 2:45 p.m.

Notices of Intended Regulatory Action

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **VR 470-03-03. Rules and Regulations to Assure the Rights of Clients in Community Programs.** The purpose of the proposed action is to assure the Department of Mental Health, Mental Retardation and Substance Abuse Services regulations on the rights of clients are current and adequately protect the rights of the residents served. This regulation will be incorporated into and superseded by VR 470-03-04, Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The task force will meet regularly throughout the state in hopes of completing the process in 12 months and will conduct public hearings.

Statutory Authority: § 37.1-84.1 of the Code of Virginia.

Written comments may be submitted until January 12, 1994, to Elsie D. Little, State Human Rights Director, P. O. Box 1797, 109 Governor Street, Richmond, VA 23214.

Contact: Rubyjean Gould, Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Administrative Services, 109 Governor Street, Richmond, VA 23214, telephone (804) 786-3915.

V.A.R. Doc. No. R94-292; Filed November 22, 1993, 2:45 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider promulgating regulations entitled: **VR 470-03-04. Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to assure the regulations on the rights of clients are current and adequately protect the rights of the residents served. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 37.1-84.1 of the Code of Virginia.

Written comments may be submitted until January 12, 1994, to Elsie D. Little, State Human Rights Director, P. O. Box 1797, 109 Governor Street, Richmond, VA 23214.

Contact: Rubyjean Gould, Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Administrative Services, 109 Governor Street, Richmond, VA 23214, telephone (804) 786-3915.

V.A.R. Doc. No. R94-293; Filed November 24, 1993, 10:46 a.m.

DEPARTMENT OF MOTOR VEHICLES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Motor Vehicles intends to consider amending regulations entitled: **VR 485-50-8502. Rules and Regulations for the Motorcycle Rider Safety Training Center Program.** The purpose of the proposed action is to revise current regulations by amending certain sections. Public hearings will be held on the proposed amendments after they are published.

Statutory Authority: §§ 46.2-203 and 46.2-1189 of the Code of Virginia.

Written comments may be submitted until February 20, 1994.

Contact: Bruce Biondo, Program Manager, Room 405, P. O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1813.

V.A.R. Doc No. R94-426; Filed December 21, 1993, 3:52 p.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 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.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control

Notices of Intended Regulatory Action

Board intends to consider repealing regulations entitled: **VR 680-16-06. Tennessee-Big Sandy River Basin Water Quality Management Plan.** The purpose of the proposed action is to repeal the existing Tennessee-Big Sandy River Basin Water Quality Management Plan while concurrently promulgating a new, updated plan.

Basis and Statutory Authority: Section 62.1-44.15(13) of the Code of Virginia authorizes the board to establish policies and programs for effective area-wide or basin-wide water quality control and management. Section 62.1-44.15(10) of the Code of Virginia authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth.

Title 40, Parts 35 and 130, of the Code of Federal Regulations requires states to develop a continuing planning process of which Water Quality Management Plans (WQMP) are a part. No VPDES permit may be issued which is in conflict with an approved WQMP.

Need: WQMPs set forth measures for the department to implement in order to reach and maintain water quality goals in general terms and numeric loadings for, among other things, five-day biochemical oxygen demand. The Tennessee-Big Sandy WQMP was adopted by the board in 1977. This plan has not been updated to reflect current data, including total maximum daily loading and waste load allocations, scientific studies, new or revised legislation, procedures, policies and regulations, and changes in area growth and development.

Substance and Purpose: The purpose of this proposal is to repeal the existing Tennessee-Big Sandy River Basin WQMP. This plan has not been updated since it was originally adopted by the board in 1977 and is outdated. Concurrently with this proposed action, the board plans to adopt a new, updated Tennessee-Big Sandy River Basin WQMP which will incorporate policies, procedures, regulations, current data and information regarding point and nonpoint sources of pollution which have changed since the original plan was adopted in 1977.

Estimated Impacts: There are approximately 330,000 persons residing in the Tennessee-Big Sandy River Basin. There are 182 municipal and 76 industrial VPDES permits issued for the basin. No financial impact to the Department of Environmental Quality or the regulated community is anticipated by the repeal of the existing plan since a new plan will be adopted concurrently. The new proposal will provide the Commonwealth, local governments, industrial firms, agricultural interests and interested citizens with a more up-to-date management tool to assist in achieving and maintaining applicable water quality goals in the basin.

Alternatives: The Tennessee-Big Sandy River Basin WQMP has not been updated to reflect current data, scientific studies, new or revised legislation, policies or regulations, or changes in area growth and development since it was

adopted in 1977. One alternative is to continue to use the existing, outdated WQMP. To do this would result in noncompliance with amendments to the Clean Water Act for achieving current water quality goals until a state WQMP is developed and adopted in late 1994.

Comments: The board seeks comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternative or other alternatives. In addition, the board will hold a public meeting to receive views and comments on Thursday, January 20, 1994, at 7 p.m. at the University of Virginia Southwest Center, Highway 19 N., Abingdon, VA 24210.

Accessibility to Persons with Disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions should contact Ms. Dalton. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than January 5, 1994.

Advisory Committee/Group: An advisory committee was convened to provide input to the department regarding the content of the proposed new Tennessee-Big Sandy River Basin WQMP. The committee was composed of federal, state and local government representatives and members of environmental organizations. The committee will be reconvened after the close of this public comment period to provide comments on the new draft plan.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold at least one informational proceeding (informal hearing) on this regulatory action after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a formal evidential hearing on this proposal after it is published in the Register of Regulations.

Statutory Authority: §§ 62.1-44.15(10) and 62.1-44.15(13) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 31, 1994, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240.

Contact: Ronald D. Sexton, Department of Environmental Quality, Water Division, P. O. Box 888, Abingdon, VA 24210, telephone (703) 676-5507.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-16-06:1. Tennessee-Big Sandy River Basin.** The purpose of the proposed action is to adopt a new Tennessee-Big Sandy River Basin Water Quality Management Program.

Notices of Intended Regulatory Action

Basis and Statutory Authority: Section 62.1-44.15(13) of the Code of Virginia authorizes the board to establish policies and programs for effective area-wide or basin-wide water quality control and management. Section 62.1-44.15(10) of the Code of Virginia authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth.

Title 40, Parts 35 and 130, of the Code of Federal Regulations requires states to develop a continuing planning process of which Water Quality Management Plans (WQMP) are a part. No VPDES permit may be issued which is in conflict with an approved WQMP.

Need: The Tennessee-Big Sandy WQMP was adopted by the board in 1977. This plan has not been updated to reflect current data, including total maximum daily loading and waste load allocations, scientific studies, new or revised legislation, procedures, policies and regulations, and changes in area growth and development.

Substance and Purpose: WQMPs set forth measures for the board to implement in order to reach and maintain water quality goals in general terms and numeric loadings for, among other things, five-day biochemical oxygen demand (BOD). The purpose of this proposal is to adopt a new Tennessee-Big Sandy River Basin WQMP to incorporate policies, procedures, regulations, current data and information regarding point and nonpoint sources of pollution which have changed since the original plan was adopted. Concurrently with this action, the board plans to repeal the existing plan.

Estimated Impacts: There are approximately 330,000 persons residing in the Tennessee-Big Sandy River Basin. There are 182 municipal and 76 industrial VPDES permits issued for the basin. No financial impact to the Department of Environmental Quality or the regulated community is anticipated. The proposal will provide the Commonwealth, local governments, industrial firms, agricultural interests and interested citizens with a more up-to-date management tool to assist in achieving and maintaining applicable water quality goals in the basin.

Alternatives: The Tennessee-Big Sandy River Basin WQMP has not been updated to reflect current data, scientific studies, new or revised legislation, policies or regulations, or changes in area growth and development since it was adopted in 1977. One alternative is to continue to use the existing, outdated WQMP. To do this would result in noncompliance with amendments to the Clean Water Act for achieving current water quality goals until a state WQMP is developed and adopted in late 1994.

Comments: The board seeks comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternative or other alternatives. In addition, the board will hold a public meeting to receive views and comments on Thursday, January 20, 1994, at 7 p.m. at the University of Virginia Southwest

Center, Highway 19 N., Abingdon, VA 24210.

Accessibility to Persons with Disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions should contact Ms. Dalton. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than January 5, 1994.

Advisory Committee/Group: An advisory committee was convened to provide input to the department regarding the content of the proposed WQMP. The committee was composed of federal, state and local government representatives and members of environmental organizations. The committee will be reconvened, after the close of this public comment period, to provide comments on the draft plan.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold at least one informational proceeding (informal hearing) on this regulatory action after a proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a formal evidential hearing on this proposal after it is published in the Register of Regulations.

Statutory Authority: §§ 62.1-44.15(10) and 62.1-44.15(13) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 31, 1994, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240.

Contact: Ronald D. Sexton, Department of Environmental Quality, Water Division, P. O. Box 888, Abingdon, VA 24210, telephone (703) 676-5507.

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.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Title of Regulation: VR 155-01-2:1. Regulations of the Board of Audiology and Speech ~~Speech-Language Pathology~~.

Statutory Authority: §§ 54.1-2400 and 54.1-2600 et seq. of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until March 28, 1994.

(See Calendar of Events section for additional information)

Basis: Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia provides the basis for these regulations. Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to “promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system.”

Purpose: The proposed amended regulations delete expired standards for licensure and practice as audiologists and speech-language pathologists, change the name of speech pathology to speech-language pathology, revise the definitions of the scope of practice of audiology and speech-language pathology and delete a single route to licensure by endorsement through maintenance of membership in a voluntary association. The amendments also prescribe the licensees’ responsibilities for supervision and accountability for unlicensed assistants and aides and clarifies that supervision must be provided in the same office with the unlicensed individual.

Substance: The key provisions of each regulation are summarized below:

§ 1.1: The definitions of the practice of audiology and speech-language pathology are amended to comply with legislation enacted by the 1992 General Assembly.

§ 1.5: Public Participation Guidelines are deleted. They are now in separate emergency status and are in the process of being promulgated into separate, permanent regulations.

§ 5.1 1: The current § 5.1 1 was deleted. A new § 5.1 1 was added which limits the endorsement section to applicants who are presently licensed in another state or the District of Columbia or who have ever been licensed in another state or the District of Columbia. The

qualifications for licensure are equal to those of any other applicant with the exception that the individual applying under this section must either verify that his current license is unencumbered or that any license he held previously was not subject to disciplinary action. This change will clarify the alternative paths to licensure and will better ensure that all candidates are required to meet equal qualifications.

§§ 5.1 1 and 5.1 2: This section is reformatted and entry to licensure through the Certificate of Clinical Competence is strengthened by adding an experience or a current examination qualification. Those applicants who may have been licensed through an association certificate will have to meet qualifications that minimally are more stringent.

§ 5.1 2: The original § 5.1 2 is deleted to remove obsolete qualifications for licensure of audiologist and speech-language pathologists, leaving intact requirements which became effective January 1, 1993.

§ 6.5: A regulation was added requiring accountability for unlicensed assistants and aides.

§ 7.1 5: An addendum was added to clarify that failure to disclose use and identity of assistants is considered negligence. Licensees will have to provide name tags for unlicensed assistants and aides identifying them as such.

§ 7.1 8: The regulation was amended to require supervision in the same office with the unlicensed assistant or aide rather than simply allow the licensee to be in the same building with the assistant or aide. The same office is intended to be within the licensees site of practice, not within individual cubicles/spaces. The licensee will have to be present in his office when aides and assistants are serving the public.

§ 7.1 15: A regulation was added to clarify that aiding and abetting unlicensed activity may result in disciplinary action. Additional disciplinary actions may occur.

In compliance with legislation effective July 1, 1992, the name of the board and profession is changed from audiology and speech pathology to audiology and speech-language pathology.

Issues: The proposed amendments result from a comprehensive review of the regulations and revisions which comply with legislative changes:

1. Problem: Obsolete licensure requirements. Definitions of the scope of practice for audiologist and speech-language pathologists were amended by the 1992 General Assemb

to itemize specific practices that previously were described in board, general clinical terminology. (See § 1.1)

Solution: Revise the regulations to comply with the Code of Virginia.

The board proposes to amend the definition in § 1.1 to comply with changes to the Code of Virginia. The new language will ease compliance for licensees and for the board when determining compliance.

2. **Problem:** Obsolete licensure requirements. Regulations effective December 18, 1991, include qualifications for licensure through December 31, 1992, and project national qualifications effective January 1, 1993. These regulations allowed prospective licensees one year to prepare for the new requirements. College and university curricula were revised well in advance of the existing regulations. (See former § 5.1 2 and current § 5.1 3)

Solution: Delete the obsolete requirements and leave in place the regulations effective January 1, 1993.

Current licensees are not affected by the new requirements unless they choose, after a three-year-expiration, to reapply under the new requirements. Individuals who apply for reinstatement within three years of expiration will be required only to meet the requirements in effect at the time of their initial applications for their original license.

3. **Problem:** The board believes that the current practice of issuing licenses to those who hold a Certificate of Clinical Competence provides an unfair advantage for members of the American Speech-Language Hearing Association (ASHA) over those who do not choose to belong to the association. (See former § 5.1 1)

Existing regulations of the board offer two pathways to licensure: (i) endorsement; and (ii) education and examination.

Under existing endorsement provisions, a candidate may receive a license if he holds a Certificate of Clinical Competence issued by ASHA. Those who retain their certificates by paying annual membership dues to the association are grandfathered from future revisions of the association's and the board's requirements if they maintain their dues in the association. This creates an unfair double standard.

Solution: Require an individual licensed in another state to verify that the current license is unencumbered. The board also feels that it must verify the reason that a previously held license is no longer current to determine if it may have been censured in some manner. The board accepted this proposal as the least restrictive and one which provides protective oversight.

Add requirements to assure the current competence of applicants for licensure by endorsement. In lieu of

prescribing continuing education, the board determined that the applicant should document current competence by having either worked in the field for one of the past three or two of the past five years OR has taken and passed the national examination within three years prior to application. The applicant unable to meet these conditions must apply under the current regulations. The board determined that these requirements would meet the need for flexibility while also assuring current competence. Adding this requirement in addition to the Certificate of Clinical Competence would abolish the double standard.

4. **Problem:** Existing endorsement provisions require the applicant to have education, experience, knowledge, skills, and abilities "equivalent" to the regulations of the board. The board has no means to assess this equivalency. (See § 5.1 b(2))

Solution: Delete the provision and require all candidates to meet the same qualifications for licensure.

The board determined that this solution provides consistency, equity, and allows licensure decisions to be made objectively rather than on a subjective assessment.

5. **Problem:** The 1992 General Assembly changed the name of the Board of Audiology and Speech Pathology to the Board of Audiology and Speech-Language Pathology, making references in existing regulations incorrect.

Solution: Revise the name of the board an all references to speech pathology throughout the relations.

6. **Problem:** Public Participation Guidelines now have their own VR number and are separate regulations. (See § 1.5 - § 1.11)

Solution: Delete Public Participation Guidelines from regulations.

Impact:

A. **Numbers and Types of Regulated Entities:** There are 305 audiologists licensed by the board and 1263 speech-language pathologists licensed by the board for a total of 1568 licensees.

B. **Projected Costs for Regulated Entities:** No increased cost to regulated entities is expected to result from these amendments except (i) licensees who fail to renew within three years of expiration will have to requalify for licensure under more stringent requirements. This impact can be avoided by renewing annually; and (ii) all applicants will have to meet the same qualifications. Those previously qualifying on the basis of payment of dues to a voluntary association may have to qualify under consistent qualifications for licensure. Out-of-state applicants will have to submit a validation, subject to verification, that the license is unrestricted and current. The form will be provided by the board and mailing by the applicant.

Proposed Regulations

C. Projected Cost to Agency for Implementation and Enforcement: Projected costs to the agency are minimal. Licensees will receive a copy of the final regulations at a projected cost for printing and mailing of \$2500.

D. Source Funds: All funds of the Board of Audiology and Speech-Language Pathology are derived from fees paid by licensees and applicants for licensure.

E. Projected Cost for Compliance: Any costs of compliance are avoidable by renewing licenses by expiration date. Licensees who fail to renew within three years may have to meet more stringent qualifications upon relicensure. Cost would vary dependent upon qualification status of licensee.

Summary:

The amended regulations delete qualifications which appear in existing regulations and which expired on December 31, 1992. The amendments also change the name of speech pathology to speech-language pathology and revise the definitions of the scope of practice of audiology and speech-language pathology to comply with legislation enacted by the 1992 General Assembly. The amendments revise licensure requirements for those seeking licensure by endorsement of credentials maintained by membership in a voluntary national professional association and delete public participation guidelines being promulgated under a separate VR number. The amendments clarify the responsibility of the licensee for assistants and aides working with him, the supervision required for such, the identification as assistant or aide to the public and that aiding and abetting unlicensed activity is prohibited.

VR 155-01-2:1. Regulations of the Board of Audiology and Speech-Language Pathology.

PART I. GENERAL PROVISIONS.

Article 1. Definitions.

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

"Audiologist" means any person who accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting hearing and related communicative disorders or who assists persons in the perception of sound and is not authorized by another regulatory or health regulatory board to perform any such services engages in the practice of audiology .

"Advertisement" means any information disseminated or placed before the public.

"Applicant" means a person applying for licensure by the board.

"Board" means the Board of Audiology and Speech-Language Pathology.

"Department" means the Department of Health Professions.

"Educational standards board" means the clinical certification board of the American Speech-Language and Hearing Association.

"Executive director" means the board administrator for the Board of Audiology and Speech-Language Pathology.

"Practice of audiology" or speech pathology" means the performance for compensation of any nonmedical service, not authorized by another regulatory or health regulatory board, relating to the prevention, diagnosis, evaluation and treatment of disorders or impairments of speech, language, voice or hearing, whether of organic or nonorganic origin means the practice of conducting measurement, testing and evaluation relating to hearing and vestibular systems, including audiologic and electrophysiological measures, and conducting programs of identification, hearing conservation, habilitation, and rehabilitation for the purpose of identifying disorders of the hearing and vestibular systems and modifying communicative disorders related to hearing loss including but not limited to vestibular evaluation, electrophysiological audiometry and cochlear implants . Any person offering services to the public under any descriptive name or title which would indicate that professional audiology or speech pathology services are being offered shall be deemed to be practicing audiology and speech pathology .

"Practice of speech-language pathology" means the practice of facilitating development and maintenance of human communication through programs of screening, identifying, assessing and interpreting, diagnosing, habilitating and rehabilitating speech-language disorders including, but not limited to:

- 1. Providing alternative communication systems and instruction and training in the use thereof;*
- 2. Providing aural habilitation, rehabilitation and counseling services to hearing-impaired individuals and their families;*
- 3. Enhancing speech-language proficiency and communication effectiveness; and*
- 4. Providing audiologic screening.*

Any person offering services to the public under any descriptive name or title which would indicate that professional speech-language pathology services are being offered shall be deemed to be practicing speech-language pathology .

pathology.

"Speech-language disorders" means disorders in fluency, speech articulation, voice, receptive and expressive language (syntax, morphology, semantics, pragmatics), swallowing disorders, and cognitive communication functioning.

Speech pathologist— "Speech-language pathologist" means any person who accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting speech, voice or language and is not authorized by another regulatory or health regulatory board to perform any such services engages in the practice of speech-language pathology .

Article 2. Legal Base.

§ 1.2. The following legal base describes the responsibility of the Board of Audiology and Speech Speech-Language Pathology to promulgate regulations governing the licensure of audiologists and speech speech-language pathologists in the Commonwealth of Virginia:

Title 54.1:

Chapter 1 (§§ 54.1-100 through 54.1-114);

Chapter 24 (§§ 54.1-2400 through 54.1-2402.1);

Chapter 25 (§§ 54.1-2500 through 54.1-2510); and

Chapter 26 (§§ 54.1-2600 through 54.1-2603) of the Code of Virginia.

Article 3. Purpose.

§ 1.3. These regulations establish the standards for training, examination, licensure, and practice of persons as audiologists and speech speech-language pathologists in the Commonwealth of Virginia.

Article 4. Applicability.

§ 1.4. Individuals subject to these regulations are (i) audiologists and (ii) speech speech-language pathologists.

Exemptions: The provisions of these regulations shall not prevent (i) any persons employed by a federal, state, county or municipal agency, or an educational institution as a speech speech-language or hearing specialist or therapist from performing the regular duties of his office or position; (ii) any student, intern, or trainee in audiology or speech speech-language pathology, pursuing a course of study at an accredited university or college, or working in a recognized training center, under the direct supervision of a licensed or certified audiologist or speech

speech-language pathologist from performing services constituting a part of his supervised course of study; (iii) a licensed audiologist or speech speech-language pathologist from employing or using the services of unlicensed persons as necessary to assist him in his practice.

Article 5. Public Participation Guidelines.

§ 1.5. Mailing list.

The executive director of the board shall maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. Notice of intent to promulgate regulations;
2. Notice of public hearings or informational proceedings, the subject of which is proposed or existing regulations; and
3. Final regulations when adopted.

§ 1.6. Additions and deletions to mailing list.

A. Any person wishing to be placed on the mailing list shall have his name added by writing to the board.

B. The board may, in its discretion, add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations.

C. Those on the list periodically may be requested to indicate their desire to continue to receive documents or to be deleted from the list.

D. When mail is returned as undeliverable, persons shall be deleted from the list.

§ 1.7. Notice of intent.

A. At least 30 days prior to publication of the notice to conduct an informational proceeding as required by § 9-6.14:7.1 of the Code of Virginia, the board shall publish a notice of intent.

B. The notice shall contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter.

C. The notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

§ 1.8. Informational proceedings or public hearings for existing rules.

A. At least once each biennium, the board shall conduct an informational proceeding, which may take the form of

Proposed Regulations

a public hearing, to receive public comment on existing regulations. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Notice of such proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

C. The proceeding may be held separately or in conjunction with other informational proceedings.

§ 1.9. Petition for rulemaking.

A. Any person may petition the board to adopt, amend, or delete any regulation.

B. Any petition received within 10 days prior to a board meeting shall appear on the agenda of that meeting of the board.

C. The board shall have sole authority to dispose of the petition.

§ 1.10. Notice of formulation and adoption.

Prior to any meeting of the board or subcommittee of the board at which the formulation or adoption of regulations is to occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

§ 1.11. Advisory committees.

The board may appoint advisory committees as it may deem necessary to provide for citizen and professional participation in the formation, promulgation, adoption, and review of regulations.

PART II. OPERATIONAL RESPONSIBILITIES.

Article 1. Posting of License.

§ 2.1. Each licensee shall post his license in a main entrance or place conspicuous to the public in the facility in which the licensee is practicing.

§ 2.2. A licensee shall be able to produce this wallet license upon request.

Article 2. Records.

§ 2.3. Accuracy of information.

A. All changes of mailing address or name shall be furnished to the board within five days after the change occurs.

B. All notices required by law and by these regulations to be mailed by the board to any registrant or licensee shall be validly given when mailed to the latest address on file with the board.

PART III. FEES.

Article 1. Initial Fees.

§ 3.1. The following fees shall be paid as applicable for licensure:

- 1. Application for audiology license \$125
- 2. Application for *speech speech-language* pathology license \$125
- 3. Verification of licensure requests from other states \$ 50

Article 2. Renewal Fees.

§ 3.2. The following annual fees shall be paid as applicable for license renewal:

- 1. Audiology license renewal \$ 55
- 2. *Speech Speech-language* pathology license renewal \$ 55

Article 3. Reinstatement Fee.

§ 3.3. In addition to all back renewal fees, the following fee shall be paid for reinstatement of license for each year up to three years following expiration (see § 4.4):

- Reinstatement fee per year of expiration \$100

Article 4. Other Fees.

§ 3.4. Duplicates.

Duplicate wall certificates shall be issued by the board after the licensee submits to the board a signed affidavit that a document has been lost, destroyed, or the applicant has had a name change.

- Duplicate wall certificates \$ 50

§ 3.5. Other fee information.

- 1. A. There shall be a fee of \$25 for returned checks.
- 2. B. Fees shall not be refunded once submitted.

PART IV.

RENEWALS.

Article 1. Expiration Dates.

§ 4.1. The following licenses shall expire on December 31 of each calendar year:

1. Audiologist; and
2. ~~Speech~~ Speech-language pathologist.

§ 4.2. A licensee who fails to renew his license by the expiration date shall have an invalid license.

Article 2. Renewal.

§ 4.3. A person who desires to renew his license for the next year shall, not later than the expiration date:

1. Return the renewal notice and applicable renewal fee;
2. Notify the board of any changes in name and address.

Article 3. Reinstatement.

§ 4.4. Reinstatement.

A. When a license is not renewed by the expiration date, the board may consider reinstatement of a license up to three years of expiration. See § 3.3.

B. A licensee who does not reinstate within three years as prescribed by subsection A of this section shall reapply for licensure as prescribed by Part V and meet the qualifications for licensure in effect at the time of the new application.

PART V. REQUIREMENTS FOR LICENSURE.

Article 1. Licensure.

§ 5.1. The board may grant a license to any applicant who meets one of the following sets of requirements for licensure:

1. Endorsement.

a. The board may grant a license without examination to any applicant who holds a current "Certificate of Clinical Competence," in the area in which they seek licensure issued by the American Speech-Language Hearing Association; or

b. The board may issue a license to any applicant

by endorsement when the person:

(1) Holds a current unencumbered license from any state or the District of Columbia; and

(2) Has practiced audiology or speech pathology for one year or has met the requirements of the regulations of the board for licensure of audiologists and speech pathologists or has education, experience, knowledge, skills, and abilities equivalent to the regulations of the board for licensure and has provided sufficient written evidence of those qualifications at the time of application; and

(3) Has passed a qualifying examination approved by the board.

Any applicant who holds a license from another state or the District of Columbia or has ever been licensed by another state or the District of Columbia shall apply for licensure under this section and may be granted a license by the board when the applicant:

a. Holds a current unencumbered license from any state(s) or the District of Columbia and verifies such on a form prescribed by the board. If the license is not current, documentation shall be provided on a form prescribed by the board of the reason; and

b. Meets one combination of qualifications prescribed in subdivisions 1 b (1) and 1 b (2) of this section or subdivisions 1 b (3) and 1 b (4) of this section. If the applicant does not meet one of the combinations of qualifications prescribed in this subdivision, the applicant who is or has been licensed in another state or the District of Columbia shall qualify under subdivision 1 c of this section:

(1) Holds a current and unrestricted Certificate of Clinical Competence in the area in which he seeks licensure issued by the American Speech-Language Hearing Association. Verification of currency shall be in the form of a certified letter from the American Speech-Language Hearing Association issued within six months prior to application; and

(2) Has held employment in the area for which he seeks licensure for one of the past three consecutive years or two of the past five consecutive years; or

(3) Holds a current and unrestricted Certificate of Clinical Competence in the area in which he seeks licensure issued by the American Speech-Language Hearing Association. Verification of currency shall be in the form of a certified letter from the American Speech-Language Hearing Association issued within six months prior to application; and

(4) Has passed a qualifying examination approved by the board that was taken and passed within

Proposed Regulations

three years preceding the date of application; or

c. Meets the requirements of the regulations of the board for licensure of audiologists and speech-language pathologists under subdivision 3 of § 5.1.

2. Certificate or clinical competence. This subdivision 2 applies to all applicants who are not currently licensed in another state or the District of Columbia or who have not previously been licensed in another state or the District of Columbia. The applicant shall meet one combination of qualifications prescribed in subdivisions 2 a and 2 b of this section or subdivisions 2 c and 2 d of this section. If the applicant does not meet one of the combinations of qualifications prescribed in this subdivision 2, the applicant shall qualify under subdivision 3 of § 5.1. The board may grant a license if the applicant:

a. Holds a current and unrestricted Certificate of Clinical Competence in the area in which he seeks licensure issued by the American Speech-Language Hearing Association. Verification of currency shall be in the form of a certified letter from the American Speech-Language Hearing Association issued within six months prior to application; and

b. Has held employment in the area for which he seeks licensure for one of the past three consecutive years or two of the past five consecutive years; or

c. Holds a current and unrestricted Certificate of Clinical Competence in the area in which he seeks licensure issued by the American Speech-Language Hearing Association issued within six months prior to application; and

d. Has passed a qualifying examination approved by the board that was taken and passed within three years preceding the date of application; or

e. Meets the requirements of the board for licensure of audiologists and speech-language pathologists under subdivision 3 of § 5.1.

2. Education and examination. These requirements apply through December 31, 1992.

a. Examination. The applicant shall pass a qualifying examination approved by the board. The examination shall have been passed within three years preceding the date of application.

Exception: No further examination will be required for applicants having passed the board approved examination at any time prior to application if they have been actively engaged in the respective profession during the 24 months immediately preceding the date of application.

AND

b. Degree and coursework equivalency.

(1) The applicant shall have completed at least 60 semester hours approved by the board from a college or university whose audiology and speech program is accredited by the Educational Standards Board of the American Speech-Language and Hearing Association or an equivalent accreditation.

(2) At least 30 of the 60 semester hours shall be in courses beyond the bachelor's degree and acceptable toward a graduate degree by the college or university where these courses are taken and shall be applicable to the field for which licensure is sought. See Appendix 1.

AND

e. Supervised clinical experience. The applicant shall have completed 300 clock hours of direct client contact hours with individuals presenting a variety of disorders of communication. This experience shall have been within the college or university attended by the applicant or within a clinical training program acceptable to the board. A minimum of 200 clock hours shall be in the professional area in which licensure is sought, that is, in either audiology or speech pathology.

3. Education and examination. These requirements are effective January 1, 1992.

a. Examination. The applicant shall pass a qualifying examination approved by the board. The examination shall have been passed within three years preceding the date of application.

Exception: No further examination will be required for applicants having passed the board approved examination at any time prior to application if they have been actively engaged in the respective profession during the 24 months immediately preceding the date of application.

AND

b. Degree and coursework equivalency.

(1) Degree. The applicant shall hold a Master's degree or its equivalent from a college or university whose audiology and speech ~~speech-language~~ program is accredited by the Educational Standards Board of the American Speech-Language and Hearing Association or an equivalent accreditation.

(2) Coursework (all candidates). The applicant shall have completed at least 75 semester hours of coursework. Twenty-seven of the 75 semester hours shall be in basic science and 36 of the 75 semeste

hours shall be in professional coursework. See Appendices H and III I and II .

AND

(3) Supervised clinical experience (all candidates).

(a) The applicant shall complete 375 clock hours of supervised clinical observation and supervised clinical practicum combined. The clock hours of supervised clinical experience shall be provided by a college or university whose audiology and ~~speech~~ *speech-language* pathology program is accredited by the Educational Standards Board of the American Speech-Language and Hearing Association or an equivalent accreditation. See Appendix IV III .

(b) The supervision for the practicum and observation shall be provided by a person who is licensed by the board of ~~Audiology and Speech Pathology~~ in the appropriate area of practice.

AND

4. Clinical observation. Twenty-five of the 375 clock hours (see § 5.1 3 b(3)) shall be in clinical observation prior to beginning clinical practicum.

AND

5. Clinical practicum. Three hundred fifty of the 375 clock hours (see § 5.1 3 b(3)) shall be in a clinical practicum. At least 250 of those 350 clock hours shall be in clinical hours at the graduate level in the area in which the license is sought. At least 50 of the 350 clock hours shall be in each of three types of clinical settings such as, but not limited to, public schools, private practice, free clinic, hospital setting.

For a specific breakdown of the clinical clock hours required for both ~~speech/language~~ *speech-language* and audiology applicants, see Appendix IV III .

Article 2.

Application Process

§ 5.2. Prior to seeking licensure as an audiologist or ~~speech~~ *speech-language* pathologist, an applicant shall submit:

1. A completed and signed application;
2. The applicable fee prescribed in § 3.1; and
3. Additional documentation as may be required by the board to determine eligibility of the applicant.

§ 5.3. All required parts of the application shall be submitted at the same time. An incomplete application package shall be returned.

Exception: Some schools require that certified transcripts be sent directly to the licensing authority. That policy is acceptable to the board.

National examination scores also will be accepted from the examining authority.

PART VI. STANDARDS OF PRACTICE.

Article 1. General.

§ 6.1. There shall be separate licenses for the practice of audiology and ~~Speech~~ *speech-language* pathology.

§ 6.2. It is prohibited for any person to practice as an audiologist or ~~Speech~~ *speech-language* pathologist unless such person has been issued a license in the appropriate classification.

§ 6.3. The titles of audiologist and ~~Speech~~ *speech-language* pathologist shall be reserved under law for the use by licensed practitioners only.

§ 6.4. No person unless otherwise licensed to do so, shall prepare, order, dispense, alter or repair hearing aids or parts of or attachments to hearing aids for consideration. However, audiologists licensed under this chapter may make earmold impressions and prepare and alter earmolds for clinical use and research.

§ 6.5. Every licensed audiologist and *speech-language* pathologist shall be held fully responsible for the performance and activities of all unlicensed assistants and aides.

Article 2. Core of Knowledge

§ 6.5. 6.6. An audiologist and ~~speech~~ *speech-language* pathologist shall be able to demonstrate knowledge, skills, and abilities as relevant to his specific practice in the following areas:

1. Psychological and sociological aspects of human development;
2. Anatomical, physiological, neurological, psychological, and physical bases of speech, voice, hearing and language;
3. Genetic and cultural aspects of speech and language development;
4. Current principles, procedures, techniques, and instruments used in evaluating the speech, language, voice, and hearing of children and adults;
5. Various types of disorders of speech, language, voice, and hearing classifications, causes and

Proposed Regulations

manifestations;

6. Principles, remedial procedures, hearing aids, tinnitus devices, and other instruments used in the habilitation and rehabilitation for those with various disorders of communication;

7. Relationships among speech, language, voice, and hearing problems, with particular concern for the child or adult who presents multiple problems;

8. Organization and administration of programs designed to provide direct service to those with disorders of communications;

9. Theories of learning and behavior in their application to disorders of communication;

10. Services available from related fields for those with disorders of communication; and

11. Effective use of information obtained from related disciplines about the sensory, physical, emotional, social, and intellectual status of a child or an adult;

§ 6-6. 6.7. In addition, the audiologist shall be able to demonstrate knowledge, skills, and abilities relevant to the specific practice as follows:

1. Conducting evaluation of the function of the auditory and vestibular systems, including the use of electrophysiological techniques and the evaluation of tinnitus;

2. Evaluation of auditory processing; and

3. Principles, procedures, and techniques of organizing and administering industrial hearing conservation programs, including noise surveys, the use of hearing protective devices, and the training and supervising of audiometric technicians.

§ 6-7. 6.8. In addition, the ~~speech~~ *speech-language* pathologist shall be able to demonstrate knowledge, skills, and abilities relevant to the specific practice in the following:

1. Evaluation and treatment of disorders of the oral and pharyngeal mechanism as they relate to communication, including but not limited to dysphagia; and

2. Use of alternative communication devices and appliances facilitating communication.

PART VII. REFUSAL, SUSPENSION, REVOCATION, AND DISCIPLINARY ACTION.

Article 1. Unprofessional Conduct.

§ 7.1. The board may refuse to issue a license or approval to any applicant, and may suspend for a stated period of time or indefinitely, or revoke any license or approval, or reprimand any person, or place his license on probation with such terms and conditions and for such time as it may designate, or impose a monetary penalty for any of the following causes:

1. Guaranteeing the results of any speech, voice, language, or hearing consultative or therapeutic procedure;

2. Diagnosis or treatment of speech, voice, language, and hearing disorders by correspondence, provided this shall not preclude;

a. Follow-up correspondence of individuals previously seen, or

b. Providing the persons served professionally with general information of an educational nature.

3. Revealing to unauthorized persons confidential patient information obtained from the individual he serves professionally without the permission of the individual served;

4. Exploitation of persons served professionally by accepting them for treatment when benefit cannot reasonably be expected to occur, or by continuing treatment unnecessarily;

5. Incompetence or negligence in the practice of the profession *where failure to disclose use and identity of assistants is considered negligence* (see § 6-5 6.7);

6. Failing to recommend a physician consultation and examination for any communicatively impaired person (before the fitting of a new or replacement prosthetic aid on such person) not referred or examined by a physician within the preceding six months;

7. Failing to refer a client to a physician when there is evidence of an impairment that might respond to medical treatment. Exception: This would not include communicative disorders of nonorganic origin.

8. Failing to supervise persons who assist them in the practice of ~~speech~~ *speech-language* pathology and audiology without being present at all times within the same building when unlicensed supportive personnel are delivering services.

9. Conviction of a felony related to the practice for which the license is granted;

10. Failure to comply with federal, state, or local laws and regulations governing the practice of audiology and ~~speech~~ *speech-language* pathology;

11. Failure to comply with any regulations of the

Proposed Regulations

board;

12. Inability to practice with skill and safety because of physical, mental, or emotional illness, or substance abuse;

13. Making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, an advertisement of any sort regarding services or anything so offered to the public which contains any promise; assertion; representation; or statement of fact which is untrue, deceptive, or misleading; and

14. Exceeding the scope of practice.

APPENDIX I.

Coursework Through December 31, 1992.

The applicant shall have completed at least 60 semester hours approved by the board from a college or university whose audiology and speech program is accredited by the Educational Standards Board of the American Speech-Language and Hearing Association or an equivalent accreditation.

Of the 60 semester hours, at least 30 semester hours shall be in courses beyond the bachelor's degree and acceptable toward a graduate degree by the college or university where these courses are taken and shall be applicable to the field for which licensure is sought. (See § 5-1 2 b)

The 60 semester hours shall be broken down as follows:

1. 12 semester hours in courses that provide fundamental knowledge applicable to the normal development and use of speech, voice, hearing and language; and

2. 42 semester hours in courses in the management of speech, voice, hearing and language disorders, and information supplementary to such fields. Of these 42 semester hours:

a. At least 6 semester hours shall be in audiology for those desiring a license as a speech pathologist, or in speech pathology for those desiring a license as an audiologist;

b. No more than 6 semester hours may be in courses that provide academic credit for clinical practice;

c. At least 24 semester hours, including no more than three semester hours of credit for thesis or dissertation, shall be in the field in which the license is sought.

d. 6 semester hours may be in electives if desired or additional course work may be taken under 2.a and 2.c above.

3. 6 semester hours may be in electives.

APPENDIX H I .
Basic Science Coursework.
Effective January 1, 1993.

A Master's degree or its equivalent from a college or university whose audiology and speech ~~speech~~ speech-language program is accredited by the Educational Standards Board of the American Speech-Language and Hearing Association or an equivalent accreditation is required.

The applicant shall have completed at least 75 semester hours of coursework.

1. Basic science coursework.

At least 27 of the 75 semester hours shall be in basic science coursework as follows:

a. 6 semester hours in biological/physical sciences and mathematics;

b. 6 semester hours in behavioral and/or social sciences; and

c. 15 semester hours in basic human communication processes to include the anatomic and physiologic basis, the physical and psychophysical bases, and the linguistic and psycholinguistic aspects.

APPENDIX H H II .
Professional Coursework.
Effective January 1, 1993.

A Master's Degree or its equivalent from a college or university whose audiology and speech ~~speech~~ speech-language program is accredited by the Educational Standards Board of the American Speech-Language and Hearing Association or an equivalent accreditation is required.

The applicant shall have completed at least 75 semester hours of coursework which includes basic science coursework (see Appendix H I) and professional coursework. At least 36 of the 75 semester hours shall be in professional coursework.

A. Speech and language candidates.

1. At least 30 of the 36 semester hours of professional coursework shall be in courses for which graduate credit was received.

a. Six of the 30 semester hours of graduate credit shall be required in audiology.

(1) 3 semester hours in hearing disorders and hearing evaluation; and

(2) 3 semester hours in habilitative/rehabilitative procedures.

Proposed Regulations

b. At least 21 of the 30 semester hours of graduate credit shall be in the professional area in which licensure is sought.

- (1) 6 semester hours in speech disorders;
- (2) 6 semester hours in language disorders; and
- (3) 9 semester hours in electives in speech and language.

c. Three of the 30 semester hours of graduate credit may be electives in speech, language or audiology graduate study.

2. Six of the 36 semester hours of professional coursework may be at the undergraduate level.

B. Audiology candidates.

1. At least 30 of the 36 semester hours of professional coursework shall be in courses for which graduate credit was received.

a. At least 6 of the 30 graduate credits shall be required in speech-language pathology, not associated with hearing impairment, as follows:

- (1) 3 semester hours in speech disorders; and
- (2) 3 semester hours in language disorders.

b. At least 21 of the 30 semester hours shall be in the professional area in which licensure is sought:

- (1) 6 semester hours in hearing disorders and hearing evaluation;
- (2) 6 semester hours in habilitative/rehabilitative procedures; and
- (3) 9 semester hours in electives in audiology.

c. 3 of the 30 semester hours prescribed above shall be electives in an area of graduate credit (audiology, speech, or language).

2. Six of the 36 semester hours of professional coursework may be at the undergraduate level.

APPENDIX IV III.

Clinical Practicum.

Effective January 1, 1993.

The applicant shall complete 375 clock hours of supervised clinical observation (25 hours) and supervised clinical practicum (350 hours) combined.

The applicant shall gain experience by working in at least three types of clinical settings such as, but not limited to, public schools, private practice, nursing homes, free

clinics, hospital settings, etc. At least 50 hours shall be served in each of the three types of settings. (See § 5-1-5 § 5.1 3 b (5))

A. Speech and language candidates.

1. For the clinical practicum, 250 of the 350 clock hours shall be at the graduate level in the area in which the license is sought.

a. At least 160 of the 250 graduate clock hours shall be in each of the following eight categories:

- (1) 20 clock hours in evaluation: speech disorders in children;
- (2) 20 clock hours in evaluation: speech disorders in adults;
- (3) 20 clock hours in evaluation: language disorders in children;
- (4) 20 clock hours in evaluation: language disorders in adults;
- (5) 20 clock hours in treatment: speech disorders in children;
- (6) 20 clock hours in treatment: speech disorders in adults;
- (7) 20 clock hours in treatment: language disorders in children; and
- (8) 20 clock hours in treatment: language disorders in adults.

b. Up to 20 of the 250 graduate clock hours shall be in related disorders in the major professional area.

c. At least 35 of the 250 graduate clock hours shall be in audiology.

- (1) 15 clock hours in evaluation/screening
- (2) 15 clock hours in habilitation/rehabilitation.
- (3) 5 clock hours in audiology electives.

d. 35 of the 250 graduate clock hours shall be in electives if desired or additional hours work may be taken under *subdivisions 1 a and 1 c* above.

2. 100 of the 250 clock hours may be at the undergraduate level.

B. Audiology candidates.

1. For the clinical practicum, 250 of the 350 clock hours shall be at the graduate level in the area in which the license is sought.

- a. At least 160 of the 250 graduate clock hours shall be in the following:
- (1) 40 clock hours in evaluation: hearing in children;
 - (2) 40 clock hours in evaluation: hearing in adults;
 - (3) 40 clock hours in selection and use: amplification and assistive devices for children; and
 - (4) 40 clock hours in selection and use: amplification and assistive devices for adults.
- b. At least 20 of the 250 graduate clock hours shall be in treatment: hearing disorders in children and adults.
- c. Up to 20 of the 250 graduate clock hours shall be in related disorders in the major professional area.
- d. At least 35 of the 250 graduate clock hours shall be in speech-language pathology unrelated to hearing impairment as follows:
- (1) 15 graduate clock hours in evaluation/screening;
 - (2) 15 graduate clock hours in treatment; and
 - (3) 5 graduate clock hours in electives.
- e. 15 of the 250 graduate clock hours shall be in electives if desired or additional course work may be taken under ~~the~~ *subdivisions 1 a through 1 c* above.
2. 100 of the 350 clock hours may be at the undergraduate level.

V.A.R. Doc. No. R94-421; Filed December 22, 1993, 11:56 a.m.

COMMONWEALTH OF VIRGINIA
Board of Audiology and Speech-Language Pathology

Department of Health Professions
 6606 West Broad Street, 4th Floor
 Richmond, Virginia 23230-1717 (804) 662-8907

APPLICATION FOR LICENSURE

Make check payable to Treasurer of Virginia. Fees are non-refundable.

I. IDENTIFYING INFORMATION

Name in full (Please print or type)

Last	First	Middle/Initial
Home Address	City	State
Social Security Number	Date of Birth	Area Code and Home Telephone No.
		Work Telephone No.

APPLICATION INFORMATION (Check all that apply)

- Application for audiology license (\$125.00)
- Application for speech-language pathology license (\$125.00)

III. LICENSURE THROUGH ENDORSEMENT

Any applicant who holds a license from another state or the District of Columbia or has ever been licensed by another state or the District of Columbia shall apply for licensure under this section. See Part VI for required documentation.

- I hold a current unencumbered license in another state(s).

State	Date of Initial Licensure	License #	Professional Area
State	Date of Initial Licensure	License #	Professional Area

- I hold a current Certificate of Clinical Competence from ASHA, and
- I have practiced audiology and/or speech-language pathology for one year of the past three consecutive years or two of the past five consecutive years. OR
- I hold a current Certificate of Clinical Competence from ASHA, and
- I have passed the National Examination:

Date	Score

- I have completed 25 hours in clinical observation prior to beginning clinical practicum
- I have completed 350 clock hours in a clinical practicum
- I have completed 250 hours at the graduate level in the area in which licensure is sought
- I have completed 50 clock hours in three types of clinical settings such as, but not limited to, public schools, private practice, free clinic, hospital setting

VI. REQUIRED DOCUMENTATION The following shall be submitted with this application:

A. Endorsement/Certificate of Clinical Competence

1. Attached Endorsement Certification completed by each State where you are currently licensed or have ever held a license.
2. An **ORIGINAL LETTER** from the American Speech-Language Pathology Hearing Association certifying the applicant holds a Certificate of Clinical Competence, is in good standing, and remains on current status. Letter must be prepared within six months of filing the application.
3. Verification of employment (if applying through endorsement) that applicant has practiced for one of the past three consecutive years or two of the past five consecutive years prior to application.
4. National examination scores. (Certified Results)

B. Education/Examination

1. National examination scores. (Certified Results)
2. Verification of employment for the past 24 months, if examination date preceded date of this application by more than three years.
3. Official undergraduate and graduate transcripts.
4. Verification of clock hours with an original signature.

C. Reinstatement

1. Verification of employment for one of the past three years.
2. An **ORIGINAL LETTER** from the American Speech-Language Pathology Hearing Association certifying the applicant holds a Certificate of Clinical Competence, is in good standing, and remains on current status. Letter must be prepared within six months of filing the application.
3. National examination scores. (Certified Results)

VII. IMPAIRED PRACTICE

- a. Have you ever been convicted of any criminal offense other than minor traffic violations? Yes _____ No _____ If yes, explain: _____
- b. Have you ever had a license lapse, voluntarily surrendered, placed on probation, suspended, revoked, or have you been otherwise disciplined, or ever been the subject of an investigation by any Board that regulates audiology and speech-language pathology? Yes _____ No _____. If yes, please explain in detail at the end of this application.

REGISTRAR OF REGULATIONS

Page 4

COMMONWEALTH OF VIRGINIA
 Board of Audiology and Speech-Language Pathology
 Department of Health Professions
 6606 West Broad Street, 4th Floor
 Richmond, Virginia 23230-1717 (804) 662 9907

COMMONWEALTH OF VIRGINIA
 Board of Audiology and Speech-Language Pathology
 Department of Health Professions
 6606 West Broad Street, 4th Floor
 Richmond, Virginia 23230-1717 (804) 662 9907

ENDORSEMENT CERTIFICATION FORM

Applicant please complete the top portion only and send form to the Audiology and Speech-Language Pathology regulatory board in the state(s) from which you are or have been licensed.

Name: _____ Social Security Number _____

Address: _____

(City) _____ (State) _____ (Zip Code) _____

I hereby authorize the release of the following information to the Virginia Board of Audiology and Speech-Language Pathology and authorize the Board to secure additional information concerning me or any statement in this application, from any person or source the Board may require. I further agree to submit to questioning by the Board or any member or agent thereof, and to substantiate any statement to the Board or its agent as it deems necessary.

Signature of applicant _____ Date _____

Name of State: _____

BOARD: Please provide information below and return to the Virginia Board of Audiology and Speech-Language Pathology.

Applicant's Full Name: Last _____ First _____ Middle/Maiden _____

Audiology license number: _____ was granted on _____ Date _____

Speech-Language Pathology License Number: _____ was granted on _____ Date _____

Check whether this license was issued by reciprocity _____, endorsement _____, or as a primary (original) license _____

Status of License: [] Current [] Inactive [] Expiration Date _____

LICENSURE REINSTATEMENT

Make check payable to Treasurer of Virginia. Fees are non-refundable.
 For required documentation see page 3

I. IDENTIFYING INFORMATION

Name in full (Please print or type)

Last		First		Middle/Maiden	
Home Address		City		State	
Social Security Number		Date of Birth		Area Code and Home Telephone	
Work Telephone					

II. APPLICATION INFORMATION (Check all that apply)

- Reinstatement of audiology license (\$100.00 per year since expiration)
- Reinstatement of speech-language pathology license (\$100.00 per year since expiration plus back renewal fees)

III. LICENSURE INFORMATION

Former License Number: _____

Date of Expiration: _____

Name at Time of Initial Licensure: _____

IV. UPDATE

A. I have passed the National Examination: _____ Date _____ Score _____

B. Please list all employment since licensure expiration date:

1. Company: _____ Date of Employment: _____

Job Responsibilities: _____

Proposed Regulations

BOARD FOR BRANCH PILOTS

Title of Regulation: VR 535-01-01. Branch Pilot Regulations.

Statutory Authority: §§ 54.1-113 and 54.1-902 of the Code of Virginia.

Public Hearing Date: March 24, 1994 - 9:30 a.m.

Written comments may be submitted until March 24, 1994.

(See Calendar of Events section for additional information)

Basis: Sections 54.1-902 and 54.1-113 of the Code of Virginia provide the Board for Branch Pilots with the statutory authority to promulgate rules and regulations. The board is empowered to promulgate regulations to establish entry requirements for licensure and standards of practice and conduct for branch pilots.

Purpose: The purpose of this regulatory action is to adjust application and renewal 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, and to establish mandatory Assisted Radar Plotting Aids (ARPA) training for licensed branch pilots in Virginia in accordance with the federal Coast Guard requirements.

Substance: The regulatory changes will require each licensed full and limited branch pilot to complete the Assisted Radar Plotting Aids training program prior to renewing their Virginia license. The proposed amendments change application and renewal fees.

Issues: This regulatory action will adjust application and renewal 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, and to establish mandatory Assisted Radar Plotting Aids (ARPA) training for licensed branch pilots in Virginia in accordance with the federal Coast Guard requirements.

Estimated Impact: The proposed Branch Pilot Regulations affect approximately 50 licensed branch pilots. Since the proposed rules and regulations are substantially identical to the current rules and regulations there will be no additional cost to the agency in the implementation and compliance of these regulations.

Summary:

This regulation applies directly to approximately 50 limited and unlimited branch pilots. The substantive changes in the regulation provide for an adjustment in the application and renewal fees and the implementation of the requirement for the Assisted Radar Plotting Aids (ARPA) endorsement, and require all full unlimited branch pilots renewing their license

after the effective date of these regulations to provide proof that they have piloted 12 trips since the last renewal of their license, six of which must be during the first six months of the calendar year and six within the last six months of the calendar year.

VR 535-01-01. Branch Pilot Regulations.

PART I. INITIAL LICENSE.

§ 1.1. Initial licensing.

A. Any person wishing to obtain a license as a Limited Branch Pilot shall meet the following qualifications:

1. Satisfactorily complete a two year apprenticeship in a program approved by the board;

2. Satisfactorily complete a comprehensive examination which shall be approved by the board and administered by the examining committee of the board. The examination shall be in two parts:

a. Written;

b. Practical oral examination;

3. Comply with the board's regulations and Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 of the Code of Virginia ;

4. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination must include a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drugs or alcohol use; and

5. Pay a licensing fee of \$ 175 240 . Each check or money order shall be made payable to the Treasurer of Virginia. All fees are nonrefundable.

B. Any limited branch pilot wishing to obtain a full branch pilot license shall meet the following qualifications:

1. Satisfactorily complete a five year apprenticeship in a program approved by the board;

2. Hold a limited branch pilot license in good standing;

3. Pass a practical examination approved by the board and administered by the board's Examining Committee;

4. Possess a valid unlimited Federal Inland Masters License with First Class Pilot endorsement issued by the United States Coast Guard for the same waters as his branch. *Any such license acquired after Januar*

Proposed Regulations

1994 shall include Assisted Radar Plotting Aids (ARPA) radar endorsement. A copy of this license shall be filed with the clerk of the board immediately;

5. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination must include a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drug or alcohol use;

6. Qualify in accordance with § 54.1-905 of the Code of Virginia; and

7. Pay a licensing fee of \$ ~~175~~ 240 . Each check or money order is to be made ~~out~~ payable to the Treasurer of Virginia. All fees are nonrefundable.

PART II. LICENSE RENEWAL.

§ 2.1. License renewal.

Each pilot seeking renewal of his license shall complete a renewal application, comply with the following regulations and appear before the board or its License Renewal Committee which shall determine if he possesses the qualifications to be renewed.

A. Any limited branch pilot seeking to renew his license shall meet the following standards:

1. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination must include a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drug or alcohol use.

2. Furnish to the board evidence that he has transited the waters embraced by his license during the preceding 12 months.

3. After three years of licensure as a limited branch pilot, possess a valid First Class Pilot License issued by the United States Coast Guard for the same waters as his limited branch. *Any such license acquired after January 1994 shall include assisted Radar Plotting Aids (ARPA) radar endorsement.*

4. Pay a license renewal fee of \$ ~~155~~ 225 . Each check or money order is to be made payable to the Treasurer of Virginia. All fees are nonrefundable.

B. Any full branch pilot seeking to renew his license shall meet the following standards:

1. Possess a valid unlimited Federal Inland Masters License with First Class Pilot endorsement issued by

the United States Coast Guard for the same waters as his branch; *any such license renewed or acquired after January 1994 shall include Assisted Radar Plotting Aids (ARPA) radar endorsement;*

2. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination must include a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drug or alcohol use;

3. Furnish to the board evidence that he has transited the waters embraced by his license during the preceding 12 months , *and that he has piloted 12 or more ships during that time, at least six trips as a pilot within the first six months of the calendar year and six trips as a pilot within the last six months of the calendar year ;*

4. Upon the showing of good cause, the board may waive the requirements of subdivision 3 above when in its judgment the pilot is otherwise qualified;

5. Qualify in accordance with § 54.1-906 of the Code of Virginia; and

6. Pay a license renewal fee of \$ ~~155~~ 225 . Each check or money order is to be made payable to the Treasurer of Virginia. All fees are nonrefundable.

PART III. CHANGE OF LICENSE.

§ 3.1. Change of license.

In order to extend a license, an applicant must satisfactorily complete 12 or more round trips with a currently licensed pilot of the branch for which the applicant seeks licensure, receive a First Class Pilot License issued by the United States Coast Guard for that additional area and pass a practical examination approved by the board and administered by the board's Examination Committee.

PART IV. STANDARDS OF CONDUCT.

§ 4.1. Grounds for denial of licensure, denial of renewal, or discipline.

The board shall have the authority to deny initial licensure, deny an extension of license, or deny renewal as well as to discipline existing licensees, whether limited or not, for the following reasons:

1. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude or any alcohol or drug-related offense there

Proposed Regulations

being no appeal pending therefrom or the time for appeal having been elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

2. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude.

3. Failing to report to the board in writing any reports of the National Transportation Safety Board involving the licensee, or the results of any disciplinary action taken by the United States Coast Guard against the licensee within 30 days of that report or action.

4. Refusing or in any other way failing to carry out an order from the pilot officers for reasons other than the public's health, safety, and welfare.

5. Negligence or misconduct in the performance of duties.

6. Violating or cooperating with others in violating any provision of Chapter 9 (§ 54.1-900 et seq.) of the Title 54.1 of the Code of Virginia, as amended, or any regulation of the board.

7. Failing to, as soon as possible under the circumstances, report to the pilot officers his finishing time and other required information relating to the particulars of the ship.

8. Failing to file immediately with the president or vice president of the board with a copy to the board administrator a complete written account of any violation of the statutes of Virginia or of the United States relating to pilotage or failing to report in writing to the president or vice president of the board with a copy to the board administrator an account of all collisions, groundings, or other maritime mishaps of any description that may occur during the discharge of the pilot's duties. This report shall be received no later than seven days after such an incident.

9. Failing to report to the board any physical, emotional, or psychological impairment which may affect his ability to perform the duties of a pilot. Such reports must be provided within 30 days of the onset of the condition.

10. Refusal to comply with the board's requirement for a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drug or alcohol use. Such test is required immediately and no later than 12 hours after involvement in a collision, grounding or

other incident resulting in personal injury, death, environmental hazard or property damage in excess of \$100,000. Refusal to comply with this requirement shall result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code.

11. Refusal to comply with the board's requirement for a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drug or alcohol use in any instance in which the board has reasonable cause to believe a test is necessary to protect the public health, safety or welfare. Refusal to comply with this requirement shall result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code.

12. Failure to send the test required by § 4.1 10 or § 4.1 11 to the president or vice president of the board with a copy to the board administrator within 48 hours of the administration of the test;

13. An indication of impairment on a test furnished under § 4.1 10 or § 4.1 11.

14. Performing or attempting to perform any of the duties of his office while under the influence of alcohol, or any medication (controlled substance or otherwise) to the extent that he is unfit for the performance of the duties of his office.

All previous regulations of the Board for Branch Pilots are repealed upon the effective date of these regulations.

V.A.R. Doc. No. R94-378; Filed December 21, 1993, 2:28 p.m.

BOARD FOR CONTRACTORS

Title of Regulation: VR 220-01-00. Public Participation Guidelines (REPEALING).

Title of Regulation: VR 220-01-00:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until March 14, 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 § 54.1-201 of the Code of Virginia. The board is empowered to conduct studies and promulgate regulations setting standards for licensure of contractors.

Purpose: The purpose of this regulatory action is to implement the requirements of the Administrative Process

Proposed Regulations

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 the same 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 participation by the public, they will become more familiar with the contents and expectations of the regulations. The advantage to the agency is that with public knowledge of the regulations, the agency will save considerable staff time in explaining, implementing and enforcing the regulations.

Estimated Impact: The proposed Public Participation Guidelines affect approximately 36,000 firms licensed by the board. The regulations also apply to the general public, associations and other related groups to ensure their participation in the regulatory process.

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

Summary:

In accordance with the Administrative Process Act, these regulations set procedures for the Board for Contractors to follow in order to inform the public and provide full opportunities for public participation in the regulatory process. The regulations provide for the establishment and maintenance of a mailing list, set procedures for petitions for rulemaking, provide for informational proceedings or public hearings on existing rules and set procedures for both the publication of notices of formulation and adoption and the appointment of advisory committees.

VR 220-01-00:1. Public Participation Guidelines.

§ 1. Definitions.

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

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

"Agency" or "board" means the Board for Contractors.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a

municipal corporation, or any other legal entity.

§ 2. Mailing list.

The agency will maintain a list of persons and organizations who will be mailed the following documents as they become available:

- 1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.*
- 2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.*
- 3. Notice that the final regulations have been adopted.*

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 3. Placement on the mailing list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 2. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 4. Petition for rulemaking.

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

§ 5. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

§ 6. Informational proceedings or public hearings for

Proposed Regulations

existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 7. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 8. Advisory committees.

The board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession,

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

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

§ 9. Applicability.

Sections 2 through 4, 6, and 8 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. Nos. R94-422 and R94-423; Filed December 22, 1993, 11:58 p.m.

BOARD OF DENTISTRY

Title of Regulation: VR 255-01-2. Public Participation Guidelines.

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

Public Hearing Date: N/A – Written comments may be submitted through March 11, 1994.

(See Calendar of Events section for additional information.)

Basis: Section 54.1-2400 establishes the general powers and duties of the Board of Dentistry which include the promulgation of regulations. Section 9-6.14:7.1 of the Administrative Process Act establishes the statutory requirements for public participation in the regulatory process.

Purpose: The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The regulations replace emergency regulations currently in effect.

Substance:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations.

Section 2.1 establishes the composition of the mailing list and the process for adding or deleting names from that list.

Section 2.2 lists the documents to be sent to persons on the mailing list.

Section 3.1 establishes the requirements and procedures for petitioning the board to develop or amend a regulation. The regulation sets forth the guidelines for a petition and

Proposed Regulations

the requirements for a response from the board.

Section 3.2 sets forth the requirements and procedures for issuing a Notice of Intended Regulatory Action.

Section 3.3 sets forth the requirements and procedures for issuing a Notice of Comment Period.

Section 3.4 sets forth the requirements and procedures for issuing a Notice of Meeting.

Section 3.5 sets forth the requirements and guidelines for a public hearing on a proposed regulation.

Section 3.6 sets forth the requirements and guidelines for a biennial review of all regulations of the board.

Section 4.1 establishes the requirements and criteria for the appointment of advisory committees in the development of regulations.

Section 4.2 establishes the requirements for determining the limitation of service for an advisory committee.

Section 4.2 A sets forth the conditions in which an advisory committee may be dissolved for lack of public response to a Notice of Intent or in the promulgation of an exempt or excluded regulation.

Section 4.2 B sets forth a term of 12 months for the existence of an advisory committee or the requirements for its continuance.

Issues: The issues addressed are those presented by the amended provisions of the Administrative Process Act. These amendments pertain to: (i) public notifications and the establishment of public participation guidelines mailing list; (ii) petitioning the board for rulemaking, the conduct of public hearings related to proposed regulations, and the conduct of biennial reviews of existing regulations; and (iii) guidelines for the use of advisory committees.

An overall issue related to whether provisions of the Administrative Process Act were to be repeated in regulation. The board generally agreed with the Registrar that provisions stated in statute should not be repeated in regulation, but in instances in which clarity was enhanced by restating or elaborating on statutory provisions, the provisions were repeated.

1. **Mailing Lists and Notifications.** To establish requirements for mailing lists and for documents to be mailed to persons or entities on the mailing lists.

The board proposes language to instruct persons or entities who wish to be placed on its mailing list on how to proceed and identifies explicitly those documents which will be mailed to those persons or entities. A listing of these documents, which are specified in statute, is repeated for the sake of clarity.

The proposed regulation also establishes a mechanism for identifying segments of the mailing list of interest to specific persons or entities, and for the board, at its discretion, to notify additional persons or entities of opportunities to participate in rulemaking. In addition, the proposed regulation provides for periodic updating of the mailing lists, and for removal of persons or entities when mail is returned as undeliverable.

2. **Petitioning for Rulemaking/Public Hearings/Biennial Reviews.** The APA, as amended, states general requirements for public petitions for rulemaking, encourages the conduct of informational proceedings and periodic reviews of existing regulations, and specifies certain information to be included in Notices of Intended Regulatory Action, Notices of Comment Periods, and Notices of Meetings. The board believes these requirements and processes should be further elaborated in regulation for the benefit of public understanding.

The board adopted as emergency provisions and proposes these regulations as recommended by the Department of Health Professions. The proposed regulations specify:

a. The process and content required for petitions for rulemaking.

b. The content of Notices of Intended Regulatory Action, including a requirement that the board state whether it intends to convene a public hearing on any proposed regulation. If no such hearing is to be held, the board shall state the reason in the notice. The notice must also indicate that a public hearing shall be scheduled during the comment period if requested by at least 25 persons or entities.

c. The content of Notices of Meetings, including a requirement that the notice indicate that copies of regulations for which an exemption from the provisions of the APA is claimed will be available prior to any meeting at which the exempted regulation is to be considered.

d. A requirement that the board conduct a public hearing during the comment period unless, at a noticed meeting, the board determines that a hearing is not required.

e. A requirement, consistent with Executive Order Number 23(90), that the board review all existing regulations at least once each biennium.

These elaborations on the Administrative Process Act are included in the proposed regulations in the belief that the board should provide every opportunity feasible for public participation, and that any curtailment of these opportunities should require affirmative action by the board at a noticed meeting.

Proposed Regulations

3. Guidelines for Use of Advisory Committees. The APA, as amended, requires that agencies specify guidelines for the use of advisory committees in the rulemaking process. The statutory provisions do not specify the content of these guidelines or the duration of appointment of advisory committees.

The board adopted emergency provisions and proposes regulations identical to those recommended by the Department of Health Professions. These proposed regulations include:

- a. Provision for the board, at its discretion, to appoint an ad hoc advisory committee to assist in review and development of regulations.
- b. Provision for the board, at its discretion, to appoint an ad hoc committee to provide technical or professional assistance when the board determines that such expertise is necessary, or when groups of individuals register an interest in working with the board.
- c. Provisions for tenure of advisory committees and for their dissolution.

These provisions are considered necessary to specify to the public the conditions which should be met in the board's use of general or technical advisory committees in its rulemaking processes. They also avoid the continuation of such committees beyond their period of utility and effectiveness.

Estimated Impact:

A. Regulated Entities: The proposed regulations will affect those persons or entities currently on the mailing lists of the board. However, there is no estimation of how many persons or groups may be affected by notices, hearings, or appointments of ad hoc advisory committees as a result of these proposed regulations.

B. Projected Costs to Regulated Entities: There are no projected costs for compliance with proposed regulations.

C. Projected Cost for Implementation: There are no additional costs to the agency associated with the promulgation of these regulations, since the board has conducted its business in compliance with the requirements of the Administrative Process Act under existing Public Participation Guidelines.

Summary:

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Dentistry. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The proposed regulations will

replace emergency regulations currently in effect.

VR 255-01-2. Public Participation Guidelines.

PART I. GENERAL PROVISIONS.

§ 1.1. Purpose.

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Dentistry. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

§ 1.2. 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.

"Board" means the Board of Dentistry.

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

PART II. MAILING LIST.

§ 2.1. Composition of the mailing list.

A. The board shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.

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

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

§ 2.2. Documents to be sent to persons or entities on the mailing list.

Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to th

promulgation of regulations:

1. A Notice of Intended Regulatory Action.
2. A Notice of Comment Period.
3. A copy of any final regulation adopted by the board.
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

PART III. PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

§ 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

§ 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

§ 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

§ 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

§ 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

PART IV. ADVISORY COMMITTEES.

§ 4.1. Appointment of committees.

A. The board may appoint an ad hoc advisory

Proposed Regulations

committee whose responsibility shall be to assist in the review and development of regulations for the board.

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

§ 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.
2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

V.A.R. Doc. No. R94-349; Filed December 15, 1993, 2:20 p.m.

DEPARTMENT OF FORESTRY

Title of Regulation: VR 312-01-01. Public Participation Guidelines (REPEALING).

Title of Regulation: VR 312-01-1:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1101 of the Code of Virginia.

Public Hearing Date: February 8, 1994 - 2 p.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize Public Participation Guidelines for soliciting the input from interested persons in the formation and development of its regulations.

Purpose: The purpose of the proposed action is to adopt Public Participation Guidelines for the Department of Forestry which ensure interested persons are able to comment on the regulatory actions in a meaningful fashion during all phases of the regulatory process.

Substance: The guidelines provide that the department will develop a mailing list of interested persons of proposed regulatory actions; brief appropriate advisory committees; provide a comment; hold public meetings as appropriate; and follow other requirements of the Administrative Process Act.

Estimated Impact: Adoption of the proposed Public Participation Guidelines should not impose any financial impact on the agency or the public. The impact of the Public Participation Guidelines upon small business or organizations shall be favorable by allowing direct participation into the formation, development and promulgation of regulations.

Summary:

Pursuant to Virginia statute, the Department of Forestry submits its proposed regulation, Public Participation Guidelines. The department intends to repeal VR 312-01-01 and promulgate VR 312-01-1:1 to replace the emergency Public Participation Guidelines. This regulation outlines the procedure in which the department will solicit the input of interested parties in the formation and development of regulations.

VR 312-01-1:1. Public Participation Guidelines.

§ 1. Definitions.

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

"Advisor" means any of the following: (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) groups; (iv) individuals; and (v) any combination thereof.

"Department" means the Department of Forestry, including staff, etc., established pursuant to Virginia law (§§ 9-6.14:7.1 and 10.1-1101) that implements programs and provides administrative support to the State Forester.

"State Forester" means the head of the Department of Forestry who has been established pursuant to Virginia law as the legal authority to adopt regulations.

"Virginia law" means the provisions found in the Code of Virginia or the Virginia Acts of Assembly authorizing the department to make regulations or decide cases or containing procedural requirements thereof.

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

Proposed Regulations

review of regulatory actions governed by the Administrative Process Act.

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 of § 3 of this regulation shall be used for soliciting the input of interested parties in the formation and development or repeal of regulations and any revisions thereto in accordance with the Administrative Process Act. These procedures shall not only be utilized prior to the formation and drafting of regulations, but shall be utilized during the entire formation, promulgation and final adoption process.

The guidelines for public participation are based on the principle that citizens have both a right and a responsibility to take part in the governmental processes, that government functions best when it provides for participation by the public, and that department regulations should impose only those requirements which are necessary and do not unreasonably burden private businesses or individual citizens.

B. At the discretion of the State Forester, the procedures in § 3 may be supplemented by any means and in any manner to gain additional public participation in the regulation adoption process or as necessary to meet federal requirements, provided such means allow for balanced participation by the interested parties.

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

D. Any person may petition the department to request the department to develop a new regulation, or amend or repeal an existing regulation. The State Forester shall respond to the petition within 180 days or as required under the Administrative Process Act.

§ 3. Public participation procedures.

A. The department shall establish and maintain a list or lists consisting of interested citizens, organizations, associations and industry expressing an interest in the adoption, amendment or repeal of regulations.

B. Whenever the State Forester so directs, the department may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The department may form an ad hoc advisory group to assist in the drafting and formation of the proposal. When an ad hoc advisory group is formed, it shall be

formed so as to give a balanced representation of interested parties.

D. The department regulatory coordinator shall prepare the draft regulatory review package (specified in § 1(B)(1)(b) of Executive Order Twenty-Three (90) (Revised)) and hold in the department's office for the inspection of the Secretary of Commerce and Trade at least 30 days before the department anticipates submitting the proposed Notice of Intended Regulatory Action (NOIRA) to The Virginia Register of Regulations, the Governor, the Department of Planning and Budget and the Board of Forestry. Also, at least 30 days before the anticipated date of submission of the NOIRA, the department regulatory coordinator shall deliver to the secretary all requirements of the office of the secretary.

E. The department shall consult with the Attorney General's office before and during the regulatory process.

F. The department shall issue a NOIRA for all regulatory proposals in accordance with the Administrative Process Act.

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

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

b. 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.

2. The department shall hold at least one public meeting when considering the adoption of new regulations. In the case of amendments to or repeal of existing regulations, the necessity for holding at least one public meeting shall be decided by the State Forester.

In those cases where at least one public meeting has been determined to be necessary, the NOIRA shall also include the date, not to be less than 30 days after publication in The Virginia Register, time and place of the public meeting(s).

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

G. 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.

2. Distribution by mail to parties on the list(s)

Proposed Regulations

established under subsection A of this section.

3. Distribution by mail to the Governor, the Department of Planning and Budget and the Board of Forestry.

H. After consideration of public input, the department may prepare the draft proposed regulation and prepare the Notice of Public Comment (NOPC) and any supporting documentation required for review by the Administrative Process Act, Governor's Executive Order, and the Secretary of Commerce and Trade. The State Forester shall notify the secretary by telephone and in writing of any substantive differences between what was reviewed and approved by the secretary as a proposed regulation and what was actually proposed at least 24 hours prior to filing the proposed regulation with the Governor, the Department of Planning and Budget, The Virginia Register and the Board of Forestry. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group during the development of the draft regulation.

I. The NOPC shall include, in addition to the requirements of the Registrar of Regulations, the following:

1. The notice of the opportunity to comment on 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. 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.

b. A statement of estimated impact:

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

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

community.

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

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 or organizations in Virginia.

e. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, the department assurance that the proposed regulation is the least burdensome available alternative.

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

5. The date, time and place of at least one public hearing to receive comments on the proposed regulation. The hearings may be held at any time during the public comment period. The hearings may be held in Charlottesville or in such locations as the department determines will best facilitate input from interested parties.

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

K. Upon approval of the draft proposed regulation by the State Forester, the department may publish the proposal for public comment.

L. 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.

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 parties on the list(s) established under subsection A of this section.

3. Distribution by mail to the Department of Planning and Budget and the Board of Forestry.

4. Distribution by mail to the office of the Governor.

M. The regulatory coordinator shall prepare a summary of comments received in response to the NOPC and

submit them to the State Forester for approval. Both the summary and the comments shall become a part of the department file. The State Forester or designated representative shall inform the secretary in accordance with requirements 24 hours prior to filing the final regulation with The Virginia Register, the office of the Governor, the Department of Planning and Budget and the Board of Forestry.

N. If one or more changes are made to the proposed regulations from the time it is published as a proposed regulation to the time it is published as a final regulation, any person may petition the department within 30 days from the publication of the final regulation to request an opportunity for oral and written submittals on changes to the regulation. If 25 or more persons submit requests for an opportunity to submit oral or written comments, the department shall suspend the regulatory process for 30 days to solicit additional public comment.

O. Regulations may be formally and finally adopted by the signed order of the State Forester. A 30-day final adoption period for regulations shall commence upon the publication of the final regulation in The Virginia Register. The Governor shall review the final regulation during this 30-day final adoption period and if the Governor objects to any portion or all of the regulation, the Governor may file a formal objection to the regulation, suspend the effective date of the regulation, or both.

If no objection is filed during the 30-day final period, the regulation shall become effective at the conclusion of the 30-day final adoption period or at a later date specified by the State Forester.

V.A.R. Doc. Nos. R94-364 and R94-365; Filed December 20, 1993, 10:15 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: VR 320-01-04. Resident Trainee Program for Funeral Service.

Statutory Authority: §§ 54.1-2400, 54.1-2803 and 54.1-2817 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until March 28, 1994.

(See Calendar of Events section for additional information)

Basis: Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia provides the basis for these regulations. Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to "promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system."

Purpose: The proposed amendments set forth revised requirements for the resident trainee programs. The proposed amended regulations address eight specific areas: (i) maximum length of time an individual may be registered as an apprentice; (ii) supervision of a registrant who has completed the formal trainee program but has not yet become licensed; (iii) requirement for final reporting; (iv) penalty for failure to report; (v) revisions of wording and format for clarity and ease of compliance; (vi) relaxation of supervision requirements for active trainees; (vii) strengthening of reporting requirements for active trainees; and (viii) increase in administrative fees when changing supervisors/sites.

Substance: The key provisions of each amendment are summarized below:

Section 1.1 establishes definitions of direct supervision, full-time school attendance, full-time work schedule, part-time school attendance for clarification of areas that, as a result of being non-specific, have impacted ease of compliance.

Section 1.5 increases the fees from \$10 to \$15 for resumption of traineeship after interruption and reinstatement of traineeship after expiration.

Section 2.2 establishes a "cap" of four years on the maximum allowable time that one can be registered as a trainee. The pre-licensure process involves an 18 month apprenticeship and a maximum of two years of schooling allowing the trainee six months to apply and prepare for the exam.

Section 2.6 states that at least forty hours per week apprenticeship is required but clarifies that additional and further hours may be required at the discretion of the supervisors.

Section 2.10 describes the procedure to be followed if the traineeship is interrupted and clarifies that adherence to this procedure is required regardless of who interrupts the traineeship (trainee or supervisor).

Section 2.20 requires the trainee to obtain a new supervisor when the program is interrupted and clarifies that adherence to this procedure is mandated if credit is to be approved regardless of who interrupts the traineeship (trainee or supervisor).

Section 2.22 clarifies the procedure for submitting a partial report. Subsection B of this requirement mandates a final report to the board at the end of the traineeship and requires that the curriculum checklist (originally designed for optional use) shall be completed and submitted to the board.

Section 2.23 clarifies the responsibilities of the trainee, supervisor and establishment manager for submitting reports.

Proposed Regulations

Section 3.5 clarifies and relaxes the curriculum requirement concerning knowledge of an contact with community resources.

Appendices:

Application for Apprenticeship - Revised and updated in conformity with requirements.

Application for Apprenticeship Supervisor - Reformatted only.

General Information for Trainees - Reformatted only.

Trainee Program Recording Form - Added to promulgation as it is no longer optional but is a required reporting form.

Funeral Service Affidavit - Added to conform with amended regulations.

Issues: The proposed amendments result from a comprehensive review of the regulations and are as a result of monitoring patterns of noncompliance. Many of the requirements do not change in content or level of requirement. Rather, they contain clarification for ease of understanding and compliance. Major issues are as follows:

1. Problem: Current regulations permit funeral service trainees to prolong their traineeships and pursue "careers" as apprentices. Existing provisions allow the trainee to engage in the scope of practice of the licensed funeral professional so long as the apprentice is directly supervised by a licensee. Some apprentices complete the formal apprenticeship program but remain unqualified for licensure since they have not attended mortuary science school or there is a maximum allowable time for delaying examinations, the only penalty is losing credit for past formal apprenticeships. Some individuals simply reinstate their apprenticeships and the cycle begins again. The funeral establishment can employ one licensed staff person and continue to provide services by recycling "career" apprentices.

Solution: The board agreed that a "cap" should be required and concurred that an additional six months is sufficient time to apply for and take the examination and to serve in the trainee capacity. The board proposes to reserve the right to waive the time requirement when appropriate.

2. Problem: The board has received complaints from the public that apprentices who have completed the formal traineeship remain registered as apprentices, meet with families and perform embalmings without licensed staff present.

Training supervisors consistently have not provided oversight required because the definition of supervision is not clear. (See § 1.1 and § 2.15 B)

Solution: The board added a definition of direct supervision to clarify that the licensed supervisor be present and in the same facility with the trainee and require that any apprentice registered in the program be directly supervised. The board believes this to be the only viable alternative to prevent unwarranted practice.

3. Problem: The board determined that the public needs appropriate verification that supervision is provided during the entire registration period. The board must assure that the report is received. (See § 2.22 B and § 2.23)

Solution: To assure that appropriate supervision is provided, the board proposed to require a final report in the form of an affidavit at the end of the 48-month registration period. The affidavit must include attestments by the registrant and the supervisor that direct supervision was provided. Failure to report may result in an informal conference with the board.

4. Problem: Active trainees usually have a maximum of two supervisors. Because the supervisor may be required to respond to multiple activities on site, he can not always be present "in the room with" the trainee. (See § 1.1)

Solution: The board determined that a regulation requiring only that the supervisor be "in the building with" the trainee is less burdensome and still provides protection to the public from unlicensed activity. (See § 3.22)

5. Problem: Active trainees do not have to attest that they have complied with the curriculum required by the board. The curriculum checklist is for informal use only. Reports from trainees sitting for the examination that they have been provided/exposed to little of the curriculum contents have been of major concern to the board.

Solution: The board determined that the trainee and supervisors should sign a notarized affidavit that they have each complied with responsibilities to the trainee curriculum and that completion and submittal of the trainee checklist should be mandatory.

6. Problem: Trainees frequently change sites of training and training supervisors. The administrative processing of new approvals is time-consuming and, thereby, costly. (See § 3.1)

Solution: The board determined that a fee increase for trainee interruptions was financially required.

Impact:

A. Numbers and Types of Regulated Entities: There are currently 187 registered trainees regulated by the board. Each has at least one supervisor and some have two supervisors (one for funeral service and one for embalming). The board estimates that there are approximately 250 licensed supervisors. Trainees are currently registered at approximately 195 of the 493 licensed establishments (several trainees serve more than

Proposed Regulations

one establishment).

B. Projected Costs for Regulated Entities: A regulated funeral establishment which has a trainee is required currently to supervise the trainee directly. The amendment relaxes supervision. The supervisor will be required to be on site whenever the trainee is on duty. The increased cost in supervisory time is avoidable since offering training is voluntary. Trainees increase productivity and revenues sufficient to defray any costs for supervision.

The strongest impact will be felt by the trainee who has not moved expeditiously toward licensure. However, the individual can remain in the funeral home performing services that do not require a license. Based on the varying wages of trainees, an exact cost to the registrant cannot be determined.

Trainees will have additional reporting requirements. Cost to the trainee will be for mailing only as the board provides the forms. A slight increase in administrative cost to re-approve sites and supervisors when a trainee changes locations will occur. This expense is avoidable.

C. Projected Cost to Agency for Implementation and Enforcement: Registrants and licensed supervisors will receive a copy of the final regulations at a projected cost for printing and mailing of \$1,000. Printing applications will cost \$150 and will involve minimal staff time. The board expects disciplinary cases to increase slightly as a result of the supervisory requirements and expects the increased cost to average \$5,000 annually. Complaints and reports of noncompliance are not expected to increase as a result of the remainder of the proposed amendments. The staff presently has a trainee tracking system in place to monitor compliance.

A total estimated cost is projected at \$6,150 for staff time, postage, printing, mailing and adjudication costs.

D. Source Funds: All funds of the Board of Funeral Directors and Embalmers are derived from fees paid by licensees, registrants and applicants.

E. Projected Cost for Compliance: The fee increases regarding changes during the term of the apprenticeship will be an avoidable expense to the trainee.

No increased costs for compliance with requirements for record-keeping or reporting licenses under current regulations are anticipated.

Summary:

The proposed regulations address eight specific areas: (i) maximum length of time an individual may be registered as an apprentice; (ii) supervision of a registrant who has completed the formal trainee program but has not yet become licensed; (iii) requirements for final reporting; (iv) penalty for failure to report; (v) revisions of wording and format

for clarity and ease of compliance; (vi) relaxation of supervision requirements for active trainees; (vii) strengthening of reporting requirements for active trainees; and (viii) increase in administrative fees when changing supervisors/sites.

VR 320-01-04. Resident Trainee Program for Funeral Service.

PART I. GENERAL PROVISIONS.

Article 1. Definitions, Legal Base, Purpose, Applicability.

§ 1.1. Definitions.

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

"Applicant" means a person applying for registration by the board.

"Board" means the Board of Funeral Directors and Embalmers.

"Conduct" means to carryout and perform.

"Direct supervision" means that a licensed funeral service professional is present and in the room with the trainee.

"Full-time school attendance" means that the individual attending mortuary science school is enrolled in 12 or more semester hours of coursework per semester.

"Full-time work schedule" means that the resident trainee works at least 40 hours per week.

"Part-time school attendance" means that the individual attending mortuary science school is enrolled in 11 or fewer semester hours of coursework per semester.

"Registration" means the process of applying to the board to seek approval to serve as a trainee or supervisor.

"Resident trainee" means a person who is preparing to be licensed for the practice of funeral services under the direct supervision of a practitioner licensed by the board.

"Supervisor" means a licensed employee of the establishment which is the training site. The employee is licensed as an embalmer, funeral director, or funeral service licensee and has agreed to supervise the training program of the resident trainee and has been approved by the board to provide supervision.

"Training site" means the licensed funeral establishment which has agreed to serve as the location for resident training and has been approved by the board for the

Proposed Regulations

training.

§ 1.2. Legal base.

Section 54.1-2817 of the Code of Virginia describes the responsibility of the Board of Funeral Directors and Embalmers to regulate the resident trainee program for funeral service in the Commonwealth of Virginia.

§ 1.3. Purpose.

These regulations establish the standards for qualifications, training and practice of persons as resident trainees; sites of training; and supervisors of training in the Commonwealth of Virginia.

§ 1.4. Applicability.

Individuals and establishments subject to these regulations are (i) funeral service resident trainees; (ii) licensed funeral homes serving as training sites; and (iii) funeral service licensees, funeral directors, and embalmers serving as training supervisors.

Article 2. Fees.

§ 1.5. Initial fees.

The following fees shall be paid as applicable for registration:

1. Funeral service resident trainee registration ... \$25
2. Resumption of traineeship after interruption .. ~~\$10~~
\$15

§ 1.6. Renewal fee.

The following annual fee shall be paid for registration renewal:

- Resident trainee registration renewal \$25

§ 1.7. Reinstatement fee.

The following reinstatement fee shall be paid in addition to annual renewal fees for reinstatement of an expired registration up to three years following expiration:

- Resident trainee registration reinstatement ~~\$10~~ \$15

Article 3. Other Fees.

§ 1.8. ~~Other fees~~ Duplicates .

A. ~~Duplicates.~~

- Duplicate trainee registration \$25

B. ~~Other.~~

§ 1.9. Additional fee information.

- 1- A. There shall be a fee of \$25 for returned checks.
- 2- B. Fees shall not be refunded once submitted.

Article 4 . Renewals.

§ ~~1.9.~~ § 1.10. Expiration date.

A. The resident trainee registration shall expire on January 31 of each calendar year.

B. A person who fails to renew a registration by the expiration date shall be deemed to have an invalid registration.

C. No credit will be allowed for a traineeship period served under an expired registration.

§ ~~1.10.~~ § 1.11. Renewal of registration.

A person who desires to renew his registration for the next year shall not later than the expiration date:

1. Return the renewal notice:
2. Submit the applicable fee; and
3. Notify the board of any changes in name, address, employment, or supervisor.

§ ~~1.11.~~ § 1.12. Reinstatement of expired registration.

The board may consider reinstatement of an expired registration for up to three years following expiration. A written application request for reinstatement shall be submitted to the board and shall include payment of all applicable delinquent renewal fees prescribed in § 1.6 plus the additional reinstatement fee prescribed in § 1.7.

§ ~~1.12.~~ § 1.13. Reapplication for registration.

When a registration is not reinstated within three years of its expiration date, an applicant for registration shall restart the training program and reapply for traineeship.

PART II. TRAINEE PROGRAM REQUIREMENTS.

Article 1. Training Program: General.

§ 2.1. Resident training.

For applicants applying for initial traineeships after November 1, 1990, The trainee program shall consist of at least 18 months of resident training.

Proposed Regulations

§ 2.2. Traineeship registration.

An individual may hold an active traineeship registration for a maximum of 48 months from the date of initial registration for the traineeship program. The board, in its discretion, may grant an extension of the traineeship registration.

§ 2.2. § 2.3. School attendance.

A resident trainee shall not attend school full time while serving his traineeship (see § 1.1).

§ 2.3. § 2.4. Number of trainees limited.

When more than two trainees are requested by a licensed funeral establishment, not more than two trainees will be registered per licensed supervisor at any time.

§ 2.4. § 2.5. Approval of funeral training.

The approval shall apply to and be valid only to:

1. The resident trainee;
2. The licensed person(s) under whom the training is to be given; and
3. The funeral service establishment(s) named in the approval statement.

§ 2.5. § 2.6. Trainee work schedule.

Every resident trainee shall be assigned a work schedule of at least 40 hours each week in order to obtain credit for such training. The trainee shall be required to serve ~~weekday, evening, and weekend shifts~~ to receive training in all areas of funeral service. *Additional and further hours may be at the discretion of the supervisor or may be a requirement of the facility.*

Article 2.

Resident Trainees: Requirements and Application Process for Registration.

§ 2.6. § 2.7. Resident trainee requirements.

To be approved for registration as a resident trainee, a person shall:

1. Be a graduate of an accredited high school or the equivalent;
2. Obtain a supervisor approved by the board to provide training;
3. Have not been convicted of a felony. The board, in its discretion, may approve an individual convicted of a felony if he has been pardoned or has had his civil rights restored.

§ 2.7. § 2.8. Trainee application package.

Every qualified person seeking registration with the board as a trainee under the Program for Training of Resident Trainees shall submit an application package which shall include:

1. Completed and signed application;
2. Fee prescribed in § 1.5; and
3. Additional documentation as may be required by the board to determine eligibility of the applicant.

§ 2.8. § 2.9. Submission of incomplete application package; exception.

All required parts of the application package shall be submitted at the same time. An incomplete package will be returned to the applicant.

Exception: Some schools require that certified transcripts be sent directly to the licensing authority. That policy is acceptable to the board. National examination scores where applicable will also be accepted from the examining authority.

§ 2.9. § 2.10. Resumption-of-traineeship application.

When a traineeship is interrupted by the trainee, the trainee shall submit a resumption-of-traineeship application to the board prior to resuming his traineeship.

Article 3.

Establishment Application Requirements.

§ 2.10. § 2.11. Training sites.

Funeral training shall be given at the main office of the licensed funeral service establishment approved for training or at any branch of such establishment that complies with the provisions of these regulations and is approved by the board as a training site.

§ 2.11. § 2.12. Qualifications of training site.

The board shall approve only an establishment or two combined establishments to serve as the training site(s) which:

1. Have a full and unrestricted Virginia license;
2. Have complied in all respects with the provisions of the regulations of the Board of Funeral Directors and Embalmers; and
3. Have 35 or more funerals and 35 or more bodies for embalming per calendar year for each person to be trained. This total must be maintained throughout the period of training.

Proposed Regulations

§ ~~2.12~~. § 2.13. Approval of training site.

An individual, firm, or corporation owning or operating any funeral service establishment shall apply to and be approved by the board prior to permitting funeral training to be given or conducted in the establishment.

§ ~~2.13~~. § 2.14. Establishment application package.

Every qualified establishment or combined establishments seeking approval as a training site(s) shall submit an application package which shall include:

1. Completed and signed application; and
2. Additional documentation as may be required by the board to determine eligibility of the establishment.

Article 4.
Supervisor Application Requirements.

§ ~~2.14~~. § 2.15. Training supervision.

Training shall be conducted under the direct supervision of a licensee(s) approved by the board.

§ ~~2.15~~. § 2.16. Qualifications of supervisor.

The board shall approve only funeral service licensees, licensed funeral directors, or licensed embalmers to give funeral training who:

1. Have a full and unrestricted Virginia funeral license;
2. Have complied in all respects with the provisions of the regulations of the Board of Funeral Directors and Embalmers; and
3. Are employed full time in the establishment where training occurs.

§ ~~2.16~~. § 2.17. Supervisor approval.

An individual shall apply to and be approved by the board prior to serving as a supervisor.

§ ~~2.17~~. § 2.18. Supervisor application package.

Every qualified person seeking approval of the board as a supervisor shall submit an application package which shall include:

1. Completed and signed application; and
2. Additional documentation as may be required by the board to determine eligibility of the applicant.

§ ~~2.18~~. § 2.19. Curriculum compliance.

An approved supervisor shall comply with and shall

provide supervision and training as prescribed by these regulations.

Article 5.
Program Requirements.

§ ~~2.19~~. § 2.20. Selection of new supervisor.

If the program is interrupted because the approved supervisor is unable to serve, the trainee shall obtain a new supervisor.

§ ~~2.20~~. § 2.21. Resumption of training.

Credit for training shall resume when a new supervisor is obtained by the trainee and approved by the board.

Article 6.
Reporting Requirements.

§ ~~2.21~~. § 2.22. Report to the board ; *six-month report; partial report; final report* .

A. The trainee, the supervisor(s), and the establishment shall submit a written report to the board at the end of every six months of training. The report shall:

1. Verify that the trainee has actually served in the required capacity during the preceding six months; and
2. Be received in the board office no later than 10 days following the end of the six-month period. A late report automatically will have credit deducted in two week increments from the completed training time.

B. *If the training program is terminated or interrupted prior to completion of a six-month period, the trainee and the supervisor shall submit a partial report to the board. The partial report shall provide the amount of time served and the dates since the last reporting period. Credit for partial reports shall be given in increments of one month. Written explanation of the causes of program termination/interruption shall be provided by the trainee and the supervisor. Partial reports shall be received in the board office no later than 10 days after the interruption/termination of the trainee program. Credit may be deducted for late reports.*

C. *The trainee, the supervisor(s) and the establishment manager shall submit written final reports to the board at the end of the apprenticeship period as follows:*

1. *Final Trainee Report which certifies that the trainee has conducted 25 funerals and 25 embalmings;*
2. *Notarized affidavit. A trainee, his supervisor and the establishment manager shall submit a notarized affidavit to the board at the end of the trainee program that full compliance has been met with the trainee curriculum; and*

3. Curriculum checklist. A trainee shall submit a completed checklist showing a chronological history of training to the board at the end of the trainee program.

All final reports shall be received in the board office no later than 10 days after the completion of the traineeship. Late reports may result in additional time being added to the traineeship.

§ 2.22. § 2.23. Failure to submit training report.

If the trainee, supervisor, or establishment manager fails to submit the reports required in § 2.21 § 2.22, the trainee shall forfeit all credit for training since the last report made or disciplinary action may be taken against the trainee, supervisor and establishment manager. The board may waive such forfeiture.

§ 2.23. Terminated or interrupted training.

If the training program is terminated or interrupted prior to completion of a six-month period, the trainee and the supervisor shall submit the following information to the board within five working days:

1. Trainee:

a. All partial progress reports to the date of termination for the six-month period; and

b. Written explanation of the causes of program termination/interruption.

2. Supervisor. The supervisor shall submit written explanation of the causes of program termination/interruption.

§ 2.24. Credit for partial reports.

Credit for partial reports shall only be given in increments of one month.

PART III. TRAINING PROGRAM: FUNERAL SUPERVISORS' RESPONSIBILITIES.

Article 1. Regulations and Forms.

§ 3.1. Regulations.

The supervisor shall provide the trainee with regulations or sections of regulations relating to the funeral industry as follows:

1. Regulations of the Board of Funeral Directors and Embalmers;

2. Preneed regulations of the Board of Funeral Directors and Embalmers;

3. Virginia Department of Health regulations governing:

a. Vital statistics reporting;

b. Responsibilities of the medical examiner;

c. Cremations and burial at sea;

d. Disinterments and reinterments;

e. Shipping bodies to another country;

f. Shipping bodies by public transport; and

g. Filing of death certificates;

4. Occupational Safety and Health Administration (OSHA) regulations;

5. Regulations governing the filing of Veteran's Administration and Social Security claims;

6. Federal Trade Commission's Funeral Rule on funeral industry practices.

§ 3.2. Forms.

The supervisor shall provide the trainee with copies of and explanations for the use of:

1. General price list;

2. Itemized statement of funeral goods and services;

3. Casket price list;

4. Outer burial container price list; and

5. Preneed contract.

§ 3.3. Forms completion.

The supervisor shall instruct the trainee in how to complete, and allow the trainee to complete, final forms for business as follows:

1. Itemized statements of funeral goods and services;

2. Preneed contracts;

3. Death certificates;

4. Veteran and Social Security Administration forms;

5. Cremation forms; and

6. Vital statistic reports.

§ 3.4. Preneed funding forms.

Proposed Regulations

The supervisor shall instruct the trainee on the requirements and use of forms used by funding companies for the investment of preneed funds.

Article 2. Knowledge of the Community and Others.

§ 3.5. Community resources.

The supervisor shall provide the trainee with a list of the following and a contact person whom the funeral home uses as a resource at each place with a contact at each of the following .

1. Area hospitals;
2. Area nursing homes;
3. Regional medical examiner;
4. City or county morgue;
5. Police department;
6. Cemeteries and crematoriums; and
7. Churches, mosques, synagogues.

§ 3.6. Community funeral customs.

The supervisor shall instruct the trainee on the funeral customs of the following:

1. Nationalities served by the funeral home;
2. Religious rites;
3. Fraternal rites; and
4. Military rites.

Article 3. Merchandising.

§ 3.7. Merchandising.

The supervisor shall instruct the trainee on:

1. The features and prices of merchandise offered by the establishment, both special order and in-stock merchandise;
2. How to display merchandise and stock the selection room;
3. How to complete information cards to be displayed on caskets; and
4. How to order merchandise.

Article 4.

Initial Arrangements and Meeting with the Family.

§ 3.8. Initial contact.

The supervisor shall allow the trainee to observe and then conduct the following:

1. Taking a death call;
2. Removing a body and transporting it to the funeral home;
3. Placing the body in the preparation or holding room;
4. Obtaining permission for embalming;
5. Documenting verbal permission for embalming; and
6. Documenting the reason for proceeding with an embalming when the next-of-kin cannot be contacted.

§ 3.9. Confidentiality and dignity.

The supervisor shall instruct the trainee in the meaning of, and ensure that the trainee adheres to, the funeral home policy for:

1. Honoring the confidentiality of every family and family member; and
2. Honoring the dignity of the dead and the families of the dead at all times.

§ 3.10. Initial arrangements.

The supervisor shall allow the trainee to observe and then to practice with the supervisor the following:

1. Giving prices over the telephone;
2. The required time to offer the general price list, casket price list, outer burial container price list, and presenting the itemized statement of funeral goods and services to the family;
3. Meeting with the family and discussing prices and disclosures;
4. Taking vital statistics information;
5. Taking information for obituary notices and filing the notices with the newspaper;
6. Showing the family the merchandise in the selection room;
7. Making cash advance arrangements with a third party; and
8. Arranging with and completing the paperwork fo

Proposed Regulations

cremations and cemetery burials.

§ 3.11. Meeting with the family.

With the supervisor present and in the same room, the supervisor shall allow the trainee to:

1. Meet with families to discuss prices, disclosures, and making arrangements for at need services;
2. Complete itemized statements of funeral goods and services for presentation to the families;
3. Complete preneed arrangements with families;
4. Explain the features and prices of merchandise to families; and
5. Assist families in choosing at need substitute merchandise when merchandise that is chosen during a preneed arrangement is not available at need.

Article 5. The Service.

§ 3.12. Disposition.

The supervisor shall allow the trainee to observe and then conduct the following arrangement for disposition of the body.

1. Making cemetery and crematory arrangements;
2. Taking a body to the crematorium; and
3. Disposing of cremains as requested by the family.

§ 3.13. Services.

The supervisor shall allow the trainee to observe and then conduct with the supervisor present, the following arrangements:

1. Visitation/viewing;
2. Chapel, church, and graveside services;
3. Services for disposition of cremains;
4. Funeral processions;
5. Multiple services taking place simultaneously;
6. Direct cremations;
7. Immediate burials;
8. Receiving bodies from another funeral home;
9. Shipping bodies to another funeral home; and

10. Preparing information sheet on services for receptionist to use in answering questions for the public.

PART IV. RESPONSIBILITIES OF EMBALMING SUPERVISOR.

Article 1. Preparation Room.

§ 4.1. Preparation room.

The supervisor shall instruct the trainee on the following:

1. Stocking the preparation room to meet compliance with regulations;
2. Purpose and use of protective clothing and gear during the preparation of a body;
3. Cleanliness, disinfection, and sanitation requirements for the preparation room;
4. Hazardous and infectious waste management; and
5. Cleaning and sterilizing reusable instruments.

Article 2. The Embalming.

§ 4.2. Embalming: general.

The supervisor shall instruct the trainee on the following:

1. Use and purpose of the embalming instruments;
2. Use and purpose of the embalming fluids; and
3. Use and purpose of the embalming report.

§ 4.3. Embalming.

The supervisor shall allow the trainee to observe, and then conduct with the supervisor present and in the same room, the following:

1. External disinfection of bodies;
2. Cleaning bodies after the embalming;
3. Using precautions in an embalming of bodies harbouring an infectious disease;
4. Preparing bodies with tissue gas;
5. Setting the features on bodies;
6. Using restorative techniques on damaged bodies;

Proposed Regulations

7. Using cosmetology on bodies;

8. Clothing bodies;

9. Casketing bodies; and

10. Embalming bodies.

§ 4.4. Embalming reports.

The supervisor shall have the trainee observe and then complete embalming reports.

PART V. THE TRAINEE'S RESPONSIBILITIES.

Article 1. Regulations and Forms.

§ 5.1. Regulatory agencies.

The trainee shall be able to list the state and federal agencies that regulate the funeral industry and be able to describe the roles and functions of each agency as it relates to the funeral industry.

§ 5.2. Regulations.

The trainee shall be knowledgeable of the contents of the regulations prescribed in § 3.1 and be able to explain to the supervisor and the board those regulations and how they apply to the funeral industry.

§ 5.3. Forms.

The trainee shall complete the forms prescribed in § 3.3 and be able to explain to the supervisor and the board the use and content requirements of the forms.

§ 5.4. Preneed.

The trainee shall be able to explain to the supervisor and the board preneed funding requirements.

Article 2. Knowledge of the Community and Others.

§ 5.5. Community resources.

The trainee shall contact at a time of need the funeral home's resource person at each of the facilities prescribed in § 3.5 and make arrangements as pertinent for transporting, removing, services, or disposition of the dead.

§ 5.6. Funeral customs.

The trainee shall be knowledgeable of and be able to explain to the supervisor and the board the funeral customs prescribed in § 3.6.

Article 3.

Merchandising.

§ 5.7. Merchandising.

The trainee shall:

1. Display merchandise and learn to stock the selection room;
2. Prepare pricing and information cards to be displayed on the caskets;
3. Be able to explain to the supervisor the features and prices of merchandise; and
4. Place an order for merchandise.

Article 4. Initial Arrangements and Meeting with the Family.

§ 5.8. Initial contact.

The trainee shall conduct the activities prescribed in § 3.8 under the supervision of the supervisor.

§ 5.9. Meeting with the family.

The trainee shall conduct arrangements with families in the presence of and in the same room with the supervisor as prescribed in §§ 3.10 and 3.11.

Article 5. The Service.

§ 5.10. Disposition and services.

The trainee shall plan and conduct 25 funerals during the traineeship as prescribed in §§ 3.12 and 3.13.

Article 6. Embalming.

§ 5.11. Embalming.

The trainee shall conduct 25 embalmings in the room with and under the supervision of the embalming supervisor. The trainee will conduct all procedures prescribed in § 4.3.

§ 5.12. Embalming preparation.

The trainee shall have a knowledge of and be able to explain to the supervisor and the board the purpose and procedures as prescribed in §§ 4.1 and 4.2.

§ 5.13. Embalming reports.

The trainee shall complete embalming reports on the 25 embalmings the trainee conducts.

PART VI.

REFUSAL, SUSPENSION, REVOCATION, AND DISCIPLINARY ACTION.

§ 6.1. Disciplinary action.

The board may refuse to issue or renew a license, registration, or approval to any applicant; and may suspend for a stated period of time or indefinitely, or revoke any license, registration, or approval, or reprimand any person, or place his license or registration on probation with such terms and conditions and for such time as it may designate or impose a monetary penalty for failure to comply with the regulations of the training program or the Regulations of the Board of Funeral Directors and Embalmers.

NOTICE: The forms used in administering the Resident Trainee Program for Funeral Service regulations are not being published; however, the name of each form filed by the Board of Funeral Directors and Embalmers is listed below. The forms are available for public inspection at the Board of Funeral Directors and Embalmers, 6606 West Broad Street, Richmond, Virginia 23220, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219.

General Information for All Trainees (DHP, rev. 11/93)

Application for Apprenticeship Supervisor

Resident Trainee Report (DHP-14-004, rev. 11/93)

Trainee Program Recording Form

Funeral Service Trainee Affidavit

VA.R. Doc. No. R94-421; Filed December 22, 1993, 11:59 a.m.

BOARD OF HEALTH PROFESSIONS

Title of Regulation: VR 365-01-1:1. Public Participation Guidelines.

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

Public Hearing Date: N/A – Written comments may be submitted through March 11, 1994.

(See Calendar of Events section for additional information.)

Basis: Section 54.1-2400 establishes the general powers and duties of the Board of Health Professions which include the promulgation of regulations. Section 9-6.14:7.1 of the Administrative Process Act establishes the statutory requirements for public participation in the regulatory process.

Purpose: The purpose of these regulations is to provide guidelines for the involvement of the public in the

development and promulgation of regulations of the board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The regulations replace emergency regulations currently in effect.

Substance:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations.

Section 2.1 establishes the composition of the mailing list and the process for adding or deleting names from that list.

Section 2.2 lists the documents to be sent to persons on the mailing list.

Section 3.1 establishes the requirements and procedures for petitioning the board to develop or amend a regulation. The regulation sets forth the guidelines for a petition and the requirements for a response from the board.

Section 3.2 sets forth the requirements and procedures for issuing a Notice of Intended Regulatory Action.

Section 3.3 sets forth the requirements and procedures for issuing a Notice of Comment Period.

Section 3.4 sets forth the requirements and procedures for issuing a Notice of Meeting.

Section 3.5 sets forth the requirements and guidelines for a public hearing on a proposed regulation.

Section 3.6 sets forth the requirements and guidelines for a biennial review of all regulations of the board.

Section 4.1 establishes the requirements and criteria for the appointment of advisory committees in the development of regulations.

Section 4.2 establishes the requirements for determining the limitation of service for an advisory committee.

Section 4.2 A sets forth the conditions in which an advisory committee may be dissolved for lack of public response to a Notice of Intent or in the promulgation of an exempt or excluded regulation.

Section 4.2 B sets forth a term of 12 months for the existence of an advisory committee or the requirements for its continuance.

Issues: The issues addressed are those presented by the amended provisions of the Administrative Process Act. These amendments pertain to: (i) public notifications and the establishment of public participation guidelines mailing list; (ii) petitioning the board for rulemaking, the conduct of public hearings related to proposed regulations, and the

Proposed Regulations

conduct of biennial reviews of existing regulations; and (iii) guidelines for the use of advisory committees.

An overall issue related to whether provisions of the Administrative Process Act were to be repeated in regulation. The board generally agreed with the Registrar that provisions stated in statute should not be repeated in regulation, but in instances in which clarity was enhanced by restating or elaborating on statutory provisions, the provisions were repeated.

1. Mailing Lists and Notifications. To establish requirements for mailing lists and for documents to be mailed to persons or entities on the mailing lists.

The board proposes language to instruct persons or entities who wish to be placed on its mailing list on how to proceed and identifies explicitly those documents which will be mailed to those persons or entities. A listing of these documents, which are specified in statute, is repeated for the sake of clarity.

The proposed regulation also establishes a mechanism for identifying segments of the mailing list of interest to specific persons or entities, and for the board, at its discretion, to notify additional persons or entities of opportunities to participate in rulemaking. In addition, the proposed regulation provides for periodic updating of the mailing lists, and for removal of persons or entities when mail is returned as undeliverable.

2. Petitioning for Rulemaking/Public Hearings/Biennial Reviews. The APA, as amended, states general requirements for public petitions for rulemaking, encourages the conduct of informational proceedings and periodic reviews of existing regulations, and specifies certain information to be included in Notices of Intended Regulatory Action, Notices of Comment Periods, and Notices of Meetings. The board believes these requirements and processes should be further elaborated in regulation for the benefit of public understanding.

The board adopted as emergency provisions and proposes these regulations as recommended by the Department of Health Professions. The proposed regulations specify:

- a. The process and content required for petitions for rulemaking.
- b. The content of Notices of Intended Regulatory Action, including a requirement that the board state whether it intends to convene a public hearing on any proposed regulation. If no such hearing is to be held, the board shall state the reason in the notice. The notice must also indicate that a public hearing shall be scheduled during the comment period if requested by at least 25 persons or entities.
- c. The content of Notices of Meetings, including a

requirement that the notice indicate that copies of regulations for which an exemption from the provisions of the APA is claimed will be available prior to any meeting at which the exempted regulation is to be considered.

d. A requirement that the board conduct a public hearing during the comment period unless, at a noticed meeting, the board determines that a hearing is not required.

e. A requirement, consistent with Executive Order Number 23(90), that the board review all existing regulations at least once each biennium.

These elaborations on the Administrative Process Act are included in the proposed regulations in the belief that the board should provide every opportunity feasible for public participation, and that any curtailment of these opportunities should require affirmative action by the board at a noticed meeting.

3. Guidelines for Use of Advisory Committees. The APA, as amended, requires that agencies specify guidelines for the use of advisory committees in the rulemaking process. The statutory provisions do not specify the content of these guidelines or the duration of appointment of advisory committees.

The board adopted emergency provisions and proposes regulations identical to those recommended by the Department of Health Professions. These proposed regulations include:

- a. Provision for the board, at its discretion, to appoint an ad hoc advisory committee to assist in review and development of regulations.
- b. Provision for the board, at its discretion, to appoint an ad hoc committee to provide technical or professional assistance when the board determines that such expertise is necessary, or when groups of individuals register an interest in working with the board.
- c. Provisions for tenure of advisory committees and for their dissolution.

These provisions are considered necessary to specify to the public the conditions which should be met in the board's use of general or technical advisory committees in its rulemaking processes. They also avoid the continuation of such committees beyond their period of utility and effectiveness.

Estimated Impact:

A. Regulated Entities: The proposed regulations will affect those persons or entities currently on the mailing lists of the board. However, there is no estimation of how many persons or groups may be affected by notice.

hearings, or appointments of ad hoc advisory committees as a result of these proposed regulations.

B. Projected Costs to Regulated Entities: There are no projected costs for compliance with proposed regulations.

C. Projected Cost for Implementation: There are no additional costs to the agency associated with the promulgation of these regulations, since the board has conducted its business in compliance with the requirements of the Administrative Process Act under existing Public Participation Guidelines.

Summary:

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Health Professions. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The proposed regulations will replace emergency regulations currently in effect.

VR 365-01-1:1. Public Participation Guidelines.

PART I. GENERAL PROVISIONS.

§ 1.1. Purpose.

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Health Professions. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

§ 1.2. 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.

"Board" means the Board of Health Professions.

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

PART II. MAILING LIST.

§ 2.1. Composition of the mailing list.

A. The board shall maintain a list of persons or entities

who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.

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

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

§ 2.2. Documents to be sent to persons or entities on the mailing list.

Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action.
2. A Notice of Comment Period.
3. A copy of any final regulation adopted by the board.
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

PART III. PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

Proposed Regulations

C. The board shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

§ 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

§ 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

§ 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

§ 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board

determines that a hearing is not required.

§ 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

PART IV. ADVISORY COMMITTEES.

§ 4.1. Appointment of committees.

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

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

§ 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

V.A.R. Doc. No. R94-420; Filed December 22, 1993, 11:52 a.m.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Title of Regulation: VR 425-02-95. Administrative Regulation for the Virginia Occupational Safety and Health Program.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Public Hearing Date: February 2, 1994 - 2:30 p.m.

Written comments may be submitted through March 11, 1994.

(See Calendar of Events section for additional information)

Basis: Section 40.1-22 of the Code of Virginia authorizes the promulgation of the Administrative Regulation and authorizes the Safety and Health Codes Board to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees and to effect compliance with the federal Occupational Safety and Health Act of 1970 (P.L. 91-596). Additionally, § 40.1-22(5) charges the Commissioner of Labor and Industry with the enforcement of such rules and regulations.

Purpose: The rationale for this regulation is to provide an operational framework of rules and procedures for the administration of the VOSH Program which is responsible for assuring, so far as possible, every working person a safe and healthful workplace by clarifying and reorganizing in a more useful format the responsibility of employers, employees and other interested parties subject to VOSH's jurisdiction.

Substance: This regulatory revision provides employers, employees, the public, VOSH employees, and other parties interested in the administrative rules governing the VOSH program with a simplified document in a more concise format to aid in the understanding of the general administrative provisions and specific related procedures of the program. The proposed regulation is completely reorganized in a more logical arrangement for improved readability. This regulation also includes the following changes:

The 48-hour accident reporting requirements of employers is clarified by § 2.4 of this draft regulation.

Section 2.8 C of this draft regulation, which mirrors § 18(c) of the OSH Act, provides for the Commissioner to control the attendance of her employees at third party actions growing out of their work for the Department. This provision is based on Virginia Code §§ 40.1-3 and 40.1-11. Virginia Code § 40.1-11 states: "Neither the Commissioner nor any employee of the Department shall make use of or reveal any information or statistics gathered from any person, company or corporation for any purposes other than those of this title." The new language allows the Commissioner to restrict VOSH employees from being deposed, testifying or otherwise participating in third party

lawsuits. This will keep VOSH inspectors free to conduct their official business without the distractions of testifying in private civil actions in which the Commonwealth has no genuine interest. It will also maintain the Virginia program as effective as the federal program.

This draft regulation also clarifies the VOSH program's response to certain federal judicial actions, such as the vacation of § 1910.1000 permissible exposure limits (PEL).

Additionally, this draft regulation simplifies the regulation by omitting requirements already stipulated in Title 40.1 of the Code of Virginia in those cases where no further regulatory language is necessary to carry out that mandate.

Issues: The provisions of this draft regulation provide the first complete revision of the Administrative Regulations Manual (ARM). The reorganization and resulting changes to the regulation are advantageous as they provide improved clarity of the provisions, simplification and rearrangement of the format of the regulation which will benefit all users. Other advantages include the clarification of the 48-hour accident reporting requirements of employers, thereby, informing employers directly the full extent of their responsibilities; the advantage of the provision concerning the agency's response to request for information by subpoena is to keep employees from having to spend time away from their jobs. This, in turn, enables them to conduct a greater number of investigations and further provide a safe workplace. No negative impacts on the regulated community are anticipated.

Estimated Impact: Persons affected include approximately 138,607 private and government employers. Also affected are approximately 2,554,418 employees of these employers who will benefit from using the Administrative Regulation. No fiscal impact is anticipated with respect to employers and employees, nor is any fiscal impact for the Department anticipated beyond that required in the promulgation and adoption of this regulation. There are no localities which will be particularly affected by this regulation.

Summary:

This proposed regulation is the first complete revision of the Administrative Regulation Manual adopted in 1986. It contains substantive changes primarily in the areas of additional definition of terms, clarification of the 48-hour accident reporting requirements of employers, the agency's response to requests for information by subpoena, and the VOSH program response to federal judicial action, such as vacation of § 1910.1000 permissible exposure limits (PEL).

This revision will also simplify the regulation by omitting requirements already stipulated in Title 40.1 of the Code of Virginia in those cases where no further regulatory language is necessary to carry out that mandate.

Proposed Regulations

VR 425-02-95. Administrative Regulation for the Virginia Occupational Safety and Health Program.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Abatement period" means the period of time permitted for correction of a violation.

"Bureau of Labor Statistics" means the Bureau of Labor Statistics of the United States Department of Labor.

"Citation" means the notice to an employer that the commissioner has found a condition or conditions that violate Title 40.1 of the Code of Virginia or the standards, rules or regulations established by the commissioner or the board.

"Board" means the Safety and Health Codes Board.

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any reference to the commissioner shall include his authorized representatives.

"Commissioner of Labor and Industry" means only the Commissioner of Labor and Industry.

"Department" means the Virginia Department of Labor and Industry.

"De minimis violation" means a violation which has no direct or immediate relationship to safety and health.

"Employee" means an employee of an employer who is employed in a business of his employer.

"Employee representative" means a person specified by employees to serve as their representative.

"Employer" means any person or entity engaged in business who has employees but does not include the United States.

"Establishment" means, for the purpose of recordkeeping requirements, a single physical location where business is conducted or where services or industrial operations are performed, e.g., factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office. Where distinctly separate activities are performed at a single physical location, such as contract activities operated from the same physical location as a lumberyard; each activity is a separate establishment. In the public sector, an establishment is either (a) a single physical location where a specific

governmental function is performed; or (b) that location which is the lowest level where attendance or payroll records are kept for a group of employees who are in the same specific organizational unit, even though the activities are carried on at more than a single physical location.

"Failure to abate" means that the employer has failed to correct a cited violation within the period permitted for its correction.

"FOIA" means the Virginia Freedom of Information Act.

"Imminent danger condition" means any condition or practice in any place of employment such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through standard enforcement procedures provided by Title 40.1 of the Code of Virginia.

"OSHA" means the Occupational Safety and Health Administration of the United States Department of Labor.

"Other violation" means a violation which is not, by itself, a serious violation within the meaning of the law but which has a direct or immediate relationship to occupational safety or health.

"Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

"Public employer" means the Commonwealth, including its agencies, or any political subdivision or public body.

"Public employee" means any employee of a public employer. Volunteer members of volunteer fire departments, pursuant to § 27-42 of the Code of Virginia, members of volunteer rescue squads who serve without pay, and other volunteers pursuant to the Virginia State Government Volunteers Act are not public employees. Prisoners confined in jails controlled by any political subdivision of the Commonwealth and prisoners in institutions controlled by the Department of Corrections are not public employees unless employed by a public employer in a work-release program pursuant to §§ 53.1-60 or 53.1-131 of the Code of Virginia.

"Recordable occupational injury and illness" means (i) a fatality, regardless of the time between the injury and death or the length of illness; (ii) a nonfatal case that results in lost work days; or (iii) a nonfatal case without lost work days which results in transfer to another job or termination of employment, which requires medical treatment other than first aid, or involves loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illness which is reported to the employer but is not otherwise classified as a fatality or lost work day case.

"Repeated violation" means a violation deemed to exist

in a place of employment that is substantially similar to a previous violation of a law, standard or regulation that was the subject of a prior final order against the same employer. A repeated violation results from an inadvertent or accidental act, since a violation otherwise repeated would be willful.

"Serious violation" means a violation deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. The term "substantial probability" does not refer to the likelihood that illness or injury will result from the violative condition but to the likelihood that, if illness or injury does occur, death or serious physical harm will be the result.

"Standard" means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

"VOSH" means Virginia Occupational Safety and Health.

"Willful violation" means a violation deemed to exist in a place of employment where (i) the employer committed an intentional and knowing, as contrasted with inadvertent, violation and the employer was conscious that what he was doing constituted a violation; or (ii) the employer, even though not consciously committing a violation, was aware that a hazardous condition existed and made no reasonable effort to eliminate the condition.

"Working days" means Monday through Friday, excluding legal holidays, Saturday, and Sunday.

PART II GENERAL PROVISIONS.

§ 2.1. Jurisdiction.

All Virginia statutes, standards, and regulations pertaining to occupational safety and health shall apply to every employer, employee and place of employment in the Commonwealth of Virginia except where:

1. The United States is the employer or exercises exclusive jurisdiction;
2. The federal Occupational Safety and Health Act of 1970 does not apply by virtue of § 4(b)(1) of that Act. The commissioner shall consider Federal OSHA case law in determining where jurisdiction over specific working conditions has been preempted by the regulations of a federal agency; or,

3. The employer is a public employer, as that term is defined in these regulations. In such cases, the Virginia laws, standards and regulations governing occupational safety and health are applicable as stated including §§ 1.1, 2.2, 6.3, 6.4, and 6.5 of these regulations.

§ 2.2. Applicability to public employers.

A. All occupational safety and health standards adopted by the board shall apply to public employers and their employees in the same manner as to private employers.

B. All sections of these regulations shall apply to public employers and their employees. Where specific procedures are set out for the public sector, such procedures shall take precedence.

C. The following portions of Title 40.1 of the Code of Virginia shall apply to public employers: §§ 40.1-49.4.A(1), 40.1-49.8, 40.1-51, 40.1-51.1, 40.1-51.2, 40.1-51.2:1, 40.1-51.3, 40.1-51.3:2, and 40.1-51.4:2.

D. Section 40.1-51.2:2 A of the Code of Virginia shall apply to public employers except that the commissioner shall not bring action in circuit court in the event that a voluntary agreement cannot be obtained.

E. Sections 40.1-49.4 F and 40.1-51.2:2 of the Code of Virginia shall apply to public employers other than the Commonwealth and its agencies.

F. If the commissioner determines that an imminent danger situation, as defined in § 40.1-49.4 F of the Code of Virginia, exists for an employee of the Commonwealth or one of its agencies, and if the employer does not abate that imminent danger immediately upon request, the Commissioner of Labor and Industry shall forthwith petition the Governor to direct that the imminent danger be abated.

G. If the commissioner is unable to obtain a voluntary agreement to resolve a violation of § 40.1-51.2:1 of the Code of Virginia by the Commonwealth or one of its agencies, the Commissioner of Labor and Industry shall petition for redress in the manner provided in these regulations.

§ 2.3. Notification and posting requirements.

Every employer shall post and keep posted any notice or notices, as required by the commissioner, including the Job Safety and Health Protection Poster which shall be available from the department. Such notices shall inform employees of their rights and obligations under the safety and health provisions of Title 40.1 of the Code of Virginia and these regulations. Violations of notification or posting requirements are subject to citation and penalty.

1. Such notice or notices, including all citations, petitions for variances or extensions of abatement

Proposed Regulations

periods, orders, and other documents of which employees are required to be informed by the employer under statute or by these regulations, shall be delivered by the employer to any authorized employee representative, and shall be posted at a conspicuous place where notices to employees are routinely posted and shall be kept in good repair and in unobstructed view. The document must remain posted for 10 working days unless a different period is prescribed elsewhere in Title 40.1 of the Code of Virginia or these regulations.

2. A citation issued to an employer, or a copy thereof, shall remain posted in a conspicuous place and in unobstructed view at or near each place of alleged violation for three working days or until the violation has been abated, whichever is longer.

3. A copy of any written notice of contest shall remain posted until all proceedings concerning the contest have been completed.

4. Upon receipt of a subpoena, the employer shall use the methods set forth in subsection B of this section to further notify his employees and any authorized employee representative of their rights to party status. This written notification shall include both the date, time and place set for court hearing, and any subsequent changes to hearing arrangements. The notification shall remain posted until commencement of the hearing or until an earlier disposition.

§ 2.4. Accident reports.

A. All employers, regardless of the number of their employees, shall report to the commissioner within 48 hours any accident which results in the death of any employee or the hospitalization of five or more employees.

B. If an employer does not learn of a reportable accident at the time it occurs, and the accident would otherwise be reportable under this section, the employer shall report to the department within 48 hours of learning of such an accident. Whether or not an accident is immediately reportable, if an employee dies of the effects of an employment accident within 30 days of that accident, the employer shall report to the department within 48 hours after learning of such death. Reports required by this section shall be submitted by telephone or in person to the department.

C. Each report required by this section shall relate the circumstances of the accident, the number of fatalities or hospitalizations, and the extent of any injuries. The commissioner may require additional reports in writing or otherwise, as deemed necessary, concerning the incident.

§ 2.5. Occupational injury and illness records.

A. Every employer subject to the safety and health provisions of Title 40.1 of the Code of Virginia, except

those employers exempted under the current OSHA Recordkeeping Program, shall maintain an occupational injury and illness log and summary in each individual establishment and may use for this purpose Occupational Safety and Health Administration Form, OSHA No. 200, or a substitute that is as detailed, easily readable, and understandable as the OSHA No. 200.

B. Each recordable injury and illness shall be entered on the log and summary as early as is practicable but no later than six working days after receiving information that a recordable injury or illness has occurred.

C. Employers may maintain the log and summary at a place other than the establishment or by means of data processing equipment if:

1. There is available at the place that the log and summary is maintained sufficient information to bring the log and summary to date within six working days after receiving information that a recordable case has occurred, and

2. At each employer's establishment(s), there is available a copy of the log and summary reflecting complete and current (within 45 calendar days) the injury and illness experience of that establishment.

D. The log shall be established on a calendar year basis.

E. Every employer required to maintain a log shall also maintain a supplementary record of occupational injuries and illnesses and may use for this purpose Occupational Safety and Health Administration Form, OSHA No. 101. Employer's First Report of Accident, VWC Form No. 3 (Virginia Workers' Compensation Commission), is acceptable as a substitute for OSHA No. 101. Other forms will be acceptable if they contain the information required by OSHA Form No. 101.

F. Every employer who is required by the provisions of subsection A to maintain a log shall also compile an annual summary of occupational injuries and illnesses based on the information contained in the log. The summary for the previous calendar year must be posted in accordance with § 2.3 of these regulations by February 1 and remain posted until March 1. Occupational Safety and Health Form No. 200 shall be used for this purpose.

1. The employer or the employee who prepares the log and summary shall certify that the summary is accurate and complete. This certification shall be indicated by the signature at the bottom of the summary or by attaching a separate verifying statement to the summary.

2. For employees who do not report to any fixed establishment on a regular basis, the annual summary shall be presented or mailed during the month of February to each employee who receives a paycheck during that month.

3. It is not necessary for multi-establishment employers to post summaries for those operations which have been closed down.

G. All safety and health records at each establishment shall be available for inspection and copying by the commissioner, officials from the Occupational Safety and Health Administration or the Bureau of Labor Statistics of the U.S. Department of Labor, and representatives of the U.S. Department of Health and Human Services conducting investigations under the Occupational Safety and Health Act.

H. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) provided for in this section shall, upon request, be made available by the employer to any employee, former employee, and to his representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and his representatives shall have access to the log for any establishment in which the employee is or has been employed.

I. Every employer shall prepare and maintain any other records determined by the commissioner to be necessary and submit, upon request of the commissioner, records pertaining to occupational safety and health.

J. All records required to be maintained in accordance with this section shall be retained in each establishment for five years after the year to which they pertain.

K. Where an employer has conveyed his ownership interests, both the new and the prior employers are responsible for maintaining records only for that period of the year during which he had any ownership interests. The new owner shall preserve those records, if any, of the previous owner required to be kept under this section. These records shall be retained for the remainder of the five year period required under subsection J of this section.

L. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair, or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of this section with respect to such employees by:

1. Maintaining the required records for each operation or group of operations which is subject to common supervision, e.g., field superintendent, field supervisor, etc., in an established central place;
2. Having the address and telephone number of the central place to provide information from such records during normal business hours in response to requests by telephone or by mail from the authorized parties listed in this section, and
3. Having personnel available during normal business

hours at the central place to provide by telephone or by mail requested information from such records maintained there.

§ 2.6. Annual survey.

As required by the U. S. Department of Labor and the Bureau of Labor Statistics, any employer shall complete an annual survey data form as required by the commissioner. This form shall be submitted to the commissioner and used for the compilation of statistical and other information.

§ 2.7. Access to employee medical and exposure records.

A. An employee and his authorized representative shall have access to his exposure and medical records required to be maintained by the employer.

B. When required by a standard, a health care professional under contract to the employer or employed by the employer shall have access to the exposure and medical records of an employee only to the extent necessary to comply with the requirements of the standard and shall not disclose or report without the employee's express written consent to any person within or outside the workplace except as required by the standard.

C. Under certain circumstances it may be necessary for the commissioner to obtain access to employee exposure and medical records to carry out statutory and regulatory functions. However, due to the substantial personal privacy interests involved, the commissioner shall seek to gain access to such records only after a careful determination of the need for such information and only with appropriate safeguards described at 29 CFR 1913.10(i) in order to protect individual privacy. In the event that the employer requests the commissioner to wait 24 hours for the presence of medical personnel to review the records, the commissioner will do so on presentation of an affidavit that the employer has not and will not modify or change any of the records. The commissioner's examination and use of this information shall not exceed that which is necessary to accomplish the purpose for access. Personally identifiable medical information shall be retained only for so long as is needed to carry out the function for which it was sought. Personally identifiable information shall be kept secure while it is being used and shall not be released to other agencies or to the public except under certain narrowly defined circumstances outlined at 29 CFR 1913.10(m).

D. In order to implement the policies described in subsection C of this section, the rules and procedures of 29 CFR Part 1913.10, Rules of Agency Practice and Procedure Concerning Access to Employee and Medical Records, are hereby expressly incorporated by reference. When these rules and procedures are applied to the commissioner the following federal terms should be considered to read as below:

Proposed Regulations

FEDERAL TERM	VOSH EQUIVALENT
Agency	Virginia Department of Labor and Industry
OSHA	VOSH
Assistant Secretary	Commissioner
Office of the Solicitor of Labor	Office of the Attorney General
Department of Justice	Office of the Attorney General
Privacy Act	Va. Code § 2.1-377 to -386

§ 2.8. Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas.

A. Pursuant to the Virginia Freedom of Information Act (FOIA) and with the exceptions stated in subsections B through L of this section, employers, employees and their representatives shall have access to information gathered in the course of an inspection.

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner in confidence pursuant to § 40.1-49.8 of the Code of Virginia shall not be disclosed for any purpose, except to the individual giving the statement.

C. The commissioner, in response to a subpoena, order, or other demand of a court or other authority in connection with a proceeding to which the department is not a party, shall not disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without the approval of the Commissioner of Labor and Industry.

D. The commissioner shall disclose information and statistics gathered pursuant to the enforcement of Virginia's occupational safety and health laws, standards, and regulations where it has been determined that such a disclosure will serve to promote the safety, health, and welfare of employees. Any person requesting disclosure of such information and statistics should include in his written request any information that will aid the commissioner in this determination.

E. All file documents contained in case files which are under investigation, and where a citation has not been issued, are not disclosable until:

1. The decision has been made not to issue citations; or
2. Six months has lapsed following the occurrence of an alleged violation.

F. Issued citations, orders of abatement and proposed penalties are public documents and are releasable upon a written request. All other file documents in cases where a

citation has been issued are not disclosable until the case is a final order of the commissioner or the court.

G. Information required to be kept confidential by law shall not be disclosed by the commissioner or by any employee of the department. In particular, the following specific information is deemed to be nondisclosable:

1. The identity of and statements of an employee or employee representative who has complained of hazardous conditions to the commissioner;
2. The identities of employers, owners, operators, agents or employees interviewed during inspections and their interview statements;
3. Employee medical and personnel records obtained during VOSH inspections. Such records may be released to the employee or his duly authorized representative upon a written, and endorsed request; and
4. Employer trade secrets, commercial, and financial data.

H. The commissioner may decline to disclose a document that is excluded from the disclosure requirements of the Virginia FOIA, particularly documents and evidence related to criminal investigations, writings protected by the attorney-client privilege, documents compiled for use in litigation and personnel records.

I. An effective program of investigation and conciliation of complaints of discrimination requires confidentiality. Accordingly, disclosure of records of such complaints, investigations, and conciliations will be presumed to not serve the purposes of Title 40.1 of the Code of Virginia, except for statistical and other general information that does not reveal the identities of particular employers or employees.

J. All information gathered through participation in Consultation Services or Training Programs of the department shall be withheld from disclosure except for statistical data which does not identify individual employers.

§ 2.9. Complaints.

A. Any person who believes that a safety or health hazard exists in a workplace may request an inspection by giving notice to the commissioner. Written complaints signed by an employee or an authorized representative will be treated as formal complaints. Complaints by persons other than employees and authorized representatives and unsigned complaints by employees or authorized representatives shall be treated as nonformal complaints. Nonformal complaints will generally be handled by letter and formal complaints will generally result in an inspection.

B. For purposes of this section and § 40.1-51.2(b) of the Code of Virginia, the representative(s) that will be recognized as authorized by employees for such action shall be:

1. A representative of the employee bargaining unit;
2. Any member of the employee's immediate family acting on behalf of the employee; or
3. A lawyer or physician retained by the employee.

C. A written complaint may be preceded by an oral complaint at which time the commissioner will either give instructions for filing the written complaint or provide forms for that purpose. Section 40.1-51.2(b) of the Code of Virginia stipulates that the written complaint follow an oral complaint by no more than two working days. However, if an oral complaint gives the commissioner reasonable grounds to believe that a serious condition or imminent danger situation exists, the commissioner may cause an inspection to be conducted as soon as possible without waiting for a written complaint.

D. A complaint should allege that a violation of safety and health laws, standards, rules, or regulations has taken place. The violation or hazard should be described with reasonable particularity.

E. A complaint will be classified as formal or nonformal and be evaluated to determine whether there are reasonable grounds to believe that the violation or hazard complained of exists.

1. If the commissioner determines that there are no reasonable grounds for believing that the violation or hazard exists, the employer and the complainant shall be informed in writing of the reasons for this determination.
2. An employee or authorized representative may obtain review of the commissioner's determination that no reasonable grounds for believing that the violation or hazard exists by submitting a written statement of his position with regard to the issue. Upon receipt of such written statement a further review of the matter will be made which may include a requested written statement of position from the employer, further discussions with the complainant or an informal conference with complainant or employer if requested by either party. After review of the matter, the commissioner shall affirm, modify or reverse the original determination and furnish the complainant and the employer written notification of his decision.

F. If the commissioner determines that the complaint is formal and offers reasonable grounds to believe that a hazard or violation exists, then an inspection will be conducted as soon as possible. Valid nonformal complaints may be resolved by letter or may result in an inspection

if the commissioner determines that such complaint establishes probable cause to conduct an inspection.

G. If there are several complaints to be investigated, the commissioner may prioritize them by considering such factors as the gravity of the danger alleged and the number of exposed employees.

H. At the beginning of the inspection the employer shall be provided with a copy of the written complaint. The complainant's name shall be deleted and any other information which would identify the complainant shall be reworded or deleted so as to protect the complainant's identity.

I. An inspection pursuant to a complaint may cover the entire operation of the employer, particularly if it appears to the commissioner that a full inspection is warranted. However, if there has been a recent inspection of the worksite or if there is reason to believe that the alleged violation or hazard concerns only a limited area or aspect of the employer's operation, the inspection may be limited accordingly.

J. After an inspection based on a complaint, the commissioner shall inform the complainant in writing whether a citation has been issued and briefly set forth the reasons if not. The commissioner shall provide the complainant with a copy of any resulting citation issued to the employer.

§ 2.10. Discrimination; discharge or retaliation; remedy for retaliation.

A. In carrying out his duties under § 40.1-51.2:2 of the Code of Virginia, the commissioner shall consider case law, regulations, and formal policies of federal OSHA. An employee's engagement in activities protected by Title 40.1 does not automatically render him immune from discharge or discipline for legitimate reasons. Termination or other disciplinary action may be taken for a combination of reasons, involving both discriminatory and nondiscriminatory motivations. In such a case, a violation of § 40.1-51.2:1 of the Code of Virginia has occurred if the protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity.

Employee activities protected by § 40.1-51.2:1 of the Code of Virginia include, but are not limited to:

1. Making any complaint to his employer or any other person under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;
2. Instituting or causing to be instituted any proceeding under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;
3. Testifying or intending to testify in any proceeding

Proposed Regulations

under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;

4. Cooperating with or providing information to the commissioner during a worksite inspection; or

5. Exercising on his own behalf or on behalf of any other employee any right afforded by the safety and health provisions of Title 40.1 of the Code of Virginia.

Discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of injury or death will be considered retaliatory only if the employee has sought abatement of the hazard from the employer and the statutory procedures for securing abatement would not have provided timely protection. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, an abatement of the dangerous condition.

Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations shall not be regarded as retaliatory action prohibited by § 40.1-51.2:1 of the Code of Virginia.

B. A complaint pursuant to § 40.1-51.2:2 of the Code of Virginia may be filed by the employee himself or anyone authorized to act in his behalf.

The investigation of the commissioner shall include an opportunity for the employer to furnish the commissioner with any information relevant to the complaint.

An attempt by an employee to withdraw a previously filed complaint shall not automatically terminate the investigation of the commissioner. Although a voluntary and uncoerced request from the employee that his complaint be withdrawn shall receive due consideration, it shall be the decision of the commissioner whether further action is necessary to enforce the statute.

The filing of a retaliation complaint with the commissioner shall not preclude the pursuit of a remedy through other channels. Where appropriate, the commissioner may postpone his investigation or defer to the outcome of other proceedings.

PART III. OCCUPATIONAL SAFETY AND HEALTH STANDARDS.

§ 3.1. General industry standards.

The occupational safety or health standards adopted as rules or regulations by the board either directly or by reference, from 29 CFR Part 1910 shall apply by their own terms to all employers and employees at places of employment covered by the Virginia State Plan for Occupational Safety and Health.

§ 3.2. Construction industry standards.

The occupational safety or health standards adopted as rules or regulations by the Virginia Safety and Health Codes Board either directly, or by reference, from 29 C.F.R. Part 1926 shall apply by their own terms to all employers and employees engaged in either construction work or construction related activities covered by the Virginia State Plan for Occupational Safety and Health.

1. For the purposes of the applicability of such Part 1926 standards, the key criteria utilized to make such a decision shall be the activities taking place at the worksite, not the primary business of the employer. Construction work shall generally include any building, altering, repairing, improving, demolishing, painting or decorating any structure, building, highway, or roadway; and any draining, dredging, excavation, grading or similar work upon real property. Construction also generally includes work performed in traditional construction trades such as carpentry, roofing, masonry work, plumbing, trenching and excavating, tunnelling, and electrical work. Construction does not include maintenance, alteration, or repair of mechanical devices, machinery, or equipment, even when the mechanical device, machinery or equipment is part of a pre-existing structure.

2. Certain standards of 29 C.F.R. Part 1910 have been determined by federal OSHA to be applicable to construction and have been adopted for this application by the board.

3. The standards adopted from 29 C.F.R. Part 1910.19 and 29 C.F.R. Part 1910.20 containing respectively, special provisions regarding air contaminants and requirements concerning access to employee exposure and medical records shall apply to construction work as well as general industry.

§ 3.3. Agriculture standards.

The occupational safety or health standards adopted as rules or regulations by the board either directly, or by reference, from 29 CFR Part 1928 shall apply by their own terms to all employers and employees engaged in either agriculture or agriculture related activities covered by the Virginia State Plan for Occupational Safety and Health.

§ 3.4. Maritime standards.

The occupational safety or health standards adopted c

rules or regulations by the board either directly, or by reference, from 29 C.F.R. Part 1915 and 29 C.F.R. Part 1917 shall apply by their own terms to all public sector employers and employees engaged in maritime related activities covered by the Virginia State Plan for Occupational Safety and Health.

§ 3.5. General duty.

Where a recognized hazard exists that is causing or likely to cause death or serious physical harm, and specific general industry, construction and agricultural standards do not apply or may not exist, the requirements of § 40.1-51.1(a) of the Code of Virginia shall apply to all employers covered by the Virginia State Plan for Occupational Safety and Health.

§ 3.6. Public participation in the adoption of standards.

Interested parties, e.g., employers, employees, employee representatives, and the general public, may offer written and oral comments in accordance with the requirements of the Public Participation Guidelines of either the board or the department, as appropriate, regarding the adoption, alteration, amendment, or repeal of any rules or regulations by the board or the commissioner to further protect and promote the safety and health of employees in places of employment over which the board or the commissioner have jurisdiction.

§ 3.7. Response to judicial action.

A. Any federal occupational safety or health standard, or portion thereof, adopted as rule or regulation by the board either directly, or by reference, and subsequently stayed by an order of any federal court will not be enforced by the commissioner until the stay has been lifted. Any federal standard which has been administratively stayed by OSHA will continue to be enforced by the commissioner until the stay has been reviewed by the board. The board will consider adoption or rejection of any federal administrative stay and will also subsequently review and then consider adoption or rejection of the lifting of such stays by federal OSHA.

B. The continued enforcement of any VOSH standard, or portion thereof, which is substantively identical to a federal standard that has been vacated by an order of any federal court shall be at the discretion of the commissioner until such time as the standard and related federal judicial action have been reviewed by the board. The board shall consider the revocation or the repromulgation of any such standard.

PART IV. VARIANCES.

§ 4.1. General provisions.

A. Any employer or group of employers desiring a permanent or temporary variance from a standard or

regulation pertaining to occupational safety and health may file with the commissioner a written application which shall be subject to the following policies:

1. A request for a variance shall not preclude or stay a citation or bill of complaint for violation of a safety or health standard;

2. No variances on recordkeeping requirements required by the U.S. Department of Labor shall be granted by the commissioner;

3. An employer, or group of employers, who has applied for a variance from the U.S. Department of Labor, and whose application has been denied on its merits, shall not be granted a variance by the commissioner unless there is a showing of changed circumstances significantly affecting the basis upon which the variance was originally denied;

4. An employer to whom the U.S. Secretary of Labor has granted a variance under OSHA provisions shall document this variance to the commissioner. In such cases, unless compelling local circumstances dictate otherwise, the variance shall be honored by the commissioner without the necessity of following the formal requirements which would otherwise be applicable. In addition, the commissioner will not withdraw a citation for violation of a standard for which the Secretary of Labor has granted a variance unless the commissioner previously received notice of and decided to honor the variance; and

5. Incomplete applications will be returned within 30 days to the applicant with a statement indicating the reason or reasons that the application was found to be incomplete.

B. In addition to the information specified in §§ 4.2 A and 4.3 A of this regulation, every variance application shall contain the following:

1. A statement that the applicant has informed affected employees of the application by delivering a copy of the application to their authorized representative, if there is one, as well as having posted, in accordance with § 2.3 of these regulations, a summary of the application which indicates where a full copy of the application may be examined.

2. A statement indicating that the applicant has posted, with the summary of the application described above, the following notice: "Affected employees or their representatives have the right to petition the Commissioner of Labor and Industry for an opportunity to present their views, data, or arguments on the requested variance, or they may submit their comments to the commissioner in writing. Petitions for a hearing or written comments should be addressed to the Commissioner of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street,

Proposed Regulations

Richmond, VA 23219. Such petitions will be accepted if they are received within 30 days from the posting of this notice or within 30 days from the date of publication of the commissioner's notice that public comments concerning this matter will be accepted, whichever is later."

3. A statement indicating whether an application for a variance from the same standard or rule has been made to any federal agency or to an agency of another state. If such an application has been made, the name and address of each agency contacted shall be included.

C. Upon receipt of a complete application for a variance, the commissioner shall publish a notice of the request in a newspaper of statewide circulation within 30 days after receipt, advising that public comments will be accepted for 30 days and that an informal hearing may be requested in conformance with subsection D of this section. Further, the commissioner may initiate an inspection of the establishment in regard to the variance request.

D. If within 30 days of the publication of notice the commissioner receives a request to be heard on the variance from the employer, affected employees, the employee representative, or other employer(s) affected by the same standard or regulation, the commissioner will schedule a hearing with the party or parties wishing to be heard and the employer requesting the variance. The commissioner may also schedule a hearing upon his own motion. The hearing will be held within a reasonable time and will be conducted informally in accordance with § 9-6.14:11 of the Code of Virginia unless the commissioner finds that there is a substantial reason to proceed under the formal provisions of § 9-6.14:12 of the Code of Virginia.

E. If the commissioner has not been petitioned for a hearing on the variance application, a decision on the application may be made promptly after the close of the period for public comments. This decision will be based upon the information contained in the application, the report of any variance inspection made concerning the application, any other pertinent staff reports, federal OSHA comments or public records, and any written data and views submitted by employees, employee representatives, other employers, or the public.

F. The commissioner will grant a variance request only if it is found that the employer has met by a preponderance of the evidence, the requirements of either § 4.2 B 4, or § 4.3 B 4, of these regulations.

1. The commissioner shall advise the employer in writing of the decision and shall send a copy to the employee representative if applicable. If the variance is granted, a notice of the decision will be published in a newspaper of statewide circulation.

2. The employer shall post a copy of the commissioner's decision in accordance with § 2.3 of these regulations.

G. Any party may within 15 days of the commissioner's decision file a notice of appeal to the board. Such appeal shall be in writing, addressed to the board, and include a statement of how other affected parties have been notified of the appeal. Upon notice of a proper appeal, the commissioner shall advise the board of the appeal and arrange a date for the board to consider the appeal. The commissioner shall advise the employer and employee representative of the time and place that the board will consider the appeal. Any party that submitted written or oral views or participated in the hearing concerning the original application for the variance shall be invited to attend the appeal hearing. If there is no employee representative, a copy of the commissioner's letter to the employer shall be posted by the employer in accordance with the requirements of § 2.3 of these regulations.

H. The board shall sustain, reverse, or modify the commissioner's decision based upon consideration of the evidence in the record upon which the commissioner's decision was made and the views and arguments presented as provided above. The burden shall be on the party filing the appeal to designate and demonstrate any error by the commissioner which would justify reversal or modification of the decision. The issues to be considered by the board shall be those issues that could be considered by a court reviewing agency action in accordance with § 9-6.14:17 of the Code of Virginia. All parties involved shall be advised of the board's decision within 10 working days after the hearing of the appeal.

§ 4.2. Temporary variances.

A. The commissioner shall give consideration to an application for a temporary variance from a standard or regulation only if the employer or group of employers is unable to comply with that standard or regulation by its effective date for good cause and files an application which meets the requirements set forth in this section. No temporary variance shall be granted for longer than the time needed to come into compliance with the standard or one year, whichever is shorter.

B. A letter of application for a temporary variance shall be in writing and contain the following information:

1. Name and address of the applicant;
2. Address of the place or places of employment involved;
3. Identification of the standard or part thereof from which a temporary variance is sought; and
4. Evidence to establish that:
 - a. The applicant is unable to comply with

standard by its effective date because professional or technical personnel or materials and equipment needed to come into compliance with the standard are unavailable, or because necessary construction or alteration of facilities cannot be completed by the effective date;

b. The applicant is taking effective steps to safeguard his employees against the hazards covered by the standard; and

c. The applicant has an effective program for coming into compliance with the standard as quickly as practicable.

C. A temporary variance may be renewed if the application for renewal is filed at least 90 days prior to the expiration date and if the requirements of subsection A of this section are met. A temporary variance may not be renewed more than twice.

§ 4.3. Permanent variances.

A. Applications filed with the commissioner for a permanent variance from a standard or regulation shall be subject to the requirements of § 4.1 of these regulations and the following additional requirements.

B. A letter of application for a permanent variance shall be submitted in writing by an employer or group of employers and shall contain the following information:

1. Name and address of the applicant;
2. Address of the place or places of employment involved;
3. Identification of the standard, or part thereof for which a permanent variance is sought; and
4. A description of the conditions, practices, means, methods, operations, or processes used and evidence that these would provide employment and a place of employment as safe and healthful as would be provided by the standard from which a variance is sought.

C. A permanent variance may be modified or revoked upon application by an employer, employees, or by the commissioner in the manner prescribed for its issuance at any time except that the burden shall be upon the party seeking the change to show altered circumstances justifying a modification or revocation.

§ 4.4. Interim order.

A. Application for an interim order granting the variance until final action by the commissioner may be made by the employer prior to, or concurrent with, the submission of an application for a variance.

B. A letter of application for an interim order shall include statements as to why the interim order should be granted and shall include a statement that it has been posted in accordance with § 2.3 of these regulations. The provisions contained in §§ 4.1 A, 4.1 B 1 and 4.1 B 3 of these regulations shall apply to applications for interim orders in the same manner as they do to variances.

C. The commissioner shall grant the interim order if the employer has shown by clear and convincing evidence that effective methods to safeguard the safety and health of employees have been implemented. No interim order shall have effect for more than 180 days. If an application for an interim order is granted, the employer shall be so notified and it shall be a condition of the order that employees shall be advised of the order in the same manner as used to inform them of the application for a variance.

D. If the application for an interim order is denied, the employer shall be so notified with a brief statement of the reason for denial.

PART V. INSPECTIONS.

§ 5.1. Advance notice.

A. Where advance notice of an inspection has been given to an employer, the employer, upon request of the commissioner, shall promptly notify the authorized employee representative of the inspection if the employees have such a representative.

B. An advance notice of a safety or health inspection may be given by the commissioner only in the following circumstances:

1. In cases of imminent danger;
2. Where it is necessary to conduct inspections at times other than regular working hours;
3. Where advance notice is necessary to assure the presence of personnel needed to conduct the inspection; or
4. Where the commissioner determines that advance notice will insure a more effective and thorough inspection.

§ 5.2. Walkthrough.

Walkthrough by the commissioner for the inspection of any workplace includes the following privileges.

1. The commissioner shall be in charge of the inspection and, as part of an inspection, may question privately any employer, owner, operator, agent, or employee. The commissioner shall conduct the interviews of persons during the inspection or at

Proposed Regulations

other convenient times.

2. As part of an inspection, the commissioner may take or obtain photographs, video recordings, audio recordings and samples of materials, and employ other reasonable investigative techniques as deemed appropriate. As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other devices to employees in order to monitor their exposures.

3. Any employee representative selected to accompany the commissioner during the inspection of the workplace shall be an employee of the employer. Additional employer representatives and employee representatives may be permitted by the commissioner to accompany the inspection team where the commissioner determines such additional persons will aid in the inspection. A different employer representative or employee representative may accompany the commissioner during each phase of the inspection if, in the determination of the commissioner, this will aid in the conduct of the inspection.

4. The commissioner may limit the number of representatives when the inspection group would be of such size as to interfere with the inspection or create possible safety hazards, or when the representative does not represent an employer or employee present in the particular area under inspection.

5. In such cases as stated in subdivision 4 of this section, the commissioner must give each walkthrough representative the opportunity to advise of possible safety or health hazards and then proceed with the inspection without walkthrough representatives. Whenever the commissioner has limited the number of employee walkthrough representatives, a reasonable number of employees shall be consulted during the inspection concerning possible safety or health hazards.

6. Technical personnel such as safety engineers and industrial hygienists or other consultants to the commissioner or the employer may accompany the commissioner if the commissioner determines that their presence would aid in the conduct of the inspection and agreement is obtained from the employer or the commissioner obtains an order under § 40.1-6(8)(b) of the Code of Virginia. All such consultants shall be bound by the confidentiality requirements of § 40.1-51.4:1 of the Code of Virginia.

7. The commissioner is authorized to dismiss from the inspection party at any time any person or persons whose conduct interferes with the inspection.

§ 5.3. Trade secrets.

The following rules shall govern the treatment of trade secrets.

1. At the beginning of an inspection the commissioner shall request that the employer identify any areas of the worksite that may contain or reveal a trade secret. At the close of an inspection the employer shall be given an opportunity to review the information gathered from those areas and identify to the commissioner that information which contains or may reveal a trade secret.

2. The employer shall notify the commissioner prior to the case becoming a final order of any information obtained during the inspection which is to be identified as containing trade secrets.

3. Properly identified trade secrets shall be kept in a separate case file in a secure area not open for inspection to the general public. The separate case file containing trade secrets shall be protected from disclosure in accordance with § 40.1-51.4:1 of the Code of Virginia.

4. Upon the request of an employer, any employee serving as the walkthrough representative in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such employee representative, the commissioner will interview a reasonable number of employees working in that area concerning matters of safety and health.

PART VI. CITATION AND PENALTY.

§ 6.1. Issuance of citation and proposed penalty.

A. Each citation shall be in writing and describe with particularity the nature of the violation or violations, including a reference to the appropriate safety or health provision of Title 40.1 of the Code of Virginia or the appropriate rule, regulation, or standard. In addition, the citation must fix a reasonable time for abatement of the violation. The citation will contain substantially the following: "NOTICE: This citation will become a final order of the commissioner unless contested within fifteen working days from the date of receipt by the employer". The citation may be delivered to the employer or his agent by the commissioner or may be sent by certified mail or by personal service to an officer or agent of the employer or to the registered agent if the employer is a corporation.

B. A citation issued under subsection A to an employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:

1. Employees of such employer have been provided

with the proper training and equipment to prevent such a violation;

2. Work rules designed to prevent such a violation have been established and adequately communicated to employees by such employer and have been effectively enforced when such a violation has been discovered;

3. The failure of employees to observe work rules led to the violation; and

4. Reasonable steps have been taken by such employer to discover any such violation.

C. For the purposes of subsection B only, the term "employee" shall not include any officer, management official or supervisor having direction, management control or custody of any place of employment which was the subject of the violative condition cited.

D. The penalties as set forth in § 40.1-49.4 of the Code of Virginia shall also apply to violations relating to the requirements for recordkeeping, reports or other documents filed or required to be maintained and to posting requirements.

E. In determining the amount of the proposed penalty for a violation the commissioner will ordinarily be guided by the system of penalty adjustment set forth in the VOSH Field Operations Manual. In any event the commissioner shall consider the gravity of the violation, the size of the business, the good faith of the employer, and the employer's history of previous violations.

§ 6.2. Contest of citation or proposed penalty; general proceedings.

A. An employer to whom a citation or proposed penalty has been issued may contest the citation by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from the receipt of the citation or proposed penalty. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period in which the employer must contest.

B. The notice of contest shall indicate whether the employer is contesting the alleged violation, the proposed penalty or the abatement time.

C. The employer's contest of a citation or proposed penalty shall not affect the citation posting requirements of § 2.3 of these regulations unless and until the court ruling on the contest vacates the citation.

D. When the commissioner has received written notification of a contest of citation or proposed penalty, he will attempt to resolve the matter by settlement, using the procedures of §§ 8.1 and 8.2 of these regulations.

E. If the matter is not settled or it is determined that settlement does not appear probable, the commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth's Attorney and arranging for the filing of a bill of complaint and issuance of a subpoena to the employer.

F. A contest of the proposed penalty only shall not stay the time for abatement.

§ 6.3. General contest proceedings applicable to the public sector.

A. The commissioner will not propose penalties for citations issued to public employers.

B. Public employers may contest citations or abatement orders by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from receipt of the citation or abatement order. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period during which the employer may contest.

C. The notice of contest shall indicate whether the employer is contesting the alleged violations or the abatement order.

D. Public employees may contest abatement orders by notifying the commissioner in the same manner as described at subsection B.

E. The commissioner shall seek to resolve any controversies or issues rising from a citation issued to any public employer in an informal conference as described in § 8.1 of these regulations.

F. The contest by a public employer shall not affect the requirements to post the citation as required at § 2.3 of these regulations unless and until the commissioner's or the court ruling on the contest vacates the citation. A contest of a citation may stay the time permitted for abatement pursuant to § 40.1-49.4 C of the Code of Virginia.

§ 6.4. Contest proceedings applicable to political subdivisions.

A. Where the informal conference has failed to resolve any controversies arising from the citation, and a timely notice of contest has been received regarding a citation issued to a public employer other than the Commonwealth or one of its agencies, the Commissioner of Labor and Industry shall schedule a hearing in accordance with the provisions of § 9-6.14:11 of the Code of Virginia. Upon conclusion of the hearing, the commissioner will notify all participants within five working days of the decision to affirm, modify or vacate the contested aspects of the citation or abatement order.

Proposed Regulations

B. Public employers may appeal decisions of the commissioner in the manner provided for in § 40.1-49.5 of the Code of Virginia.

C. Public employees and their authorized representative have full rights to notification and participation in all hearings and appeals as are given private sector employees.

D. If abatement of citations is not accomplished, the commissioner shall seek injunctive relief under § 40.1-49.4 F of the Code of Virginia.

§ 6.5. Contest proceedings applicable to the Commonwealth.

A. Where the informal conference has failed to resolve any controversies arising from a citation issued to the Commonwealth or one of its agencies, and a timely notice of contest has been received, the Commissioner of Labor and Industry shall refer the case to the Attorney General, whose written decision on the contested matter shall become a final order of the commissioner.

B. Whenever the Commonwealth or any of its agencies fails to abate a violation within the time provided in an appropriate final order, the Commissioner of Labor & Industry shall formally petition for redress as follows: For violations in the Department of Law, to the Attorney General; for violations in the Office of the Lieutenant Governor, to the Lieutenant Governor; for violations otherwise in the executive branch, to the appropriate cabinet secretary; for violations in the State Corporation Commission, to a judge of the commission; for violations in the Department of Workers' Compensation, to the Chairman of the Workers' Compensation Commission; for violations in the legislative branch of government, to the Chairman of the Senate Committee on Commerce and Labor; for violations in the judicial branch, to the chief judge of the circuit court or to the Chief Justice of the Supreme Court. Where the violation cannot be timely resolved by this petition, the commissioner shall bring the matter to the Governor for resolution.

C. Where abatement of a violation will require the appropriation of funds, the commissioner shall cooperate with the appropriate agency head in seeking such an appropriation; where the commissioner determines that an emergency exists, the commissioner shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

PART VII. ABATEMENT.

§ 7.1. Contest of abatement period.

A. The employer, employees, or employee representative may, by written notification to the commissioner, contest the time permitted for abatement.

B. The notice of contest of abatement period must be in writing and shall have been delivered by hand or mailed to the commissioner within 15 working days from the date of the receipt of the citation and order of abatement.

C. The same procedures and requirements used for contest of citation and penalty, set forth at §§ 6.2, 6.3, 6.4, and 6.5, of these regulations, shall apply to contests of abatement period.

D. The time permitted for abatement, if contested in good faith and not merely for delay, does not begin to run until the entry of a final order of the court.

§ 7.2. Extension of abatement time.

A. Where an extension of abatement is sought concerning a final order of the commissioner or of a court, the extension can be granted as an exercise of the enforcement discretion of the commissioner. While the extension is in effect the commissioner will not seek to cite the employer for failure to abate violation in question. The employer shall carry the burden of proof to show that an extension should be granted.

B. The commissioner will consider a written petition for an extension of abatement time if the petition is mailed to or received by the commissioner prior to the expiration of the established abatement time.

C. A written petition requesting an extension of abatement time shall include the following information:

- 1. All steps taken by the employer, and the dates such actions were taken, in an effort to achieve compliance during the prescribed abatement period;*
- 2. The specific additional abatement time necessary in order to achieve compliance;*
- 3. The reasons such additional time is necessary, such as the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date;*
- 4. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period; and*
- 5. A certification that a copy of the petition has been posted and served on the authorized representative of affected employees, if there is one, in accordance with § 2.3 of these regulations, and a certification of the date upon which such posting and service was made.*

D. A written petition requesting an extension of abatement which is file with the commissioner after expiration of the established abatement time will be accepted only if the petition contains an explanation satisfactory to the commissioner as to why the petition'

could not have been filed in a timely manner.

1. The employer is to notify the commissioner as soon as possible.

2. Notification of the exceptional circumstances which prevents compliance within the original abatement period shall accompany a written petition which includes all information required in subsection C.

E. The commissioner will not make a decision regarding such a petition until the expiration of 15 working days from the date the petition was posted or served.

F. Affected employees, or their representative, may file a written objection to a petition for extension of abatement time. Such objections must be received by the commissioner within 10 working days of the date of posting of the employer's petition. Failure to object within the specified time period shall constitute a waiver of any right to object to the request.

G. When affected employees, or their representatives object to the petition, the commissioner will attempt to resolve the issue in accordance with § 8.1 of these regulations. If the matter is not settled or settlement does not appear probable, the Commissioner of Labor and Industry will hear the objections in the manner set forth at subsection I below.

H. The employer or an affected employee may seek review of an adverse decision regarding the petition for extension of abatement to the Commissioner of Labor and Industry within five working days after receipt of the commissioner's decision.

I. An employee's objection not resolved under subsection G of this section or an employer or employee appeal under subsection H will be heard by the Commissioner of Labor and Industry using the procedures of § 9-6.14:11 of the Code of Virginia. Burden of proof for a hearing under subsection G shall lie with the employer. Burden of proof for an appeal under subsection H shall lie with the party seeking review.

1. All parties shall be advised of the time and place of the hearing by the commissioner.

2. Within 15 working days of the hearing, all parties will be advised of the Commissioner of Labor and Industry's decision.

3. Since the issue is whether the Commissioner of Labor and Industry will exercise his enforcement discretion, no further appeal is available.

PART VIII. REVIEW AND SETTLEMENT.

§ 8.1. Informal conference.

A. An informal conference may be held for the purpose of discussing any issue raised by the inspection, citation, abatement order, proposed penalty, notice of contest, or any other disputed issue.

B. The employer, an employee, or an employee representative may request an informal conference. Neither the conference nor a request for a conference shall stay the running of time allowed for abatement of a cited violation or the time allowed for filing a notice of contest of the citation, abatement period or proposed penalty.

C. The informal conference will be held by the commissioner. However, other personnel of the Department of Labor and Industry, Department of Health, and any other state department or agency may participate as deemed necessary.

D. The time and location of the informal conference shall be at the discretion of the commissioner, except that the conference shall not be held at the employer's work site.

E. An employee representative shall be given the opportunity to participate in a conference requested by the employer. This same right will be extended to the employer when an informal conference is requested by employees. It is the duty of the employer, if he has requested a conference, to notify the employees by the means described in § 2.3 of these regulations as soon as the time and place of the conference have been established. Upon granting an employee request for a conference, the commissioner is responsible for notifying the employer. The commissioner, at his discretion, may conduct separate portions of the conference with the employer and employee representative.

F. During or following the conference the commissioner may affirm or amend the citations, penalties, or abatement period if the order has not become final. The commissioner shall notify the employer in writing of his decision. The employer shall notify employees of this decision in the manner set forth in § 2.3 of these regulations.

G. The failure to request an informal conference before the expiration of 15 working days does not preclude settlement at a later stage of the proceedings if a notice of contest has been timely filed.

§ 8.2. Settlement.

A. Settlement negotiations may be held for the purpose of resolving any dispute regarding an inspection, citation, order of abatement, proposed penalty, or any other matter involving potential litigation. Settlement is encouraged at any stage of a proceeding until foreclosed by an order becoming final. It is the policy of the commissioner that the primary goal of all occupational safety and health activity is the protection of worker safety, health and

Proposed Regulations

welfare; all settlements shall be guided by this policy.

B. Settlement negotiations will ordinarily take place in the medium of an informal conference. Employees shall be given notice of scheduled settlement discussions and shall be given opportunity to participate in the manner provided for in § 8.1 E of these regulations.

C. Where a settlement with the employer is reached before the 15th working day after receipt of a citation, order of abatement, or proposed civil penalty, and no notice of contest has been filed, the commissioner shall forthwith amend the citation, order of abatement, or proposed civil penalty, as agreed. The amended citation shall bear a title to indicate that it has been amended and the amended citation or an accompanying agreement shall contain a statement to the following effect: "This citation has been amended by agreement between the commissioner and the employer named above. As part of the written agreement, the employer has waived his right to file a notice of contest to this order. This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the commissioner."

D. Following receipt of an employer's timely notice of contest, the commissioner will immediately notify the appropriate Commonwealth's Attorney and may delay the initiation of judicial proceedings until settlement opportunities have been exhausted.

1. During this period, the commissioner may amend the citation, order of abatement, or proposed civil penalty through the issuance of an amended citation. Every such amended citation shall bear a title to indicate that it has been amended and the amended citation or the accompanying agreement shall contain a statement to the following effect: "This amended citation is being issued as a result of a settlement between the commissioner and the employer. The employer, by his signature below, agrees to withdraw his notice of contest filed in this matter and not to contest the amended citation. This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the commissioner."

2. At the end of this period, if settlement negotiations are not successful, the commissioner will initiate judicial proceedings by causing a bill of complaint to be filed and turning over the contested case to the Commonwealth's Attorney.

E. Employees or their representative have the right to contest abatement orders arising out of settlement negotiations if the notice is timely filed with the commissioner within 15 working days of issuance of the amended citation and abatement order. Upon receipt of a timely notice of contest the commissioner will initiate judicial proceedings.

F. After a bill of complaint has been filed, any settlement shall be handled through the appropriate Commonwealth's Attorney and shall be embodied in a proposed order and presented for approval to the court before which the matter is pending. Every such order shall bear the signatures of the parties or their counsel; shall provide for abatement of any violation for which the citation is not vacated; shall provide that the employer's agreement not be construed as an admission of civil liability; and may permit the commissioner, when good cause is shown by the employer, to extend any abatement period contained within the order.

V.A.R. Doc. No. R94-418; Filed December 22, 1993, 11:20 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: State Plan for Medical Assistance Relating to Utilization Review of Case Management for Recipients of Auxiliary Grants.

VR 460-03-3.1102. Case Management Services (Supplement 2 to Attachment 3.1 A).

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C).

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

Public Hearing Date: N/A – Written comments may be submitted through March 11, 1994.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. Section 9-6.14:9 of the Administrative Process Act (APA) also provides for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews. The 1993 General Assembly amended § 63.1-25.1 of the Code of Virginia requiring that auxiliary grant recipients be evaluated by a case manager to determine his need for residential care. Section 63.1-173.3 of the Code of Virginia was amended to require that a uniform assessment instrument be completed upon admission and at subsequent intervals as determined by regulations of the Board of Social Services for each resident of an adult care residence. In order to maximize federal financial participation, the DMAS will use its authority under § 1905(a)(19) and 1915(g) of the Social Security Act to amend the State Plan for Medical Assistance to cover case management for recipients of auxiliary grants residing in licensed homes for adults.

Purpose: The purpose of this proposal is to amend the State Plan for Medical Assistance to expand Medicaid coverage to include targeted case management services to recipients of auxiliary grants residing in licensed adult

care residences.

Summary and Analysis: The section of the State Plan affected by this action is Case Management Services (Attachment 3.1, Supplement 2).

During the 1993 session, the General Assembly passed significant legislation governing the Auxiliary Grant Program and licensure of homes for adults. This new legislation required that all recipients of auxiliary grants must be evaluated using the state designated uniform assessment instrument to determine their need for residential care as a condition of eligibility for an auxiliary grant. The law provides that no public agency shall incur a financial obligation if the individual is determined ineligible for an auxiliary grant. This requirement is to become effective on June 1, 1994.

During the same session, the General Assembly also revised the law governing licensing of homes for adults. These residential facilities will be called adult care residences and will be licensed to provide either residential living or assisted living.

In preparation for implementation of these new requirements, a new system of reimbursement for adult care residences was developed. This new reimbursement method will provide for payments for residential and assisted living for individuals who are in financial need. Residents of licensed adult care residences who meet the financial eligibility requirements for the Auxiliary Grant Program and who require at least a residential level of care based on an assessment by a case manager shall be eligible to receive an auxiliary grant. Individuals who are eligible for auxiliary grants may also receive a payment for assisted living from the DMAS if their needs are determined, according to an assessment, to meet the level of care criteria for assisted living which are being promulgated by the DMAS in separate regulations.

Assessments and case management for auxiliary grant and assisted living will be provided by case managers employed by human service agencies in accordance with the Code of Virginia. The case managers will be responsible for assessing the applicant's or recipient's need for care using a uniform assessment instrument as required by regulations of the Department of Social Services. In addition to assessment, the case manager will be responsible for locating, coordinating and monitoring the services needed by auxiliary grant recipients residing in licensed adult care residences. The case manager will notify the eligibility worker in the local department of social services of the results of the assessment and will notify the DMAS if the applicant or recipient meets the criteria for assisted living. In addition, the case manager will notify the DMAS if changes occur in the condition of the client that affect his continued level of care.

These regulations describe the qualifications of case managers and case management agencies.

Adopting these regulations will permit the Commonwealth to carry out the requirement of the law that recipients of auxiliary grants receive an assessment to determine their need and appropriate placement assuring that each individual will be placed in an adult care residence able to meet his needs and will monitor any changes in his condition which may indicate a need for a more appropriate placement as his condition changes. In addition, Medicaid coverage of case management for this group will permit federal financial participation in the cost of administering the case management requirement.

Issues: Coverage of case management for recipients of auxiliary grants will permit the Commonwealth to provide case management services including assessment and placement services to frail Virginians who can no longer live independently. In addition, coverage of this service through Medicaid will reduce the cost of the service by obtaining 50% federal funding.

Impact: During Fiscal Year 1995, all auxiliary grant recipients residing in adult care residences will be assessed as well as all new applicants. All auxiliary grant recipients will be eligible to receive payment for case management services during FY 95. It is estimated that Medicaid will pay for case management on behalf of 7,629 eligible auxiliary grant recipients during FY 95 at a cost of \$2,016,257 (general funds \$999,660; nongeneral funds \$1,016,597) and 6,010 recipients at a cost of \$2,047,072 (general funds \$1,012,482; nongeneral funds \$1,034,590) during FY 96. These figures reflect a net additional cost of case management resulting from this change to the State Plan. It should be noted that approximately 2,000 Medicaid recipients residing in adult care residences already receive case management services through community services boards. They are expected to continue to receive case management through those agencies, and the cost of those services is already in the budget.

Forms: The assessment information will be recorded on the Uniform Assessment Instrument developed at the direction of the Long-Term Care Council and in accordance with the direction of the 1993 General Assembly in HJR 601. This form will become the mandated assessment form for all Commonwealth home- and community-based long-term care services by July 1, 1994.

Summary:

During the 1993 session, the General Assembly passed significant legislation governing the Auxiliary Grant Program and licensure of homes for adults. This new legislation required that all recipients of auxiliary grants must be evaluated using the state designated uniform assessment instrument to determine their need for residential care as a condition of eligibility for an auxiliary grant. The law provides that no public agency shall incur a financial obligation if the individual is determined ineligible for an auxiliary grant. This requirement is to become effective on

Proposed Regulations

June 1, 1994.

During the same session, the General Assembly also revised the law governing licensing of homes for adults. These residential facilities will be called adult care residences and will be licensed to provide either residential living or assisted living.

In preparation for implementation of these new requirements, a new system of reimbursement for adult care residences was developed. This new reimbursement method will provide for payments for residential and assisted living for individuals who are in financial need. Residents of licensed adult care residences who meet the financial eligibility requirements for the Auxiliary Grant Program and who require at least a residential level of care based on an assessment by a case manager shall be eligible to receive an auxiliary grant. Individuals who are eligible for auxiliary grants may also receive a payment for assisted living from the DMAS if their needs are determined, according to an assessment, to meet the level of care criteria for assisted living which are being promulgated by the DMAS in separate regulations.

Assessments and case management for auxiliary grant and assisted living will be provided by case managers employed by human service agencies in accordance with the Code of Virginia. The case managers will be responsible for assessing the applicant's or recipient's need for care using a uniform assessment instrument as required by regulations of the Department of Social Services. In addition to assessment, the case manager will be responsible for locating, coordinating and monitoring the services needed by auxiliary grant recipients residing in licensed adult care residences. The case manager will notify the eligibility worker in the local department of social services of the results of the assessment and will notify the DMAS if the applicant or recipient meets the criteria for assisted living. In addition, the case manager will notify the DMAS if changes occur in the condition of the client that affect his continued level of care.

These regulations describe the qualifications of case managers and case management agencies. Adopting these regulations will permit the Commonwealth to carry out the requirement of the law that recipients of auxiliary grants receive an assessment to determine their need and appropriate placement assuring that each individual will be placed in an adult care residence able to meet his needs and will monitor any changes in his condition which may indicate a need for a more appropriate placement as his condition changes. In addition, Medicaid coverage of case management for this group will permit federal financial participation in the cost of administering the case management requirement.

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 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 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 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
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,

Proposed Regulations

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 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.

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.

Proposed Regulations

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 pre-discharge 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 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 §

Proposed Regulations

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;

(9) Using assessment tools; and

(10) Identifying community resources and organizations and coordinating resources and activities.

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;

Proposed Regulations

(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;
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;

Proposed Regulations

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:

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.

Proposed Regulations

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.

§ 7. Case management for recipients of auxiliary grants.

A. Target group.

Recipients of optional state supplements (auxiliary grants) who reside in licensed adult care residences.

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 assessment, service location, coordination and monitoring for aged, blind and disabled individuals who are applying for an optional state supplement (auxiliary grant) to pay the cost of residential or assisted living care in a licensed adult care residence in order to facilitate access to and receipt of the most appropriate placement. In addition, the case management services will provide for periodic reassessment to determine whether the placement continues to meet the needs of the recipient of optional state supplement (auxiliary grant) and to arrange for transfer to a more appropriate placement or arrange for supplemental services as the needs of the individual change.

E. Qualifications of providers.

A qualified case manager for recipients of auxiliary grants must be a qualified employee of a human service agency as required in § 63.1-25.1 of the Code of Virginia. To qualify as a provider of case management for the elderly, the human service agency:

1. Must employ or contract for case managers who have experience or have been trained in establishing, and in periodically reviewing and revising, individual community care plans and in the provision of case management services to elderly persons and to disabled adults;

2. Must have signed an agreement with the Department of Medical Assistance Services to deliver case management services to aged, blind and disabled recipients of optional state supplements (auxiliary grants);

3. Shall have written procedures for assuring the quality of case management services;

4. 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 in human services or health care and relevant education which indicates that the individua

Proposed Regulations

possesses the following knowledge, skills, and abilities at entry level. These must be documented on the job application form or supporting documentation.

a. Knowledge of:

- (1) Aging and the impact of disabilities and illnesses on aging;
- (2) Conducting client assessments (including psychosocial, health and functional factors) and their uses in care planning;
- (3) Interviewing techniques;
- (4) Consumers' rights;
- (5) Local human and health service delivery systems, including support services and public benefits eligibility requirements;
- (6) The principles of human behavior and interpersonal relationships;
- (7) Effective oral, written, and interpersonal communication principles and techniques;
- (8) General principles of record documentation;
- (9) Service planning process and the major components of a service plan.

b. Skills in:

- (1) Negotiating with consumers and service providers;
- (2) Observing, recording and reporting behaviors;
- (3) Identifying and documenting a consumer's needs for resources, services and other assistance;
- (4) Identifying services within the established services system to meet the consumer's needs;
- (5) Coordinating the provision of services by diverse public and private providers;
- (6) Analyzing and planning for the service needs of elderly or disabled persons;

c. Abilities to:

- (1) Demonstrate a positive regard for consumers and their families;
- (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.

(6) Develop a rapport and communicate with different types of persons from diverse cultural backgrounds;

(7) Interview.

5. 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 experience in the human services field working with the aged or disabled.

6. To obtain DMAS payment, the case management provider must maintain in a resident's record a copy of the resident's assessment, plan of care, all reassessments, and documentation of all contacts, including but not limited to face-to-face contacts with the resident, made in regard to the resident.

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.

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. Payment for case management services is limited to no more than one visit during each calendar quarter. In order to bill for case management services during a calendar quarter, the case manager must comply with the documentation requirements of subsection E of this section and have documented contact with the resident during that quarter.

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality Care.

The following is a description of the standards and the methods that will be used to assure that the medical and remedial care and services are of high quality:

§ 1. Institutional care will be provided by facilities qualified to participate in Title XVIII and/or Title XIX.

§ 2. Utilization control.

A. General acute care hospitals.

1. The Commonwealth of Virginia is required by state law to take affirmative action on all hospital stays that approach 15 days. It is a requirement that the

Proposed Regulations

hospitals submit to the Department of Medical Assistance Services complete information on all hospital stays where there is a need to exceed 15 days. The various documents which are submitted are reviewed by professional program staff, including a physician who determines if additional hospitalization is indicated. This review not only serves as a mechanism for approving additional days, but allows physicians on the Department of Medical Assistance Services' staff to evaluate patient documents and give the Program an insight into the quality of care by individual patient. In addition, hospital representatives of the Medical Assistance Program visit hospitals, review the minutes of the Utilization Review Committee, discuss patient care, and discharge planning.

2. In each case for which payment for inpatient hospital services, or inpatient mental hospital services is made under the State Plan:

a. A physician must certify at the time of admission, or if later, the time the individual applies for medical assistance under the State Plan that the individual requires inpatient hospital or mental hospital care.

b. The physician, or physician assistant under the supervision of a physician, must recertify, at least every 60 days, that patients continue to require inpatient hospital or mental hospital care.

c. Such services were furnished under a plan established and periodically reviewed and evaluated by a physician for inpatient hospital or mental hospital services.

B. Long-stay acute care hospitals (nonmental hospitals).

1. Services for adults in long-stay acute care hospitals. The population to be served includes individuals requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, comprehensive rehabilitative therapy services and individuals with communicable diseases requiring universal or respiratory precautions.

a. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care hospital placement, and any additional information that justifies the need for intensive services. Physician certification must accompany the request. Periods of care not authorized by DMAS shall not be approved for payment.

b. These individuals must have long-term health conditions requiring close medical supervision, the need for 24-hour licensed nursing care, and the need for specialized services or equipment needs.

c. At a minimum, these individuals must require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is the designated unit must be on the nursing unit 24 hours a day on which the resident resides), and coordinated multidisciplinary team approach to meet needs that must include daily therapeutic leisure activities.

d. In addition, the individual must meet at least one of the following requirements:

(1) Must require two out of three of the following rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of one hour each day; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

(2) Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by a licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy; or

(3) The individual must require at least one of the following special services:

(a) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only);

(c) Dialysis treatment that is provided on-unit (i.e. peritoneal dialysis);

(d) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body); or

(f) Ongoing management of multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e. suctioning every hour; stabilization of feeding; stabilization of elimination, etc.).

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 individuals' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

f. When the individual no longer meets long-stay acute care hospital criteria or requires services that the facility is unable to provide, then the individual must be discharged.

2. Services to pediatric/adolescent patients in long-stay acute care hospitals. The population to be served shall include children requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, daily dependence on device-based respiratory or nutritional support (tracheostomy, gastrostomy, etc.), comprehensive rehabilitative therapy services, and those children having communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.) and with terminal illnesses.

a. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care, and any additional information that justifies the need for intensive services. Periods of care not authorized by DMAS shall not be approved for payment.

b. The child must have ongoing health conditions requiring close medical supervision, the need for 24-hour licensed nursing supervision, and the need for specialized services or equipment. The recipient must be age 21 or under.

c. The child must minimally require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is that nursing unit must be on the unit 24 hours a day on which the child is residing), and a coordinated multidisciplinary team approach to meet needs.

d. In addition, the child must meet one of the following requirements:

(1) Must require two out of three of the following physical rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of 45 minutes per day; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

(2) Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device

(respiratory or cardiac), kinetic therapy, etc; or

(3) Must require at least one of the following special services:

(a) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, strep throat, etc.);

(c) Dialysis treatment that is provided within the facility (i.e. peritoneal dialysis);

(d) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) Extensive wound care requiring debridement, irrigation, packing, etc. more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body);

(f) Ostomy care requiring services by a licensed nurse;

(g) Services required for terminal care.

e. In addition, the long-stay acute care hospital must provide for the educational and habilitative needs of the child. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must also be individualized to meet the child's specific needs and must be provided in an organized manner that encourages the child's participation. Services may include, but are not limited to, school, active treatment for mental retardation, habilitative therapies, social skills, and leisure activities. Therapeutic leisure activities must be provided daily.

f. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

g. When the resident no longer meets long-stay hospital criteria or requires services that the facility is unable to provide, the resident must be discharged.

Proposed Regulations

C. Nursing facilities.

1. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements.

2. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

3. The Department of Medical Assistance Services shall conduct at least annually a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. The survey will be composed of a sample of Medicaid residents and will include review of both current and closed medical records.

4. Nursing facilities must submit to the Department of Medical Assistance Services resident assessment information at least every six months for utilization review. If an assessment completed by the nursing facility does not reflect accurately a resident's capability to perform activities of daily living and significant impairments in functional capacity, then reimbursement to nursing facilities may be adjusted during the next quarter's reimbursement review. Any individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties.

5. In order for reimbursement to be made to the nursing facility for a recipient's care, the recipient must meet nursing facility criteria as described in Supplement 1 to Attachment 3.1-C, Part 1 (Nursing Facility Criteria).

In order for reimbursement to be made to the nursing facility for a recipient requiring specialized care, the recipient must meet specialized care criteria as described in Supplement 1 to Attachment 3.1-C, Part 2 (Adult Specialized Care Criteria) or Part 3 (Pediatric/Adolescent Specialized Care Criteria). Reimbursement for specialized care must be preauthorized by the Department of Medical Assistance Services. In addition, reimbursement to nursing facilities for residents requiring specialized care will only be made on a contractual basis. Further specialized care services requirements are set forth below.

In each case for which payment for nursing facility

services is made under the State Plan, a physician must recommend at the time of admission or, if later, the time at which the individual applies for medical assistance under the State Plan that the individual requires nursing facility care.

6. For nursing facilities, a physician must approve a recommendation that an individual be admitted to a facility. The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter. At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

7. When the resident no longer meets nursing facility criteria or requires services that the nursing facility is unable to provide, then the resident must be discharged.

8. Specialized care services.

a. Providers must be nursing facilities certified by the Division of Licensure and Certification, State Department of Health, and must have a current signed participation agreement with the Department of Medical Assistance Services to provide nursing facility care. Providers must agree to provide care to at least four residents who meet the specialized care criteria for children/adolescents or adults.

b. Providers must be able to provide the following specialized services to Medicaid specialized care recipients:

(1) Physician visits at least once weekly;

(2) Skilled nursing services by a registered nurse available 24 hours a day;

(3) Coordinated multidisciplinary team approach to meet the needs of the resident;

(4) For residents under age 21, provision for the educational and habilitative needs of the child;

(5) For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of six sessions each day, 15 minutes per session, five days per week;

(6) For residents over age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of four sessions per day, 30 minutes per session, five days a week;

- (7) Ancillary services related to a plan of care;
- (8) Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);
- (9) Psychology services by a board-certified psychologist related to a plan of care;
- (10) Necessary durable medical equipment and supplies as required by the plan of care;
- (11) Nutritional elements as required;
- (12) A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;
- (13) Nonemergency transportation;
- (14) Discharge planning;
- (15) Family or caregiver training; and
- (16) Infection control.

D. Facilities for the Mentally Retarded (FMR) and Institutions for Mental Disease (IMD).

1. With respect to each Medicaid-eligible resident in an FMR or IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet his current health needs and promote his maximum physical well being; the necessity and desirability of his continued placement in the facility; and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

2. With respect to each intermediate care FMR or IMD, periodic on-site inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, the necessity and desirability of continued placement in the facility, and the feasibility of meeting his health care needs through alternative

institutional or noninstitutional services. Full reports shall be made to the state agency by the review team of the findings of each inspection, together with any recommendations.

3. In order for reimbursement to be made to a facility for the mentally retarded, the resident must meet criteria for placement in such facility as described in Supplement 1, Part 4, to Attachment 3.1-C and the facility must provide active treatment for mental retardation.

4. In each case for which payment for nursing facility services for the mentally retarded or institution for mental disease services is made under the State Plan:

a. A physician must certify for each applicant or recipient that inpatient care is needed in a facility for the mentally retarded or an institution for mental disease. The certification must be made at the time of admission or, if an individual applies for assistance while in the facility, before the Medicaid agency authorizes payment; and

b. A physician, or physician assistant or nurse practitioner acting within the scope of the practice as defined by state law and under the supervision of a physician, must recertify for each applicant at least every 365 days that services are needed in a facility for the mentally retarded or institution for mental disease.

5. When a resident no longer meets criteria for facilities for the mentally retarded or an institution for mental disease or no longer requires active treatment in a facility for the mentally retarded, then the resident must be discharged.

E. Psychiatric services resulting from an EPSDT screening.

Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403 and § 4b to Attachment 3.1 A & B Supplement 1, psychiatric services shall be covered, based on their prior authorization of medical need, for individuals younger than 21 years of age when the need for such services has been identified in a screening as defined by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. The following utilization control requirements shall be met before preauthorization of payment for services can occur.

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

"Admission" means the provision of services that are medically necessary and appropriate, and there is a reasonable expectation the patient will remain at least overnight and occupy a bed.

Proposed Regulations

“CFR” means the Code of Federal Regulations.

“Psychiatric services resulting from an EPSDT screening” means services rendered upon admission to a psychiatric hospital.

“DMHMRSAS” means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

“DMAS” means the Department of Medical Assistance Services.

“JCAHO” means Joint Commission on Accreditation of Hospitals.

“Medical necessity” means that the use of the hospital setting under the direction of a physician has been demonstrated to be necessary to provide such services in lieu of other treatment settings and the services can reasonably be expected to improve the recipient’s condition or to prevent further regression so that the services will no longer be needed.

“VDH” means the Virginia Department of Health.

2. It shall be documented that treatment is medically necessary and that the necessity was identified as a result of an EPSDT screening. Required patient documentation shall include, but not be limited to, the following:

a. Copy of the screening report showing the identification of the need for further psychiatric diagnosis and possible treatment.

b. Copy of supporting diagnostic medical documentation showing the diagnosis that supports the treatment recommended.

c. For admission to a psychiatric hospital, for psychiatric services resulting from an EPSDT screening, certification of the need for services by an interdisciplinary team meeting the requirements of 42 CFR §§ 441.153 or 441.156 that:

(1) Ambulatory care resources available in the community do not meet the recipient’s treatment needs;

(2) Proper treatment of the recipient’s psychiatric condition requires admission to a psychiatric hospital under the direction of a physician; and

(3) The services can reasonably be expected to improve the recipient’s condition or prevent further regression so that the services will no longer be needed, consistent with 42 CFR § 441.152.

3. The absence of any of the above required

documentation shall result in DMAS’ denial of the requested preauthorization.

4. Providers of psychiatric services resulting from an EPSDT screening must:

a. Be a psychiatric hospital accredited by JCAHO;

b. Assure that services are provided under the direction of a physician;

c. Meet the requirements in 42 CFR Part 441 Subpart D;

d. Be enrolled in the Commonwealth’s Medicaid program for the specific purpose of providing psychiatric services resulting from an EPSDT screening.

F. Home health services.

1. Home health services which meet the standards prescribed for participation under Title XVIII will be supplied.

2. Home health services shall be provided by a licensed home health agency on a part-time or intermittent basis to a homebound recipient in his place of residence. The place of residence shall not include a hospital or nursing facility. Home health services must be prescribed by a physician and be part of a written plan of care utilizing the Home Health Certification and Plan of Treatment forms which the physician shall review at least every 62 days.

3. Except in limited circumstances described in subdivision 4 below, to be eligible for home health services, the patient must be essentially homebound. The patient does not have to be bedridden. Essentially homebound shall mean:

a. The patient is unable to leave home without the assistance of others or the use of special equipment;

b. The patient has a mental or emotional problem which is manifested in part by refusal to leave the home environment or is of such a nature that it would not be considered safe for him to leave home unattended;

c. The patient is ordered by the physician to restrict activity due to a weakened condition following surgery or heart disease of such severity that stress and physical activity must be avoided;

d. The patient has an active communicable disease and the physician quarantines the patient.

4. Under the following conditions, Medicaid will

reimburse for home health services when a patient is not essentially homebound. When home health services are provided because of one of the following reasons, an explanation must be included on the Home Health Certification and Plan of Treatment forms:

- a. When the combined cost of transportation and medical treatment exceeds the cost of a home health services visit;
 - b. When the patient cannot be depended upon to go to a physician or clinic for required treatment, and, as a result, the patient would in all probability have to be admitted to a hospital or nursing facility because of complications arising from the lack of treatment;
 - c. When the visits are for a type of instruction to the patient which can better be accomplished in the home setting;
 - d. When the duration of the treatment is such that rendering it outside the home is not practical.
5. Covered services. Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.

- a. Nursing services,
- b. Home health aide services,
- c. Physical therapy services,
- d. Occupational therapy services,
- e. Speech-language pathology services, or
- f. Medical supplies, equipment, and appliances suitable for use in the home.

6. General conditions. The following general conditions apply to reimbursable home health services.

a. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his or her license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

b. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition.

The written plan of care shall appear on the Home Health Certification and Plan of Treatment forms.

c. A physician recertification shall be required at intervals of at least once every 62 days, must be signed and dated by the physician who reviews the plan of care, and should be obtained when the plan of care is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. Recertifications must appear on the Home Health Certification and Plan of Treatment forms.

d. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

e. The physician orders for durable medical equipment and supplies shall include the specific item identification including all modifications, the number of supplies needed monthly, and an estimate of how long the recipient will require the use of the equipment or supplies. All durable medical equipment or supplies requested must be directly related to the physician's plan of care and to the patient's condition.

f. A written physician's statement located in the medical record must certify that:

(1) The home health services are required because the individual is confined to his or her home (except when receiving outpatient services);

(2) The patient needs licensed nursing care, home health aide services, physical or occupational therapy, speech-language pathology services, or durable medical equipment and/or supplies;

(3) A plan for furnishing such services to the individual has been established and is periodically reviewed by a physician; and

(4) These services were furnished while the individual was under the care of a physician.

g. The plan of care shall contain at least the following information:

(1) Diagnosis and prognosis,

(2) Functional limitations,

(3) Orders for nursing or other therapeutic services,

(4) Orders for medical supplies and equipment, when applicable

Proposed Regulations

(5) Orders for home health aide services, when applicable,

(6) Orders for medications and treatments, when applicable,

(7) Orders for special dietary or nutritional needs, when applicable, and

(8) Orders for medical tests, when applicable, including laboratory tests and x-rays

6. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

7. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

a. Nursing services. Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

b. Home health aide services. Home health aides must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A recipient may not receive duplicative home health aide and personal care aide services.

c. Rehabilitation services. Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by physicians of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.

(1) Physical therapy services shall be directly and specifically related to an active written care plan

designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(2) Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(3) Speech-language pathology services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech Pathology. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology.

d. Durable medical equipment and supplies. Durable medical equipment, supplies, or appliances must be ordered by the physician, be related to the needs of the patient, and included on the plan of care. Treatment supplies used for treatment during the visit are included in the visit rate. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.

e. A visit shall be defined as the duration of time

that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.

G. Optometrists' services are limited to examinations (refractions) after preauthorization by the state agency except for eyeglasses as a result of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT).

H. In the broad category of Special Services which includes nonemergency transportation, all such services for recipients will require preauthorization by a local health department.

I. Standards in other specialized high quality programs such as the program of Crippled Children's Services will be incorporated as appropriate.

J. Provisions will be made for obtaining recommended medical care and services regardless of geographic boundaries.

* * *

PART I.

INTENSIVE PHYSICAL REHABILITATIVE SERVICES.

§ 1.1. A patient qualifies for intensive inpatient or outpatient rehabilitation if:

A. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of a multi-disciplinary coordinated team approach to improve his ability to function as independently as possible; and

B. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

§ 1.2. In addition to the initial disability requirement, participants shall meet the following criteria:

A. Require at least two of the listed therapies in addition to rehabilitative nursing:

1. Occupational Therapy
2. Physical Therapy
3. Cognitive Rehabilitation
4. Speech-Language Therapy

B. Medical condition stable and compatible with an active rehabilitation program.

PART II.

INPATIENT ADMISSION AUTHORIZATION.

§ 2.1. Within 72 hours of a patient's admission to an intensive rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility shall notify the Department of Medical Assistance Services in writing of the patient's admission. This notification shall include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is approved, the Department will establish and notify the facility of an approved length of stay. Additional lengths of stay shall be requested in writing and approved by the Department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

PART III.

DOCUMENTATION REQUIREMENTS.

§ 3.1. Documentation of rehabilitation services shall, at a minimum:

A. Describe the clinical signs and symptoms of the patient necessitating admission to the rehabilitation program;

B. Describe any prior treatment and attempts to rehabilitate the patient;

C. Document an accurate and complete chronological picture of the patient's clinical course and progress in treatment;

D. Document that a multi-disciplinary coordinated treatment plan specifically designed for the patient has been developed;

E. Document in detail all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment;

F. Document each change in each of the patient's conditions;

G. Describe responses to and the outcome of treatment; and

H. Describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

§ 3.2. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no reimbursement will be provided.

Proposed Regulations

PART IV. INPATIENT REHABILITATION EVALUATION.

§ 4.1. For a patient with a potential for physical rehabilitation for which an outpatient assessment cannot be adequately performed, an intensive evaluation of no more than seven calendar days will be allowed. A comprehensive assessment will be made of the patient's medical condition, functional limitations, prognosis, possible need for corrective surgery, attitude toward rehabilitation, and the existence of any social problems affecting rehabilitation. After these assessments have been made, the physician, in consultation with the rehabilitation team, shall determine and justify the level of care required to achieve the stated goals.

§ 4.2. If during a previous hospital stay an individual completed a rehabilitation program for essentially the same condition for which inpatient hospital care is now being considered, reimbursement for the evaluation will not be covered unless there is a justifiable intervening circumstance which necessitates a re-evaluation.

§ 4.3. Admissions for evaluation and/or training for solely vocational or educational purposes or for developmental or behavioral assessments are not covered services.

PART V. CONTINUING EVALUATION.

§ 5.1. Team conferences shall be held as needed but at least every two weeks to assess and document the patient's progress or problems impeding progress. The team shall periodically assess the validity of the rehabilitation goals established at the time of the initial evaluation, and make appropriate adjustments in the rehabilitation goals and the prescribed treatment program. A review by the various team members of each others' notes does not constitute a team conference. A summary of the conferences, noting the team members present, shall be recorded in the clinical record and reflect the reassessments of the various contributors.

§ 5.2. Rehabilitation care is to be terminated, regardless of the approved length of stay, when further progress toward the established rehabilitation goal is unlikely or further rehabilitation can be achieved in a less intensive setting.

§ 5.3. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

PART VI. THERAPEUTIC FURLOUGH DAYS.

§ 6.1. Properly documented medical reasons for furlough may be included as part of an overall rehabilitation

program. Unoccupied beds (or days) resulting from an overnight therapeutic furlough will not be reimbursed by the Department of Medical Assistance Services.

PART VII. DISCHARGE PLANNING.

§ 7.1. Discharge planning shall be an integral part of the overall treatment plan which is developed at the time of admission to the program. The plan shall identify the anticipated improvements in functional abilities and the probable discharge destination. The patient, unless unable to do so, or the responsible party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every two weeks, as a part of the team conference.

PART VIII. REHABILITATION SERVICES TO PATIENTS.

§ 8.1. Rehabilitation services are medically prescribed treatment for improving or restoring functions which have been impaired by illness or injury or, where function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning. The rules pertaining to them are:

A. Rehabilitative nursing.

Rehabilitative nursing requires education, training, or experience that provides special knowledge and clinical skills to diagnose nursing needs and treat individuals who have health problems characterized by alteration in cognitive and functional ability.

Rehabilitative nursing are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan approved by a physician after any needed consultation with a registered nurse who is experienced in rehabilitation;
2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a registered nurse or licensed professional nurse, nursing assistant, or rehabilitation technician under the direct supervision of a registered nurse who is experienced in rehabilitation;
3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The service shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice and include the intensity of rehabilitative nursing services which can only be provided in an intensive rehabilitation setting.

B. Physical therapy.

Physical therapy services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a qualified physical therapist licensed by the Board of Medicine;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

C. Occupational therapy.

Occupational therapy services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of a qualified

occupational therapist as defined above;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

D. Speech-language therapy.

Speech-language therapy services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

E. Cognitive rehabilitation.

Cognitive rehabilitation services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with a clinical psychologist experienced in working with the neurologically impaired and licensed by the Board of

Proposed Regulations

Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be rendered after a neuropsychological evaluation administered by a clinical psychologist or physician experienced in the administration of neuropsychological assessments and licensed by the Board of Medicine and in accordance with a plan of care based on the findings of the neuropsychological evaluation;

3. Cognitive rehabilitation therapy services may be provided by occupational therapists, speech-language pathologists, and psychologists who have experience in working with the neurologically impaired when provided under a plan recommended and coordinated by a physician or clinical psychologist licensed by the Board of Medicine;

4. The cognitive rehabilitation services shall be an integrated part of the total patient care plan and shall relate to information processing deficits which are a consequence of and related to a neurologic event;

5. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and

6. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.

F. Psychology.

Psychology services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified psychologist as required by state law;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

G. Social work.

Social work services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified social worker as required by state law;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

H. Recreational therapy.

Recreational therapy are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

I. Prosthetic/orthotic services.

1. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member, and services necessary to design the device, including measuring, fitting, and instructing the patient in its use;

2. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design the device, including measuring, fitting and instructing the patient in its use; and

3. Maxillofacial prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine oral and dental care.

4. The services shall be directly and specifically related to an active written treatment plan approved by a physician after consultation with a prosthetist, orthotist, or a licensed, board eligible prosthodontist, certified in Maxillofacial prosthetics.

5. The services shall be provided with the expectation, based on the assessment made by physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and predictable period of time, or shall be necessary to establish an improved functional state of maintenance.

6. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical and dental practice; this includes the requirement that the amount, frequency, and duration of the services be reasonable.

J. Durable medical equipment.

1. Durable medical equipment furnished the patient receiving approved covered rehabilitation services is covered when the equipment is necessary to carry out an approved plan of rehabilitation. A rehabilitation hospital or a rehabilitation unit of a hospital enrolled with Medicaid under a separate provider agreement for rehabilitative services may supply the durable medical equipment. The provision of the equipment is to be billed as an outpatient service. Medically necessary medical supplies, equipment and appliances shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance

with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase. Payment shall not be made for additional equipment or supplies unless the extended provision of services has been authorized by DMAS. All durable medical equipment is subject to justification of need. Durable medical equipment normally supplied by the hospital for inpatient care is not covered by this provision.

2. Supplies, equipment, or appliances that are not covered for recipients of intensive physical rehabilitative services include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners;

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office;

c. Furniture or appliance not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales);

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface; mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience, for example, an electric wheelchair plus a manual chair; cleansing wipes);

e. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and non-legend drugs);

f. Home or vehicle modifications;

g. Items not suitable for or used primarily in the home setting (i.e., but not limited to, car seats, equipment to be used while at school);

h. Equipment that the primary function is vocationally or educationally related (i.e., but not

Proposed Regulations

limited to, computers, environmental control devices, speech devices) environmental control devices, speech devices).

PART IX. HOSPICE SERVICES.

§ 9.1. Admission criteria.

To be eligible for hospice coverage under Medicare or Medicaid, the individual elects to receive hospice services rather than active treatment for the illness. Both the attending physician (if the individual has an attending physician) and the hospice medical director must certify the life expectancy.

§ 9.2. Utilization review.

Authorization for hospice services requires an initial preauthorization by DMAS and physician certification of life expectancy. Utilization review will be conducted to determine if services were provided by the appropriate provider and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patients' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 9.3. Hospice services are a medically directed, interdisciplinary program of palliative services for terminally ill people and their families, emphasizing pain and symptom control. The rules pertaining to them are:

1. Nursing care. Nursing care must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

2. Medical social services. Medical social services must 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.

3. Physician services. Physician services must be performed by a professional who is licensed to practice, who is acting within the scope of his license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team must be a licensed doctor of medicine or osteopathy.

4. Counseling services. Counseling services must be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Counseling, including dietary

counseling, may be provided both for the purpose of training the individual's family or other caregiver to provide care, and for the purpose of helping the individual and those caring for him to adjust to the individual's approaching death. 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.

5. 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.

6. 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.

7. Drugs and biologicals. Only drugs which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

8. 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.

9. 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.

PART X. COMMUNITY MENTAL HEALTH SERVICES.

§ 10.1. Utilization review general requirements.

A. On-site utilization reviews shall be conducted, at a minimum annually at each enrolled provider, by the state

Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS). During each on-site review, an appropriate sample of the provider's total Medicaid population will be selected for review. An expanded review shall be conducted if an appropriate number of exceptions or problems are identified.

B. The DMHMRSAS review shall include the following items:

1. Medical or clinical necessity of the delivered service;
2. The admission to service and level of care was appropriate;
3. The services were provided by appropriately qualified individuals as defined in the Amount, Duration, and Scope of Services found in Attachment 3.1 A and B, Supplement 1 § 13d Rehabilitative Services; and
4. Delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

§ 10.2. Mental health services utilization criteria.

Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found at VR 460-03-3.1100.

A. Intensive in-home services for children and adolescents.

1. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service shall be recommended in the Individual Service Plan (ISP) which shall be fully completed within 30 days of initiation of services.
2. Services shall be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.
3. Services shall be used when out-of-home placement is a risk and 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. Services are not appropriate for a family in which a child has run away or a family for which the goal is to keep the family together only until an out-of-home placement can be arranged.
5. Services shall also be used to facilitate the

transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

6. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services, with the goal of keeping the child with the family.

7. The provider of intensive in-home services for children and adolescents shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

8. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home service is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in-home service, and includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in-home services below the five-hour a week minimum may be covered. However, variations in this pattern must be consistent with the individual service plan. Service plans must incorporate a discharge plan which identifies transition from

9. The intensity of service dictates that caseload sizes should be six or fewer cases at any given time. If on review caseloads exceed this limit, the provider will be required to submit a corrective action plan designed to reduce caseload size to the required limit unless the provider can demonstrate that enough of the cases in the caseload are moving toward discharge so that the caseload standard will be met within three months by attrition. Failure to maintain required caseload sizes in two or more review periods may result in termination of the provider agreement unless the provider demonstrates the ability to attain and maintain the required caseload size.

10. Emergency assistance shall be available 24 hours per day, seven days a week.

B. Therapeutic day treatment for children and adolescents.

1. Therapeutic day treatment is appropriate for children and adolescents who meet the DMHMRSAS definitions of "serious emotional disturbance" or "at risk of developing serious emotional disturbance" and who also meet one of the following:

- a. Children and adolescents who require year-round treatment in order to sustain behavioral or

Proposed Regulations

emotional gains.

b. Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

- (1) This programming during the school day; or
- (2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. Children and adolescents who have deficits in social skills, peer relations, dealing with authority; are hyperactive; have poor impulse control; are extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

2. 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.

3. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

4. 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.

5. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

6. Services shall be provided following a diagnostic assessment when authorized by the physician, licensed

clinical psychologist, licensed professional counselor, licensed clinical social worker or certified psychiatric nurse and in accordance with an ISP which shall be fully completed within 30 days of initiation of the service.

C. Day treatment/partial hospitalization services shall be provided to adults with serious mental illness following diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse, and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

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 services shall be provided to those individuals who have mental illness or mental retardation, and who have experienced long-term or repeated psychiatric hospitalization, or who lack daily living skills and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term care is needed to maintain the individual in the community.

1. Services shall be provided following an assessment which clearly documents the need for services and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

2. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

3. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are 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 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.

4. Time allocated for field trips may be used to calculate time and units 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. Admission to crisis intervention services is indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress. Crisis intervention may be the initial contact with a client.

1. The provider of crisis intervention services shall be licensed as an Outpatient Program by DMHMRSAS.

2. Client-related activities provided in association with a face-to-face contact are 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 must be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. When travel is required to provide out-of-clinic services, such time is reimbursable. Crisis intervention may involve the family or significant others.

F. Case management.

1. Reimbursement shall be provided only for "active" case management clients, as defined. 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 activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client 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. The Medicaid eligible individual shall meet the DMHMRSAS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

3. There shall be no maximum service limits for case management services.

4. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. The ISP shall be updated at least annually.

§ 10.3. Mental retardation utilization criteria.

Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found at VR 460-03-3.1100.

A. Appropriate use of day health and rehabilitation services requires the following conditions shall be met:

1. The service is provided by a program with an operational focus on skills development, social learning and interaction, support, and supervision.

2. The individual shall be assessed and deficits must be found in two or more of the following areas to qualify for services:

a. Managing personal care needs,

b. Understanding verbal commands and communicating needs and wants,

c. Earning wages without intensive, frequent and ongoing supervision or support,

Proposed Regulations

d. Learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,

e. Exhibiting behavior appropriate to time, place and situation that is not threatening or harmful to the health or safety of self or others without direct supervision,

f. Making decisions which require informed consent,

g. Caring for other needs without the assistance or personnel trained to teach functional skills,

h. Functioning in community and integrated environments without structured, intensive and frequent assistance, supervision or support.

3. Services for the individual shall be preauthorized annually by DMHMRSAS.

4. Each individual shall have a written plan of care developed by the provider which shall be fully complete within 30 days of initiation of the service, with a review of the plan of care at least every 90 days with modification as appropriate. A 10-day grace period is allowable.

5. The provider shall update the plan of care at least annually.

6. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting plan of care goals.

7. 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 at least four but less than seven hours on 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.

8. The provider shall be licensed by DMHMRSAS.

B. Appropriate use of case management services for persons with mental retardation requires the following conditions to be met:

1. The individual must require case management as documented on the consumer service plan of care

which is developed based on appropriate assessment and supporting data. Authorization for case management services shall be obtained from DMHMRSAS Care Coordination Unit annually.

2. An active client shall be defined as 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 other entities including a minimum of one face-to-face contact within a 90-day period.

3. The plan of care shall address the individual's needs in all life areas with consideration of the individual's age, primary disability, level of functioning and other relevant factors.

a. The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of the actual review.

b. The need for case management services shall be assessed and justified through the development of an annual consumer service plan.

4. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.

PART XI GENERAL OUTPATIENT PHYSICAL REHABILITATION SERVICES.

§ 11.1. Scope.

A. Medicaid covers general outpatient physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals and by rehabilitation agencies which have a provider agreement with the Department of Medical Assistance Services (DMAS).

B. Outpatient rehabilitative services shall be prescribed by a physician and be part of a written plan of care.

§ 11.2. Covered outpatient rehabilitative services.

Covered outpatient rehabilitative services shall include physical therapy, occupational therapy, and speech-language pathology services. Any one of these services may be offered as the sole rehabilitative service and shall not be contingent upon the provision of another.

service.

§ 11.3. Eligibility criteria for outpatient rehabilitative services.

To be eligible for general outpatient rehabilitative services, the patient must require at least one of the following services: physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy. All rehabilitative services must be prescribed by a physician.

§ 11.4. Criteria for the provision of outpatient rehabilitative services.

All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

A. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

B. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be

of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by or under the direction of a speech-language pathologist who meets the qualifications in subdivision B1 above. The program must meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 11.5. Authorization for services.

A. General physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals and

Proposed Regulations

by rehabilitation 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. A visit shall be defined as the duration of time that a rehabilitative therapist is with a client to provide services prescribed by the physician. Visits shall not be defined in measurements or increments of time.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized by using the Rehabilitation Treatment Authorization form (DMAS-125). This request must be signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

§ 11.6. Documentation requirements.

A. Documentation of general outpatient rehabilitative services provided by a hospital-based outpatient setting or a rehabilitation agency shall, at a minimum:

1. describe the clinical signs and symptoms of the patient's condition;
2. include an accurate and complete chronological picture of the patient's clinical course and treatments;
3. document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;
4. include a copy of the physician's orders and plan of care;
5. include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);
6. describe changes in each patient's condition and response to the rehabilitative treatment plan; and
7. describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 11.7. Service limitations.

The following general conditions shall apply to reimbursable physical rehabilitative services:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided.

PART XII. UTILIZATION REVIEW OF CASE MANAGEMENT FOR RECIPIENTS OF AUXILIARY GRANTS.

§ 12.1. Criteria of need for case management services.

It shall be the responsibility of the assessor who identifies the individual's need for residential or assisted living in an adult care residence to assess the need for case management services. The case manager shall update the assessment and make any necessary changes to the individual's plan of care as part of the case management annual visit. Case management services may be initiated at any time during the year that a need is identified.

§ 12.2. Coverage limits.

DMAS shall reimburse for one case management visit per year for every individual who receives an auxiliary grant. For individuals meeting the following criteria, DMAS shall reimburse for one case management visit per calendar quarter:

1. The individual needs the coordination of multiple services and the individual does not currently have support available that is willing to assist in the coordination of and access to services, and a referral to a formal or informal support system will not meet the individual's needs; or

2. The individual has an identified need in his physical environment, support system, financial resources, emotional or physical health which must be addressed to ensure the individual's health and welfare and other formal or informal supports have either been unsuccessful in their efforts or are unavailable to assist the individual in resolving the need.

§ 12.3. Documentation requirements.

The update to the assessment and plan of care shall be required annually regardless of whether the individual receives an annual visit or is authorized for quarterly case management visit.

V.A.R. Doc. No. R94-360; Filed December 16, 1993, 11:37 a.m.

BOARD OF NURSING HOME ADMINISTRATORS

Title of Regulation: VR 500-01-2:1. Regulations of the Board of Nursing Home Administrators.

Statutory Authority: §§ 54.1-2400 and 54.1-3101 of the Code of Virginia.

Public Hearing Date: February 8, 1994 - 9 a.m.

Written comments may be submitted until March 28, 1994.

(See Calendar of Events section for additional information)

Basis: Chapter 24 (§ 54.1-2400 et seq.) of the Code of Virginia provides the basis for these regulations. Chapter 24 establishes the general powers and duties of health regulatory boards including responsibility to "promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system."

Purpose: The proposed amendments are revised verbatim to the emergency regulations of the Board of Nursing Home Administrators which went into effect June 29, 1993. The proposed amendments increase fees for licensure, examination, renewal, late renewal and reinstatement; relax continuing education requirements for licensees by requiring vendors to register with the board; and respond to Governor Wilder's conditioned approval of emergency regulations.

Substance: The key provisions of these regulations are summarized below:

§ 1.1 - Adds definitions relevant to registration of vendors of continuing education to provide clarity for compliance.

§ 3.1 - Increases initial licensure fees for administrators, administrators-in-training and preceptors. Increases examination fees.

§ 3.2 - Increases renewal fees for nursing home administrators and preceptors.

§ 3.3 - Increases late renewal for administrators and preceptors who do not renew by expiration date but renew within six months of expiration date.

§ 3.4 - Increases reinstatement fees for administrators and preceptors who reinstate after six months of expiration date.

§ 3.5 - Increases fees for duplicate licenses, wall certificates and returned checks.

§ 8.4 - Deletes requirement. Adds new § 8.4 which requires the licensee to retain continuing education documentation subject to audit.

§ 8.5 - Deletes requirement. Adds new § 8.5 which authorizes random audit for compliance monitoring and prescribes the procedure for licensees to follow if contacted for an audit.

§§ 9.1 through 9.15 - Adds requirements for registration of vendors of continuing education courses.

Issues: The proposed amendments result from a comprehensive review of regulations and a mandate from Governor Wilder.

1. **Problem:** Revenue deficit and increased administrative costs. The Board of Nursing Home Administrators experienced a 10% decline in renewals in 1991 and 1992 combined. Administrative costs of mandatory continuing education requirements increased as a result a 20% increase in violations. A deficit of \$98,342 is projected by June 30, 1994. (See §§ 3.1 through 3.6)

Solution: The board developed four alternative fee structures. Each alternative requires a 10% reduction in expenditures by the board.

The board voted to increase revenues \$77,968 for the biennium. A net surplus of \$4,001 would result by June 30, 1994.

The board determined this solution to be the most reasonable. The board voted to reduce its expenditures by at least 10% and currently is limiting travel and per diem costs and streamlining administrative costs.

Emergency regulations were approved effective

Proposed Regulations

November 4, 1992, implementing fee increases as prescribed in this solution.

2. Problem: Continuing education requirements involve extensive reporting, tracking and monitoring. Disciplinary cases have increased 718% from the previous biennium as a result of violations of the requirements.

Over 600 licensees submitted documentation from 300+ vendors covering over 1000 different courses. Tracking involved thousands of course verifications.

Of 662 licensees submitting documentation, 134 (20%) were found in violation. Seventy-six appealed to administrative hearings. The program created tremendous overload on staff.

Solution: The board will contract with the Inspection Division of the department to conduct a sampling. The board will determine compliance of 75 licensees sampled. The board will require vendors of continuing education to register with the board and provide to the board when randomly sampled, validation of content and quality of instructors and courses.

Staff is allocated to the board on a part-time basis and the board wanted assurance that services to licensees and the public were not interrupted by the continuing education program. The board determined that this solution is the most cost effective, equitable, and flexible and the least burdensome to licensees.

3. Problem: Governor Wilder granted conditional approval to the emergency regulations in November, 1992.

Governor Wilder stated: "I concur with the adoption of this emergency regulation. However, my approval is conditioned upon the Board of Nursing Home Administrators conducting a thorough review of the need and effectiveness of the mandatory continuing education requirement. Additionally, this review should focus on how to make this requirement beneficial to administrators as well as to the citizens using nursing facilities. Another key element of this investigation should be to make the administration of the continuing education requirement less costly while remaining effective. This study shall be concluded prior to promulgating permanent regulations."

Solution: Conduct a full review of the effectiveness of the regulations, carefully study the efficacy of mandating continuing education requirements including how requirements are beneficial to administrators and administrative costs while assuring effectiveness.

The board has reviewed the effectiveness of the regulations and is proposing to reduce administrative costs and reduce stringency of continuing education requirements.

The board concludes that it is responsible to the public to monitor both initial competency for licensure and ensure continued competency. The board may not have the "ideal" mechanism to ensure continued competency but has determined that its requirements increase the probability of access and exposure to new knowledge and technological advances. The board concludes its study with support of mandatory continuing education.

Estimated Impact:

A. Regulated Entities: There are currently 682 licensed nursing home administrators, 163 registered preceptors (training supervisors for apprentices), and 90 administrators-in-training for a total of 935 licensees and registrants. The board projects that approximately 200 vendors of continuing education will register with the board.

B. Projected Costs for Licensed Entities: Licensure fees will increase a maximum of 25% for initial licensure, renewal, late renewal and reinstatement. The late renewal and reinstatement fees are avoidable by renewing the license by the expiration date.

C. Projected Cost to Agency: The board estimates the cost for implementing these amendments at \$19,000. This estimate includes staff time, postage, printing, mailing and adjudication of violations.

D. Source of Funds: All funds of the Board of Nursing Home Administrators are derived from application, examination and licensure fees.

E. Projected Cost for Compliance: The following fees are currently in effect through emergency regulations and are proposed for adoption. Fees prior to the emergency regulations are in the left column and proposed fees are in the right column:

Applicant for Trainee Program	- From \$150 to \$188
Applicant for Preceptor - From \$100 to \$125
Applicant for Administrator - From \$125 to \$156
Fee for State Examination - From \$100 to \$125
Fee for National Examination	... - From \$150 to \$188

Annual Renewal Administrator	.. - From \$100 to \$125
Annual Renewal Preceptor - From \$ 50 to \$ 63

Late Renewal Administrator - From \$150 to \$175
Late Renewal Preceptor - From \$ 50 to \$ 88

(Late renewal fees are avoidable by renewing by the expiration date.)

Reinstatement Fee	
Administrator - From \$200 to \$225

Reinstatement Fee Preceptor	... - From \$100 to \$113
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Proposed Regulations

(Reinstatement fees are avoidable by renewing the license by the expiration date or filing for late renewal within six months of the expiration date.)

Fee for duplicate license - From \$ 25 to \$ 31
Fee for duplicate wall certificate - From \$ 50 to \$ 63
Fee for returned check - From \$ 25 to \$ 31

(The first two fees provide an extra service to licensees per request. Returned check fee is avoidable.)

Fee for verification of license to another state - From \$ 50 to \$ 63

Licensees are required to attend 20 classroom hours of continuing education during each calendar year. The average cost of 20 classroom hours of continuing education is \$400. The majority of continuing education credits are given at conferences and conventions which are attended for reasons other than participation in continuing education classes. With over 1,000 courses given in Virginia in 1992, classes are readily accessible in all localities and travel to any particular class would be minimal.

Relaxing the reporting requirements for continuing education will reduce costs for licensees and place onus on vendors to assure quality in content and instruction.

Summary:

The proposed amendments increase fees for licensure, registration, renewal, late renewal, and reinstatement that went into effect November 4, 1992, and June, 1993, through emergency regulations; amend reporting requirements for continuing education; require registration of vendors of continuing education; and respond to Governor Wilder's conditional approval of the emergency regulations.

VR 500-01-2.1. Regulations of the Board of Nursing Home Administrators.

PART I. GENERAL PROVISIONS.

Article 1. Definitions.

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

"Accredited institution" means any degree-granting college or university accredited by the following: Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, Western Association of Schools and Colleges,

and public schools accredited by the Virginia Department of Education.

"Applicant" means a person applying to sit for an examination or applying for licensure by the board.

"Administrator-in-training program (A.I.T.)" means the apprenticeship program which consists of 2,080 hours of continuous training in nursing home administration in a licensed nursing home.

"Administrator-of-record" means the licensed nursing home administrator designated in charge of the general administration of the facility and identified as such to the facility's licensing agency.

"Administrator-in-training applicant" means a person applying for approval to enter the administrator-in-training (A.I.T.) program.

"Classroom hour" means 50 minutes of attendance in a group program for obtaining continuing education.

"Continuing education" means the educational activities which serve to maintain, develop, or increase the knowledge, skills, and performance and competence generally recognized as relevant to the nursing home administrator's professional responsibilities.

"Department" means the Department of Health Professions.

"Direct supervision" means directing the activities and course of a subordinate's performance.

"Executive director" means the board administrator for the Board of Nursing Home Administrators.

"Formal program of learning" means a process that is designed and intended primarily as an educational activity and that complies with the applicable standards as defined by Part VIII of these regulations.

"Full-time employment" means employment of at least 37 1/2 hours per week.

"Group program" means an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants.

"Instructional design" means a plan that specifies the learning objectives of the program; the content of the program; the methods of presentation (case studies, lectures, work group; programmed instruction, use of audio or visual aids or group participation); and the method whereby the participant evaluates whether the learning objectives were achieved. Adequacy of technical knowledge or skills in developing instructional design shall be demonstrated by appropriate experience or education of the presenter.

Proposed Regulations

"Learning objectives" means specifications of what participants should gain as a result of completing continuing education courses.

"N.A.B." means the National Association of Boards of Examiners for Nursing Home Administrators.

"National examination" means a test used by the board to determine competence of candidates for licensure.

"Nursing home administrator" means any individual licensed by the Board of Nursing Home Administrators.

"Nursing home" means any public or private facility required to be licensed as a nursing home under the provisions of Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 of the Code of Virginia and the regulations of the Board of Health.

"Practicum" means a course of study as part of a degree or post-degree program designed especially for the preparation of candidates for licensure as nursing home administrators that involves supervision by an accredited college or university of the practical application of previously studied theory. The practicum shall be served under a preceptor registered with the board.

"Preceptor" means a nursing home administrator currently licensed in Virginia approved by the board to conduct an administrator-in-training (A.I.T.) program.

"Quality instruction" means instruction that is provided by teachers/presenters who are capable through background, training, education and experience of communicating effectively and providing an environment conducive to learning. Instructors shall be competent in the subject matter, skilled in the use of the appropriate teaching method(s) and prepared in advance.

"Sponsor" means an individual or business approved by the board to offer continuing education in accordance with these regulations.

"State examination" means a test used by the Board of Nursing Home Administrators to determine competency of a candidate relevant to regulations and laws in Virginia for purposes of licensure.

Article 2. Legal Base.

§ 1.2. The following legal base describes the authority of the Board of Nursing Home Administrators to prescribe regulations governing nursing home administrators in the Commonwealth of Virginia:

Title 54.1:

Chapter 1 (§ 54.1-100 through 54.1-114);

Chapter 24 (§ 54.1-2400 through 54.1-2403);

Chapter 25 (§ 54.1-2500 through 54.1-2510); and

Chapter 31 (§ 54.1-3100 through 54.1-3103)

of the Code of Virginia.

Article 3. Purpose.

§ 1.3. These regulations establish the standards for qualifications, training, examination, licensure, and practice of persons as administrators-in-training; nursing home administrators; and preceptors in the Commonwealth of Virginia.

Article 4. Applicability.

§ 1.4. Individuals subject to these regulations are (i) nursing home administrators, (ii) applicants, (iii) administrators-in-training, and (iv) preceptors, and (v) approved sponsors of continuing education courses.

Article 5. Public Participation Guidelines.

§ 1.5. Mailing list.

The executive director of the board shall maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. Notice of intent to promulgate regulations;
2. Notice of public hearings or informational proceedings, the subject of which is proposed or existing regulations; and
3. Final regulations when adopted.

§ 1.6. Additions and deletions to mailing list.

A. Any person wishing to be placed on the mailing list shall have his name added by writing to the board.

B. The board may, in its discretion, add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations.

C. Those on the list may be periodically requested to indicate their desire to continue to receive documents or to be deleted from the list.

D. When mail is returned as undeliverable, persons shall be deleted from the list.

§ 1.7. Notice of intent.

A. At least 30 days prior to publication of the notice to conduct an informational proceeding as required by §

Proposed Regulations

9-6.14:7.1 of the Code of Virginia, the board shall publish a notice of intent.

B. The notice shall contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any persons to provide written comment on the subject matter.

C. The notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

§ 1.8. Informational proceedings or public hearings for existing rules.

A. At least once each biennium, the board shall conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Notice of such proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

C. The proceeding may be held separately or in conjunction with other informational proceedings.

§ 1.9. Petition for rulemaking.

A. Any person may petition the board to adopt, amend, or delete any regulation.

B. Any petition received within 10 days prior to a board meeting shall appear on the agenda of that meeting of the board.

C. The board shall have sole authority to dispose of the petition.

§ 1.10. Notice of formulation and adoption.

Prior to any meeting of the board or subcommittee of the board at which the formulation or adoption of regulations is to occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

§ 1.11. Advisory committees.

The board may appoint advisory committees as it may deem necessary to provide for citizen and professional participation in the formation, promulgation, adoption, and review of regulations.

PART II. OPERATIONAL RESPONSIBILITIES.

Article 1.

Posting of License and Licensure.

§ 2.1. An individual shall have a valid nursing home administrator's license issued by the Board of Nursing Home Administrators in order to engage in the general administration of a nursing home.

§ 2.2. Each licensee shall post his license in a main entrance or place conspicuous to the public in the facility in which the licensee is administrator-of-record.

Article 2. Records.

§ 2.3. Accuracy of information.

A. All changes of mailing address or name shall be furnished to the board within five days after the change occurs.

B. All notices required by law and by these regulations to be mailed by the board to any registrant or licensee shall be validly given when mailed to the latest address on file with the board and shall not relieve the licensee, trainee, or preceptor of the obligation to comply.

PART III. FEES.

Article 1. Initial Fees.

§ 3.1. The applicant shall submit ALL fees below which apply:

1. Application for A.I.T. program	\$150	\$188
2. Preceptor application fee	\$100	\$125
3. Application fee for license to practice nursing home administration	\$125	\$156
4. Fee to sit for state examination	\$100	\$125
5. Fee to sit for national examination	\$150	\$188
6. Verification of licensure requests from other states	\$ 50	\$ 63

Article 2. Renewal Fees.

§ 3.2. Renewal fees received by the board no later than the expiration date (see § 4.1).

The following annual fees shall be paid as applicable and received by the board no later than the expiration date for license and preceptor registration renewal (see § 4.4):

1. Nursing home administrator license

Proposed Regulations

renewal \$100 \$125

2. Preceptor registration renewal \$ 50 \$ 63

§ 3.3. Late renewal fees.

The following late fees shall be paid as applicable and received by the board within six months following the initial expiration date (see § 4.4):

1. Nursing home administrator late license renewal ~~\$150~~ \$175
(~~\$100~~ \$125 renewal and \$50 penalty fee)

2. Preceptor late registration renewal \$75 \$ 88 .
(~~\$50~~ \$63 renewal and \$25 penalty fee)

Article 3. Reinstatement Fees.

§ 3.4. The board, in its discretion, may reinstate a license that was not renewed within six months of the initial expiration date provided certain conditions are met.

NOTE: There may be additional fees for nursing home administrator license reinstatement depending upon the conditions approved by the board for reinstatement (see § 4.7).

The board, in its discretion, may reinstate a preceptor registration that was not renewed within six months of the initial expiration date (see § 4.8).

If the board approves reinstatement the following applicable reinstatement fees shall be paid.

1. Nursing home administrator reinstatement (See NOTE under § 3.4) ~~\$200~~ \$225

2. Preceptor reinstatement ~~\$100~~ \$113

Article 4. Other Fees.

§ 3.5. Duplicates.

Duplicate licenses or wall certificates shall be issued by the board after the licensee submits to the board a signed affidavit that a document has been lost, destroyed, or the applicant has had a name change.

1. Duplicate license \$ 25 \$ 31

2. Duplicate wall certificates \$ 50 \$ 63

§ 3.6. Additional fee information.

A. There shall be a fee of ~~\$25~~ \$31 for returned checks.

B. Fees shall not be refunded once submitted.

PART IV. RENEWALS.

Article 1. Expiration Dates.

§ 4.1. The following shall expire on March 31 of each calendar year:

1. Nursing home administrator license; and
2. Preceptor registration.

§ 4.2. A licensee who fails to renew his license by the expiration date shall have an invalid license. See §§ 4.5 and 4.7.

§ 4.3. A preceptor who fails to renew his registration by the expiration date shall not serve as a preceptor. See §§ 4.6 and 4.8.

Article 2. Renewal and Reinstatement.

§ 4.4. Renewal received by the board no later than the expiration date.

A. A person who desires to renew his license or preceptor registration for the next year shall, not later than the expiration date:

1. Return the renewal notice;
2. Submit the applicable fee(s) prescribed in § 3.2;
3. Notify the board of any changes in name and address; and
4. Submit the continuing education documentation prescribed in §§ 8.1 through 8.8 of these regulations.

B. The requirements in subsection A above shall be received in the board office or the bank lock box no later than the expiration date. Postmarks shall not be considered.

§ 4.5. Late renewal for nursing home administrator license.

A. A person who fails to renew his license by the expiration date shall, within six months of the initial expiration date:

1. Return the renewal notice or request renewal in writing to the board;
2. Submit the applicable fee prescribed in § 3.3;
3. Notify the board of any changes in name and address; and
4. Submit the continuing education documentation.

Proposed Regulations

prescribed in §§ 8.1 through 8.8 for the previous calendar year.

The requirements in this subsection A shall be received in the board office within six months of the initial expiration date. Postmarks shall not be considered.

B. A candidate for late renewal who does not meet the requirements in subsection A above shall reinstate as prescribed in § 4.7.

§ 4.6. Late renewal for preceptor registration.

A. A person who fails to renew his preceptor registration by the expiration date shall, within six months of the initial expiration date:

1. Return the renewal notice or request renewal in writing to the board;
2. Submit the applicable fee prescribed in § 3.3; and
3. Notify the board of any changes in name and address.

The requirements of this subsection A shall be received in the board office within six months of the initial expiration date. Postmarks shall not be considered.

B. A preceptor who fails to renew within six months of the initial expiration date shall reinstate as prescribed in § 4.8.

§ 4.7. Reinstatement for nursing home administrator license.

The board, in its discretion, may reinstate a license that was not renewed as prescribed in §§ 4.4 and 4.5 as follows:

An applicant for nursing home administrator license reinstatement shall:

1. Apply as a new applicant on forms provided by the board; and
2. Submit the applicable reinstatement fee prescribed in § 3.4; and
3. Meet one or more of the following requirements as determined by the board at the time of application for reinstatement. All applications for reinstatement shall be reviewed by the Credentials Committee and the applicant shall be notified of which of the following requirements must be met:

a. Submit evidence of attendance at 20 classroom hours of continuing education for each year of expiration and for the year preceding expiration if continuing education requirements were not met for that year. (NOTE: See § 8.3 B and C for possible

exception to the 20 hour requirement);

b. Requalify for licensure under the requirements for initial licensure in effect at the time of application for reinstatement (see § 5.1). NOTE: Such requalification does not include retaking of the state and national examinations but may include more stringent qualifications than were in effect at the time of original application for licensure);

c. Retake and pass the state and national examinations (see fees under § 3.1).

§ 4.8. Reinstatement of preceptor registration.

The board, in its discretion, may reinstate a preceptor registration that was not renewed as prescribed in § 4.6 as follows:

An applicant for preceptor registration reinstatement shall:

1. Apply as a new applicant on forms provided by the board;
2. Meet the current requirements for preceptor approval in effect at the time of application for reinstatement (see §§ 6.8 through 6.9); and
3. Submit the applicable reinstatement fee prescribed in § 3.4.

PART V. REQUIREMENTS FOR LICENSURE.

Article 1. Qualifications.

§ 5.1. One of the following sets of qualifications is required for licensure:

1. Degree and practicum experience.
 - a. Applicant holds a baccalaureate or higher degree in nursing home administration or a health administration field from an accredited college or university; and
 - b. Applicant has completed a 400-hour practicum (see § 1.1) in nursing home administration as part of the degree program under the supervision of a preceptor registered by the board; and
 - c. Applicant has received a passing grade on the state examination and the national examination.

OR

2. Certificate program.
 - a. Applicant holds a baccalaureate or higher degree

Proposed Regulations

from an accredited college or university; and

b. Applicant has completed successfully a program with a minimum of 21 semester hours study in long-term care administration from an accredited college or university. The program shall be one that has been recognized by the board and shall include a minimum of 15 semester hours of academic courses related to long-term care administration; and

c. Applicant has completed successfully a 400-hour practicum (see § 1.1) as part of the certificate program under the supervision of a preceptor registered by the board; and

d. Applicant has received a passing grade on the state examination and the national examination.

OR

3. Administrator-in-training program.

a. Applicant has successfully completed 2,080 hours, or the approved equivalent thereof (see § 6.3), of continuous training in an A.I.T. program; and

b. Applicant has received a passing grade on the state examination and the national examination.

OR

4. Endorsement. The board may issue a Virginia license to any person by endorsement when the person:

a. Holds a current unencumbered license from any state or the District of Columbia;

b. Meets one of the following:

(1) Has practiced nursing home administration for one year; or

(2) Complies with all regulations of the Board of Nursing Home Administrators governing nursing home administration licensure in Virginia; or

(3) Has education and experience equivalent to qualifications required by these regulations and has provided written evidence of those qualifications at the time of application for licensure; and

c. Has successfully completed the state examination.

Article 2.

Application Process.

§ 5.2. An individual seeking licensure as a nursing home administrator, approval as a preceptor, or seeking examination/reexamination shall submit simultaneously:

1. Application provided by the board;

2. Additional documentation as may be required by the board to determine eligibility of the applicant; and

3. The applicable fee(s) prescribed in § 3.1.

§ 5.3. All required parts of the application package shall be submitted at the same time. An incomplete package shall be returned.

EXCEPTION: Some schools require that certified transcripts be sent directly to the licensing authority. That policy is acceptable to the board.

National examination scores will also be accepted from the examining authority.

§ 5.4. An applicant for examination shall submit the application package not less than 45 days prior to an examination date. The application package shall be received in the board office on the examination application deadline date. Postmarks will not be considered.

§ 5.5. Waiver of time limits.

The board may, for good cause, waive the time requirement in § 5.4 for the filing of any application. The burden of proof which demonstrates good cause rests with the applicant.

Article 3.

General Examination Requirements.

§ 5.6. Failure to appear.

The applicant shall forfeit the examination fee if unable to sit for the examination for any reason.

§ 5.7. Reexamination.

Any person failing an examination may reapply for a subsequent examination, and shall pay the examination fee prescribed in § 3.1 with each application filed.

§ 5.8. Scheduling early examinations.

A. An applicant may request to take the scheduled examination most closely preceding the expected completion of the required formal education requirement or the A.I.T. program.

B. All such requests shall be in writing.

C. Approval of the written request by the board shall be required prior to submitting the application and fee for examination (see §§ 5.2, 5.4 and 3.1).

D. Application for licensure shall be submitted after the applicant completes the qualifications for licensure.

PART VI. ADMINISTRATOR-IN-TRAINING PROGRAM.

Article 1. Trainee Requirements and Application Process.

§ 6.1. To be approved as an administrator-in-training, a person shall:

1. Have received a passing grade on a total of 60 semester hours of education from an accredited college or university;
2. Obtain a preceptor currently approved by and registered with the board to provide training;
3. Submit the fee prescribed in of § 3.1;
4. Submit the application provided by the board; and
5. Submit additional documentation as may be required by the board to determine eligibility of the applicant.

All required parts of the application package shall be submitted at the same time. An incomplete package shall be returned.

EXCEPTION: Some schools require that certified transcripts be sent directly to the licensing authority. That policy is acceptable to the board.

Article 2. Training Program.

§ 6.2. The A.I.T. program shall consist of 2,080 hours or its approved equivalent (see § 6.3) of continuous training to be completed within 24 months. Extension may be granted by the board on an individual case basis.

§ 6.3. An A.I.T. applicant with prior health care work experience may request approval to receive a maximum 1,000 hours of credit toward the total 2,080 hours as follows:

1. Applicant shall have been employed full-time for four of the past five consecutive years immediately prior to application as an assistant administrator or director of nursing.
2. The employment described above shall have been in a facility as prescribed in § 6.4.
3. Applicants with experience as a hospital administrator shall have been employed full-time for three of the past five years immediately prior to application as a hospital administrator-of-record or an assistant hospital administrator in a hospital setting having responsibilities in all of the following areas:
 - a. Regulatory;

- b. Fiscal;
- c. Supervisory;
- d. Personnel; and
- e. Management.

§ 6.4. Training shall be conducted only in:

1. A nursing home, licensed by the Department of Health, Commonwealth of Virginia; or
2. An institution licensed by the Virginia Mental Health, Mental Retardation and Substance Abuse Services Board in which long-term care is provided; or
3. A certified nursing home owned or operated by an agency of any city, county, or the Commonwealth or of the United States government; or
4. A certified nursing home unit located in and operated by a general or special hospital licensed under procedures of Rules and Regulations for Licensure of General and Special Hospitals of the Virginia Department of Health.

§ 6.5. Training shall be under the direct supervision of a certified preceptor (see §§ 6.8 and 6.9).

§ 6.6. Not more than two A.I.T.'s may be supervised per approved and registered preceptor at any time.

§ 6.7. An A.I.T. shall be required to serve full time weekday, evening, and weekend shifts to receive training in all areas of nursing home operation.

Article 3. Qualifications and Application Process to Train: Preceptors.

§ 6.8. An individual shall be approved by and registered with the board prior to serving as a preceptor.

§ 6.9. The board shall approve and register only preceptors to give training who:

1. Have a full, unrestricted, and current Virginia nursing home administrator license;
2. Are employed full-time in the facility where training occurs (see § 6.4);
3. Have served for a minimum of two of the past three years immediately prior to the preceptorship as a full-time administrator in accordance with § 6.4 or as an approved preceptor in another state;
4. Submitted the fee prescribed in subdivision 2 of § 3.1;

Proposed Regulations

5. Submitted the applications provided by the board; and

6. Submitted additional documentation as may be required by the board to determine eligibility of the applicant.

All required parts of the application package shall be submitted at the same time. An incomplete package shall be returned.

EXCEPTION: Preceptors submitting information which documents preceptorship served in another state, may have the other state send information directly to the licensing authority. That policy is acceptable to the board.

Article 4. Administration of A.I.T. program.

§ 6.10. Prior to the beginning of the A.I.T. program, the preceptor shall develop and submit to the board for approval, a training plan which shall include and be designed around the specific training needs of the administrator-in-training. The training plan shall include the Core of Knowledge as defined by Title XVIII and Title XIX of the Social Security Act and published in the Federal Register on February 2, 1989, and the Domains of Practice as appended to these regulations. (See Appendices I and II.) The training plan developed by the board or an alternate plan may be used.

§ 6.11. The preceptor shall maintain progress reports on forms prescribed by the board for each month of training.

§ 6.12. The A.I.T.'s certificate of completion plus the accumulated original monthly reports shall be submitted by the preceptor to the board within 30 days following the completion of the A.I.T. program.

§ 6.13. If the preceptor fails to submit the reports required in § 6.12, the A.I.T. shall forfeit all credit for training. The board may waive such forfeiture.

§ 6.14. If the A.I.T. program is terminated prior to completion, the trainee and the preceptor shall submit the following information to the board within five working days:

1. Preceptor.

a. All required monthly progress reports prescribed in § 6.11; and

b. Written explanation of the causes of program termination.

2. A.I.T. The A.I.T. shall submit written explanation of the causes of program termination.

§ 6.15. If the program is interrupted because the approved and registered preceptor is unable to serve, the A.I.T. shall

notify the board within five working days and shall obtain a new preceptor who is registered with the board.

§ 6.16. Credit for training shall resume when a new preceptor is obtained and approved and registered by the board.

§ 6.17. If an alternate training plan or set of goals is developed, it shall be submitted to the board for approval before A.I.T. resumes training.

PART VII. REFUSAL, SUSPENSION, REVOCATION, AND DISCIPLINARY ACTION.

Article 1. Unprofessional Conduct.

§ 7.1. The board may refuse to admit a candidate to any examination; refuse to issue or renew a license or approval to any applicant; and may suspend for a stated period of time or indefinitely, or revoke any license or approval, or reprimand any person, or place his license on probation with such terms and conditions and for such time as it may designate, or impose a monetary penalty for any of the following causes:

1. Conducting the practice of nursing home administration in such a manner as to constitute a danger to the health, safety, and well-being of the residents, staff, or public;

2. Demonstrated inability or unwillingness to maintain a facility in accordance with the Virginia Department of Health Rules and Regulations for the Licensure of Nursing Homes in Virginia;

3. Failure to comply with federal, state, or local laws and regulations governing the operation of a nursing home;

4. Conviction of a felony related to the practice for which the license was granted;

5. Failure to comply with any regulations of the board;

6. Failure to comply with continuing education requirements;

7. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse;

8. Failure to comply with board's regulations on preceptorship while serving as a preceptor.

PART VIII. CONTINUING EDUCATION.

§ 8.1. As a prerequisite to renewal of a license or

reinstatement of a license, each licensee shall be required to take continuing education related to health care administration. See § 8.2 and §§ 8.6 through 8.9.

§ 8.2. Continuing education shall consist of training programs, seminars, and workshops directly related to the following:

1. Nursing home administration;
2. Long term care;
3. Resident care;
4. Physical resource management;
5. Laws, regulatory codes, and governing boards;
6. Courses to gain knowledge in departmental areas;
7. Core of Knowledge in Appendix I; and
8. Domains of Practice in Appendix II.

§ 8.3. Continuing education requirements for each calendar year.

A. An administrator who holds a license on January 1 of any calendar year shall attend 20 classroom hours of continuing education for that calendar year.

B. An administrator whose initial date of licensure is between April 1 and July 31 of any calendar year shall attend 10 classroom hours of continuing education for the calendar year in which initial licensure takes place.

C. An administrator whose initial date of licensure is between August 1 and December 31 of any calendar year shall not be required to attend continuing education for the calendar year in which initial licensure takes place.

§ 8.4. Continuing education hours, documentation, and signed completed affidavit of completion shall be submitted as one package and received in the board office no later than January 15 of the calendar year following the year in which the courses were required to be taken. Postmarks will not be considered.

§ 8.5. Administrators shall submit evidence of having obtained continuing education credit by:

1. Forwarding copies of certificates or transcripts issued, signed, and dated by the course provider showing the classroom hours attended; and
2. Forwarding an affidavit of completion signed by the administrator on forms provided by the board.

§ 8.4. The licensee shall retain in his personal files complete documentation of continuing education as specified in subdivisions 1 and 2 of § 8.5

§ 8.5. If contacted for an audit, the licensee shall forward to the board by the date requested the following:

1. Completed and signed affidavit of completion on forms provided by the board;
2. Evidence of attendance provided by the approved sponsor for each course taken. Evidence of attendance shall include:
 - a. Date(s) the course was taken;
 - b. Hours attended;
 - c. Participant's name;
 - d. Approved sponsor's signature.

§ 8.6. Credit shall be considered only for courses taken under sponsors approved by the board or courses taken from an accredited institution as defined in § 1.1 or an appropriate state agency.

Exception: Credit shall be considered for courses taken in another state by Virginia-licensed nursing home administrators who reside out-of-state when the sponsors of such courses are listed in good standing with the National Association of Boards of Examiners of Nursing Home Administrators or the American College of Nursing Home Administrators.

§ 8.6- 8.7. Only classroom hours shall be accepted.

§ 8.7- 8.8. Credit shall only be given for 30-minute increments.

§ 8.8- 8.9. The continuing education hours shall be current to the calendar year in which they were required.

PART IX. CONTINUING EDUCATION SPONSORS.

Article I. Applicability.

§ 9.1. Applicability.

These regulations apply to individuals or businesses applying for approval and approved by the Board of Nursing Home Administrators to provide continuing education courses recognized for credit by the Board of Nursing Home Administrators.

Exception: Providers of courses given in other jurisdictions than Virginia do not have to have prior approval of the Virginia Board of Nursing Home Administrators if such courses are provided by sponsors listed in good standing with the National Association of Boards of Examiners of Nursing Home Administrators or the American College of Nursing Home Administrators.

Proposed Regulations

Courses provided by an accredited institution as defined in § 1.1 and taken for credit do not have to have prior approval of the Virginia Board of Nursing Home Administrators.

Article 2. Application Process.

§ 9.2. Application requirements.

Individuals or businesses as required by § 9.1 seeking registration as an approved sponsor of continuing education courses for licensed nursing home administrators shall apply for sponsor-approval by the board as follows:

1. Submit a completed application on a form provided by the board;
2. Submit additional information as prescribed on the application to determine eligibility of the sponsor;
3. Submit applicable fee prescribed in § 9.5.

§ 9.3. Incomplete application package.

All required parts of the application package shall be submitted at the same time. An incomplete package will not be considered.

§ 9.4. Application deadline.

An applicant for approved sponsorship shall submit the application package not less than 30 days prior to presenting a course. The application package shall be received by the deadline date. Postmarks will not be considered.

Article 3. Fees.

§ 9.5. Fees.

- A. Initial Application for Sponsorship Approval ... \$275
- B. Annual Renewal of Sponsorship Approval \$200

Article 4. Renewal of Sponsorship Approval.

§ 9.6. Expiration date.

Sponsorship approval shall expire on December 31 of each calendar year. A renewal notice will be sent by the board to each registered sponsor within 60 days prior to expiration. All renewal notices required by these regulations shall be validly given when mailed to the latest address on file with the board and shall not relieve the sponsor from obligation to comply.

§ 9.7. Renewals.

A. Renewal fees received by the board no later than the expiration date shall be in the amount prescribed in subsection B of § 9.5. Postmarks shall not be considered.

B. An individual or company who fails to renew the sponsorship approval by the expiration date shall reapply for approval as a new sponsor and pay the fee prescribed in subsection A of § 9.5.

Article 5. Qualifications for Approval.

§ 9.8. Course content.

A. If audited by the board, the sponsor shall document that the content of each course provided meets at least one of the requirements prescribed in § 8.2 of these regulations.

NOTE: Self-study courses and home video courses shall not meet the requirements of these regulations. Courses designed to enhance the profitability or decorating needs of the nursing home facility shall not meet the requirements of these regulations.

B. If audited by the board, the sponsor shall document that the primary objective of the course shall be to increase the licensees' professional competence and skills and shall improve the quality of long-term care services rendered to the public as follows:

1. Sponsor shall establish learning objectives of each course as defined in § 1.1.
2. Sponsor shall establish the level of knowledge of each course. Levels of knowledge shall be described as basic, intermediate, advanced or updated.
3. Sponsor shall establish method(s) of presentation as defined under "Instructional design" in § 1.1.
4. Instructional design shall comply with §§ 9.9 through 9.14.

§ 9.9. Prerequisites.

Sponsors shall state in writing the prerequisites for education, experience or both for all courses. Prerequisites shall be written in precise language so that potential participants can readily ascertain whether they qualify for the program or whether the program's specified level of knowledge is appropriate for them.

§ 9.10. Presenters/Instructors.

Sponsors shall maintain a Vita on each presenter and shall be able to demonstrate to the board if audited that each presenter is qualified in the subject matter (see "Qualified Instructors" in § 1.1) and knowledgeable in instructional design as defined in § 1.1.

§ 9.11. Program materials.

Sponsors shall be able to demonstrate to the board if audited that program materials are technically accurate, current and sufficient to meet the course's stated objectives.

§ 9.12. Program presentation.

A. Sponsors shall inform participants in writing prior to the date of the course of the following:

1. Learning objectives;
2. Prerequisites;
3. Level of knowledge of course;
4. Program content;
5. Nature and extent of advance preparation;
6. Method of presentation to be used;
7. Amount of continuing education credit in classroom hours;
8. Date(s) of course;
9. Registration policies/procedures, fees, refunds;
10. That the sponsor is approved by the Board of Nursing Home Administrators to provide courses for which credit shall be considered by the board; and
11. A written agenda of the program's activities.

B. Sponsors shall monitor group courses and accurately record attendance including participants who arrive late or leave before a program is completed. Such individuals shall not be presented certificates of attendance. Sponsors shall be able to demonstrate to the board if audited the attendance recording procedure.

§ 9.13. Evaluations.

A. Sponsors shall evaluate instructors' performance at the conclusion of each program to determine continued use of such instructor. Sponsor shall be able to document the evaluation to the board if audited.

B. Sponsors shall solicit evaluations on the course and the instructor from the participants to include the following:

1. Were learning objectives met?
2. Were prerequisites necessary?
3. Did program materials contribute to the achievement of the learning objectives?

4. Did the program content comply with the stated contents in the course's advertisement?

5. Was the instructor qualified and knowledgeable in communicating effectively and competent in the subject matter?

§ 9.14. Certificates of attendance.

A. Each attendee shall receive from the sponsor a certificate of attendance when the attendee arrived on time and attended the entire course. A sample copy of the certificate of attendance for each course shall be retained and available for inspection during an audit.

B. The certificate of attendance shall contain the following information:

1. Date the course was taken;
2. Classroom hours of the course;
3. Participant's name;
4. Signature of authorized representative of the sponsor.

Article 6. Record Keeping.

§ 9.15. Documentation retention.

A. The sponsor shall retain for three years complete documentation of each continuing education course provided as prescribed in §§ 9.8 through 9.14.

B. If contacted for an audit, the sponsor shall forward by the date requested each item required in §§ 9.8 through 9.14 which will be listed on the request for audit.

APPENDIX I. CORE OF KNOWLEDGE.

The Core of Knowledge referred to in this program consists of the disciplines under the federal guidelines:

A. Applicable standards of environmental health and safety.

1. Knowledge of local, state and federal regulations applicable to nursing homes.

2. Resources: Local and state health departments, local state regulatory agencies, and federal regulatory agencies.

B. Local and state health and safety regulations.

C. General administration.

D. Psychology of patient care.

Proposed Regulations

Resources: Staff, patient, and advisory physicians; social worker and patient's social history; principles and techniques of long term care nursing (director of nursing, nursing supervisors).

E. Principles of medical care.

1. Resources: Medical director, staff, patient, and advisory physicians/medical colleges, especially those offering degree programs in health care administration or long-term health care.

F. Personal and social care.

G. Therapeutics and supportive care and services in long term care.

1. Resources: Dietary, physical therapy, occupational therapy, clinic, social services, volunteers, family, and pharmacist.

H. Departmental organization and management administrator, advisor physicians, director of nursing, food service manager, laundry and housekeeping supervisor, and maintenance supervisor.

I. Community Interrelationships.

1. Hospitals
2. Hospice programs
3. Other nursing homes
4. Home for adults
5. Retirement or life care communities
6. Home health care
7. Health Department
8. Social service agencies
9. Department for the Aging
10. Area Agencies on Aging
11. Clinics
12. Physicians
13. Medical societies
14. Regulatory agencies
15. Long term care professional associations
16. Advocates for the aged
17. Ombudsman

18. Volunteers

19. Educators

20. Schools

21. Religious communities

APPENDIX II. DOMAINS OF PRACTICE.

CODE SUBJECT CATEGORY

10.00 PATIENT CARE

10.10 Nursing Services

10.20 Social Services

10.30 Food Services

10.40 Physician Services

10.50 Social and Therapeutic
Recreational Activities

10.60 Medical Records

10.70 Pharmaceutical Services

10.80 Rehabilitation Services

20.00 PERSONNEL MANAGEMENT

20.10 Maintaining positive
atmosphere

20.20 Evaluation Procedures

20.30 Recruitment of Staff

20.40 Interviewing Candidates

20.50 Selecting Future Candidates

20.60 Selecting Future Employees

20.70 Providing Staff Development &
Training Activities

20.80 Health and Safety

30.00 FINANCIAL MANAGEMENT

30.10 Budgeting

30.20 Financial Planning

30.30 Asset Management

30.40 Accounting

Proposed Regulations

40.00 MARKETING AND PUBLIC RELATIONS

40.10 Public Relations Activities

40.20 Marketing Program

50.00 PHYSICAL RESOURCE MANAGEMENT

50.10 Building & Grounds Maintenance

50.20 Environmental Services

50.30 Safety Procedures and Programs

50.40 Fire and Disaster Plans

60.00 LAWS, REGULATORY CODES & GOVERNING BOARDS

60.10 Rules and Regulations

60.20 Governing Boards

NOTICE: The forms used in administering the Regulations of the Board of Nursing Home Administrators are not being published; however, the name of each form filed by the Board of Nursing Home Administrators is listed below. The forms are available for public inspection at the Board of Nursing Home Administrators, 6606 West Broad Street, Richmond, Virginia 23220, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219.

Application for Nursing Home Administrator

Endorsement Certification Form

Application for Administrator-in-Training

Application for Preceptor Certification

Application for Continuing Education Sponsorship Approval

VA.R. Doc. No. R94-424; Filed December 22, 1993, 11:55 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-43-4. Adoptee Application for Disclosure of Identifying Information on Birth Family in a Closed Adoption Record.

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

Public Hearing Date: N/A - Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under authority granted by §§ 63.1-25, 63.1-236 and 63.1-236.1 of the Code of Virginia. Section 63.1-25 gives the state board the authority to establish rules and regulations. Section 63.1-236 as amended effective July 1, 1992, allows adults adopted in Virginia to apply to the Commissioner of Social Services for identifying information on their birth families. Prior to this Code change, a petition had to be filed in circuit court. Section 63.1-236.1 allows agencies to assess a fee against the applicant when conducting a search for birth family pursuant to § 63.1-236. Section 63.1-236.1 specifies that local departments of social services must assess this fee in accordance with regulations and fee schedules established by the state board.

Purpose: The purpose of this regulation is to provide policy for implementing the changes in § 63.1-236 of the Code of Virginia. This Code section allows adults adopted in Virginia to apply to the Commissioner of Social Services for identifying information on their birth families. Such information would include the birth family member's name, current address and telephone number. Prior to the Code change, effective July 1, 1992, adults adopted in Virginia had to petition the circuit court for identifying information on their birth families.

Substance: This regulation provides policy to local agencies who are conducting searches for birth family members of the adult adoptee in order to request the individual's consent to the disclosure of identifying information. The regulation also provides policy to department staff who have decision making responsibility with regard to whether to grant or deny disclosure.

Issues: Upon receiving the application of an adult adopted in Virginia, § 63.1-236 provides the department with the authority to designate the agency which conducted the adoption investigation to search for specific birth family members. The purpose of the search is to advise the birth family members of the adoptee's request for identifying information and to ascertain the birth family members' feelings about having such identifying information disclosed. Based upon the information obtained during the search, the department will make a decision regarding the disclosure of the requested information. Although the law clearly provides both the department and the searching agency with specific authority and decision making responsibility, regulations are an added protection. Regulations also help to ensure that adult adoptees and birth family members feel protected since they provide clear guidelines which specify when the disclosure of identifying information can be granted and when it cannot be. When this was a court-ordered rather than an administrative process, disclosure was normally granted upon receiving the mutual consent of the parties involved. This continues to be the case under administrative procedures.

Impact: The provisions of § 63.1-236 must be complied with regardless of whether regulations are promulgated. Therefore, these regulations will not have a financial

Proposed Regulations

impact on the department or on local agencies. The regulations will prescribe consistent guidelines, and in so doing, provide an additional protection for all parties involved in the process.

Summary:

This regulation establishes policy relative to the search and disclosure process when an adult adopted in Virginia applies to the Virginia Department of Social Services to obtain identifying information on his birth family pursuant to § 63.1-236 of the Code of Virginia. This regulation prescribes consistent guidelines which complement the law and provide an additional protection to all parties involved in the process.

VR 615-43-4. Adoptee Application for Disclosure of Identifying Information on Birth Family in a Closed Adoption Record.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

“Adoption” means the legal process in which a person’s rights and duties toward birth parents are terminated and similar rights and duties are established with a new family.

“Adoptee Application for Disclosure” means the adult adoptee’s formal request, on a prescribed notarized application form, to receive identifying information on specific birth family members.

“Agency” means a local department of social services or a licensed child-placing agency.

“Agency Letter of Appointment” means a letter from the commissioner or his designee appointing a designated person or agency to do a search for certain birth family members and to report the findings back to the commissioner within an established period of time.

“Commissioner” means the Commissioner of the Department of Social Services or his designee.

“Designated person or agency” means the person or agency whom the commissioner or his designee has appointed to conduct a search for the birth family members about whom the adult adoptee wants identifying information.

“Final Disposition” means the letter in which the commissioner or his designee grants or denies the Adoptee Application for Disclosure.

“Identifying information” means facts, such as names and addresses, that designate the birth family of the adult adoptee.

“Person” means any individual, association, partnership or corporation.

“Search” means an attempt by a designated person or agency to locate and advise specific members of the adoptee’s birth family of the Adoptee Application for Disclosure and to ascertain the birth family members’ feelings about having their identity and whereabouts disclosed to the adoptee.

PART II. POLICY.

§ 2.1. Responsibilities of the commissioner.

The commissioner shall:

1. Upon receiving the Adoptee Application for Disclosure, designate the person or agency that made the investigation required by § 63.1-223 or § 63.1-228 of the Code of Virginia to attempt to locate and advise the applicable members of the birth family of the request for identifying information. Such designation is to be made within 30 days of receipt of the Adoptee Application for Disclosure. The time frame for the search is eight months unless otherwise determined by the commissioner. If the agency need additional time, this may be granted if such need is documented in writing by the searching agency to the commissioner.

2. Assist the agency in the search by providing technical assistance and case material from the adoption records.

3. Upon receipt of the agency’s report to the commissioner and any written comments submitted by the adoptee, the biological family, or the adoptive parents, make a determination as to whether good cause exists for the release of identifying information and send the adoptee and searching agency a copy of the Final Disposition granting or denying the Adoptee Application for Disclosure. The disclosure of identifying information will be granted when the adult birth family members for whom the agency searched is located and consents to having his identity and whereabouts disclosed to the adoptee. However, the following extenuating circumstances are to be considered:

a. If the birth parent is deceased, and other adult family members who know about the birth and adoption of the adoptee want their names and addresses disclosed, good cause may exist for identifying information on these family members to be given to the adoptee if the adoptee wishes this.

b. If one birth parent does not want his identity disclosed to the adoptee, other adult children of the birth parent who were not adopted or who were adopted by a relative should generally not have their identity disclosed. Exceptions are:

(1) If the other birth parent of the adoptee and adult sibling consents to disclosure and if the searching agency ascertains that the adult sibling has been informed about the adopted child (in such a case, the sibling could be contacted by the searching agency and could give informed consent relative to the disclosure of his identity and whereabouts); or

(2) If the birth parent is deceased and the adult sibling was contacted by the designated person or agency doing the search because the record or other information indicated that the adult sibling knew the circumstances surrounding the child's placement and adoption, and the adult sibling consented to disclosure.

c. If the search is for an adult birth sibling who was adopted, at least one of the adult sibling's adoptive parents, unless both are deceased, must give his consent for the birth sibling to be contacted unless it is certain that the birth sibling knows that he was adopted. As an example, but not a limitation, it may be ascertained that the birth sibling knows of his adoption if he has contacted the Virginia Department of Social Services or the placing agency to find out about his adoption or to ask that a letter be put in the file of adopted siblings. Another example would be if the adoptive parents, when being informed of the search by the agency, reveals that the adoptee knows of his adoption.

d. In contacting relatives or persons who know the birth parent/adult sibling and can aid in the search, the searching agency is to use discretion. The confidential nature of the inquiry is not to be revealed unless it is clear from the record or other information that the contacted person knows the circumstances surrounding the child's placement and adoption.

2. Report to the commissioner, or the court if applicable, the results of the attempt to locate and advise the adult birth family members about whom the adoptee wants identifying information of the Adoptee Application for Disclosure.

a. The agency's report shall be in the format prescribed by the commissioner and shall not include identifying information on the birth family. No identifying information is to be disclosed to the adoptee, the birth family, or any attorney representing the parties without proper authorization from the commissioner or the court.

b. Resources used to locate the adult birth family members should be fully documented in the agency's report in those cases where agency efforts were unsuccessful.

c. If the adult birth family members about whom the adoptee wants identifying information can be located, the agency's report shall include updated nonidentifying information about him. The report should also indicate his wishes regarding having his identity disclosed and being contacted by the adoptee.

d. The agency's report shall include a recommendation regarding disclosure based on their findings. If the agency recommends that identifying information be disclosed, the agency may wish to offer its services as an intermediary or suggest some other agency or person be appointed.

e. If there is a fee, the agency's report shall include a statement indicating the amount of the fee assessed and whether or not the fee has been paid. The commissioner cannot grant the release of identifying information unless the agency has provided verification that the fee has been paid. Fees assessed for services rendered by local departments of social services shall be assessed according to standards and fee schedules established by the State Board of Social Services.

f. If the agency needs additional time to conduct the search, the agency shall document this need in writing to the commissioner and shall inform the adoptee of the need for additional time. If the search is being conducted by a local department of social services, and is not completed after 20 hours of work, the agency must obtain the adoptee's written permission to continue the search if additional fees are to be charged.

g. If disclosure of identifying information is granted by the commissioner, the searching agency is responsible for providing the identifying information to the adoptee.

VA.R. Doc. No. R94-361; Filed December 16, 1993, 4:27 p.m.

Proposed Regulations

ADOPTEE APPLICATION FOR DISCLOSURE

TYPE OR PRINT CLEARLY AND ADD ADDITIONAL PERTINENT INFORMATION
ON A SEPARATE PAGE IF NECESSARY

_____ (APPLICANT'S ADOPTIVE NAME)

_____ (APPLICANT'S CURRENT NAME,
IF DIFFERENT FROM ADOPTIVE
NAME)

APPLIES TO THE COMMISSIONER, VIRGINIA DEPARTMENT OF SOCIAL SERVICES, PURSUANT
TO CODE SECTION 63.1-236

1. The Applicant, _____ (name) is over the age of eighteen
born on _____ (complete date of birth).
2. The Applicant's adoptive mother's name and address is _____
_____.
3. The Applicant's adoptive father's name and address is _____
_____.
4. If the Applicant has identifying or other information which would aid in the search, please
note this below or on an attached page.

_____.
5. The Applicant is desirous of obtaining the identity of the birth parents and/or other birth
family because _____ (give reason).
6. The Applicant must indicate by check mark(s) for whom he/she is searching. The Applicant
wishes to obtain the identity of ___ (Birth Mother) ___ (Birth Father) ___ (Birth Siblings)

(Signature of Applicant)

(Complete address and phone number of applicant)

STATE OF _____
COUNTY OR CITY OF _____

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public

My commission expires: _____

DEPARTMENT OF TAXATION

Title of Regulation: VR 630-0-1. Guidelines for Public Participation in Regulation Development and Promulgation.

Statutory Authority: §§ 9-6.14:7.1 and 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was initially adopted on September 18, 1984, and became effective on October 25, 1984. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance relating to the Department of Taxation's procedures for public participation in the regulatory development process.

This regulation covers the development and revision of all regulations not exempt from the public participation provisions of the Administrative Process Act ("APA"), Chapter 1.1:1 (§ 9-6.14:1, et seq.) of Title 9 of the Code of Virginia.

Substance: The amendments to § 1.1 reflect the general policy for regulation revision, and conditions for petitioning the department for revision of a particular regulation.

The amendments to § 2.1 incorporate the procedures by which the department develops a list of interested parties for participation in the regulation development process.

The amendments to Part III incorporate the procedures by which the department will notify interested parties, including publication of such notice.

The amendments to Part IV incorporate the procedures by

which the department will involve interested parties, including ad hoc working groups, preparation of working drafts, submission of the proposed regulation, public hearings, response to comments on regulations, and procedures for publication and adoption of final regulations.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the regulation development process.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** This regulation affects practitioners, industry associations, interest groups, and the general public who may be interested in the regulations developed by the Department of Taxation.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. *The regulation governs the development of regulations which are not exempt from the public participation provisions of the Administrative Processes Act.*

2. *The amendments to the regulation provide:*

a. *The general policy for regulation revision, and conditions for petitioning the Department of Taxation (the "department") for revision of a particular regulation.*

b. *Procedures by which the department develops a list of interested parties for participation in the regulation development process.*

c. *Procedures by which the department will notify interested parties.*

Proposed Regulations

d. Procedures by which the department will involve interested parties, including ad hoc working groups, preparation of working drafts, submission of the proposed regulation, public hearings, response to comments on proposed regulations, and procedures for publication and adoption of final regulations.

3. The regulation was initially adopted on September 18, 1984, and became effective on October 25, 1984. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

4. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

VR 630-0-1. Guidelines for Public Participation in Regulation Development and Promulgation.

PART I. GENERAL PROVISIONS.

§ 1.1.1. Generally.

A. These guidelines shall govern the development or revision of all regulations not exempt from the public participation provisions of the Administrative Process Act ("APA"), Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

In developing any regulation which it proposes, the Department of Taxation ("department") is committed to soliciting a high level of input and comment from a broad cross section of interested taxpayers, professional associations, and industry associations. Such input and participation shall be actively solicited by the department.

The department will generally promulgate new regulations or revise existing regulations as the result of federal or state law changes, regulatory changes by other federal or state agencies, changes or clarifications in department policy, or upon petition by an individual or group. Petitions requesting revision or development of a regulation will be responded to by the department within 180 days from the date the petition is received by the department.

B. Any person who is interested in participating in the regulation development process generally, or in specific regulation development efforts, or who wishes to petition for the development or revision of a regulation or regulations, should immediately notify the department in writing. Such notification of interest should be sent to Director, Tax Policy Division, Department of Taxation, P.O. Box 6-L, Richmond, VA 23282. Assistant Commissioner for Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, Virginia 23282-1880.

PART II.

IDENTIFICATION OF INTERESTED PARTIES.

§ 2.1. Identification of interested parties.

Prior to the development of any regulation, the department shall identify persons, associations, committees, groups, or individuals whom it feels would be interested in or affected by the proposal. The methods for identifying interested parties generally shall include, but not be limited to, the following:

1. Obtain annually from the Secretary of the Commonwealth a list of all persons, taxpayer groups, associations and others who have registered as lobbyists for the annual General Assembly session. This list will be used to identify interest groups which may be interested in the subject matter of the proposed regulation.

2. Utilize the statewide listing of business, professional, civic, and charitable associations and societies in Virginia published by the State Chamber of Commerce to identify additional industry and professional associations which might be interested in the regulation.

3. Utilize department subject matter files to identify persons who have previously raised questions or expressed an interest in the subject matter under consideration through requests for formal rulings or administrative appeals.

4. Utilize a standing list, compiled by the department, of persons who have previously participated in public proceedings relative to similar subject matters or who have expressed an interest in all tax regulations.

5. Utilize a standing list, compiled by the department, or attorneys, certified public accountants, and corporate tax personnel who practice in the field of state and local taxation.

6. Develop a list of persons who, in accordance with § 1.1 of this regulation, petitioned for the development or revision of a regulation or notified the department of an interest in participating in the regulation development process.

PART III.

NOTIFICATION OF INTERESTED PARTIES.

§ 3. Notification of interested parties.

A. § 3.1. Generally.

The department shall prepare a Notice of Intent to Develop Regulation Intended Regulatory Action ("notice") prior to the development of any regulation. The notice shall identify the subject matter and purpose for the development of the new intent of the planned

Proposed Regulations

regulation(s) and shall specify a time deadline of at least 30 days for receipt of responses from persons interested in participating in the development process. The notice shall also state whether the department intends to conduct a public hearing on the regulation after its publication. See § 4.2 of this regulation.

B. § 3.2. Dissemination of notice.

The methods for disseminating the notice to the public generally shall include, but not be limited to, the following:

1. ~~Send~~ *Sending* the notice to all persons identified (pursuant to ~~subsection B above~~) § 2.1 of this regulation as having a potential interest in the regulation;
2. ~~Publish~~ *Publishing* the notice in The Virginia Register of Regulations; and
3. ~~Request~~ *Requesting* that industry, professional and taxpayer associations to whom the notice is sent publish such notice in newsletters or journals or use any other means available to them to disseminate the notice to ~~the~~ *their* membership.

§ 3.3. Working draft.

The department may elect to begin development of a working draft of the regulation (see § 4.1 B of this regulation) during the period of time covered by the notice. Also, the department may choose to develop a working draft prior to this time and disseminate the draft to interested persons along with the notice in order to facilitate informed comments.

The department will not submit a proposed regulation to the Registrar of Regulations for publication in The Virginia Register of Regulations until a minimum of 30 days after the notice is published in The Virginia Register of Regulations.

PART IV. PUBLIC PARTICIPATION.

§ 4. Public participation.

A. § 4.1. Regulation development.

1. ~~Initial comment.~~ A. After interested parties have responded to the notice, the department will analyze the level of interest. If sufficient interest exists, ~~the department may schedule or absent a substantial expression of interest if the department feels such action is warranted,~~ informal meetings prior to the development of any regulation may be scheduled to determine the specific areas of interest or concern and to gather factual information relative to the subject matter of the regulation.

Alternatively, the department may elect to request that persons who have responded to the notice make written

submittals of comments, concerns and suggestions relative to the proposed regulation.

The department, in its discretion, may establish an ad hoc working group to assist in the regulation development process. The department will always establish an ad hoc working group if: (i) requested by 25 or more persons affected by the regulation; (ii) requested by an industry, professional, or similar group, organized formally or informally, representing 25 or more persons affected by the regulation; or (iii) the subject matter of the regulation is of an esoteric nature.

The activities of an ad hoc working group typically will include: (i) reviewing or drafting one or more working drafts and providing feedback; (ii) furnishing information on, and facilitating the department's understanding of, a business or industry, including site visits to plants or other facilities; (iii) formulating alternative approaches within applicable statutory and case law; and (iv) providing any other assistance that will facilitate the adoption of a comprehensive and technically accurate regulation.

2. ~~Preparation of working draft.~~ B. Subsequent to the initial public input on the development of any regulation, the department shall develop a working draft of the proposed regulation. In certain instances where the technical nature of the subject matter merits, the department may request that industry or professional groups, or ad hoc working groups formed under subsection A of this section, develop a working draft. A copy of ~~this draft~~ Copies of the working draft will be furnished to all persons interested parties who responded to the notice indicating an interest in the regulation and to those persons participating in the initial comment phase of the development process. Persons to whom a copy of the working draft is furnished will be invited to submit written comments on the draft. The communication providing the working draft to interested parties shall specify the deadline for comments. A minimum of 14 days will generally be allowed by the department for comments and where possible a longer period of time will be provided for this purpose. If the response warrants, or upon request by interested parties or a working group, additional informal meetings may be held to discuss the working draft.

B. § 4.2. Submission of the regulation pursuant to under the Administrative Process Act.

Upon conclusion of the development process consideration of comments received in connection with the working draft, the department shall prepare the a proposed regulation for submission to under the Administrative Process Act ("APA") APA. After submission of the proposed regulation to the Registrar of Regulations pursuant to the APA, the regulation will be published in The Virginia Register of Regulations.

The department shall furnish to all persons identified as

Proposed Regulations

having a potential interest in the subject matter interested parties identified in accordance with § 2.1 of this regulation, a copy of the regulation as submitted pursuant to under the APA, together with a copy of the General Public Notice of Informational Proceeding any other material that may be helpful in better understanding the regulation. A cover letter accompanying these documents shall explain the deadlines for submitting formal public comments pursuant to under the APA. A minimum of 60 days shall be provided for the submission of written comments after the proposed regulation is published in The Virginia Register of Regulations.

Except in the case of nonsubstantive changes, the department will generally conduct a public hearing on proposed regulations. If a nonsubstantive regulation is being promulgated and comment will be restricted to written submittals, the date and place to which submittals must be made shall be clearly specified.

In cases when the department states in the notice that it does not intend to hold a public hearing, no such hearing is required unless the Governor requests the department to do so or the department receives requests for a hearing from 25 or more persons.

Where a public proceeding hearing is to be held, the time, date, and place shall be clearly specified in the department's communications with interested parties. Additionally, the date by which persons intending to participate in the public proceeding should notify the department of their interest shall be noted. Additionally, notice of the public hearing will be publicized in accordance with the APA, including publication in the Richmond Times-Dispatch or another newspaper of general circulation in the state capital and publication in The Virginia Register of Regulations.

When a public hearing will be held, persons who will participate will be encouraged to submit written copies of their comments in advance or at the public proceeding hearing in order to insure that all comments are accurately reflected in the formal transcript of the proceeding.

Ⓒ. § 4.3. Adoption period.

Upon responding to all public comments on the proposed regulation and making any changes it deems necessary based upon such comments, the department may adopt the regulation.

The final regulation will also be published in The Virginia Register of Regulations. Generally, the final regulation will become effective 30 days after its publication in The Virginia Register of Regulations.

However, when one or more changes of substantial impact have been made between the proposed and final regulation, a person may petition the department to request an opportunity to submit additional comments on

the change(s). In any case in which 25 or more such requests are received, the department will suspend the adoption of the regulation for 30 days to allow for additional public comment, except when the department determines that the change(s) in question are minor or inconsequential in their impact.

Similarly, the Governor has the discretion to suspend the regulatory process for 30 days to enable the department to seek additional public comment on any substantial change(s) made between the proposed and final regulations.

Upon issuing an order At least five days prior to adopting a regulation, the department, at its discretion, may will send a copy of the final regulation as adopted together with a summary of public comments and its response to comments made during the public proceeding or written submittal period, to participants responses to all commentators and interested parties.

Ⓓ. § 4.4. Publication of final regulation.

When any regulation is published, the department shall print and distribute such regulation. The distribution of any regulation shall be made with a goal of increasing voluntary tax compliance.

VA.R. Doc. No. R94-405; Filed December 21, 1993, 3:22 p.m.

* * * * *

Title of Regulation: VR 630-3-302. Definitions: Sales - Corporation Income Tax. Corporate Income Tax: Definitions.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Proposed Regulations

Purpose: This regulation sets forth definitions used in determining Virginia taxable income as provided in § 58.1-302 of the Code of Virginia. Taxpayers must comply with the definitions contained in this regulation in determining Virginia taxable income.

Section 58.1-302 of the Code of Virginia was amended by Chapter 678 of the 1992 Acts of the General Assembly, retroactive to all taxable years in which the Department of Lottery has paid any prizes.

The amendments to this regulation reflect the legislative changes made to § 58.1-302 of the Code of Virginia, and department policy regarding the definitions contained herein. Where definitions have been moved to other new or existing regulations, the definitions have been deleted from this regulation.

Substance: The amendment to the definition of "affiliated" removes language which is duplicated in the regulations issued under § 58.1-442 of the Code of Virginia.

The definition of "compensation" has been moved to VR 630-3-413. Because this definition only applies for purposes of allocation and apportionment, it is logical to move the definition to the regulation in which the defined term is applied. See VR 630-3-413 for amendments to the definition.

The definition of "corporation" was amended to include any publicly traded partnership which is taxed as a corporation for federal purposes. This is in response to federal law which taxes these entities as corporations.

The definition of "foreign source income" was moved to VR 630-3-302.2, a new (and separate) regulation. Because this definition requires detailed analysis and computations, it was felt that a separate regulation would be more appropriate. See VR 630-3-302.2 for amendments to the definition.

The definition of "income and deductions from Virginia sources" was moved to VR 630-3-302.1, a new (and separate) regulation. Because this definition has been greatly expanded for purposes of nexus determinations, it was felt that a separate regulation would be more appropriate. See VR 630-3-302.1 for amendments to the definition.

The definition of "sales" has been moved to VR 630-3-414. Because this definition only applies for purposes of allocation and apportionment, it is logical to move the definition to the regulation in which the defined term is applied. See VR 630-3-414 for amendments to the definition.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the terms defined herein.

Taxpayers will have greater comprehension of regulations if defined terms are contained within the regulation in which the term is applied.

Taxpayers will be more aware of issues regarding foreign source income and income from Virginia sources if separate regulations for these complex defined terms are promulgated.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** Entities subject to the provisions of this regulation include publicly traded partnerships which are taxed as corporations, corporations which allocate and apportion their income, and corporations claiming a subtraction for foreign source income. Since the purpose of this regulation is to publicize current policy, or to move definitions to a more logical location, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. *The definitions of "compensation" and "sales" have been moved to VR 630-3-413 and VR 630-3-414, respectively. Amendments to these definitions have been made in the respective regulations.*

2. *The definitions of "income from Virginia sources" and "foreign source income" have been moved to regulations VR 630-3-302.1 and VR 630-3-302.2, respectively. These are new regulations, and have significantly amended the definitions previously contained in this regulation.*

3. *The definition of "corporation" has been amended to include any publicly traded partnership that is taxed as a corporation for federal purposes.*

4. *Duplicative language was removed from the*

Proposed Regulations

definition of "affiliated." The language was more appropriate in the regulations issued under § 58.1-442 of the Code of Virginia.

5. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

VR 630-3-302. Corporate Income Tax: Definitions.

The following words and terms, when used in these the regulations relating to the taxation of corporations, shall have the following meaning unless the context or regulation clearly indicates otherwise:

"Affiliated" means a group of two or more corporations, each of which is itself subject to Virginia income tax, and in which: (i) one corporation owns at least 80% of the voting stock of the other or others, or (ii) at least 80% of the voting stock of two or more corporations is owned by the same interests.

For the purpose of § 58.1-442 of the Code of Virginia, it is not necessary for all members of a controlled group to be subject to Virginia income tax in order for some of the members, otherwise eligible, to file a consolidated or combined return. For example, two or more corporations subject to Virginia income tax may be 80% owned by a foreign corporation not subject to Virginia income tax. All of the subsidiaries subject to Virginia income tax may file a consolidated or combined return without the foreign parent corporation.

"Compensation" is defined in VR 630-3-413.

"Compensation" means, for the purpose of allocation and apportionment under § 58.1-406 of the Code of Virginia as used in computing the payroll factor under § 58.1-412 of the Code of Virginia, all remuneration or wages for employment as defined in I.R.C. § 3121(a) except that compensation includes the excess wages over the contribution base defined in I.R.C. § 3121(a)(1).

1. Generally compensation will be the gross wages, salaries, tips, commissions and other remuneration paid to employees and reported to the Internal Revenue Service. The department will accept the gross amounts reported to the IRS on Forms W-2/W-3, Form 940 or the accounting records of the corporation provided that all of the employees of the corporation are included in such reports or records.

2. If the corporation has any employees who are not subject to the F.I.C.A. and F.U.T.A. payroll taxes or are not subject to U.S. income tax because they are nonresident aliens, compensation includes all wages, salaries, tips, commissions and other remuneration paid to or for such employees in addition to the compensation in subdivision 1 above.

3. The corporation shall determine compensation on a

consistent basis so as not to distort the compensation paid to employees located within and without Virginia. In the event the corporation is not consistent in its reporting, it shall disclose in its return to Virginia the nature and extent of such inconsistency.

4. The terms "employees" and "personal services" shall have the same meaning as used in the context of employment in I.R.C. § 3121(b).

5. The term "paid or accrued" means either (i) cash or property paid to employees and reported to the I.R.S. as in subdivision 1 above, or (ii) amounts properly accrued on the books of the corporation under its accounting method for federal income tax purposes, but not both.

"Corporation" means: (i) any entity created as such under the laws of the United States, any state, any territory or possession thereof of the United States, the District of Columbia, or any foreign country, or any political subdivision of any of the foregoing; or (ii) any entity taxable as a corporation under federal law, including but not limited to, an association; or joint stock company, partnership or any other entity subject to corporation income taxes under the United States Internal Revenue Code. See I.R.C. § 7701 as defined by § 7701 of the Internal Revenue Code and the U.S. Treasury regulations issued thereunder; or (iii) a publicly traded partnership as defined by § 7704 of the Internal Revenue Code which is treated as a corporation for federal income tax purposes.

"Domestic corporation" means a corporation, as defined above, organized, created, or existing under the applicable laws of the Commonwealth of Virginia. Compare I.R.C. § 7701(a)(4). Note, for federal purposes, a domestic corporation is one created or organized in the United States or under the law of the United States or of any state.

"Foreign corporation" means a corporation, as defined above, which is not a domestic corporation. Registration of a foreign corporation with the State Corporation Commission for the privilege of doing business in Virginia shall not make a corporation a domestic corporation.

"Foreign source income" is defined in VR 630-3-302.2. means income computed in accordance with the following principles:

1. The federal taxable income of corporations organized under the laws of the United States, any of the 50 states or the District of Columbia (U.S. domestic corporations) includes their worldwide income. Virginia law provides a subtraction for "foreign source income" if any is included in federal taxable income. Corporations that are not U.S. domestic corporations include in federal taxable income only income from U.S. sources or income effectively connected with a U.S. trade or business.

Proposed Regulations

Such corporations will not have any "foreign source income" included in federal taxable income.

2. Foreign source income does not include all income from sources without the United States but is limited to specified types of income and is also limited by the federal source rules in I.R.C. §§ 861 et seq. and the regulations thereunder in determining the source of a particular item of income.

3. Corporations having foreign source income determine the amount of the subtraction by the following procedure:

a. The specified types of gross income included in federal taxable income are segregated. The types of income are: interest, dividends, rents, royalties, license and technical fees, also gains, profits and other income from the sale of intangible or real property.

b. The federal source rules are applied to determine the source of each item, particularly whether or not the item is effectively connected with the conduct of a U.S. trade or business.

c. The federal procedure in Treasury Reg. § 1.861-8 is applied to allocate and apportion expenses to income derived from U.S. and foreign sources.

d. The gross income from sources without the U.S. from subdivision 3 b less the expenses allocated and apportioned to such income in subdivision 3 c is the foreign source income for purposes of the Virginia subtraction.

4. All income and expenses included in foreign source income and property or other activity associated with such income and expenses shall be excluded from the factors in the Virginia formula for allocating and apportioning Virginia taxable income to sources within and without Virginia.

"Income and deductions from Virginia sources" is defined in VR 630-3-302.1. means items of income, gain, loss and deduction attributable to the ownership, sale, exchange or other disposition of any interest in real or tangible personal property in Virginia or attributable to a business, trade, profession or occupation carried on in Virginia or attributable to intangible personal property employed in a business, trade, profession or occupation carried on in Virginia.

A. If the entire business of a corporation is not deemed to have been transacted or conducted within this Commonwealth by § 58.1-405 of the Code of Virginia, then the "income from Virginia sources" means that portion of the corporation's Virginia taxable income resulting from the allocation and apportionment formulas set forth in §§ 58.1-406 through 58.1-421 of the Code of Virginia.

1. Allocable income is limited to certain dividends. See § 58.1-407 of the Code of Virginia.

2. Apportionable income is Virginia taxable income less allocable income. Apportionment formulas are then applied to determine the part of apportionable income that is income from Virginia sources. Generally, a corporation will have income from Virginia sources if there is sufficient business activity within Virginia to make any one or more of the following apportionment factors positive: (i) vehicle miles (for motor carriers); (ii) cost of performance (for financial corporations); (iii) completed contracts (for certain construction corporations); (iv) revenue car miles (for railway companies); and (v) property, payroll or sales (for all other corporations).

3. See §§ 58.1-408 through 58.1-421 of the Code of Virginia and the regulations thereunder for details. Accordingly, a foreign corporation may be subject to Virginia income tax on the portion of its income deemed to be derived from Virginia sources under apportionment formulas even though no specific portion of its gross or net income may be separately identified as being derived directly from Virginia.

B. Certificate of authority.

1. §§ 13.1-757 and 13.1-919 of the Code of Virginia provide that if a corporation's only activity in Virginia is limited to certain activity in connection with investment in notes, bonds or other instruments secured by the deeds of trust on property located in Virginia, such corporations shall not be deemed to be transacting business in Virginia for purposes of §§ 13.1-757 and 13.1-919 of the Code of Virginia which require foreign corporations to obtain a certificate of authority from the State Corporation Commission before transacting business in Virginia. All corporations having income from Virginia sources are subject to Virginia income tax regardless of whether or not they are required to obtain a certificate of authority.

2. A foreign corporation whose only connection with Virginia is the receipt of interest on notes, bonds or other instruments secured by deeds of trust on property located in Virginia will have no payroll or real or tangible personal property located in Virginia. Although the interest may be paid by a Virginia resident, for purposes of the sales factor the gross receipts will not be assigned to Virginia because there is no income producing activity in Virginia. See § 58.1-416 of the Code of Virginia. If the corporation is a financial corporation as defined in § 58.1-418 of the Code of Virginia there would be no costs of performance in Virginia. Therefore, such a corporation would have no income from Virginia sources and, since such a corporation is not required to obtain a certificate of authority, it would not be required to file a Virginia income tax return. See Reg. § 630-3-441.

Proposed Regulations

However, if such a corporation acquires real or tangible personal property in Virginia by foreclosure or any other means the corporation will have property (or cost of performance) in Virginia. Therefore the corporation will have income from Virginia sources and be required to file a Virginia income tax return.

C. In the course of computing income from Virginia sources a corporation may be required to make computations solely for that purpose or maintain records used only for that purpose. The effects on tax liability of a method used to determine any components of income from Virginia sources and the burden of maintaining records not otherwise maintained and of making computations not otherwise made shall be taken into consideration in determining whether such method is sufficiently precise.

D. Example: Corporation A is a manufacturer of paper products conducting all of its manufacturing, selling and shipping operations outside Virginia. It makes no sales to customers in Virginia. It therefore has no gross income which may be identified as being derived directly from Virginia. However, the corporation does operate a facility in Virginia solely for the purchase of pulpwood for shipment to its manufacturing plants in other states.

While corporation A has no gross income derived directly from Virginia, it has property and payroll in this state. Accordingly, Corporation A has income from Virginia sources based on apportionment factors.

"Sales" is defined in VR 630-3-414. means the gross receipts of the corporation from all sources not allocated under § 58.1-407 of the Code of Virginia (dividends) whether or not such gross receipts are generally considered as sales. In the case of the sale or other disposition of intangible property, gross receipts shall be disregarded and only the net gain from the transaction shall be included.

A. Manufacturing sales:

In the case of a taxpayer whose business activity consists of manufacturing and selling, or purchasing and reselling goods or other property of a kind which would properly be included in the inventory of the taxpayer primarily for sale to customers in the ordinary course of its trade or business, gross receipts means gross sales, less returns and allowances, and includes service charges, carrying charges, or time-price differential charges incidental to such sales.

B. Sales made in other types of business activity:

1. If the business activity consists of providing services such as the operation of an advertising agency, or the performance of equipment service contracts, "sales" includes the receipts from performance of such service including fees, commissions, and similar items.

2. In the case of cost plus fixed fee contracts, such as the operation of a government owned plant for a fee, "sales" include the entire reimbursed cost, plus the fee.

3. In the case of the sale, assignment, or licensing of intangible property such as patents and copyrights, "sales" includes only the net gain from the sale or disposition.

4. In the case of the sale of real or personal property, "sales" includes the gross proceeds from such sales.

5. The term "sales" does not include amounts required by federal law to be included in federal taxable income as recapture of items deducted in prior years.

"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, and any foreign country. Note that this definition applies only within the to the allocation and apportionment section of this chapter sections of Article 10 (§ 58.1-406 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia. When used elsewhere in the chapter Chapter 3 of Title 58.1 of the Code of Virginia, the term "state," depending on the context, may or may not include foreign countries and U.S. United States possessions or territories; depending on the context.

VA.R. Doc. No. R94-380; Filed December 21, 1993, 3:11 p.m.

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Title of Regulation: VR 630-3-302.2. Corporate Income Tax: Foreign Source Income.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. Promulgating this regulation is within the broad authority granted to the Tax Commissioner.

The definition of foreign source income was originally contained in VR 630-3-302. That regulation was originally adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. Because the

Definition of foreign source income requires a detailed analysis of qualifying income, and computations to determine the amount of the subtraction, a separate regulation has been promulgated.

Purpose: This regulation sets forth guidance and explanation of the procedures relating to the determination of the Virginia foreign source income subtraction. The subtraction is allowed pursuant to § 58.1-402 of the Code of Virginia. The definition of foreign source income is contained in § 58.1-302 of the Code of Virginia. This regulation provides guidance as to the types of income that qualify, and the amount of the overall subtraction.

The regulation expands and replaces the definition of foreign source income which was previously found in VR 630-3-302. The regulation provides more comprehensive guidance, and reflects previously published rulings regarding the amount and type of income eligible for the foreign source income subtraction.

Substance: Section 1 of the regulation provides definitions that are used throughout the body of the regulation.

Section 2 of the regulation provides that the Code of Virginia limits the definition of foreign source income to certain specific types of income. Income of a type not specified does not qualify regardless of its source.

Section 3 of the regulation generally provides rules for determining the source of income. Section 3 C 2 of the regulation provides guidance in the definition of "technical fees." As previously defined by Public Document (P.D.) 86-209 (11/3/86) and P.D. 87-211 (9/15/87), technical fees generally exclude compensation for labor or personal services. In order to qualify for a subtraction pursuant to this regulation, technical fees must arise in connection with, and be incidental to, passive types of income in the nature of rents, royalties, or license fees. Numerous examples are provided which illustrate the application of this rule. This section also provides guidance on how qualifying technical fees are to be sourced for purposes of determining the foreign source income subtraction.

Section 3 D provides guidance for determining the source of gains, profits or other income from the sale of real property or intangibles. Generally, the sale of real property located outside the United States will result in foreign source income.

Intangible property is subject to the sourcing rules provided in § 3 D 2. The general rule is that the seller must be other than a United States resident in order for the sale of intangible property to be considered foreign source. There are exceptions, which parallel federal sourcing rules for this type of property. The primary exceptions are for certain contingent payment sales of patents, copyrights, goodwill or similar property. The regulation also follows federal sourcing rules regarding the sale of intangible property from an office or fixed place of business located outside the United States.

The regulation provides that income from the sale of software is not considered to be the sale of intangible property. Software sales often produce income from a license or royalty agreement. Rents, royalties, and licenses are types of income which expressly qualify for the subtraction. Accordingly, income from the sale of software may qualify for the foreign source income subtraction as a royalty or license fees, but not as the sale of intangible property.

Where the sale of software does not result in a license or similar agreement between the taxpayer and a customer, the income will usually not qualify for the foreign source income subtraction. Typically, such activity will be considered to be income from the performance of personal services which do not qualify for the subtraction. Income arising from the purchase and sale of prewritten software is considered to be wholesale or retail activity which does not qualify for the subtraction.

Section 4 of the regulation provides guidance as to the computations necessary in order to determine the net amount of the Virginia subtraction. As previously published in P.D. 86-154, (8/14/86), the statutory construction of the Code of Virginia requires the subtraction for foreign source income to be determined in accordance with federal sourcing rules. These rules (§ 861-863 of the Internal Revenue Code) provide elaborate procedures for determining the allocable and apportionable expenses which must be netted against gross foreign source income in determining federal taxable income. The Virginia subtraction must be determined in accordance with these rules.

Because Virginia's subtraction is determined by specific reference to the federal sourcing rules, previously published policy (P.D. 87-149 (6/8/97)) provides that federal Form 1118 is the appropriate starting point for calculating the Virginia subtraction. Because the applicable federal rules must be applied in preparing this form, it is the starting point for the Virginia subtraction.

Certain types of income that are "foreign source" for federal purposes do not qualify for the Virginia subtraction. Accordingly, the regulation provides a method for determining the proportional amount of the total federal expenses reported on Form 1118 that relate to types of income eligible for the Virginia subtraction. The calculation is made in accordance with the previously published policy of P.D. 91-229 (9/30/91).

The regulation provides that the use of the federal sourcing rules is mandatory, and that the information on federal Form 1118 shall be presumed to be the applicable starting point for determining the subtraction.

Section 5 of the regulation provides that the apportionment factors must be adjusted to exclude any item of income which is eligible for the foreign source income subtraction.

Issues: Regulatory provisions should be revised periodically

Proposed Regulations

to reflect current policy with respect to issues. This regulation combines the department's existing published policy with respect to the determination of the foreign source income subtraction.

Foreign source income is a relatively complicated area of federal taxation. The Virginia subtraction is determined by reference to the federal rules. However, not all federal foreign source income qualifies for the Virginia subtraction. The regulation provides a reasonable method of determining the Virginia subtraction by utilizing information which is available in the federal tax return. This approach results in fewer calculations for the taxpayer, and a verifiable starting point for the resolution of disputes.

Because the Virginia subtraction is for specific types of income, the numerous examples contained in the regulation will aid taxpayers in determining which income qualifies.

Although not all income which is "foreign source" for federal purposes qualifies for the Virginia subtraction, the Virginia apportionment factors will be diluted. Because foreign source income will reduce the amount of income which is apportioned and taxed in Virginia, the risk of double taxation is not significant.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** Entities subject to the provisions of this regulation include corporations that claim a Virginia subtraction for foreign source income. Since the primary purpose of this regulation is to combine the published policy of several public documents into a single, comprehensive document, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. *The definition of foreign source income, which was previously defined in VR 630-3-302, has been replaced by this new (and separate) regulation. The original definition has been expanded, and comprehensive examples added for clarity.*

2. *The regulation contains guidance for determining the source of income. In situations where the federal sourcing rules are not incorporated by reference, detailed sourcing rules are provided.*

3. *The regulation provides that the apportionment factors must exclude items of income which qualify for the subtraction.*

4. *The regulation incorporates previously published policy that:*

a. *Provides guidance as to the types of income that qualify for the subtraction. Income of a type not specifically provided does qualify regardless of its source.*

b. *Provides a definition of the term "technical fees" for purposes of the subtraction. Numerous examples have been provided to assist taxpayers in determining what constitutes a "technical fee" which qualifies for the subtraction.*

c. *Provides examples of how expenses are apportioned to, and netted against, the income which qualifies for the subtraction. The subtraction must be determined net of related expenses determined in accordance with federal sourcing rules.*

d. *Reinforces the utilization of federal Form 1118 as a starting point for the computation.*

5. *The regulation provides guidance with respect to income arising from the sale of software. The regulation breaks this type of income into license fees, programming services, and wholesale and retail activity. The eligibility of each type of income is separately addressed.*

6. *The regulation provides detailed rules for sourcing income from the sale of an intangible property. The sale of software is distinguished from the sale of intangibles.*

7. *The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.*

VR 630-3-302.2. Corporate Income Tax: Foreign Source Income.

§ 1. Definitions.

The following words and terms, when used in thi

regulation, shall have the following meaning, unless the context clearly indicates otherwise:

"Federal sourcing rules" means Part I of Subchapter N of the Internal Revenue Code (§ 861, et seq.) and the United States Treasury Regulations promulgated thereunder.

"Foreign source" means attributable, under federal sourcing rules and this regulation, to sources without the United States.

"Form 1118" means Form 1118, Foreign Tax Credit - Corporations, as published by the Internal Revenue Service for purposes of computing the federal foreign tax credit, or the equivalent revision of such form.

"Source" means the place to which income is attributed in determining whether it is deemed to be from within or without the United States.

"Sourcing" means the process of determining the source of income.

"U. S. domestic corporation" means a corporation organized under the laws of the United States, any of the 50 states, or the District of Columbia.

"United States resident" means a U. S. domestic corporation.

"United States nonresident" means any corporation other than a U. S. domestic corporation.

B. The federal taxable income of U.S. domestic corporations includes their worldwide income. Pursuant to subsection C 8 of § 58.1-402 of the Code of Virginia, U. S. domestic corporations are allowed a subtraction for "foreign source income" to the extent included in federal taxable income.

C. Corporations that are not U.S. domestic corporations only include income which is from U.S. sources or income which is effectively connected with a U.S. trade or business in their federal taxable income. Such corporations will not have any "foreign source income" included in their federal taxable income, and consequently will not qualify for the Virginia subtraction.

§ 2. Foreign source income subtraction.

A. The subtraction for foreign source income is limited to: (i) interest; (ii) dividends; (iii) rents, royalties, license, and technical fees from property located or services performed without the United States or from any interest in such property; and (iv) gains, profits, or other income from the sale of intangible or real property located without the United States, as these terms are described in § 3 of this regulation.

B. Other types of income, not specifically described in §

3 of this regulation, do not qualify for the subtraction regardless of the source of the income.

C. In determining the source of any income, and the amount of the subtraction allowed pursuant to this regulation, the federal sourcing rules shall be applied as described in §§ 3 and 4 of this regulation.

§ 3. Income qualified for the subtraction.

A. Interest, other than interest derived from sources within the United States, qualifies for the subtraction. The rules of § 861(a)(1) of the Internal Revenue Code and the U. S. Treasury Regulations thereunder shall be applied in determining interest from sources within the United States.

B. Dividends, other than dividends derived from sources within the United States, qualify for the subtraction. The rules of § 861(a)(2) of the Internal Revenue Code and the U. S. Treasury Regulations thereunder shall be applied in determining interest from sources within the United States.

1. Dividends derived from sources without the United States may qualify for separate Virginia subtractions as foreign dividend gross up, Subpart F income, or dividends from 50% or more owned corporations. See §§ 8, 10, and 13 of VR 630-3-402.2 respectively.

2. To the extent an item has been claimed as a subtraction under another provision of the Code of Virginia, it shall not be subtracted again under this regulation.

C. 1. Rents, royalties, or license fees from property located outside the United States, or from any interest in such property, including rents, royalties, or fees for the use of or for the privilege of using outside the United States any patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property qualifies for the subtraction. The rules of § 861(a)(4) of the Internal Revenue Code and the U. S. Treasury Regulations thereunder shall be applied in determining rents, royalties, and licenses from sources within and without the United States.

2. Technical fees. a. Generally, compensation for labor or personal services performed does not qualify for the Virginia foreign source income subtraction regardless of its source. In order to qualify for a subtraction pursuant to this regulation, technical fees must arise in connection with, and be incidental to, passive types of income in the nature of rents, royalties, or license fees consistent with subsection C 1 of this section.

Any services performed must be directly related to the use or privilege for which the taxpayer receives income qualifying under subdivision C 1 of this section. Income arising primarily from personal

Proposed Regulations

services, or from a contract to perform personal services, shall not qualify for the subtraction. The fact that "technical services" or services of a "technical nature" are performed does not automatically qualify such income for the subtraction.

The presence or absence of legal documents such as royalty agreements, leases, or licenses will be given great weight in determining if income qualifies as a technical fee. Generally, where an agreement to perform services does not arise contemporaneously with the right to receive the types of passive income which qualify for the subtraction under subdivision C 1 of this section, it shall be presumed to be an agreement to perform personal services not qualifying as technical fees. The relationship of the amount of income received from personal services versus the amount of income received from qualifying passive income will also be considered in determining if such services are incidental to the qualifying income.

b. Where technical fees are based on, or computed with reference to, the performance of services, the rules of § 861(a)(3) of the Internal Revenue Code and the U. S. Treasury Regulations thereunder shall be applied in determining the source of services which otherwise qualify as technical fees. Where no services are actually performed, or the fees bear no relation to the services performed, the rules of § 861(a)(4) of the Internal Revenue Code and the U. S. Treasury Regulations thereunder shall be applied in sourcing technical fees which otherwise qualify for the subtraction.

c. The burden of proof is on the taxpayer to demonstrate that any income which is compensation for labor or personal services performed without the United States pursuant to § 862(a)(3) of the Internal Revenue Code qualifies as technical fees within the meaning of this subdivision.

Example 1. Corporation ABC (ABC), is a U. S. domestic corporation that develops and sells computer software programs, and provides other services generally related to computer hardware and software. ABC contracts to license a software program it has developed for a customer located in a foreign country. The software will be licensed for use exclusively without the United States. As part of the contract, ABC must provide assistance in the installation, application, and use of the software. Such assistance is integral to the licensing of the software and would not have been contracted for otherwise. The assistance will be provided as necessary and needed, with no minimum or maximum amount of service stipulated. To the extent services for such assistance are performed outside the United States, fees paid for such services will be considered technical fees eligible for the subtraction because the fees are directly related and incidental to the

license of software used outside the United States.

Example 2. Assume the same facts as in Example 1. In addition to the software license, ABC contracts with the same customer to provide consulting services related to the purchase of computer hardware, installation of the hardware, and training in its use. Because these services are not directly related to the license agreement, fees derived from these services are not technical fees which qualify for the subtraction.

Example 3. Corporation XYZ (XYZ), a U. S. domestic corporation, provides consulting services in the computer field. XYZ contracts with a customer in a foreign country to analyze their computer needs, recommend and install computer hardware, and recommend computer software. XYZ will acquire the recommended hardware and software from other vendors and provide it to the customer as part of the contract. All services rendered pursuant to the contract will be performed outside the United States. Because XYZ is primarily performing personal services, the income arising from the contract is not considered to be technical fees which qualify for the subtraction.

Example 4. Assume the same facts as in Example 3. In addition to the items and services specified above, XYZ will customize and integrate the "prepackaged" software programs and hardware. The value of such programming services is immaterial to the overall value of the contract. The custom software created is not significantly unique or dependent on XYZ's expertise, and is not licensed by XYZ to the customer. The prepackaged software remains under license from the original vendor. The income attributable to the programming services is not considered technical fees which qualify for the subtraction.

Example 5. Green Corporation (Green), a U. S. domestic corporation, is engaged in all aspects of the hotel and resort business. Green receives income from hotel license and franchise agreements, hotel management contracts, and ownership and operation of hotels and resorts. Income from the operation of hotels and resorts located without the United States does not qualify for the subtraction, as it is not in the nature of a rent, royalty, or license. Although income from hotel franchises and licenses agreements may qualify for the subtraction where the franchise or license is located outside the United States, income from hotel management contracts is personal service income which does not qualify as a technical fee. Income earned in the day-to-day management of a hotel is not similar in nature to fees charged for occasional services incident to a contract relating to rents, royalties, or other fees relating to the use of property outside the United States, even if the property being managed is subject to a franchise or license agreement.

Example 6. Corporation EFG (EFG), a U. S. domestic corporation, licenses a patent for use in a foreign country. Pursuant to the license, EFG will receive royalties for the

use of the patent, and fees for services relating to the patent and its application. The services will be performed outside the United States, and are purely incidental to the license agreement. The fees will be paid regardless of the amount of services, if any, actually performed. Because these fees are for services performed outside the United States, incident to a contract providing royalties relating to the use of a patent outside the United States, they are considered technical fees eligible for the subtraction.

Example 7. Assume the same facts as in Example 6, except that all services are performed by employees within the United States. Because such services will not be considered to have been performed outside the United States under federal sourcing rules, the fees will not constitute technical fees.

Example 8. White Corporation (White), a U. S. domestic corporation, contracts with a customer in a foreign country to provide computer programming services. Pursuant to the contract the services are billed on an hourly basis. The hourly rates are prescribed according to the qualifications of the assigned personnel, and the nature of the service performed. The customer has described the desired qualities of the program and system, and the resulting software program will be owned by the customer. White will not license or otherwise control the programs created pursuant to the contract. White will be providing personal services which do not qualify as a technical fee eligible for the subtraction. Fees for services do not qualify as technical fees merely because the services are of a "technical" nature when the fees are not otherwise related and incident to a license, rent, or royalty agreement providing for the use of such property outside the United States.

Example 9. Blue Corporation (Blue), a U. S. domestic corporation, has several 100% owned subsidiaries located in foreign countries. Blue charges its subsidiaries a fee for "technical support." Because these fees are neither related nor incidental to a license, rent, or royalty agreement providing for the use of such property outside the United States, they do not qualify for the subtraction.

Example 10. Black Corporation (Black), a U. S. domestic corporation, receives royalties which qualify for the foreign source income subtraction. Black also recognizes foreign currency translations gains with respect to the royalty payments. The gains are related, but not equivalent, to royalties. The gains are not technical fees, related and incidental to a royalty agreement providing for the use of property outside the United States. Accordingly, foreign currency translation gain which is related to income otherwise qualifying as foreign source income does not qualify as technical fees eligible for the subtraction.

Example 11. Corporation AAA (AAA), a U. S. domestic corporation, licenses software to a customer for use without the United States for a one time charge of \$25,000. At the same time, AAA contracts to provide a

full time software support person at the customer's place of business in a foreign country for \$ 75,000 per year, plus out-of-pocket expenses. AAA does not usually provide this type of support for the particular software licensed, and the \$25,000 sales price is typical of what AAA has charged other customers. Because of the disproportionate relationship of the charge for services compared to the cost of the software, the fees are not incidental to the software license. The software support fee (\$75,000) is compensation for personal services which does not qualify for the subtraction. The \$25,000 charge for software would be sourced in accordance with the rules in § 3 D of this regulation governing intangible property.

D. Gains, profits, or other income from the sale of intangible or real property located without the United States.

1. Gains, profits, or other income from the sale of real property located without the United States qualify for the subtraction. The source of such income is without the United States if the real property sold was located without the United States. The subtraction only applies where evidence of title, deed, or other similar document clearly indicates that title in real property was transferred by seller.

Example 1. Corporation ABC, a U.S. domestic corporation, owned real estate located in a foreign country. The real estate was sold at a gain to a third party. Under the laws of the foreign country, ABC transferred the deeded title to the property to the purchaser. The gain qualifies as foreign source income.

Example 2. Corporation XYZ (XYZ) is a real estate developer and builder. XYZ contracts with a customer in a foreign country to construct a building to the customer's specifications on a turnkey basis. The building is to be constructed on the customer's land, located outside the United States. XYZ never acquires title to the property. Because XYZ did not actually transfer title to the real property, the income realized by XYZ on the contract does not qualify for the subtraction.

2. Intangible property.

a. In general. Gains, profits, or other income from the sale of intangible property located without the United States qualify for the subtraction. Except as otherwise provided in subdivision D 2 of this section, gains, profits, or other income from the sale of intangible property are considered to be income from within the United States if the seller was a United States resident, and are considered to be income from without the United States if the seller is a United States nonresident. However, in no event shall any income from the sale of intangibles be sourced outside the United States for Virginia purposes if such income is not also sourced outside the United States pursuant to Subchapter N of the Internal Revenue Code.

Proposed Regulations

b. Contingent payments. (1) To the extent payments in consideration of a sale of any patent, copyright, secret process or formula, goodwill, trademark, trade brand, franchise, or other like property are contingent on the productivity, use, or disposition of the property, gains, profits, or other income from the sale of such property will be sourced in the same manner as royalties pursuant to subdivision C 1 of § 3 of this regulation.

(2) To the extent payments in consideration of such property are not contingent on the productivity, use, or disposition of the property, gains, profits, or other income from the sale of such property are sourced in accordance with subdivision D 2 a of this section.

c. The provisions of §§ 865(f) and (h) of the Internal Revenue Code shall apply for Virginia purposes in the same manner, and to the same extent, for purposes of sourcing certain gains attributable to sales of stock in affiliates, intangibles, and from certain liquidations.

d. In the case of any income not sourced: (i) under subdivisions 2 b (1) or 2 e of this subsection; or (ii) under § 865(f) of the Internal Revenue Code for sales of stock in affiliates, if a United States resident maintains an office or other fixed place of business in a foreign country, income from sales of intangibles attributable to such office or other fixed place of business shall be sourced outside of the United States in accordance with federal sourcing rules.

e. In the case of a sale of goodwill, the payments resulting from such sale will be sourced in the country in which such goodwill was generated unless such payments are contingent on the productivity, use, or disposition of the property. Contingent payments are sourced in accordance with subdivision 2 b of this subsection.

f. Generally, for purposes of this subsection, the sale of software is not considered to be the sale of intangible property. Software sales generally generate income from a license or royalty agreement, income from the performance of services, or income from wholesale or retail activities.

(1) For purposes of this regulation, the sale of prewritten software which is purchased and resold by the taxpayer is not considered to be the sale of intangible property. This will generally be considered wholesale or retail activity which does not qualify for the foreign source income subtraction.

(2) For purposes of this regulation, software which is created or customized by the taxpayer for a

customer is not considered the sale of intangible property. To the extent such custom software is subject to a license, copyright or similar agreement between the taxpayer and the customer, the income from such license agreement may be eligible for exclusion pursuant to subsection C of this section. Where no license, copyright or similar agreement exists, the sale shall be considered a sale of personal services, which does not qualify for the foreign source income subtraction.

(3) Prewritten software is sometimes customized by the taxpayer. The original software remains under license to someone other than the taxpayer, and the customized software may, or in some cases may not, be licensed by the taxpayer to the customer. For purposes of this regulation, income resulting from the sale of the prewritten software is not considered to be the sale of an intangible. To the extent the sale relates to customized software that has been licensed by the taxpayer, income attributable to such license, copyright or similar agreement may be eligible for exclusion pursuant to subsection C of this section. Where no license, copyright, or similar agreement exists, income attributable to the customization process shall be considered a sale of personal services which does not qualify for the foreign source income subtraction.

(4) Other income from the development of "custom software, not subject to a license, copyright, or similar agreement between the taxpayer and the customer, will be considered a sale of personal services which does not qualify for the foreign source income subtraction.

(5) If a taxpayer sells prewritten software subject to a license, copyright, or similar agreement owned by the taxpayer, the income from such sale will not be considered the sale of an intangible. Income attributable to a license, copyright, or similar agreement may be eligible for exclusion pursuant to subsection C of this section. Where the prepackaged software includes manuals, books, or other tangible property, the portion of the sale attributable to such property may constitute a technical fee within the meaning of § 3 C 2 of this regulation if the provision of such property is incidental to the license of the software, and the value of such property is insignificant when compared to the value of the software license.

See § 3 C of this regulation for treatment of income from licenses and royalties.

§ 4. Calculating the foreign source income subtraction.

A. For corporations having the types of foreign source income described in § 3 of this regulation, the amount of the Virginia subtraction is determined by the followin

procedure:

Step 1: The specific items of gross income from without the United States that are included in federal taxable income are segregated between the specific types of foreign source income eligible for the subtraction and those which are not eligible. See § 3 of this regulation.

Step 2: The federal procedures in §§ 861(b) and 863(a) of the Internal Revenue Code and U. S. Treasury Regulations thereunder (§§ 1.861-8, et seq.), are applied to allocate and apportion deductions to income derived within and without the United States. Using the federal procedures, certain deductions are allocated to classes of gross income, and other deductions must be apportioned between classes of gross income where the deductions are not definitely related to any gross income (nonallocable deductions). After application of the federal procedures, it is possible to determine: (i) total deductions allocable to gross foreign source income; (ii) total deductions allocable to the types of foreign source income qualifying for the Virginia subtraction; and (iii) total nonallocable deductions apportioned to foreign source income.

Step 3: Total nonallocable deductions apportioned to total foreign source income (determined in Step 2) must be again apportioned to those types of foreign source income which qualify for the Virginia subtraction. This is accomplished by multiplying such deductions by a fraction, the numerator of which is total foreign source income which qualifies for the Virginia subtraction; and the denominator of which is gross foreign source income for federal purposes. The numerator does not include any item of income which is subtracted under another provision of Virginia law. See § 3 B 1 of this section.

Step 4: The total foreign source income which qualifies for the Virginia subtraction from Step 1, less the deductions allocated to such income from Step 2, less the deductions apportioned to such income from Step 3, is the net foreign source income allowed for purposes of the Virginia subtraction. This amount shall not be less than zero.

Example. Corporation ABC (ABC) reports the following foreign source gross income on its federal Form 1118 for 1993:

Dividends from 100% owned subsidiaries	\$1,000
Subpart F income	2,000
Dividends from less than 50% owned corp's	5,000
Royalties	3,000
Interest	2,000
Section 78 income	1,000
Branch income	2,000

Total foreign source income	\$16,000
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ABC reports the following allocable and nonallocable deductions on its 1993 Form 1118:

Allocable deductions:

Allocable to:	Interest Income	Royalties	Branch Income	Total
R & D	\$500	\$250	\$350	\$1,100
Legal & accounting	200		500	700
	-----	-----	-----	-----
Total	\$700	\$250	\$850	\$1,800
	-----	-----	-----	-----
Total Nonallocable deductions				\$5,000

ABC determines its 1993 Virginia foreign source income subtraction as follows:

Step 1: Determine income eligible for subtraction.

Dividends from less than 50% owned corp's	5,000
Royalties	3,000
Interest	2,000

Total qualified foreign source income	\$ 10,000

Note: Subpart F income, Section 78 income, and dividends from more than 50% owned corporations are subject to separate subtractions, and will not be subtracted again as foreign source income.

Step 2: Determine allocable and nonallocable deductions.

Allocable to:	Interest Income	Royalties	Total
R & D	\$500	\$250	\$750
Legal & accounting	200		200
	-----	-----	-----
Total	\$700	\$250	\$950
	-----	-----	-----
Total nonallocable deductions per Form 1118:			\$5,000

Step 3: Apportion nonallocable deductions to foreign source income qualified for Virginia subtraction.

a) Foreign source income qualified for Virginia subtraction (Step 1)	\$10,000
b) Gross foreign source income	\$16,000

Proposed Regulations

c) Ratio (a divided by b)	62.5%
d) Nonallocable deductions	\$5,000
e) Nonallocable deductions apportioned to Virginia subtraction (d X c)	\$3,125

Step 4: Determine Virginia foreign source income subtraction.

Foreign source income qualified for Virginia subtraction (Step 1)	\$10,000
Less - deductions allocable to income which qualifies for subtraction (Step 2)	950
Less - apportioned nonallocable deductions (Step 3)	3,125

Foreign source income subtraction for 1993	\$5,925

B. The Code of Virginia requires the use of the federal sourcing rules (§§ 861 of the Internal Revenue Code, et seq.) in determining net foreign source income qualified for the Virginia subtraction. Taxpayers may not use any other method, such as generally accepted accounting principles, in determining the subtraction.

C. Generally, federal Form 1118 is prepared by taxpayers with foreign source income for purposes of claiming the foreign tax credit. Because Form 1118 contains much of the information necessary to compute the foreign source income subtraction, it is usually an appropriate starting point for determining the subtraction. However, because Virginia law does not follow federal law in all respects regarding foreign source income certain adjustments are usually required. For example, not all foreign source income reported on Form 1118 qualifies for the Virginia subtraction.

D. Section 904 of the Internal Revenue Code provides for the separate application of the federal foreign tax credit limitation with respect to certain categories or "baskets" of foreign source income. Accordingly, federal Form 1118 must be prepared with respect to the separate baskets as required by federal law. The foreign tax credit limitations of § 904 of the Internal Revenue Code do not apply to the Virginia foreign source income subtraction. In addition, these limitations do not affect the federal sourcing rules used in determining the Virginia subtraction. Therefore, foreign source income reported on Form 1118 shall be considered for purposes of the foreign source income subtraction regardless of the limitations of § 904 of the Internal Revenue Code.

E. The federal foreign sourcing rules (§§ 861, et seq.) are used to compute federal Form 1118. Therefore, the department gives great weight to the information presented thereon for purposes of determining the source and nature of foreign source income. Generally, the department will not accept information which differs from federal forms and schedules if such difference would have

a material impact on federal tax liabilities. The department presumes that where federal taxes are materially affected, taxpayers will take all necessary steps to ensure that the forms and schedules have been prepared appropriately. However, federal rules may not require a high degree of precision in allocating and apportioning deductions in situations where the federal tax liability will not be affected by the limitation computed on Form 1118. Accordingly, taxpayers may provide additional information prepared in accordance with §§ 861 through 863 of the Internal Revenue Code and this regulation, which determines foreign source income and related deductions more accurately than shown Form 1118. Any additional information provided pursuant to this subdivision must be supported by detailed schedules, reconciled to the information contained on Form 1118, and not differ in such a way as to have a material impact on federal tax liabilities. Any recharacterization must applied to income, deductions, and sourcing in a consistent manner.

Example. Corporation ABC (ABC), a U. S. domestic corporation, reported foreign source income from computer programming services on its Form 1118. For Virginia purposes, ABC recharacterizes the income as a sale of intangible property, and claims this income as part of its foreign source income subtraction for Virginia purposes. However, ABC did not apply the sourcing rules for the sale of intangible property, which are different than those for services, to this income. ABC did not maintain an office or other fixed place of business outside the United States, and payments for the "software" were not contingent on productivity, use, or disposition. Under the sourcing rules for intangibles (§ 3 D 2 of this regulation) ABC would not be considered to have foreign source income from this activity, and therefore may not include this income for purposes of the Virginia subtraction. (Note: ABC's recharacterized income must have also satisfied the definition of intangible property.)

F. Pursuant to §§ 861(b) and 863(a) of the Internal Revenue Code and the U. S. Treasury regulations thereunder, certain deductions are required to be directly allocated to classes of income. If a class of income to which such expenses are allocated is not fully eligible for the Virginia foreign source income subtraction, the allocated expenses must be apportioned to the eligible income on a pro rata basis.

Example. Under federal rules, ABC Corporation (ABC) must allocate \$2,000 of expenses to foreign source dividend income. ABC's foreign source dividend income is as follows:

Dividends from 100% owned subsidiaries	\$ 5,000
Dividends from 40% owned corporations	10,000

Proposed Regulations

Total \$15,000

The dividends from 100% owned subsidiaries qualify for a separate Virginia subtraction and are therefore not included in the foreign source income subtraction. Expenses allocable to foreign source dividends from 40% owned corporations are determined as follows:

Allocable expenses \$2,000

Percentage apportioned: (10,000/15,000) 66.7%

Allocable expenses apportioned to dividends eligible for subtraction \$1,333

G. If a deduction has already been disallowed or added back in determining Virginia taxable income, it does not need to be considered again in determining net foreign source income for the Virginia foreign source income subtraction.

Example. ABC Corporation was required to add back certain net income taxes in determining Virginia taxable income. For federal purposes, the same net income taxes were allocated to certain classes of foreign source income. Because the taxes were added back by another provision of the Code of Virginia, they do not need to be deducted from foreign source income in determining the subtraction allowed by this regulation.

§ 5. Allocation and apportionment.

A. To the extent income is subtracted as foreign source income in determining Virginia taxable income, it shall be excluded from the apportionment factors in apportioning Virginia taxable income to sources within and without Virginia. Property, payroll, gross receipts, or other activity associated with such income and deductions shall be similarly excluded from the apportionment factors.

B. Income which qualifies for the foreign source income subtraction pursuant to § 402 of the Code of Virginia is subtracted in determining Virginia taxable income. Accordingly, such income cannot be allocated out of Virginia as it has already been subtracted.

V.A.R. Doc. No. R94-381; Filed December 21, 1993, 2:55 p.m.

* * * * *

Title of Regulation: VR 630-3-311. Corporate Income Tax: Report of Change of Federal Taxable Income.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section)

for additional information)

Basis: Section 58.1-203 of the Code of Virginia states that "the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department."

The department periodically reviews and revises regulations to reflect current policy and practice, under the authority granted to the Tax Commissioner.

Purpose: The purpose of this regulation is to provide guidance in the area of reporting the Virginia income tax effect of changes in federal taxable income, with respect to the form in which changes are to be reported, and how the 90 day requirement for amended returns may be extended.

Substance: This regulation has been revised to clarify existing department policy with respect to corporations reporting the Virginia income tax effect of a change in their federal taxable income. Specifically, the regulation provides that when filing an amended return, a corporation must either concede the accuracy of a final determination or explain why it is erroneous. The department may waive the filing requirement if a corporation pays the additional tax due because of a final determination, and sufficient information is available from which to verify the computation of the income tax due.

Corporations are usually required to file an amended Virginia return within 90 days of a final determination; however, a six-month extension is available for taxpayers satisfying the following requirements: (i) the extension is requested within 90 days of the federal change, and (ii) a copy of a federal revenue agent report or other evidence of a final determination accompanies the extension request.

Issues: Corporations may be relieved from filing an amended return if the department has sufficient information to verify the additional Virginia tax liability resulting from a final determination by the Internal Revenue Service.

Also, corporations may get an extension from the 90 day filing requirement for an amended return which is necessary due to reporting a change in federal taxable income. This is an advantage for corporations having a large volume of state tax returns to file in a relatively short period of time.

Estimated Impact:

a. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. The department will attempt to minimize printing and mailing costs by printing

Proposed Regulations

and distributing this regulation in conjunction with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. Number and Types of Regulated Entities: All corporations subject to income tax in Virginia are subject to the provisions of this regulation. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

d. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised to clarify existing department policy with respect to (i) amended tax returns filed due to a change in federal taxable income, and (ii) when extensions are available for amended income tax returns which are filed due to a change in federal taxable income.

In particular, this regulation clarifies the department's position with respect to amended returns. In filing an amended return due to a change in federal taxable income, a corporation is required to either concede the accuracy of an I.R.S. final determination, or explain why the determination is erroneous. If a corporation pays any additional tax resulting from a final determination without filing an amended return, and the department has sufficient information available with which to verify the tax computation, the department may waive the amended return requirement.

Corporations in general are required to file an amended return within 90 days from a final determination date. Under this regulation, corporations are permitted to apply for a six month extension of the required filing, after meeting the applicable requirements.

VR 630-3-311. Corporate Income Tax: Report of Change of Federal Taxable Income.

A: § 1. Report.

A. If the amount of any corporation's federal taxable income is changed or corrected by the Internal Revenue Service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, ~~suek~~ the corporation must report the change or correction to the department within 90 days from the date of the final determination of ~~suek~~ the change, correction,

or renegotiation. ~~In reporting a change, correction or renegotiation, the corporation shall either concede its accuracy or state why such is erroneous. by filing an amended income tax return. In making its report, the corporation must either concede the accuracy of the final determination or explain why the determination is erroneous. If the corporation pays the additional tax resulting from such determination without filing an amended return and the department has sufficient information available from which to verify the computation of tax due, the department may waive the requirement to file an amended income tax return.~~

B. When the volume of state returns affected by a change of federal taxable income makes it impossible for a corporation to prepare an amended Virginia return within 90 days from the date of the final determination, or for other good cause shown, a corporation may request a six month extension to file the amended Virginia return reporting additional tax or claiming a refund provided both of the following requirements are met:

1. The extension is requested within 90 days of the federal change; and

2. A copy of the federal revenue agent report or other evidence of a final determination of the federal change accompanies the request for an extension. The information must show the amount, nature, and date of the federal change. The amended Virginia return must reconcile to the information submitted with the extension request.

Any extension granted pursuant to this subsection shall similarly extend the period in which the department may audit and assess additional tax related to the amended return.

B: § 2. Amended return.

When any corporation files an amended federal income tax return for any taxable year, it must also file an amended Virginia return for such taxable year. ~~The~~ Except as provided by VR 630-3-1823, or by § 1 B of this regulation, the amended Virginia return must be filed within 90 days of from the filing of the complementary corresponding federal amended return; ~~except that any~~ amended return claiming a refund for overpayment of tax must be filed within 60 days of the final determination of any changes in its federal tax liability whether the amended Virginia return reports additional tax or claims a refund. (See Regulation § VR 630-1-1823.).

C: § 3. Final determination.

For purposes of this section a "final determination" of a change in federal tax liability shall have the same meaning as set forth in paragraph (B) of Regulation § 630-1-1823 VR 630-3-1823.

VA.R. Doc. No. R94-382; Filed December 21, 1993, 3:12 p.m.

Proposed Regulations

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Title of Regulation: VR 630-3-312. Corporate Income Tax: Limitations on Assessments.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: Section 58.1-203 of the Code of Virginia states that "the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department."

The department periodically reviews and revises regulations to reflect current policy and practice, under the authority granted to the Tax Commissioner.

Purpose: The purpose of this regulation is to provide guidance in the area of limitations on assessments; specifically, the time within which the department must assess tax deficiencies, and the time within which the department must retrieve an erroneous refund paid to a taxpayer.

Substance: There are no substantive changes to the existing regulation.

Issues: Since there were no substantive changes to the existing regulation, there are no issues to report.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. The department will attempt to minimize printing and mailing costs by printing and distributing this regulation in conjunction with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** All corporations subject to income tax in Virginia are subject to the provisions of this regulation. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated

that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

The existing regulation provides a three year limitation on the department for assessing taxes from the date such taxes were due. The three year limitation is not applicable in situations where (i) no return was filed, (ii) a false or fraudulent return was filed or (iii) a change in federal taxable income was not reported.

The existing regulation also permits the department to assess additional tax within one year of the date a report of change in federal taxable income was filed.

The term "erroneous refund" is defined under the existing regulation, and recovery times are provided for the department. The department is permitted: (i) two years to recover an erroneous refund if it was originally made due to an error on the part of the department, and (ii) five years to recover if the refund was made because of fraud or misrepresentation on the part of a taxpayer.

The changes made to the existing regulation are made in order to clarify the regulation. There are no substantive changes.

VR 630-3-312. Corporate Income Tax: Limitations on Assessments.

A: § 1. In general.

Except as otherwise provided, the department must assess any tax deficiency within three years from the date the tax was due and payable. See ~~Va. Code~~ § 58.1-104 of the Code of Virginia .

B: § 2. Exceptions.

The three-year statute of limitations for assessment shall not be applicable to the situations set forth below.

1. Failure to file a return.

When any corporation fails to file a return as required by law, an assessment may be made at any time.

2. False or fraudulent return.

If any corporation files a false or fraudulent return with intent to evade the tax legally due, an assessment may be made at any time.

3. Failure to report change in federal taxable income.

When any corporation fails to report a change or correction which increases its federal taxable income ,

Proposed Regulations

as required by Va. Code § 58.1-311 fails to report a change or correction in federal taxable income which is treated as a deficiency for federal purposes, or fails to file an amended Virginia return as required by law § 58.1-311 of the Code of Virginia, the tax may be assessed at any time.

4. Waiver.

When the Department and the taxpayer, before the expiration of the statute of limitations, agree to extend the period for assessing the tax beyond such statute, the tax may be assessed at any time prior to the expiration date of such agreement. Subsequent agreements further extending the period of assessment may be executed prior to the expiration date of the previous agreement. Any agreement waiving and extending the statutory assessment period must be in writing and must clearly specify the date to which the assessment period has been extended. Any such extension will also extend the period in which a taxpayer may file an amended return claiming a refund. See Va. Code §§ 58.1-101, 58.1-1823. The department may extend the period for assessing the tax beyond the statute of limitations. See VR 630-1-101 for a detailed discussion of waivers. See also VR 630-1-1823 and §§ 58.1-101 and 58.1-1823 of the Code of Virginia.

5. Report of change or correction in federal income.

When any taxpayer reports a change or correction or files an amended return pursuant to reflecting an increase in federal taxable income pursuant to Va. Code § 58.1-311, or reports a change or correction in federal taxable income which is treated as a deficiency for federal purposes as required by § 58.1-311 of the Code of Virginia, an assessment may be made at any time within one year after such report, correction, or amended return is filed with the department. Any additional tax assessed pursuant to this provision regulation may not exceed the amount of additional Virginia tax due as a result of the federal change or correction. However, an assessment for additional amounts tax due which is not attributable to the federal change or correction may be made provided such assessment is made within the otherwise applicable statute of limitations. Further, if any other provision of law allows the assessment of tax during a period which exceeds the one-year period specified in this subsection, e.g., filing of a false or fraudulent return, such other provision shall prevail.

6. Carry-back deficiencies.

Any deficiency which is attributable to the carry-back of a net operating loss or net capital loss may be assessed at any time an assessment may be made for during the statutory period of limitations applicable to the taxable year in which the loss occurred. For example, if a taxpayer incurs a net operating loss in

taxable year 1983 and a portion of the loss is carried back to taxable year 1980 resulting in a refund for taxable year 1980, and a subsequent audit reduces or eliminates the loss which was carried back to 1980, assessment relative to such deficiency may be assessed within the statute of limitations applicable to taxable year 1983.

Example. SportCo, Inc., a calendar year filer, filed its Virginia income tax return for the 1991 calendar year on April 15, 1992. The return reflected a net operating loss which the corporation carried back to 1988. In 1993, the corporation reported a change in its 1991 federal taxable income to the department which reduced the net operating loss reported for 1991, resulting in an adjustment to the carryback of the net operating loss to 1988. There is now additional tax due for 1988 attributable to the 1991 net operating loss carryback. The general three year statute of limitations has expired for 1988. However, since the adjustment relates to a carryback from 1991, an assessment may be made at any time within the statute of limitations for the 1991 taxable year (i.e., within three years from April 15, 1992) or one year from filing the amended Virginia return, whichever is later.

7. Recovery of erroneous refund.

a. An erroneous refund of tax shall be considered an underpayment of tax on the date the refund is made. An assessment for recovery of the erroneous refund may be made within two years of the date such refund is made except that recovery may be made within five years if any part of the refund was the result of fraud or misrepresentation of a material fact.

b. a. Erroneous refund defined. As used in this regulation, the term "erroneous refund" means the issuance of a refund to which a taxpayer is not entitled. An erroneous refund of tax shall be considered an underpayment of tax as of the date the refund is issued by the department.

b. Where a taxpayer provides complete and current accurate information and an erroneous refund results from a departmental error, such as (for example, a clerical error), an assessment for the recovery of the erroneous refund may be made within two years from the date the erroneous refund was issued by the department is limited to recovery within the two year statute of limitations. See § 58.1-1812 of the Code of Virginia and VR 630-1-1812 for information on whether penalty and interest will be assessed.

c. If an erroneous refund issued by the department is induced by fraud or a misrepresentation of a material fact by the taxpayer, including inadvertent taxpayer error, e.g., the omission of information or

the incorrect listing of information which has a direct bearing on the computation of Virginia taxable income or tax liability. However, the department may make an assessment for the recovery of the amount erroneously refunded within five years from the date of the refund if the issuance of the erroneous refund results from a misrepresentation of a material fact by the taxpayer, including inadvertent taxpayer error, e.g., the omission of information or the incorrect listing of information which has a direct bearing on the computation of Virginia taxable income or tax liability was issued.

V.A.R. Doc. No. R94-383; Filed December 21, 1993, 3:12 p.m.

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Title of Regulation: VR 630-3-323. Corporate Income Tax: Excess Cost Recovery - Taxable Years Beginning Before January 1, 1988.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985 effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explains the procedures relating to the adjustments which taxpayers must make in accordance with § 58.1-323 of the Code of Virginia to phase in the Accelerated Cost Recovery System. All taxpayers must make an addition on their Virginia income tax return for taxable years beginning on or after January 1, 1982, and ending on or before December 31, 1987. Taxpayers are also permitted to claim

subtractions of previously required ACRS additions, pursuant to a prescribed schedule, in taxable years beginning before 1988.

Section 58.1-323 of the Code of Virginia was amended by Chapter 729 of the 1984 Acts of the General Assembly and Chapter 484 of the 1987 Acts of the General Assembly; the section was repealed by Chapter 9 of the 1987 Acts of the General Assembly effective for taxable years beginning on and after January 1, 1988.

The amendments to this regulation reflect the legislative changes made to § 58.1-323 of the Code of Virginia, and department policy regarding the ACRS additions and subtractions.

Substance: The amendments to § 1 reflect the General Assembly's repeal of § 58.1-323 of the Code of Virginia for years beginning after 1987.

The amendments to § 2 A incorporate the previously published policy that the Modified Accelerated Cost Recovery (MACRS) system was subject to the add back prior to the repeal of the section. The amendments to § 2 C makes it clear that no addition is required for property depreciated under the Alternative Depreciation System.

The amendments to § 3 make it clear that the subtraction previously allowed under this section is not allowed after 1987. The amendments to § 3 C incorporate the previously published policy that the ACRS additions and subtractions did not create a separate Virginia tax basis, that the adjustments do not follow the assets in the event of a sale, and that no lump sum recovery of ACRS additions is permitted upon sale of the underlying assets.

The amendments to § 4 B incorporate the previously published policy that a REIT must make the ACRS addition, and that no subtraction may be passed through to REIT shareholders.

The amendments to § 5 provide that § 58.1-323.1 of the Code of Virginia governs the subtraction of ACRS adjustments in taxable years after 1987.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the adjustments required, and the impact of legislative changes.

Although § 58.1-323 of the Code of Virginia was repealed, the accumulated ACRS adjustments are recovered pursuant to § 58.1-323.1 of the Code of Virginia. Corporations will be permitted to recover the outstanding balance of ACRS additions through 1997, and file refund claims thereafter. Accordingly, although § 58.1-323 of the Code of Virginia was repealed, the provisions of this section must be applied in order to determine the amount of outstanding ACRS eligible for subtraction. This regulation, and the amendments thereto, provide guidance in determining the

Proposed Regulations

amount of ACRS subtractions to be recovered pursuant to § 58.1-323.1 of the Code of Virginia.

Estimated Impact:

a. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include corporations which claimed federal tax deductions pursuant to the Accelerated Cost Recovery System (ACRS). Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. *The regulation applies to the ACRS additions and subtractions required in taxable years beginning before January 1, 1988.*

2. *The provisions of this section were repealed for taxable years beginning on or after January 1, 1988. ACRS additions which had not been previously recovered are allowed as subtractions in determining Virginia taxable income pursuant to § 58.1-323.1 of the Code of Virginia and VR 630-3-323.1. This regulation provides guidance in determining the balance of ACRS subtractions that are allowed to be recovered pursuant to § 58.1-323.1 in post 1987 taxable years.*

3. *The regulation incorporates previously published policy that:*

a. *Makes it clear that Modified Accelerated Cost Recovery (MACRS) deductions were subject to the ACRS addition.*

b. *Makes it clear that deductions under the Alternative Depreciation System did not require an ACRS addition.*

c. *Makes it clear that the ACRS additions did not create a separate Virginia basis, that ACRS subtractions do not follow assets in the event of a sale, and that no lump sum recovery of ACRS subtractions is permitted in the event of a sale of the assets.*

d. *Makes it clear that REIT's are subject to the ACRS addition, but that no subtraction may be passed through to REIT shareholders.*

4. *The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985 effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.*

5. *The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.*

VR 630-3-323. Corporate Income Tax: Excess cost recovery - taxable years beginning before January 1, 1988.

(A) § 1. In general.

The purpose of the adjustments described by ~~this section~~ § 58.1-323 of the Code of Virginia is to phase in the federal Accelerated Cost Recovery System (ACRS). All taxpayers must make an addition on their Virginia income tax returns for taxable years beginning on or after January 1, 1982, and thereafter ending on or before December 31, 1987, which is equal to 30% of the ACRS deduction claimed on their federal income tax returns. For taxable years beginning on or after January 1, 1984, and thereafter ending on or before December 31, 1987, a subtraction is allowed which is equal to a percentage of the ACRS additions made by the taxpayer in the taxpayer's Virginia income tax returns.

(B) § 2. Addition to income.

(1) A. Any taxpayer claiming a deduction for ACRS (or for Modified Accelerated Cost Recovery ("MACRS")) on the federal return is required to add 30% of the federal ACRS deduction claimed for federal income tax purposes to Virginia taxable income. The addition is required regardless of the location of the property and regardless of the recovery method elected under ACRS. Deductions claimed under MACRS are a part of the federal Accelerated Cost Recovery System, and are therefore required to be included for purposes of determining the addition required pursuant to this regulation.

(2) B. The addition is equal to 30% of the ACRS deduction except that no addition shall be made for any federal deduction claimed with respect to property not used to produce Virginia taxable income (such as foreign

source income).

(3) C. The following refers to items on federal form 4562, Depreciation and Amortization for 1984. Rules and exclusions.

(a) 1. No addition is required for the deduction under the election to expense recovery property. I.R.C. § 179 of the Internal Revenue Code .

(b) 2. The addition is required for all recovery property (3 year, 5 year, 10 year, 15 year public utility, 15 year real property low income housing, 15 year real property other than low income housing, 18 year real property) regardless of recovery period or method used or year placed in service.

(c) 3. No addition is required for property subject to an election under I.R.C. § 168(e) (2) of the Internal Revenue Code election to use a method not based on a term of years.

(d) 4. No addition is required for depreciation or amortization of non-recovery property.

5. No addition is required for property required to be depreciated under the Alternative Depreciation System, as defined by § 168 of the Internal Revenue Code.

(4) D. Partnerships, estates, trusts , and electing small business corporations (Subchapter S) S Corporations report the ACRS addition on their Virginia returns. The ACRS addition is included in the additions and subtractions reported to each partner, beneficiary , and shareholder in accordance with the distributive share for the taxable year.

(5) E. When less than 100% of a taxpayer's income is from Virginia sources the addition is made as follows:

(a) 1. Resident individuals add 30% of the federal ACRS deduction regardless of where the property is located. No deduction, exclusion, exemption, or proration of the addition is allowed except with respect to property used to produce foreign source income. (b) 2. Nonresident individuals add 30% of the federal ACRS deduction in the same manner as resident individuals. The addition will be adjusted by the percentage of Virginia income in the computation of Virginia taxable income.

(c) 3. Part-year residents add 30% of only the portion of the federal ACRS deduction earned while a resident of Virginia. The federal ACRS deduction shall be prorated based on the number of days of residence regardless of when the property is acquired or where the property is located.

(d) 4. Corporations add 30% of the federal ACRS deduction. Those corporations eligible to allocate and

apportion income will adjust the ACRS addition as part of apportionment computations.

(e) 5. Partnerships, electing small business corporations (Subchapter S corporations) S Corporations , estates , and trusts add 30% of the Federal ACRS deduction. If a partnership, electing small business corporation S Corporation , estate , or trust has income from sources in Virginia and other states, and has partners, shareholders , or beneficiaries who are not residents of Virginia, then the nonresident's share of the additions and subtractions shall be determined in accordance with generally accepted accounting principles.

(6) § 3. Subtraction from income .

A. For taxable years beginning on or after January 1, 1984 , and beginning before January 1, 1988 , taxpayers may subtract a portion of the ACRS additions made in the taxpayer's Virginia income tax returns for taxable years beginning on or after January 1, 1982 and thereafter .

B. The subtraction is computed as follows:

(1) 1. The ACRS additions for all taxable years beginning in and during calendar years 1982 and 1983 are totaled. Twenty percent (20%) of this total may be subtracted in the first taxable year beginning on or after January 1, 1984, and in each of the four succeeding taxable years beginning on or before December 31, 1987 . In no event shall the total amount subtracted exceed 100% of the ACRS additions made during the taxable years beginning in 1982 and 1983.

(2) 2. The ACRS additions for the two taxable years beginning on or after January 1, 1984 are totaled. Twenty percent (20%) of this total may be subtracted in the third taxable year beginning on or after January 1, 1984 , and in each of the four succeeding taxable years beginning on or before December 31, 1987 . In no event shall the total amount subtracted exceed 100% of the ACRS additions made during the two taxable years beginning on or after January 1, 1984.

(3) 3. This addition and subtraction cycle continues indefinitely through taxable years beginning on or before December 31, 1987 . Thus, additions made in the third and fourth taxable years beginning after January 1, 1984 will be subtracted in the fifth through the ninth taxable years; additions made in the fifth and sixth taxable years will be subtracted in the seventh through the eleventh taxable years.

(4) 4. Short taxable years beginning after January 1, 1984 are treated as ordinary taxable years. However, the first biennium, calendar years 1982 and 1983, includes all taxable years beginning during 1982 and 1983.

Proposed Regulations

(5) Example. Corporation A was organized on January 20, 1982 and filed its first tax return electing a taxable year ending June 30, 1982. In 1986 A was acquired by another corporation and filed a short year return for the period July 1, 1986 to December 31, 1986 in order to be included in the acquiring corporation's consolidated federal return. A continued to file a separate Virginia return. The first biennium contains three taxable years beginning January 20, 1982, July 1, 1982 and July 1, 1983. The ACRS additions for these three years total \$900, twenty percent of which (\$180) will be subtracted in taxable years ending on June 30, 1985, June 30, 1986, December 31, 1986, December 31, 1987 and December 31, 1988. The ACRS additions for the second biennium (taxable years ending on June 30, 1985 and June 30, 1986) total \$600, twenty percent of which (\$120) will be subtracted in taxable years ending December 31, 1986, December 31, 1987, December 31, 1988, December 31, 1989 and December 31, 1990.

Taxable Year Subtraction Ended	ACRS Addition On Va. Return	Total for Biennium	ACRS On Va. Return
6/30/82	300		None
6/30/83	300		None
6/30/84	300	900	None
6/30/85	300		180
6/30/86	300	600	180
12/31/86	210		180 +120 300
12/31/87	300	510	180 +120 300
12/31/88	300		180 +120 +102 402
12/31/89	300	600	120 +102 222
12/31/90	300		120 +102 +120 342

C. The ACRS additions are measured by the federal ACRS deductions, and do not affect the basis of property. Accordingly, the subsequent subtractions for recovery of additions are associated with the taxable entity which was required to make the additions, not with the underlying property. ACRS subtractions do not follow the assets in the event of a sale of the assets. Because there is no provision for a separate Virginia basis or basis adjustment, no lump sum recovery of ACRS additions is permitted upon the sale of the underlying property. Subtractions of ACRS additions are permitted in accordance with statutory methods, and do not depend on the continued ownership of the depreciable property.

(D) § 4. Special situations.

(1) A. Additions. For taxable years beginning during 1982 and 1983, any taxable entity filing a federal return in

which an ACRS deduction is claimed must add 30% of such deduction in computing Virginia taxable income. No subtraction may be claimed in 1982 and 1983 returns regardless of the taxpayer's situation.

(2) B. Additions by other taxpayers and pass-through entities .

(a) 1. Except for those situations set forth below, a taxpayer may claim a subtraction for only those ACRS additions made by the taxpayer. For this purpose a partner, beneficiary , or shareholder is NOT not deemed to have made ACRS additions reported by partnerships, estates, trusts , and electing small business corporations (Subchapter S corporation) S Corporations . A partner, for example, may claim an ACRS subtraction only to the extent that it is included in the partner's distributive share of the income, loss, additions , and subtractions for the taxable year. No adjustments are required or permitted due to any changes in the partner's ownership interest between the time the ACRS addition is made by the partnership and the time the ACRS subtraction is claimed by the partnership.

(b) 2. Any taxpayer (other than a surviving spouse) claiming a subtraction based upon ACRS additions made by any other taxable entity or taxpayer must attach to the return a statement setting forth the name and taxpayer I.D. No. (federal identification number or social security number) of such other taxable entity or taxpayer , details of the ACRS additions and previous subtractions claimed by such other taxable entity or taxpayer , an explanation of the relationship between the taxpayer and such other taxable entity or taxpayer, and a statement signed by the taxpayer (or legal representative) to the effect that the subtraction claimed has not, and will not, be claimed by any other person on any other return, including the final return of such other taxable entity or taxpayer .

(c) 3. A corporation may claim a subtraction based upon ACRS additions made by another corporation if there has been a merger or other form of reorganization and the corporation claiming the subtraction would be allowed under federal law to claim a net operating loss deduction based upon a net operating loss incurred by the corporation which made the ACRS additions, assuming such corporation had incurred a net operating loss.

(d) 4. A surviving spouse may claim a subtraction based upon ACRS additions made by the decedent and the surviving spouse on a joint or combined Virginia income tax return. The statement referred to in paragraph (b) § 4 B 2 of this regulation above is not required.

5. A Real Estate Investment Trust (REIT) must make the ACRS addition in computing Virginia taxable

income. A REIT may not pass through the ACRS modification to its shareholders, and shareholders of a REIT are not required to make any modification to Virginia Taxable income for ACRS attributable to distributions from the REIT.

~~(3)~~ C. When less than 100% of a taxpayer's income is from Virginia sources the subtraction is claimed in the same manner as additions. See ~~subsection (A)~~ ~~(5)~~ § 1 E of this regulation ~~above~~.

§ 5. Unrecovered balance of excess cost recovery.

The Virginia Tax Reform Act of 1987 (1987 Acts of Assembly, Chapter 9, HB 1119) repealed § 58.1-323 of the Code of Virginia for taxable years beginning on or after January 1, 1988. For the subtraction of the outstanding balance of excess cost recovery in taxable years beginning on or after January 1, 1988, see § 58.1-323.1 of the Code of Virginia and VR 630-3-323.1.

V.A.R. Doc. No. R94-384; Filed December 21, 1993, 2:56 p.m.

* * * * *

Title of Regulation: VR 630-3-323.1. Corporate Income Tax: Excess Cost Recovery.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on February 22, 1989, effective for taxable years beginning on or after January 1, 1988. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explains the procedures relating to the subtraction which taxpayers are allowed pursuant to § 58.1-323.1 of the Code of Virginia to recover the outstanding balance of adjustments made in pre-1988 taxable years.

Prior to 1988, taxpayers were required by § 58.1-323 of the Code of Virginia to phase in the federal Accelerated Cost Recovery System (ACRS) through a series of adjustments. An addition was required on Virginia income tax returns for taxable years beginning on or after January 1, 1982, and before January 1, 1988. Taxpayers were also permitted to claim subtractions of previously required ACRS additions, pursuant to a prescribed schedule, in pre-1988 taxable years.

Section 58.1-323 of the Code of Virginia was repealed by Chapter 9 of the 1987 Acts of the General Assembly effective for taxable years beginning on and after January 1, 1988. Section 58.1-323.1 of the Code of Virginia was enacted to allow taxpayer to recover the outstanding balance of ACRS adjustments which had not previously been recovered.

Section 58.1-323.1 was amended by Chapter 773 of the 1988 Acts of the General Assembly, Chapter 794 of the 1990 Acts of the General Assembly, Chapter 210 of the 1991 Acts of the General Assembly, and Chapter 296 of the 1992 Acts of the General Assembly.

The amendments to this regulation reflect the legislative changes made to § 58.1-323.1 of the Code of Virginia, and department policy regarding the recovery of the outstanding balance of ARCS additions.

Substance: The amendment to § 1 deletes the definition of corporation. This term is defined in VR 630-3-302, and does not need to be duplicated in this regulation.

The amendments to § 2 notify the reader that § 58.1-323.1 was amended in 1990, 1991, and 1992, to defer and extend the excess cost recovery program for corporate taxpayers.

The amendments to § 4 B make it clear that individuals can claim any available carryover of post-1987 ACRS subtractions from 1988 on their 1989 tax returns. Individuals may apply for a refund if post-1987 subtraction are not recovered on their 1989 tax return.

The amendments to § 4 C incorporate the legislative changes made to defer the recovery of post-1987 ACRS subtractions for corporations. The 1990 subtraction was reduced from 30% to 10%, and for 1991 through 1993 taxable years, the subtractions were eliminated. From 1994 through 1997 taxable years, the subtraction is equal to 10%. The amendments to this section make it clear that carryovers from prior years may be subtracted in subsequent years, and that carryovers from taxable years beginning before 1991 may be subtracted in 1991 through 1993 taxable years.

The amendments to § 4 D make it clear that carryovers of unused subtractions are not determined at the entity level by conduit entities, as previously determined in Public Document (P.D.) 89-193 (6/27/89).

The amendments to § 4 F incorporate the legislative

Proposed Regulations

suspension of corporate subtractions in 1991 through 1993 taxable years.

The amendments to § 5 make it clear that unused subtractions may be carried over until fully utilized.

The amendments to § 5 E 1 provide that where a net operating loss is carried back to a taxable year beginning after December 31, 1987, the post-1987 ACRS subtraction for such year shall be redetermined. Where, after the net operating loss carryback, a post-1987 ACRS carryover is created or increased, the revised amount may be carried to subsequent years. This is consistent with P.D. 93-4 (1/8/93).

The amendments to § 5 E 2 provide that where a net operating loss carryback creates or increases the amount of a post-1987 ACRS carryover, the year(s) to which the revised ACRS carryover can be carried may be amended within the statute of limitations prescribed for filing the carryback claim arising from the net operating loss. Where the statute of limitations is otherwise closed for such carryover year, the amended return is limited solely to the changes arising from the changes to the post-1978 ACRS carryover. Examples of this amendment are also provided.

The amendments to § 8 C provide that where a net operating loss incurred in a taxable year beginning before January 1, 1988, is deducted in a taxable year beginning on or after January 1, 1988, the net ACRS addition carried with the loss (as provided in VR 630-3-402.3 and VR 630-2-311.1) shall be eliminated. The amendments also make it clear that post-1987 ACRS subtractions are not considered to be Virginia additions or subtractions that must be carried forward or back with a net operating loss for purposes of VR 630-3-402.3 or VR 630-2-311.1.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the adjustments required, and the impact of legislative changes.

Corporations are permitted to recover the outstanding balance of ARCS additions through 1997, and file refund claims thereafter. Individuals are permitted to recover the outstanding balance of ARCS additions through 1989, and file refund claims thereafter. Both individuals and corporations may be required to redetermine the amount of a post-1987 carryover or refund in the event of a net operating loss carryback. Accordingly, the provisions of this section must be applied in order to determine the amount of the post-1987 ACRS subtraction or refund which is allowed. This regulation, and the amendments thereto, provide guidance in determining the amount of ACRS subtractions or refund to be recovered pursuant to § 58.1-323.1 of the Code of Virginia.

Estimated Impact:

a. Projected cost to agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. Source of funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. Number and types of regulated entities: Entities subject to the provisions of this regulation include corporations that are entitled to make adjustments in determining their Virginia taxable income pursuant to § 58.1-323.1 of the Code of Virginia in taxable years beginning on or after January 1, 1988, and individuals that carry back net operating losses to 1988 and 1989 taxable years. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. Projected cost to regulated entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. *Section 58.1-323.1 of the Code of Virginia has been amended subsequent to its enactment to defer the timing of subtractions allowed to corporate taxpayers; the amendments to this regulation incorporate such legislative changes.*

2. *The amendments to the regulation also provide:*

a. *Where a net operating loss is carried back to a taxable year beginning after December 31, 1987, the post-1987 ACRS subtraction for such year shall be redetermined. Where, after such net operating loss carryback, a post-1987 ACRS carryback is created or increased, the revised amount may be carried to subsequent years.*

b. *Where a net operating loss carryback creates or increases the amount of a post-1987 ACRS carryover, the year(s) to which the revised ACRS carryover can be carried may be amended within the statute of limitations prescribed for filing the carryback claim arising from the net operating loss. Where the statute of limitations is otherwise closed for such carryover year, the amended return is limited solely to the changes arising from the changes to the post-1987 ACRS carryover.*

c. Carryovers of unused subtractions are not determined at the entity level by conduit entities.

d. Unused post-1987 ACRS subtractions may be carried over until fully utilized.

e. Where a net operating loss incurred in a taxable year beginning before January 1, 1988, is deducted in a taxable year beginning on or after January 1, 1988, the net ACRS addition carried with the loss (as provided in VR 630-3-402.3 and VR 630-2-311.1) shall be eliminated. Also, post-1987 ACRS subtractions are not considered to be Virginia additions or subtractions that must be carried forward or back with a net operating loss for purposes of VR 630-3-402.3 or VR 630-2-311.1.

3. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

VR 630-3-323.1. Corporate Income Tax: Excess Cost Recovery.

§ 1. Definitions.

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

“ACRS addition” means an excess cost recovery addition actually reported under § 58-151.013(b)(6) (prior to the recodification of Title 58), § 58.1-322 B 6 (for individuals) and § 58.1-402 B 3 (for corporations) of the Code of Virginia, on any return filed for a taxable year beginning between January 1, 1982 and December 31, 1987.

“ACRS subtraction” means an excess cost recovery subtraction allowable under § 58-151.013(c)(10) (prior to the recodification of Title 58), § 58.1-322 C 8 (for individuals), and § 58.1-402 C 9 (for corporations) of the Code of Virginia, for any taxable year beginning after December 31, 1983, but before January 1, 1988, regardless of whether or not a return was filed to claim the allowable subtraction.

“Corporation” means any person or entity subject to tax or required to file a return under Article 10, Chapter 3 (§ 58.1-400 et seq.) of Title 58.1 of the Code of Virginia.

“Individual” means any natural person, married or unmarried, who is subject to taxation or required to file a return under Article 2 of Chapter 3 (§ 58.1-300 et seq.) of Title 58.1 of the Code of Virginia.

“Outstanding balance of excess cost recovery” means the amount equal to the difference between (i) the sum of the ACRS additions actually reported on Virginia returns filed for taxable years beginning on and after January 1, 1982, and before January 1, 1988; and (ii) the sum of the ACRS subtractions allowed or allowable on Virginia

returns, regardless of whether or not a Virginia return was actually filed, for taxable years beginning on and after January 1, 1984, and before January 1, 1988.

“Post-1987 ACRS subtraction” means the portion of the outstanding balance of excess cost recovery which may be subtracted by individuals on returns for taxable years beginning on or after January 1, 1988, and before January 1, 1990, or by corporations on returns for taxable years beginning on or after January 1, 1988, and before January 1, 1993 1998 .

§ 2. Purpose.

A. ~~Generally.~~ The Virginia Tax Reform Act of 1987 added § 58.1-323.1 of the Code of Virginia which phases out the excess cost recovery program through the allowance of post-1987 subtractions effective for taxable years beginning on and after January 1, 1988. In 1988 § 58.1-323.1 of the Code of Virginia was amended to permit a refund if a final federal and Virginia return was returns were filed for a taxable year beginning prior to January 1, 1988. Section 58.1-323.1 of the Code of Virginia was also amended in 1990, 1991, and 1992 to defer and extend the excess cost recovery program for corporate taxpayers. This regulation sets forth the rules applicable to both individual and corporate taxpayers. In most cases the outstanding balance of excess cost recovery may be recouped through annual post-1987 subtractions over a two year period for individual taxpayers and a ~~five~~ 10 year period for corporate taxpayers (see § 4 of this regulation). Generally, if a taxpayer has insufficient Virginia taxable income to benefit from a subtraction in a particular year, all or part of the subtraction may be carried over to the next year subsequent years (see § 5 of this regulation). A taxpayer who files a final federal and Virginia return may claim an immediate subtraction for the unrecovered outstanding balance of excess cost recovery (see § 6 of this regulation). If at a conclusion of the applicable subtraction period (1989 for individuals and 1992 1997 for corporations), or after filing a final federal and Virginia return, the taxpayer still has not recouped the outstanding balance of excess cost recovery, the taxpayer may qualify to file an application for a refund (see § 7 of this regulation).

B. ~~Exclusive method.~~ Effective for taxable years beginning on and after January 1, 1988, the post-1987 subtractions and refunds allowable under this regulation shall be the exclusive means of recovering the outstanding balance of excess cost recovery.

§ 3. Computation of the outstanding balance of excess cost recovery.

A. ~~Generally.~~ A taxpayer's outstanding balance of excess cost recovery is computed only with respect to ACRS additions attributable to federal ACRS deductions on property owned directly by the taxpayer or deemed to be owned by the taxpayer for federal income tax purposes, and ACRS subtractions attributable to such ACRS additions.

Proposed Regulations

For the treatment of ACRS additions and ACRS subtractions passed through from a conduit entity see § 4 D of this regulation .

B. Computation. *The outstanding balance of excess cost recovery is computed as follows:*

1. The outstanding balance of excess cost recovery includes the sum of ACRS additions , actually reported on a Virginia return for taxable years beginning on and after January 1, 1982, and before January 1, 1988. If no Virginia return was filed for a taxable year then no ACRS addition with respect to such taxable year , may be included in the outstanding balance of excess cost recovery.

2. For most taxpayers the information necessary to compute the "outstanding balance of excess cost recovery" can be found on the Form 302 included with the Virginia returns for taxable years 1986 and 1987.

a. The "ACRS additions" for taxable years 1982, 1983, 1984, and 1985 can be found in Column B of part II of the Form 302 attached to the 1986 and 1987 return.

b. The "ACRS additions" for taxable years 1986 and 1987 can be found in Part I of the Form 302 attached to the 1986 and 1987 return, respectively.

3. The outstanding balance of excess cost recovery is reduced by the sum of ACRS subtractions which would have been allowable with respect to each biennium's ACRS additions, whether or not a return was actually filed claiming an ACRS subtraction in each taxable year beginning on and after January 1, 1984, and before January 1, 1988.

a. The ACRS subtractions which would have been allowable with respect to the first biennium, 1982/1983, are the sum of the ACRS additions actually reported on a Virginia return for all taxable years beginning on and after January 1, 1982, and before January 1, 1984, multiplied by 80% (the percentage allowed or allowable in the four taxable years following the close of the 1982/1983 biennium, i.e., 20% x 4) or by 100% (see subdivision (2) of this subdivision).

(1) The number of taxable years included in the first biennium may be one, two, or more, depending upon when the taxpayer was required to file a Virginia return and whether returns for short taxable years were filed during the period.

(2) If one or more returns for a short taxable year were filed for a period beginning after the close of the 1982/1983 biennium the percentage allowed or allowable may be 100% for the first biennium (20% x 5).

b. The ACRS subtractions which would have been allowable with respect to the second biennium, 1984/1985, are the sum of the ACRS additions actually reported on a Virginia return for the first two taxable years beginning on and after January 1, 1984, multiplied by 40% (the percentage allowed or allowable in the two taxable years following the close of the 1984/1985 biennium, i.e., 20% x 2).

(1) The number of taxable years included in the second biennium will be two unless the taxpayer did not file a return or only filed one Virginia return during the period beginning after January 1, 1984.

(2) The percentage allowed or allowable may be more or less than 40% if one or more returns for a short taxable year were filed for a period beginning on and after January 1, 1984, or if the taxpayer was not required to file a Virginia return for a period beginning before January 1, 1985.

(3) For Example: If a calendar year taxpayer first became subject to Virginia income tax in 1985, there would be no ACRS subtractions with respect to the first biennium because no returns were filed in 1982 and 1983, therefore, no ACRS additions were reported. The ACRS subtractions with respect to the second biennium would be based on ACRS additions reported on the 1985 and 1986 Virginia returns multiplied by 20% (i.e., 20% x 1, the number of taxable years beginning after the close of the second biennium and before January 1, 1988).

c. The ACRS subtractions which would have been allowable with respect to the third biennium, 1986/1987, will be zero unless one or more returns for a short taxable year were filed for a period beginning on and after January 1, 1984.

§ 4. Post-1987 ACRS subtractions.

A. Generally.

1. Except as otherwise provided in § 5 ; (Carryover of unused subtractions ;), § 6 ; (Final return ;), § 7 ; (Application for refund ;), and § 8 ; (Special rules ;) of this regulation the outstanding balance of excess cost recovery as computed in § 3 of this regulation shall be claimed as post-1987 ACRS subtractions on returns filed for taxable years beginning on and after January 1, 1988, as set forth in this section.

2. A taxpayer's post-1987 ACRS subtraction for a taxable year is the sum of:

a. The post-1987 ACRS subtraction computed as set forth in this section with respect to the outstanding balance of excess cost recovery attributable to federal ACRS deductions on property owned directly by the taxpayer or deemed to be owned by the taxpayer for federal income tax purposes, and

b. The post-1987 ACRS subtraction computed as set forth in this section with respect to the outstanding balance of excess cost recovery computed in accordance with § 3 B of this regulation by a conduit entity and passed through to the taxpayer in accordance with § 4 D of this regulation .

B. Individuals.

1. 1988. For the taxable year beginning in 1988 the post-1987 ACRS subtraction is equal to two-thirds of the outstanding balance of excess cost recovery.

2. 1989. For the taxable year beginning in 1989 the post-1987 ACRS subtraction is equal to one-third of the outstanding balance of excess cost recovery , plus the carryover from 1988, if any, computed in accordance with § 5 of this regulation .

3. 1990 and after. If a post-1987 subtraction is included in the Virginia modifications distributed by an S corporation, partnership, estate , or trust for its fiscal year ending after December 31, 1989, the individual may elect to include such amounts in the individual's subtractions for the taxable year, or may claim a refund under § 7 of this regulation .

C. Corporations.

1. 1988. For the taxable year beginning in 1988 the post-1987 ACRS subtraction is equal to 10% of the outstanding balance of excess cost recovery.

2. 1989. For the taxable year beginning in 1989 the post-1987 ACRS subtraction is equal to 10% of the outstanding balance of excess cost recovery , plus the carryover, if any, computed in accordance with § 5 of this regulation .

3. 1990. For the taxable year beginning in 1990 the post-1987 ACRS subtraction is equal to ~~30%~~ 10% of the outstanding balance of excess cost recovery , plus the carryover, if any, computed in accordance with § 5 of this regulation .

4. 1991 through 1993 . For the taxable year years beginning 1991 ~~the through 1993~~, no post-1987 ACRS subtraction is equal to ~~30%~~ of the outstanding balance of excess cost recovery shall be allowed. However, the carryover from taxable years beginning before 1991, if any, computed in accordance with § 5 of this regulation may be subtracted in the taxable years 1991 through 1993 to the extent not previously allowed .

5. ~~1992 1994~~ . For the taxable year beginning 1992 the post-1987 ACRS subtraction is equal to ~~30%~~ 10% of the outstanding balance of excess cost recovery , plus the carryover, if any, computed in accordance with § 5 of this regulation .

6. 1995. For the taxable year beginning in 1995, the post-1987 ACRS subtraction is equal to 20% of the outstanding balance of excess cost recovery, plus the carryover, if any, computed in accordance with § 5 of this regulation .

7. 1996. For the taxable year beginning in 1996, the post-1987 ACRS subtraction is equal to 20% of the outstanding balance of excess cost recovery, plus the carryover, if any, computed in accordance with § 5 of this regulation .

8. 1997. For the taxable year beginning in 1997, the post-1987 ACRS subtraction is equal to 20% of the outstanding balance of excess cost recovery, plus the carryover, if any, computed in accordance with § 5 of this regulation .

D. Conduit entities.

1. A conduit entity (estate, trust, partnership and S corporation) shall compute its outstanding balance of excess cost recovery in accordance with § 3 B of this regulation .

2. In each taxable year beginning on and after January 1, 1988, and before January 1, 1990, a conduit entity shall compute the post-1987 ACRS subtraction in accordance with § 4 B of this regulation relating to individuals , without regard to whether or not the beneficiary, fiduciary, partner , or shareholder is an individual, and shall provide each beneficiary, partner or shareholder with sufficient information to report the appropriate post-1987 ACRS subtraction. No carryover of unused subtractions shall be determined at the conduit entity level.

3. If a conduit entity files a short year return for the fiscal year ended December 31, 1987, in order to change its taxable year to a calendar year, each beneficiary, partner, or shareholder may, in certain circumstances, elect to spread the income from the conduit entity's short taxable year over four taxable years for federal income tax purposes. If such an election is made:

a. One-quarter of the conduit entity's Virginia modifications for the short taxable year (including the ACRS addition and ACRS subtraction) must be included in the 1987 Virginia taxable income of the beneficiary, partner, or shareholder;

b. One-quarter of the conduit entity's Virginia modifications for the short taxable year (excluding the ACRS addition and ACRS subtraction) must be included in the Virginia taxable income of the beneficiary, partner, or shareholder in each of the three following taxable years; and

c. The beneficiary, partner, or shareholder shall adjust the the post-1987 ACRS subtraction passed

Proposed Regulations

through from the conduit entity in each taxable year as follows: (i) For 1988, by subtracting one-half of the conduit entity's 1987 ACRS addition and adding one-half of the conduit entity's 1987 ACRS subtraction; (ii) For 1989, by subtracting one-quarter of the conduit entity's 1987 ACRS addition and adding one-quarter of the conduit entity's 1987 ACRS subtraction.

d. Example. An S corporation was formed in July 1985 and elected a fiscal year ending June 30. It reported and passed through ACRS additions of \$200 in each of its fiscal year ended (F.Y.E.) 6/30/86 and 6/30/87. There were no other Virginia additions or subtractions. The S corporation filed a short-year return for F.Y.E. 12/31/87 reporting an ACRS addition of \$100 and an ACRS subtraction of \$80. The sole shareholder of the S corporation elected to spread the short-year income over four years for federal purposes, reporting only \$25 and \$20 of the short-year ACRS additions and subtractions in 1987. In 1988 the S corporation passed through a post-1987 subtraction of \$280 (2/3 of \$500 - \$80). Because of the shareholder's election the \$280 must be reduced by 1/2 of the F.Y.E. 12/31/87 addition (1/2 of 100 = 50) and increased by 1/2 of the F.Y.E. 12/31/87 subtraction (1/2 of 80 = 40) for a net modification of \$270. The net effect of these modifications is represented in the following table:

Description of Modification	Total Passed Through	Reported in Shareholder's Virginia Return For			
		1986	1987	1988	1989
F.Y.E. 6/30/86 ACRS Addition	200	200			
F.Y.E. 6/30/87 ACRS Addition	200		200		
F.Y.E. 12/31/87 ACRS Addition	100		25	50	25
F.Y.E. 12/31/87 ACRS Subtract.	(80)		(20)	(40)	(20)
Post-1987 ACRS Subtraction	(420)			(280)	(140)
Net Modifications	0	200	205	(270)	(135)

E. Short taxable year.

1. If there is more than one taxable year beginning on or after January 1, 1988, because of a taxable year of less than 12 months, the allowable portion of the subtraction shall be prorated between all taxable years which begin in the same calendar year. The proration will be based on the number of months in each taxable year divided by the total number of months in all taxable years beginning during the calendar year.

2. Example. XYZ, Inc. files on a calendar year basis. On December 21, 1987, XYZ, Inc. is acquired by Holding, Inc., which files its returns on the basis of a

fiscal year ending on September 30. In order to be included in a consolidated return with Holding, Inc., XYZ, Inc. files two returns for taxable years beginning in 1988 - a short-year return for the period January 1, 1988, through September 30, 1988, (nine months) and a return for the period October 1, 1988, through September 30, 1989, (12 months). Because there are two taxable years beginning in 1988, which cover a total of 21 months, the post-1987 ACRS subtraction for 1988 (10% of the outstanding balance of excess cost recovery) must be prorated between the nine-month taxable year and the 12-month taxable year as follows:

Taxable year 1/1/88-9/30/88: $10\% \times 9/21 = 4.29\%$

Taxable year 10/1/88-9/30/89: $10\% \times 12/21 = 5.71\%$

Total subtractions for 1988 = 10.00%

F. Former S corporation.

1. If an S corporation becomes taxable under subchapter C of the I.R.C. *Internal Revenue Code*, its post-1987 ACRS subtraction for taxable years after termination of the election shall be the amount by which:

a. The total post-1987 ACRS subtractions for the current and all prior taxable years computed under § 4 C of this regulation relating to corporations, exceeds

b. The total post-1987 ACRS subtractions which were actually passed through to beneficiaries, partners and shareholders by the former S corporation or which were claimed by the corporation after it ceased to qualify as an S corporation.

2. Example. An S corporation is acquired by another corporation as of the first day of 1989, thereby terminating its status as an S corporation for 1989. Two-thirds of the outstanding balance of excess cost recovery was passed through to the former S corporation's shareholders in 1988. The remaining one-third will be subtracted as follows:

Post-1987 ACRS Subtraction	1989	1990	1991	1992	
1. Percent allowable for current and prior years		20%	50%	80%	100%
2. Percent previously passed through or allowed	66.7%	66.7%	66.7%	66%	
3. Percent allowable for current year (1. - 2.)	0.0%	0.0%	13.3%	34%	
4. 2, but not less than 0	0.0%	0.0%	13.3%	34%	

3. If a corporation makes a valid election to be taxed under subchapter S of the I.R.C. *Internal Revenue Code* after 1987, any post-1987 ACRS subtraction which has not been used by the corporation shall be passed through to its shareholders in accordance with § 4 D of this regulation. However, if the election is made

Proposed Regulations

for a taxable year beginning on and after January 1, 1990, no amount shall be passed through to the shareholder under § 4 D of this regulation, but the corporation shall be eligible to apply for a refund under § 7 of this regulation.

§ 5. Carryover of unused subtractions.

A. Individuals.

1. Any individual who has insufficient *Virginia taxable income (computed without regard to any post-1987 ACRS subtraction)* to offset the full amount of the any post-1987 ACRS subtraction and any carryover available for such taxable year, shall add the amount not offset to the amount allowable for the following taxable year. No amount may be subtracted under this subdivision in any taxable year beginning on or after January 1, 1990, unless such post-1987 ACRS subtraction is attributable to a conduit entity. An individual who has not recovered the full amount of the outstanding balance of excess cost recovery under this section or under § 4 of this regulation on his income tax returns filed for taxable years 1988 and 1989, may qualify to file an application for a refund under § 7 of this regulation. For recovery of post-1987 ACRS subtractions distributed from a conduit entity in years beginning after 1989, see § 4 B 3 of this regulation.

2. The portion of any post-1987 ACRS subtraction available for carryover is the lesser of:

a. The amount by which Virginia taxable income (determined by subtracting the full amount of post-1987 ACRS subtraction and carryovers available) is less than zero, or

b. The post-1987 ACRS subtraction for the taxable year including amounts carried over from a prior year under this section.

3. A taxpayer may not elect to claim less than the allowable post-1987 ACRS subtraction in any year in order to take advantage of a credit, or for any other reason.

4. Example.

a. Taxpayer A, an individual filing on a calendar year, has an outstanding balance of excess cost recovery equal to \$9,000 after taxable year 1987. For calendar year 1988 he is single with federal adjusted gross income of \$12,350 and Virginia itemized deductions of \$7,250. For Virginia income tax purposes, he has no federal adjusted gross income and he has no subtractions from federal adjusted gross income other than his post-1987 ACRS subtraction. His carryover from taxable year 1988 to 1989 is \$1,700, which is computed in the following manner:

Federal Adjusted Gross Income	\$12,350
Va. Personal Exemption	- 800
Va. Itemized Deductions	- 7,250
Post-1987 ACRS Subtraction (\$9,000 x 2/3)	- 6,000
Va. Taxable Income	- 1,700

b. Taxpayer A would be allowed to carryover carry over \$1,700 of his post-1987 ACRS subtraction for 1988 to 1989 and add it to the post-1987 ACRS subtraction (\$3,000) otherwise allowable as a subtraction in 1989. Therefore, in 1989 Taxpayer A will have a total post-1987 ACRS subtraction of \$4,700 (\$1,700 carryover from 1988 + \$3,000 for 1989).

c. Taxpayer A may not claim a post-1987 ACRS subtraction of less than \$6,000 in 1988 (increasing the amount carried over to 1989) in order to take advantage of an energy income tax credit carried over from 1987 (which cannot be carried over to 1989).

B. Corporations.

1. Any corporation which has insufficient *Virginia taxable income (computed without regard to any post-1987 ACRS subtraction)* to offset the full amount of the any post-1987 ACRS subtraction and carryover available for such taxable year, shall add the amount not offset to the amount allowable for the following taxable year. No amount may be subtracted under this subdivision in any taxable year beginning on or after January 1, 1990 1988. Any corporation that has not recovered the full amount of the outstanding balance of excess cost recovery under § 4 of this regulation or under this section on income tax returns filed for taxable years beginning on or after January 1, 1988, but before January 1, 1990 1988, may qualify to file an application for a refund under § 7 of this regulation.

2. The amount of the post-1987 ACRS subtraction available for carryover is the lesser of:

a. The amount by which Virginia taxable income (determined by subtracting the full amount of post-1987 ACRS subtraction and carryovers available) is less than zero, or

b. The post-1987 ACRS subtraction for the taxable year including amounts carried over from a prior year under this section.

3. Example. ABC, Inc. has an outstanding balance of excess cost recovery equal to \$120,000 after taxable year 1987. Under § 4 the allowable post-1987 ACRS

Proposed Regulations

subtraction is \$12,000 for 1988 and 1989, \$36,000 for 1990 and 1991, and \$24,000 for 1992. ABC has losses or income which are insufficient to absorb the full amount of the post-1987 ACRS subtractions in every year. The Virginia taxable income and carryover would be computed as follows:

Taxable year	1988	1989	1990	1991	1992
Taxable Income Before Post-1987 ACRS Subtraction:	10,000	-5,000	28,000	78,000	
Post-1987 ACRS Subtractions for current year:	12,000	12,000	36,000	36,000	
from prior year:	N/A	2,000	14,000	22,000	0
Taxable Income:	-2,000	-19,000	-22,000	20,000	
Post-1987 ACRS Subtraction available for next year:	2,000	14,000	22,000	0	N/A

"N/A" means a carryover is not available to or from the taxable year.

C. Conduit entities.

Estates, trusts, partnerships, and S corporations do not carryover carry over post-1987 ACRS subtractions under this section. Amounts distributed under § 4 D may be carried over by the beneficiaries, partners, or shareholders.

D. Nonresidents.

If a nonresident has income from Virginia sources or is required to file a Virginia return the nonresident may claim a post-1987 ACRS subtraction and carryover unused amounts under this section.

E. Net operating loss carrybacks.

1. If a net operating loss incurred in a taxable year beginning after December 31, 1987, is carried back to a taxable year beginning on or after January 1, 1988, and after such carryback the Virginia taxable income in the carryback year is less than zero, the amount of post-1987 ACRS subtraction available for carryover to subsequent years shall be redetermined. The amount of the post-1987 ACRS subtraction available for carryover to subsequent years shall be equal to the lesser of:

a. The amount by which Virginia taxable income (determined by subtracting the full amount of post-1987 ACRS subtraction available and the

amount of net operating loss carryback applied) is less than zero, or

b. The post-1987 ACRS subtraction for the taxable year including amounts carried over from a prior year under this section.

For purposes of this subsection the amount of net operating loss carryback applied in a carryback year shall be equal to the difference between the total net operating loss carryback available in such year, and the amount of such carryback which may be carried to years subsequent to such year in accordance with § 172 of the Internal Revenue Code.

2. Statute of limitations. Where a net operating loss carryback changes the amount of post-1987 ACRS subtraction utilized in the carryback year, the post-1987 ACRS subtraction available for carryover to a subsequent year may be changed in accordance with subdivision E 1 of this subsection. The statute of limitations for filing an amended return for such subsequent year is generally controlled under § 58.1-1823 of the Code of Virginia. However, within the statute of limitations prescribed for filing the carryback claim arising from the net operating loss, the taxpayer may file an amended return for a year subsequent to the carryback year even though the statute is otherwise closed. Such amended return shall be limited solely to changes in the amount of post-87 ACRS subtraction which may be deducted in the subsequent year as a result of the carryback of the net operating loss, and any refund shall be limited to the reduction in tax attributable to the change in post-87 ACRS subtraction available in the subsequent year as a result of the net operating loss carryback. In the event that a net operating loss carryback results in a taxpayer being unable to fully recover the outstanding balance of the excess cost recovery through post-87 ACRS subtractions, the taxpayer may make an application for a refund in accordance with § 7 of this regulation, or amend an application previously made under § 7 of this regulation. The time for filing such application as provided in § 7 C of this regulation shall be extended through the statute of limitations prescribed for filing the carryback of the net operating loss from the loss year.

Example 1. James Smith incurs a net operating loss in 1991, which he carries back to 1988. After the carryback, Mr. Smith has a carryover of post-1987 ACRS subtraction which may be carried forward to 1989. Although the statute of limitations within which the 1989 return may otherwise be amended has expired, Mr. Smith is permitted to amend his 1989 income tax return to include to the carryover of post-1987 ACRS subtractions from 1988 which resulted from the net operating loss carryback. The 1989 amended return must be filed within the time prescribed for filing the net operating loss carryback.

from 1991.

Example 2. Assume the same facts as in Example 1. Upon filing an amended 1989 return, Mr. Smith discovers that he has insufficient taxable income in 1989 to recover the entire balance of excess cost recovery through post-1987 ACRS subtractions. Mr. Smith may apply for a refund in accordance with § 7 of this regulation within the time prescribed for filing the net operating loss carryback from 1991.

§ 6. Final return.

1. When any taxpayer has filed a final federal return due to the death of an individual or the dissolution of a partnership, estate, trust, or individual, for a taxable year beginning on and after January 1, 1988, the taxpayer may claim the entire outstanding balance of excess cost recovery (less amounts already claimed as a post-1987 ACRS subtraction) on the final Virginia return.

a. Conduit entities. Amounts claimed on the final Virginia return of an estate, trust, partnership or S corporation shall be distributed in accordance with § 4 D.

b. Other taxpayers. If the taxpayer has insufficient income on the final Virginia return to offset the entire amount allowable under this subdivision section, an application for the refund of unrecovered taxes paid on the outstanding balance of excess cost recovery may be filed under § 7 of this regulation.

2. The fact that a taxpayer files a final Virginia return because an individual has moved from Virginia or a business has discontinued operations in Virginia shall not entitle the taxpayer to the immediate subtraction or refund allowed in § 7 A 1 of this regulation.

§ 7. Application for refund.

A. Generally In general.

1. Any taxpayer who can demonstrate that the entire outstanding balance of the excess cost recovery as computed in § 3 of this regulation has not been recovered through post-1987 ACRS subtractions allowable under §§ 4 or 5 of this regulation by such taxpayer or any other taxpayer may apply for a refund of unrecovered taxes paid on the outstanding balance of excess cost recovery.

2. When any taxpayer has filed a final federal return due to the death of an individual or the dissolution of a partnership, estate, trust, or individual, an application for the refund of unrecovered taxes paid on the outstanding balance of excess cost recovery may be filed by the person authorized to act on

behalf of the deceased or dissolved taxpayer.

3. The fact that a taxpayer files a final Virginia return because an individual has moved from Virginia or a business has discontinued its operations in Virginia shall not entitle the taxpayer to apply for a refund under this section.

4. Estates, trusts, partnerships, and S corporations shall not apply for a refund under this section except to the extent that the fiduciary of an estate or trust paid tax on undistributed income, or to the extent a former C corporation paid tax on such ACRS additions and such amounts were not recovered in accordance with § 4 F 3 of this regulation.

5. No refund shall be allowed under this section unless the taxpayer has income from Virginia sources or is required to file a Virginia return for each taxable year in which a subtraction is allowed under § 4 of this regulation or, if earlier, for each taxable year until a final federal return is filed.

B. Computation of the refund amount.

1. The refund shall be computed upon the amount of the outstanding balance of excess cost recovery which has not been recovered through post-1987 ACRS subtractions allowable under § 4 or § 5 of this regulation. This amount shall be multiplied by 5.75% (0.0575) in the case of an individual or by 6.0% (0.06) in the case of a corporation.

2. In no case shall the amount of refund allowed under this section exceed the amount of tax that was actually paid on the outstanding balance of excess cost recovery and not otherwise recovered through post-1987 ACRS subtractions. For the purpose of computing the limitation under this subdivision:

a. The refund shall be limited to the amount by which (i) the sum of the difference between the tax actually paid and the tax computed without the ACRS addition and ACRS subtraction for each taxable year beginning on and after January 1, 1982, and before January 1, 1988, exceeds (ii) the sum of the difference between the tax actually paid and the tax computed without the post-1987 ACRS subtraction for each taxable year beginning on and after January 1, 1988.

b. A beneficiary may include tax paid by an estate or trust with respect to a distribution of accumulated income.

c. A shareholder of an S corporation may include the distributive share of tax paid by the corporation in years before it elected S corporation status.

d. In the case of a net operating loss, a taxpayer may include either:

Proposed Regulations

(1) Virginia income tax paid in the year of the loss (if any), or

(2) Virginia income tax paid in a year to which any portion of the loss year ACRS addition and ACRS subtraction may have been carried with a federal net operating loss deduction.

e. In the case of a corporation required to allocate and apportion its income for any taxable year in which an ACRS addition was reported the Virginia income tax paid for such year shall be the tax attributable to the ACRS addition (net of any allowable ACRS subtraction) after apportionment.

3. Examples.

a. Newco, Inc. is incorporated in 1986 and dissolved in 1988. Newco reports ACRS additions of \$1,000 on its 1986 return and \$1,500 on its 1987 return. Newco's outstanding balance of excess cost recovery is \$2,500, all of which is reported on the 1988 final return under § 6 of this regulation. Since Newco only has sufficient income in 1988 to offset \$1,000 of the final post 1987 ACRS subtraction, Newco has \$1,500 of unrecovered outstanding balance of excess cost recovery eligible for a refund under § 7 A of this regulation. The refund amount would be \$90 (\$1,500 x 6%) under § 7 B 1 of this regulation; however, under § 7 B 2 of this regulation the refund is limited to \$24 (the tax of \$60 actually paid in 1986 and 1987 attributable to the ACRS additions less the tax of \$36 attributable to the ACRS additions less the tax of \$36 attributable to the post-1987 subtraction in 1988). The calculation of the limitation is shown below:

	1986		1987		1988	
	With ACRS	W/O ACRS	With ACRS	W/O ACRS	With ACRS	W/O ACRS
Income after other Va. modifications	2,000	2,000	500	500	1,000	1,000
ACRS addition	1,000	*	1,500	*		
Post 1987 ACRS sub.					2,500	*
Va. taxable income	3,000	2,000	2,000	500	(1,500)	1,000
Apportionment factor	25%	25%	50%	50%	60%	60%
Income of a multistate	750	500	1,000	250	(900)	600
Tax (6%)	45	30	60	15	0	36
Difference (i.e., tax attributable to ACRS modifications)		15		45		(36)

* ACRS modification excluded to compute the limitation.

Therefore, the limitation on the refund is \$24 (15 + 45 - 36).

b. James Smith moved to Virginia in 1987 and was required to report an ACRS addition in the amount of \$6,000 on his 1987 return. His outstanding balance of excess cost recovery is \$6,000 which will be subtracted in 1988 and 1989. After filing his 1989 return, Mr. Smith still has \$2,000 of the outstanding balance of excess cost recovery which has not offset income and requests a refund in the amount of \$115 (2,000 x 0.0575). However Mr. Smith's refund is limited to \$66, (the tax of \$266 actually paid in 1987 attributable to the ACRS additions less the tax of \$200 attributable to the ACRS additions less the tax of \$200 attributable to the post-1987 subtractions in 1988 and 1989). The calculation of the limitation is shown below:

	1987		1988		1989	
	With ACRS	W/O ACRS	With ACRS	W/O ACRS	With ACRS	W/O ACRS
Federal Adj. Gross Income	6,000	6,000	17,000	17,000	3,800	3,800
Additions (except ACRS)	0	0	0	0		
Subtractions (except ACRS)	0	0	0	0		
Va. Personal Exemption	700	700	800	800	800	800
Va. Standard Deduction	2,000	2,000	2,700	2,700	3,000	3,000
Taxable income before ACRS	3,300	3,300	13,500	13,500	0	0
ACRS Addition	6,000	*				
ACRS Subtraction						
Post 1987 ACRS subtraction			4,000	*	2,000	*
Virginia taxable income	9,300	3,300	9,500	13,500	(2,000)	0
Tax	335	69	345	545	0	0
Difference (i.e., tax attributable to ACRS mod.)		266		(200)		0

* ACRS modification excluded to compute the limitation.

Therefore, the limitation on the refund is \$66 (266 - 200 - 0).

C. When to file the application for refund.

1. The application for refund may be filed after filing final federal and Virginia income tax returns as provided in § 6 of this regulation or after filing the income tax return for the last taxable year specified under § 4 of this regulation for claiming a post-1987 ACRS subtraction.

2. An application for refund must be filed within three years of the applicable date.

a. In the case of a final federal and Virginia return

due to the death or dissolution of a taxpayer, the applicable date is the later of July 1, 1988, for a final return for a period beginning before January 1, 1988, or the due date of the final return for a period beginning on or after January 1, 1988.

b. In the case of an application for refund of unrecovered taxes paid on the outstanding balance of excess cost recovery, the applicable date is the due date of the last return on which the taxpayer is entitled to claim a subtraction under § 4 or § 5 of *this regulation*. A calendar year individual may file such application after filing the income tax return for 1989. A calendar year corporation may file such application after filing the income tax return for 1992 1997 .

c. *In the case of a net operating loss carryback from a year beginning on or after the last taxable year specified in § 4 of this regulation for claiming a post-1987 ACRS subtraction, see § 5 E 2 of this regulation.*

D. Form of application.

Any application for refund of unrecovered taxes paid on the outstanding balance of excess cost recovery shall be filed by a letter to the Tax Commissioner requesting the refund or by amended return. The letter shall provide sufficient documentation to demonstrate that the amount of refund requested does not exceed the amount specified in § 7 B 2 of *this regulation* (tax actually paid).

E. Accelerated application for refund.

A corporation which would be entitled to file an application for a refund under this section may apply to the Tax Commissioner for permission to claim the refund in an earlier taxable year. The Tax Commissioner shall have the authority, at his discretion, to allow the refund to be claimed in an earlier taxable year if the taxpayer has demonstrated to the satisfaction of the Tax Commissioner that:

1. The taxpayer has paid Virginia income tax with respect to its outstanding balance of excess cost recovery,
2. The taxpayer has not recovered any portion of the outstanding balance of excess cost recovery,
3. The taxpayer will be required to file a Virginia income tax return for each year in which a subtraction is allowable under §§ 4 and 5,
4. The taxpayer can reasonably expect never to have any federal taxable income or Virginia taxable income to offset the subtractions allowable under §§ 4 and 5 of *this regulation* ,
5. No other taxpayer may claim or has claimed a

subtraction or a refund with respect to the taxpayer's outstanding balance of excess cost recovery by reason of § 8 A (Successor entities) or § 4 D (Conduit entities) of *this regulation* .

[6. Example. A Real Estate Investment Trust (REIT) is required to distribute its income to shareholders and generally has no federal taxable income subject to tax. Because items of income and deduction do not have the same character in the hands of a REIT's shareholders, the ACRS modifications do not flow through to the shareholders. Therefore, a REIT can reasonably expect never to have any federal taxable income or Virginia taxable income to offset the subtractions allowable under §§ 4 and 5 of *this regulation* , and would qualify for the immediate refund under this subsection.

F. Interest.

No interest shall be paid on refunds made under this section.

§ 8. Special rules.

A. Successor entities.

In computing the outstanding balance of excess cost recovery a taxpayer may include ACRS additions and ACRS subtractions made by other taxpayers in the following situations:

1. A surviving spouse may include ACRS additions and ACRS subtractions made on a joint or combined Virginia return with the decedent.
2. A corporate taxpayer may include ACRS additions and ACRS subtractions made by another corporation if there has been a merger or other form of reorganization under the following conditions:

a. The taxpayer would be allowed under federal law to claim a net operating loss deduction based upon a net operating loss incurred by the other corporation, assuming such other corporation incurred a net operating loss.

b. A statement shall be attached to the return setting forth (i) The name and taxpayer ~~ID~~ No *identification number* . of such other corporation, (ii) Details of the ACRS additions, ACRS subtractions and post-1987 ACRS subtractions claimed by such other corporation, (iii) An explanation of the relationship between the taxpayer and such other corporation, and (iv) A statement signed by the taxpayer to the effect that the post-1987 ACRS subtraction has not, and will not, be claimed by any other taxpayer on any other return, including the final return of such other corporation.

3. A successor entity which elects to include ACRS

Proposed Regulations

additions and ACRS subtractions of another taxpayer in its outstanding balance of excess cost recovery shall not be eligible to apply for a refund under § 7 of this regulation due to the final federal and Virginia return of such other taxpayer.

B. Multiple recovery prohibited.

A taxpayer may not claim a subtraction under § 4 or § 5 of this regulation or a refund under § 7 of this regulation with respect to any portion of the outstanding balance of excess cost recovery which such taxpayer or any other taxpayer has previously recovered.

C. Net operating losses.

1. In the case of net operating losses occurring loss incurred in a taxable year beginning before January 1, 1988:

a. ~~Where a federal net operating loss deduction with respect to such loss which is claimed incurred in a taxable year beginning before January 1, 1988, is deducted in a taxable year beginning before January 1, 1988, for Virginia purposes the loss shall carry with it the ACRS additions and ACRS subtractions as provided in § 1 B 5 (iii) of VR 630-3-402 and § 4 of VR 630-2-311.1 VR 630-3-402.3 and VR 630-2-311.1 .~~

b. ~~Where a federal net operating loss deduction with respect to such loss which is claimed incurred in a taxable year beginning before January 1, 1988, is deducted in a taxable year beginning on and after January 1, 1988, shall not carry with it any the net ACRS additions or ACRS subtractions carried with the loss as provided in VR 630-3-402.3 and VR 630-2-311.1 shall be eliminated. For purposes of this subdivision b, net ACRS additions shall mean the excess of the ACRS additions over the ACRS subtractions carried with the portion of the loss carried over to years beginning on or after January 1, 1988, as provided in VR 630-3-402.3 and VR 630-2-311.1 .~~

c. In computing the outstanding balance of excess cost recovery, the ACRS additions and ACRS subtractions for the loss year shall be included only once, for the year of the loss. Amounts carried to other years with the federal net operating loss deduction shall be ignored.

d. *Example. XYZ Corporation, which was incorporated on January 1, 1985, incurred a federal net operating loss of \$10,000 for 1987. The 1987 ACRS addition is \$750, and the 1987 ACRS subtraction is \$180. XYZ carries back a portion of its 1987 NOL to 1985 and 1986 as follows:*

Year	1985	1986
------	------	------

Federal Taxable Income	3,000	2,000
NOL Carryback	-3,000	-2,000
ACRS Addition as filed	500	400
1987 Net Modifications Carried Back *	171	114
Virginia taxable income	671	514

* 1987 Net Modifications (750 ACRS addition less 180 ACRS subtraction) of 570 are prorated to each carryback year; $3,000/10,000 \times 570 = 171$; $2,000/10,000 \times 570 = 114$.

The net ACRS modifications eliminated from the carryover of XYZ's NOL to 1988 (and thereafter) are determined as follows:

Total 1987 NOL deduction	10,000
Amount carried over to years beginning after 1987	5,000
1987 net modifications (750-180)	570
Modifications attributable to carryover (5,000/10,000 x 570)	285
Modifications eliminated from the carryover of the 1987 NOL to 1988 and thereafter	285

2. For net operating losses occurring in a taxable year beginning on and after January 1, 1988, a federal net operating loss deduction with respect to such loss taxable year shall not carry with it any portion of the post-1987 ACRS subtraction allowable under §§ 4 and 5 for such year . Post-1987 ACRS subtractions are carried over in accordance with § 5 of this regulation, or recovered in accordance with §§ 6 and 7 of this regulation. Post-1987 ACRS subtractions are not considered to be Virginia additions or subtractions that must be attributed to, and carried forward or back with, a net operating loss for purposes of VR 630-3-402.3 of VR 630-2-311.1.

VA.R. Doc. No. R94-385; Filed December 21, 1993, 2:56 p.m.

* * * * *

Title of Regulation: VR 630-3-400.1. Corporate Income Tax: Telecommunications Companies.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Proposed Regulations

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on November 14, 1989, effective for taxable years beginning on or after January 1, 1989. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explains the procedures relating to the minimum tax imposed on and the credit available to telecommunication companies.

The amendments to this regulation reflect the department's policy regarding the telecommunication company tax.

Substance: The amendments to § 1 add new definitions to the regulation, and delete duplicative language.

The amendments to § 2 delete duplicative language.

The amendments to § 3 define how telephone companies which are organized as mutual associations or cooperatives are taxed. Examples are provided.

The amendments to § 6 delete duplicative language, and add guidance with respect to credits received from pass through entities.

The amendments to § 7 provide guidance in determining the minimum tax and minimum tax credit where an affiliated group of corporations files a consolidated or combined return which contains one or more telecommunications company. A telecommunications company contained in a combined or consolidated return must use procedures contained in the regulation to determine the amount of the group's corporate income tax that such company is deemed to have paid for purposes of determining the minimum tax or credit allowed. Detailed examples are provided for guidance in situations where more than one telecommunications company is included in a combined or consolidated return.

The amendments to § 10 provide that a telecommunications company may petition the State Corporation Commission for a review and recertification of the company's status or amount of gross receipts certified. Upon receipt of such redetermination, the telecommunications company must file an amended return in accordance with the procedures contained therein. Any application for refund must be filed in accordance with

the procedures contained in § 58.1-1823 of the Code of Virginia.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the adjustments required, and the impact of legislative changes.

This regulation, and the amendments thereto, provide guidance in determining the minimum tax and tax credit where more than one telecommunications company is contained in a consolidated or combined return.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** Entities subject to the provisions of this regulation include telecommunications companies, and affiliated groups of corporations filing consolidated or combined returns that contain one or more telecommunications companies. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. *New definitions have been added to the regulation, and duplicative language deleted.*

2. *Guidance on the taxation of telephone companies which are organized as mutual associations or cooperatives has been added to the regulation. Examples are provided.*

3. *Guidance is provided with respect to credits received from pass through entities.*

4. *Guidance in determining the minimum tax and minimum tax credit where an affiliated group of*

Proposed Regulations

corporations files a consolidated or combined return which contains one or more telecommunications company is provided. A telecommunications company contained in a combined or consolidated return must use procedures contained in the regulation to determine the amount of the group's corporate income tax that such company is deemed to have paid for purposes of determining the minimum tax or credit allowed.

5. Detailed examples are provided for guidance in situations where more than one telecommunications company is included in a combined or consolidated return.

6. A telecommunications company may petition the State Corporation Commission for a review and recertification of the company's status or amount of gross receipts certified. Upon receipt of such redetermination, the telecommunications company must file an amended return in accordance with procedures contained therein. Any application for refund must be filed in accordance with the procedures contained in § 58.1-1823 of the Code of Virginia.

7. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

VR 630-3-400.1. Corporate Income Tax: Telecommunications Companies.

§ 1. Definitions.

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

"Calendar year" means a 12-month period beginning on January 1 and ending on December 31.

"Company" means a telecommunications company as certified by the State Corporation Commission to the Department of Taxation.

"Cooperative telephone company" means a cooperative or mutual telephone company which is exempt from federal taxation under § 501(c)(12) of the Internal Revenue Code.

"Corporate income tax" means the tax imposed by § 58.1-400 of the Code of Virginia.

"Department" means the Department of Taxation.

"Gross receipts" means the amount of "gross receipts" certified to the Department of Taxation by the State Corporation Commission. This amount is defined in § 58.1-400.1 of the Code of Virginia to mean "all revenue from business done within the Commonwealth, including

the proportionate share of interstate revenue attributable to the Commonwealth, if such inclusion will result in annual gross receipts exceeding \$5 million, with the following deductions:

1. Revenue billed on behalf of another such telephone company or person to the extent such revenues are later paid over to or settled with that telephone company or person; and

2. Revenues from carrier access charges received from a telephone company which is holding a certificate of public convenience and necessity from the State Corporation Commission or from a telephone utility company providing interstate communications service, together with all revenue from billing and collection amounting to less than \$500,000 per year, and all revenues from shared network facilities agreements established under federal court order and like revenue received by other local exchange carriers."

"License tax" means the tax imposed on a telecommunications company under Article 2 of Chapter 26 (§ 58.1-2600 58.1-2620 et seq.) of the Code of Virginia.

"Minimum tax on telecommunications companies" or "minimum tax" means an amount of tax computed as a specified percent of the gross receipts of a telecommunications company pursuant to § 58.1-400.1 of the Code of Virginia.

"Mutual association" means a telephone company chartered in the Commonwealth which is exclusively a local mutual association and is not designated to accumulate profits for the benefit of, or pay dividends to, the stockholders or members thereof.

"NOL" means net operating loss.

"NOLD" means net operating loss deductions deduction .

"SCC" means the State Corporation Commission

"Sales" means the gross receipts of the telecommunications company from all sources not allocated (under § 58.1-407 of the Code of Virginia or otherwise) regardless of whether or not such receipts are included in the amount of gross receipts, as defined above.

"Taxable year" means the calendar or fiscal year for federal income tax purposes.

"Telecommunications company (TC)" means a company certified to the Department of Taxation by the State Corporation Commission as a telecommunications company pursuant to § 58.1-400.1 of the Code of Virginia . Such a company is defined in § 58.1-400.1 of the Code of Virginia to mean

a telephone company or other person holding a

certificate of convenience and necessity granted by the State Corporation Commission authorizing local exchange telephone service, interexchange service, radio common carrier system or a cellular mobile radio communications system, or holding a certificate issued pursuant to § 214 of the Communications Act of 1934, as amended, authorizing telephone service; or a telegraph company or other person operating the apparatus necessary to communicate by telegraph.

"Telecommunications company income tax credit" means an amount computed with regard to the gross receipts of a telecommunications company pursuant to § 58.1-434 of the Code of Virginia available to offset the corporate income tax imposed on such company under § 58.1-400 of the Code of Virginia.

§ 2. Tax administration.

A. Generally In general .

Effective for taxable years beginning on and after January 1, 1989, telecommunications companies formerly subject to the license tax on gross receipts, administered by the State Corporation Commission (SCC), will be subject to the Virginia corporation income tax. This change is the result of legislation enacted by the 1988 Virginia General Assembly (1988 Acts, Chapter 899).

B. State Corporation Commission.

1. While no longer subject to the state license tax on gross receipts or to the state pole line tax, telecommunications companies will still pay regulatory revenue taxes to the SCC based on gross receipts (§§ 58.1-2660 through 58.1-2665 of the Code of Virginia). The SCC will continue to be the central state agency responsible for the assessment of all property of telecommunications companies.

2. The SCC will make all determinations regarding a company's status as a telecommunications company or as a mutual association . The SCC will determine and certify the amount of gross receipts, as defined by law, to the department annually. See § 10 of this regulation for information regarding the appeals process.

Telecommunications companies may petition the SCC for review and correction of the company's status or the amount of gross receipts certified. The petition should be in compliance with the Rules of Practice and Procedures of the SCC.

C. Department of Taxation.

For taxable years beginning on and after January 1, 1989, telecommunications companies will be subject to the greater of the Virginia corporation income tax or to a minimum tax based on gross receipts. In order to minimize the effects of the transition from the license tax

on gross receipts to the corporation income tax, the full corporate income tax will be phased in over a 10-year period from 1989 through 1998. During this phase in period, telecommunications companies, which pay the corporate income tax, may be allowed a credit against the tax under certain conditions. If a company is subject to the minimum tax, it will not be eligible for a credit.

D. Other regulations.

Except as provided in this regulation, the provisions of all regulations adopted pursuant to § 58.1-203 of the Code of Virginia to interpret Title 58.1 of the Code of Virginia are applicable to the taxation of telecommunications companies by the Department of Taxation .

§ 3. Imposition of tax.

A. Generally In general .

Telecommunications companies must calculate both their minimum tax as provided in § 4 of this regulation and their income tax liability as provided in § 5 of this regulation for each taxable year. For each taxable year, the tax liability of a telecommunications company will be the greater of its minimum tax or of its corporate income tax.

B. Amended return.

If due to a change in federal taxable income, or for any other reason, the Virginia taxable income or gross receipts of a telecommunications company is changed, an amended return must be filed in accordance with § 58.1-311 of the Code of Virginia . The minimum tax and corporate income tax must be recomputed to determine which tax is applicable to the telecommunications company as result of the change .

C. Mutual associations.

Telephone companies chartered in the Commonwealth which are exclusively a local mutual association and are not designated to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof, that are exempt from the regulatory taxes administered by the SCC, are exempt from the minimum tax on telecommunications companies imposed under § 58.1-400.1 of the Code of Virginia, and are exempt from the corporate income tax imposed under § 58.1-400 of the Code of Virginia.

D. Cooperative telephone companies.

Cooperative telephone companies that are exempt from federal income taxation pursuant to § 501(c)(12) of the Internal Revenue Code are subject to the minimum tax on telecommunications companies imposed under § 58.1-400.1 of the Code of Virginia to the extent that the minimum tax exceeds the corporate income tax liability, if any, for such taxable year. Cooperative telephone

Proposed Regulations

companies are subject to the corporate income tax imposed under § 58.1-400 of the Code of Virginia, to the extent such companies have unrelated business taxable income or other income taxable under Virginia law. If a cooperative telephone company violates the qualification rules of § 501(c)(12) of the Internal Revenue Code and is therefore subject to federal income tax for a taxable year(s), the company is subject to the Virginia corporate income tax for such year(s).

Example 1. Telecommunications Company (TC) is a calendar year filer for federal income tax purposes. For calendar year ~~1990~~ 1993, it has ~~\$200,000~~ \$300,000 in gross receipts and Virginia taxable income equal to \$35,000. TC's minimum tax liability is \$2,400 (~~\$200,000 X 1.2%~~ \$300,000 X 0.8%) and its Virginia income tax is \$2,100 (\$35,000 X 6.0%). Because TC's minimum tax liability exceeds its income tax liability, it is subject to the minimum tax and must pay \$2,400 in tax.

Example 2. Same facts as in Example 1. In ~~1993~~ 1996 the Internal Revenue Service audits TC for calendar year ~~1990~~ 1993 and determines that the company overreported its wage expense by \$6,000; thus TC's federal taxable income for calendar year ~~1990~~ 1993 was underreported by \$6,000. TC subsequently amends its Virginia income tax return for calendar year ~~1990~~ 1993 to report the additional \$6,000 in taxable income. The amended return still shows a minimum tax liability of \$2,400 (no charge in gross receipts) and an income tax liability of \$2,460, 6.0% of (\$35,000 + 6,000). Since TC's income tax liability is now higher than its minimum tax liability, it is now subject to the income tax. TC owes the department \$60 (\$2,460 - \$2,400) additional corporate income tax, plus applicable interest .

Example 3. Telephone Cooperative Co. (TCC) is a cooperative telephone company, and has received a determination letter from the Internal Revenue Service indicating that TCC is exempt from federal income tax under § 501(c)(12) of the Internal Revenue Code. TCC is a calendar year filer for federal income tax purposes. For calendar year 1993, it has \$800,000 in gross receipts and unrelated business taxable income of \$35,000. TCC's minimum tax liability is \$6,400 (\$800,000 X 0.8%) and its Virginia income tax liability is \$2,100 (\$35,000 X 6%). Because TCC's minimum tax liability exceeds its income tax liability, it is subject to the minimum tax and must pay \$6,400 in tax.

Example 4. Same facts as in Example 3. In 1994, the Internal Revenue Service determines that TCC receives more than 15% of its income from nonmember services, and is not exempt from federal income taxes for 1994. For calendar year 1994, TCC has \$850,000 in gross receipts, and \$100,000 in federal taxable income. TCC's minimum tax liability is \$5,950 (\$850,000 X 0.7%) and its Virginia income tax liability is \$6,000 (\$100,000 X 6%). Because TCC's corporate tax liability exceeds its minimum tax liability, it is subject to the corporate income tax and must pay \$6,000 in tax. Because the corporate income tax

imposed (\$6,000) does not exceed 1.3% of gross receipts (1.3% X \$850,000 = \$11,050) TCC is not eligible for the telecommunications company income tax credit for 1994.

§ 4. Minimum tax on telecommunications companies.

A. Generally In general .

Effective for any taxable year that includes January 1, 1989, or begins after January 1, 1989, a telecommunications company may be subject to a the telecommunications company minimum tax ("minimum tax"). The minimum tax will be applicable when such tax exceeds the corporate income tax imposed under § 58.1-400 of the Code of Virginia.

B. Determination of gross receipts.

1. For each taxable year, the minimum tax of a telecommunications company is computed on the gross receipts of such company for the calendar year which ends during the taxable year.

2. If a company files an income tax return for a period of less than 12 months, the minimum tax is computed on the gross receipts for the calendar year which ends during the taxable period. If no calendar year ends during the taxable period, the minimum tax is computed on the gross receipts of the most recent calendar year which ended before the taxable period. (The minimum tax imposed on such gross receipts is prorated in accordance with subsection D of this section.)

For taxable years that begin before January 1, 1989, include January 1, 1989, and end before December 31, 1989, the minimum tax is computed on the gross receipts received during calendar year 1988. The minimum tax rate applicable to calendar year 1989 shall be used.

Example 1. If Company A's taxable year begins on April 1, ~~1990~~ 1992, and ends March 30, ~~1991~~ 1993, the minimum tax would be computed on the gross receipts for calendar year ~~1990~~ 1992.

Example 2. Company B, a calendar year filer, goes out of business on April 30, ~~1992~~ 1993. For income tax purposes, its taxable year begins on January 1, ~~1992~~ 1993, and ends on April 30, ~~1992~~ 1993. Its minimum tax would be computed on the gross receipts for calendar year ~~1991~~ 1992, and prorated in accordance with subsection D of this section.

C. Minimum tax rate.

In computing the minimum tax, a telecommunications company will use the minimum tax rate applicable to the calendar year as determined in subsection B above of this section. The applicable minimum tax rate for each calendar year will be phased down is determined in accordance with the rate schedule set forth in § 58.1-400.

of the Code of Virginia, as follows:

Gross Receipts Earned During Calendar Year	Minimum Tax Rate
1989	1.2% of gross receipts
1990	1.2% of gross receipts
1991	1.0% of gross receipts
1992	0.9% of gross receipts
1993	0.8% of gross receipts
1994	0.7% of gross receipts
1995	0.6% of gross receipts
1996 and years thereafter	0.5% of gross receipts

D. Computation of minimum tax.

1. Generally. For each taxable year, the minimum tax liability of a telecommunications company is computed by multiplying the gross receipts for the calendar year specified in subsection B of this section by the minimum tax rate specified in subsection C of this section .

Example 1 . For taxable year ~~1991~~ 1993 , Telecommunications Company (TC) files its federal and Virginia income tax return on a fiscal year basis for the year beginning July 1, ~~1991~~ 1993 , and ending June 30, ~~1992~~ 1994 . For taxable year ~~1991~~ 1993 , TC bases its minimum tax liability on its gross receipts earned during calendar year ~~1991~~ 1993 , which is multiplied by the minimum tax rate for calendar ~~1991~~ 1993 (~~1.0%~~ 0.8%) to compute its minimum tax liability.

2. Short taxable periods. If ~~the an~~ income tax return is filed for a taxable period of less than 12 months, the minimum tax ~~should be~~ is computed as follows:

- a. Compute the minimum tax as set forth in ~~subsection subdivision~~ D 1 ~~above of~~ this section .
- b. Prorate the tax by multiplying the minimum tax by the number of months (or parts thereof) in the short taxable period divided by 12.

Example 2 . The same facts as in the ~~example~~ Example 1 above, except that TC goes out of business on ~~December 31, 1991~~ January 15, 1994 , and files a short taxable period return for the period beginning July 1, ~~1991~~ 1993 , and ending ~~December 31, 1991~~ January 15, 1994 . TC bases its minimum tax liability on its gross receipts earned during calendar year ~~1991~~ 1993 . The amount of gross receipts earned during calendar year ~~1991~~ 1993 is multiplied by the minimum tax rate for calendar year ~~1991~~ 1993 (~~1.0%~~ 0.8%) and the result is multiplied by ~~6/12~~ 7/12 (the number of months (or parts thereof) in the short taxable period divided by 12) to compute its minimum tax liability.

§ 5. Corporation income tax.

A. Generally In general .

~~With the exception of the differences set forth in these regulations~~ Except as otherwise provided by regulations and the Tax Commissioner , a telecommunications company shall compute its Virginia taxable income and corporation income tax in accordance with the requirements ~~applicable to corporations generally of Article 10 (§ 58.1-400 et seq.) of Chapter 3 of the Code of Virginia .~~

B. Business entirely within Virginia.

1. Generally. For purposes of determining if the entire business of a telecommunications company is conducted within Virginia, the provisions of § 58.1-405 of the Code of Virginia and VR 630-3-405 shall be applicable.

2. Computation of income tax. If ~~under the provisions of subdivision 1 of this section,~~ it is determined that the entire business of a telecommunications company is conducted within Virginia, the tax imposed by § 58.1-400 of the Code of Virginia shall be upon the entire Virginia taxable income.

C. Allocation and apportionment.

1. Generally. The Virginia taxable income of a telecommunications company which is subject to taxation both within and without Virginia, as defined in § 58.1-405 of the Code of Virginia and VR 630-3-405, shall be allocated and apportioned its ~~Virginia taxable income~~ as provided in §§ 58.1-407 through 58.1-416 of the Code of Virginia and regulations adopted pursuant to these sections and subject to the special requirements set forth ~~below in subdivisions 2 and 3 of this subsection .~~

2. When sales are deemed to be made in Virginia.

a. In determining when a sale, other than a sale of tangible personal property, occurs in Virginia, the location of the income producing activity must be determined. (§ 58.1-416 of the Code of Virginia and VR 630-3-416.)

b. For purposes of this regulation, the income producing activity of a telecommunications company is presumed to occur in Virginia for any services or charges billed with respect to a Virginia service address (regardless of the billing address) , except that with respect to charges for interstate communications services, more income producing activity will be presumed to occur in Virginia than in any other state if both:

- a: (1) Communications either originate or terminate within Virginia; and
- b: (2) The charge for the communication is billed

Proposed Regulations

with respect to a service address within Virginia.

3. Computation of income tax. The corporation income tax of a telecommunications company subject to taxation both within and without Virginia shall be computed in the same manner as any other corporation subject to taxation both within and without Virginia.

D. Net operating loss modifications.

In addition to the modifications applicable to corporations generally, telecommunications companies are required to make the following modifications to federal taxable income in the computation of Virginia taxable income in accordance with § 58.1-403 of the Code of Virginia :

1. Addition for net operating loss deduction. If federal taxable income for any taxable year has been reduced by a net operating loss deduction (NOLD) attributable to a net operating loss incurred in a taxable year beginning before January 1, 1989, then such NOLD must be added to federal taxable income. There shall be added to federal taxable income the amount of any Net Operating Loss Deduction (NOLD) attributable to a taxable year beginning before January 1, 1989, to the extent federal taxable income was reduced by such NOLD .

2. Subtraction for net operating loss deduction. Because federal law ~~required~~ permits a NOLD to be carried back to the earliest year of the three preceding years in which there is income to be offset, a telecommunications company incurring a net operating loss in a taxable year beginning on or after January 1, 1989, ~~might be required to~~ could carry such loss back to taxable years beginning before January 1, 1989. Since a telecommunications company was not subject to Virginia income tax for years beginning before January 1, 1989, it would receive no Virginia benefit from such carryback, and the NOLD for other taxable years would be reduced or eliminated by the required federal carryback the portion of such NOLD that is carried back to taxable years beginning before January 1, 1989 .

In this situation, telecommunications companies must add back the NOLD actually allowed on their federal returns for taxable years beginning before January 1, 1989, which is attributable to a loss occurring in a taxable year beginning on or after January 1, 1989. A new NOLD is computed for Virginia purposes following the federal law and regulations except that no such loss is carried back to a taxable year beginning before January 1, 1989.

Example 1. XYZ Co. is a telecommunications company reporting on a calendar year basis. For the years 1986 - 1992 XYZ Co. had no additions or subtractions to federal taxable income except for an adjustment for net operating

loss deductions. The income of XYZ is as follows:

	1985	1986	1987	1988	1989
Federal taxable income before					
NOLD	50,000	50,000	25,000	(150,000)	75,000
NOLD	(50,000)	(50,000)	(25,000)	-	(25,000)
Federal taxable income	-0-	-0-	-0-	-0-	50,000
Virginia NOL adjustment					25,000
Virginia taxable income				(Virginia income tax not imposed)	75,000

Under federal law the 1988 net operating loss is first carried back to offset 1985, 1986 and 1987 income , and then carried forward . There would be \$25,000 of the NOL remaining to be carried forward and deducted on XYZ Co.'s 1989 federal return. Because the loss occurred in a taxable year beginning before January 1, 1989, the NOLD on the 1989 federal return must be added to federal taxable income to determine Virginia taxable income.

Example 2. Same facts as Example 1 except that the loss occurred in 1990. The income of XYZ Co. is as follows:

	1987	1988	1989	1990	1991
Federal taxable income before					
NOLD	25,000	25,000	75,000	(100,000)	75,000
NOLD	(25,000)	(25,000)	(50,000)	-	-0-
Federal taxable income	-0-	-0-	25,000	-0-	75,000
Virginia NOL adjustment			+50,000 (Virginia income) (75,000)		(25,000)
Virginia taxable income			(Tax not imposed)	-0-	50,000

Under federal law the 1990 net operating loss is first carried back to offset 1987 and 1988 income, The remaining \$50,000 NOL is carried back to the 1989 federal return.

Because the loss occurred in a taxable year beginning on and after January 1, 1989, the entire NOL will be available to offset Virginia income reported in taxable years beginning on and after January 1, 1989. The federal NOLD of \$50,000 is first added back to the 1989 federal taxable income and then a new Virginia NOL carryback is computed and subtracted. The federal laws and regulations are followed except that no NOL shall be carried back further than 1989. The result is that the carryback to 1989 is \$75,000 instead of \$50,000 and there is still \$25,000 of the NOL left to carry over to the 1991 return.

3. In addition to the above modifications, since the carryback of a NOLD results in a change in federal taxable income, the minimum tax and corporate income tax must be recomputed to determine which tax is applicable to the telecommunications company. See § 3 B of this regulation .

4. In determining the NOLD for Virginia purposes, the Virginia additions and subtractions that follow suc

Proposed Regulations

loss shall be redetermined in accordance with VR 630-3-402.3 for purposes of subdivision D 2 of this section.

§ 6. Telecommunications company income tax credit.

A. In general.

If the corporation income tax owed by a telecommunications company is subject to the corporation income tax under § 58.1-400 of the Code of Virginia because its corporation income tax exceeds the minimum tax on a telecommunications company under § 58.1-400.1 of the Code of Virginia, the telecommunications company may be eligible for a credit against the corporation income tax pursuant to § 58.1-434 of the Code of Virginia. This credit is only applicable when the corporation income tax imposed by § 58.1-400 of the Code of Virginia exceeds 1.3% of the gross receipts of the company. The amount of credit available against to reduce the corporation income tax will be phased out over a ten-year period from 1989 through 1998.

B. Determination of gross receipts.

For each taxable year, the telecommunications company income tax credit is computed on the gross receipts of such company for the calendar year which ends during the taxable year using the same amount of gross receipts which is used to determine the minimum tax for such taxable year. See § 4 B of this regulation.

If a company files an income tax return for a period of less than 12 months, the telecommunications company income tax credit is computed with reference to the gross receipts for the calendar year which ends during the taxable period. If no calendar year ends during the taxable period, the telecommunications company income tax credit is computed with reference to the gross receipts of the most recent calendar year which ended before the taxable period.

For taxable years that begin before January 1, 1989, include January 1, 1989, and end before December 31, 1989, the credit is computed with reference to the gross receipts received during calendar year 1988 (prorated by the number of months in the taxable period divided by 12). The credit rate applicable to taxable year 1989 shall be used.

EXAMPLE 1: If Company A's taxable year begins on April 1, 1990, and ends March 30, 1991, the telecommunication company income tax credit for taxable year 1990 would be computed on the gross receipts for calendar year 1990.

EXAMPLE 2: Company B, a calendar year filer, goes out of business on April 30, 1992. For federal income tax purposes, its taxable year begins on January 1, 1992, and ends on April 30, 1992. Its telecommunications company income tax credit for taxable year 1992 would be

computed on the gross receipts for calendar year 1991.

C. Credit amount.

As set forth in § 58.1-434 of the Code of Virginia, the following credit is allowable to telecommunications companies to offset the tax imposed under § 58.1-400 of the Code of Virginia will be phased out as follows:

Taxable Year: 1989

Tax Credit: 80% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.

Taxable Year: 1990

Tax Credit: 70% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.

Taxable Year: 1991

Tax Credit: 60% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.

Taxable Year: 1992 and 1993

Tax Credit: 50% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.

Taxable Year: 1994

Tax Credit: 40% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.

Taxable Year: 1995 and 1996

Tax Credit: 30% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.

Taxable Year: 1997

Tax Credit: 20% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.

Taxable Year: 1998

Tax Credit: 10% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.

Example. For taxable year ~~1991~~ 1993, Telecommunications Company (TC) files its federal income tax return on a fiscal year basis for the year beginning July 1, ~~1991~~ 1993, and ending June 30, ~~1992~~ 1994. For calendar year ~~1991~~ 1993 TC has gross receipts of \$100,000. Its corporate income tax for taxable year ~~1991~~ 1993 is \$1,400 and its minimum tax is ~~\$1,000 (\$100,000 X 1.0%)~~ \$800 ($\$100,000 \times 0.8\%$). Since its corporate income tax exceeds its minimum tax, for taxable year 1993 TC is subject to the corporate income tax and not the minimum tax. Because TC is subject to the corporate income tax, not the minimum tax, and because its TC's corporate income tax exceeds 1.3% of its gross receipts, TC is eligible to claim a credit equal to ~~60%~~ 50% of the amount by which the corporate income tax exceeds 1.3% of gross receipts.

The credit and tax due are computed as follows:

Corporate Income Tax	\$1,400
1.3% of Gross Receipts	1,300

Proposed Regulations

Credit Base		100
Credit Percentage for 1991 1993	X	00% 50%
Corporate Income Tax Credit	\$00	\$50
Corporate Tax Before Credit		\$1,400
Less Credit	00	50
Net Tax Due	\$1,300	\$1,350

D. Short taxable periods.

If the income tax return is filed for a taxable period of less than 12 months, the gross receipts used to compute the credit shall be prorated by the number of months (*or parts thereof*) in the taxable period divided by 12.

Example. Telecommunications Company (TC) goes out of business on December 31, ~~1991~~ 1993, and files a short taxable period return for the period beginning July 1, ~~1991~~ 1993, and ending December 31, ~~1991~~ 1993. For calendar year ~~1991~~ 1993 TC has gross receipts of \$100,000. Its corporate income tax for taxable year ~~1991~~ 1993 is \$700 and its minimum is \$500 (~~(\$100,000 X 1.0% X 6/12)~~ \$400 (~~\$100,000 X 0.8% X 6/12~~)). Since its corporate tax exceeds its minimum tax, TC is subject to the corporate income tax. Because TC is subject to the corporate income tax, not the minimum tax, and because its corporate income tax exceeds 1.3% of its *prorated* gross receipts, TC is eligible to claim a credit equal to ~~60%~~ 50% of the amount by which the corporate income tax exceeds 1.3% of its *prorated* gross receipts.

The credit and tax due are computed as follows:

Corporate Income Tax		\$700
1.3% of <i>Prorated</i> Gross Receipts*		650
Credit Base		50
Credit Percentage for 1991 1993	X	00% 50%
Allowable Credit	\$00	\$25
Corporate Tax Before Credit		\$700
Less Credit	00	25
Net Tax Due	\$670	\$675

* \$100,000 X 6/12 X 1.3% = \$650

E. Limitation of credit.

1. If a company is subject to the minimum tax in a taxable year, it ~~will~~ is not be eligible for a telecommunications company income tax credit in such year. *However, subject to the limitations of subdivisions 2 and 3 of this subsection, a company which is deemed to receive a telecommunications company income tax credit from a pass through entity in accordance with § 9 B of this regulation may utilize such pass through credit even though such company is otherwise subject to the minimum tax.*

2. The amount of credit allowed in any taxable year may not exceed the actual income tax liability for such year. Any excess credit for a taxable year may not be carried over *or back* to another taxable year to be used to offset the tax liability in another year.

3. This credit shall be applied against the income tax liability prior to any other credits which may be applicable against the corporation income tax.

§ 7. Separate, combined or consolidated returns of affiliated corporations.

A. Generally *In general*.

The requirements set forth under § 58.1-442 of the Code of Virginia and ~~VR 630-3-442~~ *the regulations thereunder* regarding the income tax filing status of affiliated corporations are applicable to telecommunications companies. Accordingly, if two or more affiliates of a telecommunications company previously elected to file separate returns or a consolidated or combined return, the telecommunications company must conform to the filing election previously made by other members of their affiliated group. If the first year in which a telecommunications company is subject to taxation ~~by the Department of Taxation~~ is the first year two or more members of an affiliated group of corporations, including the telecommunications company, are ~~required to file Virginia income tax returns subject to taxation~~, the group may elect to file separate returns, a consolidated return or a combined return. All returns for subsequent years must be filed on the same basis unless permission to change is granted by the ~~Department of Taxation~~ *department*.

B. Special computations required for consolidated and combined returns.

When affiliated corporations file a consolidated or a combined income tax return, the losses of one corporation may be used to offset the income of another corporation. The tax paid by the affiliated group on a consolidated or combined return is the net amount of tax due from the affiliated group after losses and gains are netted. Because of the minimum tax and tax credit requirements applicable only to telecommunications companies, a special computation is required to determine the portion of the *corporate income* tax of the affiliated group that is attributable to the telecommunications company ~~or companies upon the amount of gross receipts of a telecommunications company will be acted upon by the Department of Taxation~~.

1. Determination of separate *company corporate* income tax. To determine the portion of the *corporate income* tax liability shown on the consolidated or combined return that is attributable to the telecommunications company, each corporation included in the consolidated or combined filing must recompute its *corporate income* tax liability as if it was filing a separate return. The separate *company corporate* income tax liability of the telecommunications company is compared to the total *corporate income* tax liability shown on the consolidated or combined return. *For purposes of this subdivision, any credits otherwise allowable in determining a corporation's income tax liability shall*

be disregarded.

The lesser amount of the separate tax liability of the telecommunications company or the total tax liability shown on the consolidated or combined return is deemed to be the separate company corporate income tax imposed by § 58.1-400 of the Code of Virginia on the telecommunications company.

a. Where a consolidated or combined return contains more than one telecommunications company, the combined total of the separate company corporate income tax liabilities of the telecommunications companies is compared to the total corporate income tax shown on the combined or consolidated return, and the lesser amount is deemed to be the separate company corporate income tax imposed on the telecommunications companies. Each telecommunications company's separate company corporate income tax (or its portion of the allocated consolidated tax determined in accordance with subdivision B 1 b of this section) is compared to the minimum tax of such company. Each telecommunications company's minimum tax is determined on a separate company basis, based on the gross receipts of such company. In no event shall the minimum tax be determined on a consolidated or combined basis.

b. Where the total corporate income tax shown on the combined or consolidated return is less than the combined separate liabilities of the telecommunications companies, it shall be allocated between the telecommunications companies in proportion to their separate company corporate income tax, and such allocated amounts shall be used by the respective telecommunication companies to determine the minimum tax.

2. Determination of minimum tax. If this amount the separate company corporate income tax of the telecommunications company, computed in accordance with subdivision B 1 of this section, is less than the minimum tax of the telecommunications company, as computed in § 4 of this regulation, the company is subject to the minimum tax in lieu of the tax imposed under § 58.1-400 of the Code of Virginia. The portion of the tax separate company corporate income tax, determined in accordance with subdivision B 1 of this section, imposed under § 58.1-400 of the Code of Virginia deemed paid by the affiliated group telecommunications company shall be credited toward the company's minimum tax liability.

If the telecommunications company's portion of the consolidated or combined tax imposed under § 58.1-400 of the Code of Virginia, (as computed above) in accordance with subdivision B 1 of this section, exceeds the minimum tax of the telecommunications company, the company is not required to pay any amount of minimum tax.

3. Corporation income tax credit. If the telecommunications company's portion of the affiliated group's separate company corporate income tax exceeds the its minimum tax, the affiliated group may be allowed a credit against its tax. For purposes of this subdivision B 3, the separate company corporate income tax of the telecommunications company is not compared to the total corporate income tax liability shown on the consolidated return. If the telecommunications company's separate company corporate income tax, as computed above exceeds 1.3% of the gross receipts of the company, the affiliated group is eligible to claim a credit against the portion of the consolidated or combined corporate income tax attributable to the telecommunications company. In no case shall the amount of credit claimed exceed the lesser of the consolidated or combined income tax shown on the return or the amount of income tax deemed to be imposed on the telecommunications company.

Example 1. In taxable year 1992 1993 Telecommunications Company (TC) files a calendar year consolidated income tax return with three other affiliated corporations: A, B, and C. TC's calendar year 1992 1993 gross receipts are \$200,000 and its minimum tax is equal to ~~\$1,800~~ ~~(\$200,000 X .9%)~~ ~~\$1,600~~ ~~(\$200,000 X 0.8%)~~. The corporate income tax return shows a consolidated taxable income of \$ 33,333 and the tax due on the consolidated return is \$2,000. TC must make the following computations to determine if it is subject to the minimum tax.

Step 1: Determine TC's Portion of the Consolidated Tax separate corporate income tax .

Company	Taxable Income if Companies Separately File	Income Tax if Companies Separately File
A	(100,000)	0
B	(11,667)	0
C	125,000	7,500
TC	20,000	1,200
Total	33,333	8,700

TC's Portion of the Consolidated Tax separate corporate income tax = \$1,200 , - The which is the lesser of TC's separate tax (\$1,200) or the consolidated tax (\$2,000).

Step 2: Determine Whether the Minimum Tax is Due.

Since the minimum tax of ~~\$1,800~~ ~~\$1,600~~ exceeds TC's portion of the affiliated corporate income tax (\$1,200), the minimum tax is applicable.

Step 3: Compute Additional amount of Minimum Tax Due.

Minimum tax	\$1,800	\$1,600
Less TC's portion of consolidated tax		-1,200
Additional Tax Due	\$600	\$400

Proposed Regulations

The total tax owed by the affiliated group is \$2,400. (The consolidated tax imposed by § 58.1-400 of the Code of Virginia (\$2,000) plus the minimum tax imposed on TC (\$400).)

Example 2. In taxable year ~~1992~~ 1993 Telecommunications Company (TC) files a calendar year consolidated income tax return with three other affiliated corporations: A, B, and C. TC's calendar year ~~1992~~ 1993 gross receipts are \$200,000 and its minimum tax is equal to ~~\$1,800 (\$200,000 X .9%)~~ \$1,600 (\$200,000 X 0.8%). The corporate income tax return shows a consolidated taxable income of \$33,333 and the tax due on the consolidated return is \$2,000. TC must make the following computations to determine if it is subject to the minimum tax.

Step 1: Determine TC's Portion of the Consolidated Tax separate corporate income tax.

Company	Taxable Income if Companies Separately File	Income Tax if Companies Separately File
A	(50,000)	0
B	(11,667)	0
C	55,000	3,300
TC	40,000	2,400
Total	33,333	5,700

TC's Portion of the Consolidated Tax separate corporate income tax = \$2,000, - The which is the lesser of TC's separate tax (\$2,400) or the consolidated tax (\$2,000).

Step 2: Determine Whether the Minimum Tax is Due.

Since the minimum tax of ~~\$1,800~~ \$1,600 is less than TC's portion of the affiliated separate corporate income tax (\$2,000), the minimum tax is not applicable and TC is subject to the corporate income tax instead.

Step 3: Determine if Income Tax Credit is Allowable.

Gross Receipts	\$200,000
	X 1.3%
1.3% of Gross Receipts	\$ 2,600

Since TC's separate tax (\$2,400) is less than 1.3% of gross receipts, no credit is applicable.

Example 3. In taxable year ~~1992~~ 1993 Telecommunications Company (TC) files a calendar year consolidated income tax return with three other affiliated corporations: A, B and C. TC's calendar year ~~1992~~ 1993 gross receipts are \$200,000 and its minimum tax is equal to ~~\$1,800 (\$200,000 X .9%)~~ \$1,600 (\$200,000 X 0.8%). The corporate income tax return shows a consolidated taxable income of \$83,333 and the tax due on the consolidated return is \$5,000. TC must make the following computations to determine if it is subject to the minimum tax.

Step 1: Determine TC's Portion of the Consolidated Tax separate corporate income tax.

Company	Taxable Income if Companies Separately File	Income Tax if Companies Separately File
A	0	0
B	(11,667)	0
C	5,000	300
TC	90,000	5,400
Total	83,333	5,700

TC's Portion of the Consolidated Tax = \$5,000, - The which is the lesser of TC's separate tax (\$5,400) or the consolidated tax (\$5,000).

Step 2: Determine Whether the Minimum Tax is Due.

Since the minimum tax of ~~\$1,800~~ \$1,600 is less than TC's portion of the affiliated corporate income tax (\$5,000), the minimum tax is not applicable and TC is subject to the income tax instead.

Step 3: Determine if Income Tax Credit is Allowable.

Gross Receipts	\$200,000
	X 1.3%
1.3% of Gross Receipts	\$ 2,600

Since TC's portion of the consolidated tax is more than the 1.3% of gross receipts, the credit is applicable.

Step 4: Determine Amount of Credit.

TC's Separate Tax	\$5,400
1.3% of Gross Receipts	-2,600
Credit Base	\$2,800
Credit percentage for 1992 1993	X 50%
Corporate Income Tax Credit	\$1,400

Example 4. In taxable year 1993, Telecommunications Companies TC1 and TC2 file a calendar year consolidated income tax return with two other affiliated corporations, A and B. TC1's calendar year 1993 gross receipts are \$200,000 and its minimum tax is equal to \$1,600 (\$200,000 X 0.8%). TC2's calendar year 1993 gross receipts are \$400,000 and its minimum tax is equal to \$3,200 (\$400,000 X 0.8%). The corporate income tax return shows a consolidated taxable income of \$75,000 and the corporate income tax on the consolidated return is \$4,500 (\$75,000 X 6%). TC1 and TC2 must make the following computations to determine if they are subject to the minimum tax:

Step 1: Determine separate corporate income tax.

Company	Taxable Income if Companies Separately File	Income Tax if Companies Separately File
A	\$ 5,000	\$ 300
B	(25,000)	0
TC1	15,000	900

Proposed Regulations

TC2	80,000	4,800	

Total	\$ 75,000	N/A	

The telecommunications companies, if filing without A & B, would incur the following separate company tax:

TC1	\$ 900		
TC2	4,800		
	=====		
Total	\$ 5,700		

Because the consolidated corporate income tax (\$4,500) is less than the combined total of the separate company tax liabilities of the telecommunications companies (\$5,700), the lesser amount (\$4,500) is deemed to be the separate company corporate tax imposed on the telecommunications companies. The separate company corporate tax is allocated between the telecommunications companies as follows:

	Gross Separate Tax	%	Allocated Separate Tax
TC1	\$ 900	15.8	\$ 711
TC2	4,800	84.2	3,789
	=====	=====	=====
Total	\$ 5,700	100.0	\$ 4,500

TC1's portion of the consolidated tax = \$711, which is 15.8% of the consolidated income tax (\$4,500). TC2's portion of the consolidated tax = \$3,789, which is 84.2% of the consolidated income tax (\$4,500).

Step 2: Determine Whether the Minimum Tax is Due.

	Allocated Separate Tax	Minimum Tax
TC1	\$ 711	\$ 1,600
TC2	3,789	3,200

Since TC1's minimum tax of \$1,600 is greater than TC1's portion of the allocated separate tax (\$711), the minimum tax is applicable to TC1. TC1's minimum tax liability will be \$889 (\$1,600 - \$711), which will be added to the consolidated corporate income tax liability (\$4,500).

Since TC2's minimum tax of \$3,200 is less than TC2's portion of the affiliated corporate income tax (\$3,789), the minimum tax is not applicable to TC2. TC2 is subject to

the corporate income tax instead.

Step 3: Determine if Income Tax Credit is Allowable.

Because TC1 is subject to the minimum tax, no credit is available for TC1. TC2 is not subject to the minimum tax, and determines its eligibility for the credit as follows:

TC2 Gross Receipts	\$400,000	
	X	1.3%
	=====	=====
1.3% of Gross Receipts	\$5,200	

For purposes of determining the credit, TC2 does not compare its separate company tax (\$4,800) to the consolidated income tax (\$4,500). Since TC2's separate company tax (\$4,800) is less than the 1.3% of gross receipts, no credit is applicable.

Step 4: Determine Consolidated Tax Liability

Corporate income tax	\$4,500	
TC1 minimum tax (\$1,600-\$711)	889	
TC2 minimum tax	0	

Total consolidated tax liability	\$5,389	
Corporate Income Tax Credit	0	

Net consolidated tax liability	\$5,389	

Example 5. In taxable year 1993, Telecommunications Companies PHONE1 and PHONE2 file a calendar year consolidated income tax return with two other affiliated corporations, Y and Z. PHONE1's calendar year 1993 gross receipts are \$500,000 and its minimum tax is equal to \$4,000 (\$500,000 X 0.8%). PHONE2's calendar year 1993 gross receipts are \$1,500,000 and its minimum tax is equal to \$12,000 (\$1,500,000 X 0.8%). The corporate income tax return shows a consolidated taxable income of \$427,000 and the corporate income tax on the consolidated return is \$25,620 (\$427,000 X .06). PHONE1 and PHONE2 must make the following computations to determine if they are subject to the minimum tax:

Step 1: Determine separate corporate income tax.

Company	Taxable Income if Companies Separately File	Income Tax if Companies Separately File
Y	\$7,000	\$420
Z	30,000	1,800
PHONE1	(10,000)	0
PHONE2	400,000	\$24,000

Proposed Regulations

Total \$427,000 N/A

The telecommunications companies, if filing without Y & Z, would incur the following separate company tax:

PHONE1	\$	0
PHONE2	24,000	
=====		
Total	\$24,000	

Because the consolidated corporate income tax (\$25,620) is more than the combined total of the separate company tax liabilities of the telecommunications companies (\$24,000), the separate company tax liabilities are used to determine if the minimum tax is applicable. No allocation between the telecommunications companies is necessary.

Step 2: Determine Whether the Minimum Tax is Due.

	Separate Company Tax	Minimum Tax
PHONE1	\$ 0	\$4,000
PHONE2	24,000	12,000

Since PHONE1's minimum tax of \$4,000 is greater than PHONE1's separate company tax (\$0), the minimum tax is applicable to PHONE1. PHONE1's minimum tax liability will be \$4,000 (\$4,000 - \$0), which will be added to the consolidated corporate income tax liability (\$25,620).

Since PHONE2's minimum tax of \$12,000 is less than PHONE2's separate company tax (\$24,000), the minimum tax is not applicable to PHONE2. PHONE2 is subject to the corporate income tax instead.

Step 3: Determine if Income Tax Credit is Allowable.

Because PHONE1 is subject to the minimum tax, no credit is available for PHONE1. PHONE2 is not subject to the minimum tax, and determines its eligibility for the credit as follows:

PHONE2 Gross Receipts	\$1,500,000
	X 1.3%
=====	
1.3% of Gross Receipts	\$19,500

For purposes of determining the credit, PHONE2 does not compare its separate company tax (\$24,000) to the consolidated tax (\$25,620). Since PHONE2's separate company tax (\$24,000) is more than the 1.3% of gross receipts, the credit is applicable.

The credit is determined as follows:

PHONE2's Separate Tax	\$24,000
1.3 % of PHONE2 Gross Receipts	19,500

Credit Base	4,500
Credit percentage for 1993	X 50%

Corporate income tax credit	\$2,250

Step 4: Determine Consolidated Tax Liability

Corporate income tax	\$25,620
PHONE1 minimum tax (\$4,000-\$0)	4,000
PHONE2 minimum tax	0

Total consolidated tax liability	\$29,620
Phone2 Income Tax Credit	- 2,250

Net consolidated tax liability	\$27,370

§ 8. Transitional rule for initial fiscal year.

The license tax administered by the SCC is computed on the gross receipts for a calendar year basis regardless of the taxable year used for filing federal income tax returns. Tax year 1989, which subjects the gross receipt earned during calendar year 1988 to the license tax, is the last tax year telecommunications companies are subject to the license tax. Therefore, any telecommunications company which has a taxable year for federal income tax purposes that begins before January 1, 1989, includes January 1, 1989, and ends on a day other than December 31, 1989, must file a transitional short taxable year Virginia corporation income tax return to report the income earned after December 31, 1989, and before the first day of their fiscal year 1989 period.

To determine which tax the company must pay, the company must compute the corporate income tax on the company's income for the 12-month fiscal year and the minimum tax on the company's gross receipts for calendar year 1988. To compute the tax due on the transitional taxable year return, the tax (either the corporate income tax less any applicable credit or the minimum tax) may be prorated based upon the number of months of the 12-month fiscal year included in calendar year 1989.

§ 9. Estimated taxes.

A. Generally In general .

The requirements imposed under Article 20 of Chapter 3 (§ 58.1-500 et seq.) of the Code of Virginia regarding the filing of a declaration of estimated income taxes and the payment of estimated income taxes, shall be applicable to a telecommunications companies company regardless of

whether such company expects to be subject to the minimum tax or to the corporate income tax.

B. Exceptions to the addition to tax.

1. For purposes of determining the applicability of the exceptions under which the addition to tax for the underpayment of any installment of estimated taxes will not be imposed, it is irrelevant whether the tax shown on the return for the preceding taxable year is the corporate income tax, imposed by § 58.1-400 of the Code of Virginia or the minimum tax imposed by § 58.1-400.1 of the Code of Virginia or a license tax on gross receipts. The tax shown on the preceding year's return means the sum of the taxes imposed by §§ 58.1-400 and 58.1-400.1 of the Code of Virginia, without reduction for any credits allowable against the tax.

2. The addition to tax for the failure to pay estimated income tax (§ 58.1-504) will not be imposed on the tax liability resulting from the transitional short taxable year return required to be filed for the period that begins after December 31, 1988, and ends before the first day of a telecommunications company's 1989 taxable year.

§ 10.9. Noncorporate telecommunications companies.

A. Generally In general.

Unless specifically exempt under § 58.1-401 of the Code of Virginia, every telecommunications company certified as such by the SCC is subject to the minimum tax even though it may be exempt from, or not subject to, the corporate income tax under § 58.1-400 of the Code of Virginia. To the extent that Where the income of a noncorporate telecommunications company is subject to Virginia income tax at the entity level or in the hands of a partner or other person for whom the income retains its character, the telecommunications company will be deemed to have paid corporate income tax at the entity level for purposes of computing the minimum tax and credit under subsection B of this section.

B. Computation of minimum tax and credit.

A noncorporate telecommunications company must calculate its minimum tax liability as provided in § 4 of this regulation. If the income of the noncorporate telecommunications company is deemed to be subject to Virginia income tax under subsection A of this section, the minimum tax liability shall be compared to the income tax liability of the entity computed as if it were a corporation. The minimum tax, income tax, and credit provisions shall be applied as follows:

1. Minimum tax. If the income of the entity is not deemed to be subject to Virginia income tax under subsection A of this section, the entity shall pay the minimum tax. If the income of the entity is deemed to be subject to Virginia income tax under subsection

A of this section, and if the minimum tax exceeds the entity's income tax computed as if it were a corporation, the entity must pay an amount equal to the difference between the minimum tax and the corporate income tax.

2. Income tax. If the income of the entity is deemed to be subject to Virginia income tax under subsection A of this section, and if the minimum tax does not exceed the entity's income tax computed as if it were a corporation, the entity shall not be required to pay the corporate income tax imposed under § 58.1-400 of the Code of Virginia merely because it computes such a tax for comparison with the minimum tax liability.

3. Telecommunications company income tax credit. If the income of the entity is deemed to be subject to Virginia income tax under subsection A of this section, and if the entity's income tax computed as if it were a corporation exceeds 1.3% of its gross receipts, then the entity is eligible for a credit under § 58.1-434 of the Code of Virginia. The credit shall be computed by the entity as if it were a corporation but shall be claimed by the entity, partner, or other person, as the case may be, in proportion to the portion of the entity's income included in each taxpayer's taxable income. In no case shall the credit allowable exceed the actual income tax liability of the entity, partner, or other person, determined without regard to the income tax computed as if the entity was a corporation.

C. Return preparation.

If the income of a telecommunications company is deemed to be subject to Virginia income tax under the provisions of subsection A of this section, it must file a return, marked "RETURN BY NONCORPORATE TELECOMMUNICATIONS COMPANY," each taxable year which contains the following information:

1. The gross receipts for such taxable year;
2. The total amount of minimum tax for such taxable year;
3. The taxable income and corporate income tax computed as if it were a corporation subject to the corporate income tax under § 58.1-400 of the Code of Virginia;
4. The amount of the telecommunications company's income tax credit; and
5. A schedule which includes the name, address, tax identification number and proportionate share of the telecommunications company's income and credit taxable to each entity, partner or other person under Virginia law.

Example 1. Telecommunications Company (TC) operates

Proposed Regulations

as a partnership with two corporate partners. TC is a calendar year filer for federal income tax purposes. For calendar year ~~1990~~ 1993, TC has ~~\$200,000~~ \$300,000 in gross receipts. Computing its taxable income as if a corporation, TC has a Virginia taxable income equal to \$35,000. TC's minimum tax liability is \$2,400 (~~\$200,000 X 1.2%~~ \$300,000 X .08%) and its Virginia income tax is \$2,100 (\$35,000 X 6.0%). Since TC's minimum tax liability exceeds its income tax liability, it is subject to the minimum tax and must pay \$300 (\$2,400 - 2,100). Because TC is a partnership, its income tax liability is deemed to be paid by its partners, and because the partners are subject to tax in Virginia on their share of TC's income, TC is deemed subject to tax under subsection A of this section.

Example 2. Telecommunications Company (TC) operates as a partnership with two corporate partners. Corp A owns 60% of TC and Corp B owns 40% of TC. TC is a calendar year filer for federal income tax purposes. For calendar year ~~1990~~ 1993, TC has ~~\$200,000~~ \$300,000 in gross receipts. Computing its taxable income as if a corporation, TC has a Virginia taxable income equal to ~~\$50,000~~ \$70,000. TC's minimum tax liability is \$2,400 (~~\$200,000 X 1.2%~~ \$300,000 X .08%) and its Virginia income tax is ~~\$3,000~~ \$4,200 (~~\$50,000~~ \$70,000 X 6.0%). Since TC's income tax liability exceeds its minimum tax liability, it must determine the amount of income tax credit that would be allowable against the tax, if it paid the tax.

The credit is computed as follows:

Corporate Income Tax (deemed paid by partners)	\$3,000	\$4,200
1.3% of Gross Receipts	2,700	3,900
Credit Base	400	300
Credit Percentage for 1990	X 70%	50%
Corporate Income Tax Credit	\$280	\$150

TC would pay no tax and Corp A would be allowed a credit of ~~\$168~~ \$90 (~~\$280~~ \$150 X 60%) against its separate tax liability and Corp B would be allowed a credit of ~~\$112~~ \$60 (~~\$280~~ \$150 X 40%) against its separate tax liability.

§ 10 . Administrative appeals.

A. State Corporation Commission.

As set forth under § 2 of this regulation, the SCC will make all determinations regarding a company's status as a telecommunications company and will determine and certify the amount of gross receipts, as defined in § 58.1-400.1 of the Code of Virginia, to the department annually.

Telecommunications companies may petition the SCC for review and correction of the company's status or the amount of gross receipts certified. The petition should be *timely filed* in compliance with the Rules of Practice and Procedures of the SCC. *Within 90 days of receipt of such any recertification by the SCC resulting in a change, the telecommunications company must file an amended return in accordance with § 3 B of this regulation. Any*

application for refund must be timely filed in accordance with § 58.1-1823 of the Code of Virginia.

B. Department of Taxation.

1. Company status or gross receipts. Any application for correction of an erroneous assessment pursuant to § 58.1-1821 of the Code of Virginia that is contingent upon the status of a company as a telecommunications company or upon the amount of gross receipts of a telecommunications company, will be held without action (if a petition has been filed with the SCC pursuant to the rules of Practice and Procedures of the SCC) until a final determination has been made by the SCC on a petition filed pursuant to the Rules of Practice and Procedures of the SCC regarding the company's status or amount of gross receipts.

2. Any application pursuant to § 58.1-1821 filed with the Department of Taxation department that is not contingent upon the status of a company as a telecommunications company or upon the amount of gross receipts of a telecommunications company will be acted upon by the Department of Taxation department.

V.A.R. Doc. No. R94-386; Filed December 21, 1993, 3:13 p.m.

* * * * *

Title of Regulation: VR 630-3-402. Corporate Income Tax Determination of Virginia Taxable Income.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was initially adopted on September 14, 1984, but revised on February 1, 1987, with a retroactive effective date of January 1, 1985. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explain

The procedures relating to the determination of Virginia taxable income.

Section 58.1-402 of the Code of Virginia was amended by Chapters 484 of the 1987 Acts of the General Assembly, Chapters 39 and 639 of the 1989 Acts of the General Assembly, and Chapters 678 of the 1992 Acts of the General Assembly.

The regulation originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the information previously contained in this regulation has been divided into four separate regulations. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present.

The amendments to this regulation reflect the legislative changes made to § 58.1-402 of the Code of Virginia, the separation of information into three new regulations, and department policy regarding additions, subtractions, and the determination of Virginia taxable income.

Substance: The amendments to § 1.1 move definitions to the beginning of the regulation, and add new definitions.

A definition of federal taxable income has been added to § 1.1 of the regulation.

The amendments to § 2.1 incorporate references to the new regulations, and delete duplicative language.

The amendments to § 2.2 4 provide that a homeowner's association is subject to Virginia corporate income tax on its homeowner's association taxable income.

The amendments to § 2.2 5 provide that a political organization is subject to Virginia corporate income tax on its political organization taxable income.

The amendments to § 2.2 6 provide that a foreign corporation is subject to Virginia corporate income tax on its branch profits dividend equivalent, gross transportation income, and income for which an election has been made under § 897(i) of the Internal Revenue Code.

The amendments to § 2.2 7 reference VR 630-3-402.3, which provides guidance in determining the adjustments necessary when a net operating loss is present. References have also been added to the net operating loss adjustments required by VR 630-3-442.1 and VR 630-3-442.2 for consolidated and combined returns, respectively.

The amendments to § 2.2 8 provide that the adjustments required in determining the federal alternative minimum tax do not apply in determining Virginia taxable income.

The amendments to § 2.2 9 provide references to the adjustments required by VR 630-3-442.1 and VR 630-3-442.2 for consolidated and combined returns, respectively.

The amendments to § 3.2 provide that federal taxable income as reported on the federal return generally will be relied upon for Virginia purposes. The department will usually not accept a difference from the federal return if such difference will have an impact on federal tax liabilities.

The amendments to § 3.3 provide that certain adjustments may be necessary to reconcile federal taxable income for Virginia purposes to federal taxable income as actually reported.

The amendments to § 3.4 provide that affiliated corporations may be required to make special adjustments where federal and Virginia returns are filed on a different basis, or where a federal consolidated return contains corporations which are not subject to the Virginia corporate income tax.

If a federal consolidated return is filed, but separate Virginia returns are filed, federal taxable income must be determined as if separate federal returns had been filed.

In determining federal taxable income as if separate federal returns had been filed, no effect is given for any deferral of gain, loss, income, or deduction which may have been permitted as a result of filing a federal consolidated return.

Unless otherwise provided, elections made on a federal consolidated return shall be considered to have been made by each separate company in determining its separate federal taxable income.

If an election was made under § 338(h)10 of the Internal Revenue Code, the Virginia returns of any members of the selling group shall reflect the amount and character of income recognized in the federal consolidated return.

Section 2, Additions, has been deleted as this portion of the regulation has been moved to VR 630-3-402.1.

Section 3, Subtractions, has been deleted as this portion of the regulation has been moved to VR 630-3-402.2.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the adjustments required, and the impact of legislative changes.

Taxpayers will have greater comprehension of regulations if detailed guidance and examples are provided.

Taxpayers will be more aware of issues regarding additions, subtractions and net operating loss adjustments required in determining Virginia taxable income if

Proposed Regulations

separate regulations for these complex issues are promulgated.

Estimated Impact:

a. Projected cost to agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. Source of funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. Number and types of regulated entities: This regulation will impact all corporate taxpayers in determining their Virginia taxable income, affiliated groups of corporations that file their federal and Virginia returns on a different basis, and corporations that claim deductions for net operating losses. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. Projected cost to regulated entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. The regulation originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension the regulation has been divided into four separate regulations. VR 630-3-402.1 defines additions required in determining Virginia taxable income, VR 630-3-402.2 defines subtractions and adjustments allowed in determining Virginia taxable income, and VR 630-3-402.3 defines adjustments necessary to Virginia taxable income when net operating losses are present.

2. The amendments to the regulation provide:

a. A definition of federal taxable income.

b. References to the new regulations, and delete duplicative language.

c. That a homeowner's association is subject to Virginia corporate income tax on its homeowner's association taxable income.

d. That a political organization is subject to Virginia corporate income tax on its political organization taxable income.

e. That a foreign corporation is subject to Virginia corporate income tax on its branch profits dividend equivalent, gross transportation income, and income for which an election has been made under § 897(i) of the Internal Revenue Code.

f. That net operating loss adjustments are required by VR 630-3-442.1 and VR 630-3-442.2 for consolidated and combined returns, respectively.

g. That the adjustments required in determining the federal alternative minimum tax do not apply in determining Virginia taxable income.

h. That adjustments are required by VR 630-3-442.1 and VR 630-3-442.2 for consolidated and combined returns, respectively.

i. That federal taxable income as reported on the federal return generally will be relied upon for Virginia purposes. The department will usually not accept a difference from the federal return if such difference has an impact on federal tax liabilities.

j. That certain adjustments may be necessary to reconcile federal taxable income for Virginia purposes to federal taxable income as actually reported.

k. That affiliated corporations may be required to make special adjustments where federal and Virginia returns are filed on a different basis, or where a federal consolidated return contains corporations which are not subject to the Virginia corporate income tax.

l. That if a federal consolidated return is filed, but separate Virginia returns are filed, federal taxable income must be determined as if separate federal returns had been filed.

m. In determining federal taxable income as if separate federal returns had been filed, no effect is given for any deferral of gain, loss, income, or deduction which may have been permitted as a result of filing a federal consolidated return.

n. Unless otherwise provided, elections made on a federal consolidated return shall be considered to have been made by each separate company in determining its separate federal taxable income.

o. If an election was made under § 338(h) 10 of the Internal Revenue Code, the Virginia returns of any members of the selling group shall reflect the amount and character of income recognized in the federal consolidated return.

3. The regulation was initially adopted on September 14, 1984, but revised on February 1, 1987, with a retroactive effective date of January 1, 1985. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

VR 630-3-402. Corporate Income Tax: Determination of Virginia Taxable Income.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Corporate income tax" means the income tax imposed pursuant to § 58.1-400 of the Code of Virginia.

"Federal taxable income" means taxable income as defined by § 63 of the Internal Revenue Code and any other income taxable to the corporation under federal law for such taxable year, except where otherwise defined or adjusted. For an example of an adjustment to federal taxable income to prevent double taxation or deduction, see § 5 of VR 630-3-402.3. For examples of a different definition of federal taxable income where consolidated or combined Virginia returns are filed on a different basis than returns filed for federal purposes, see VR 630-3-442.1 and VR 630-3-442.2. For examples of a different definition of federal taxable income where separate Virginia and consolidated federal returns are filed, see § 3.4 of this regulation.

"Internal Revenue Code" or "I.R.C." means the Internal Revenue Code of 1986 and amendments thereto, as defined by § 58.1-301 of the Code of Virginia and VR 630-3-301.

PART II. DETERMINATION OF VIRGINIA TAXABLE INCOME.

§ 1. Federal taxable income.

§ 2.1. In general.

A. A Virginia income tax is imposed on all income from Virginia sources taxable income, which is defined as federal taxable income with certain specified additions, subtractions, and exemptions adjustments. For the purpose of determining Virginia taxable income, the term "federal taxable income" means all income from whatever source derived and however named on which a federal income tax is imposed. For additions to federal taxable income in determining Virginia taxable income see VR 630-3-402.1. For subtractions and adjustments to federal taxable income in determining Virginia taxable income see VR 630-3-402.2. For special adjustments required for

savings and loan associations, railway companies, and telecommunications companies see VR 630-3-403.

B. § 2.2. Federal taxable income.

The computation of Virginia taxable income begins with federal taxable income. For most corporations "federal taxable income" for Virginia income tax purposes will be the amount shown on the line of federal Form 1120 designated "taxable income" (after net operating loss deduction and special deductions). However, there are some exceptions, including, but not limited to, the following:

1. Regulated investment companies file federal Form 1120 but do not follow normal corporate rules for computing the tax. Separate taxes are imposed on "investment company taxable income" and on capital gains. The federal taxable income of a regulated investment company for Virginia purposes is the sum of: (i) "investment company taxable income" as defined in I.R.C. § 852(b) of the Internal Revenue Code, and (ii) the amount of capital gains defined in I.R.C. § 852(b) (3) of the Internal Revenue Code.

2. Real estate investment trusts file federal Form 1120 but do not follow normal corporate rules for computing the tax. Separate taxes are imposed on "real estate investment trust taxable income," capital gains, "income from foreclosure property" and "income from prohibited transactions."

The federal taxable income of a real estate investment trust for Virginia income tax purposes is the sum of: (i) "real estate investment trust taxable income" as defined in I.R.C. § 857(b)(2) of the Internal Revenue Code; (ii) "capital gains" as defined in I.R.C. § 857(b)(3) of the Internal Revenue Code; (iii) "income from foreclosure property as defined in I.R.C. § 875(b)(4) of the Internal Revenue Code; and (iv) "income from prohibited transaction transactions" as defined in I.R.C. § 857(b)(6) of the Internal Revenue Code.

3. Organizations exempt from federal tax under subchapter Subchapter F of the Internal Revenue Code which have unrelated business income are required to file federal Form 990-T. For such organizations, federal taxable income means "unrelated business taxable income" as defined in I.R.C. § 512 of the Internal Revenue Code is subject to the corporate income tax.

4. Homeowner's associations exempt from federal income taxes under § 528 of the Internal Revenue Code are subject to federal tax at a rate of 30% on their "homeowners association taxable income." For such organizations, homeowners association taxable income is subject to the corporate income tax.

5. Political organizations exempt from federal income

Proposed Regulations

taxes under § 527 of the Internal Revenue Code are subject to federal tax on their "political organization taxable income." For such organizations, political organization taxable income is subject to the corporate income tax.

4. 6. Corporations organized under the laws of a foreign country and doing business within the U.S. pay the regular federal corporate tax on net income effectively connected with the conduct of a trade or business within the U.S. and, in the absence of a treaty between the U.S. and the foreign country, a pay separate tax federal taxes of 30% on the their gross income from dividends, interest, and certain other income from U.S. Sources and branch profits, and a separate federal tax of 4.0% on United States source gross transportation income. For Virginia purposes the federal taxable income of such foreign corporations is either the taxable income taxable to the corporation under the terms of any applicable treaty (including any income taxable in addition to, or in lieu of, the treaty), or the sum of: (i) the gross income defined in I.R.C. § 881, and (ii) the net income defined in I.R.C. § 822, (iii) the United States source gross transportation income defined in I.R.C. § 887, (iv) the dividend equivalent amount defined in I.R.C. § 884, and (v) income for which an election has been made under I.R.C. § 897(i).

5. 7. Net operating loss deductions.

a. Corporations incurring a net operating loss are allowed under federal law to carry such loss back to specified years and over to specified subsequent years. Virginia law has no provision for a net operating loss deduction (NOLD). Therefore an NOLD is allowable for Virginia purposes only to the extent that the NOLD is allowed as a deduction in computing federal taxable income.

b. When a net operating loss is carried back to a prior year, the NOLD is treated as a change in federal taxable income for the year to which the loss is carried. The corporation may file an amended Virginia return claiming a refund due to the NOLD. A copy of federal form 1139, 1120X or similar form must be attached to the amended Virginia return. See Va. Code §§ 58.1-1823 (amended returns), 58.1-1823 (interest on overpayments attributable to an NOLD), 58.1-403 (special rules for railway companies) and 58.1-442 (special rules for consolidated and combined Virginia returns).

c. The Virginia additions and subtractions of the loss year follow the loss to the year the NOLD is claimed. For example, if 50% of a 1983 federal net operating loss is carried back to 1980, then 50% of the 1983 Virginia additions and subtractions will also be carried back to 1980.

d. Under federal law an NOLD may be used only to

reduce federal taxable income. An NOLD may not create or increase a federal net operating loss. Because an NOLD cannot reduce federal taxable income below zero, it is possible that a corporation with substantial Virginia additions will owe Virginia income tax even though its federal taxable income is reduced to zero by an NOLD.

e. Members of an affiliated group of corporations which file a consolidated federal return and separate or combined Virginia returns must compute federal taxable income and the NOLD as if each corporation had filed a separate federal return for all affected years. If the group files a Virginia consolidated return which does not include all of the corporations included in the federal consolidated return then the federal taxable income and NOLD must be computed as if all affected federal consolidated returns included only those corporations included in the Virginia consolidated return. The provisions of Treasury regulation § 1.1502-79 which allocated a consolidated loss to the members of the group shall not be applied in computing the separate federal taxable income in this situation. See regulation VR 630-3-442.

Corporations which claim a federal net operating loss deduction (carryback or carryover) may be required to make certain adjustments to federal taxable income as provided in VR 630-3-402.3. Affiliated corporations filing consolidated or combined returns claiming a net operating loss deduction shall make the adjustments to federal taxable income provided in VR 630-3-442.1 and VR 630-3-442.2, respectively.

8. The adjustments to federal taxable income under §§ 56, 57, and 58 of the Internal Revenue Code for purposes of determining the federal alternative minimum tax shall not be considered "other income taxable to the corporation under federal law," and are not required to be added to federal taxable income for Virginia purposes.

9. Affiliated corporations may be required to make certain adjustments in order to determine federal taxable income for Virginia purposes. See § 3.4 of this regulation, VR 630-3-442.1 and VR 630-3-442.2.

PART III. VIRGINIA TAXABLE INCOME.

6. § 3.1. Redetermination of business in Virginia.

Certain corporations may be required to redetermine Virginia taxable income to properly reflect the business done in Virginia. (§ 58.1-446 of the Code of Virginia.) in accordance with VR 630-3-446.

§ 2: Additions.

The purpose of the additions specified in § 58.1-402 of

the Code of Virginia is to add to Virginia taxable income certain items excluded or deducted from federal taxable income. If an item was fully included in federal taxable income, then it will not be added to Virginia taxable income by this section. If an item was only partially included in federal taxable income, then the item will be added to Virginia taxable income only to the extent it was excluded or deducted from federal taxable income. If an item was excluded or deducted from federal taxable income has already been included in Virginia taxable income by operation of some other section of the Code of Virginia, then the item will not be added again under this section. The additions are:

1. Interest on obligations of other states:

a. Interest on the obligations of any state other than Virginia or on the obligations of a political subdivision of such other state must be added to federal taxable income.

b. I.R.C. § 265 prohibits the deduction of expenses allocable to or interest on indebtedness incurred or continued to purchase or carry obligations exempt from federal income tax. If a corporation has interest income on obligations of other states and also has expenses or interest which were not deducted by operation of I.R.C. § 265, then the addition shall be reduced by the portion of such expenses or interest which is attributable to the interest income on obligations of other states.

EXAMPLE: Taxpayer has \$3,000 of income exempt from federal income tax of which \$1,000 is on obligations of a political subdivision of Virginia and \$2,000 on obligations of political subdivisions of states other than Virginia. Application of I.R.C. § 265 barred deduction of \$300 from federal taxable income. The addition is \$1,900 calculated as follows:

2,000 - (300 X $\frac{2,000}{3,000}$) = 1,900

c. If the interest is on an obligation created by a contract or agreement to which Virginia is a party, such interest shall not be added to Virginia taxable income.

2. Interest of dividends from the United States:

a. Interest of dividends on obligations or securities of any authority, commission or instrumentality of the United States, exempt from federal income tax but not from state income tax, must be added to federal taxable income.

b. If any related expenses were not deducted from federal taxable income by reason of I.R.C. § 265, then the addition shall be reduced by the portion of such expenses attributable to federal interest or dividends exempt from federal income tax:

3. Excess cost recovery. If any deduction was claimed on taxpayer's federal return under the accelerated cost recovery system (ACRS) for taxable years beginning after December 31, 1981, 30% of such deduction must be added to federal taxable income. See regulation VR 630-3-222.

4. State income taxes. If any Virginia income tax imposed by this chapter was deducted in determining federal taxable income, such amount shall be added to federal taxable income. If any net income taxes and other taxes, including franchise and excise taxes which are based on, measured by, or computed with reference to net income, imposed by any other taxing jurisdiction were deducted in determining federal taxable income. To determine if a particular tax imposed by another taxing jurisdiction is a net income tax see regulation VR 630-3-405.

5. Unrelated business taxable income. Organizations described in I.R.C. § 501(c) are exempt from federal income tax unless they have unrelated business income, in which case a tax is imposed on "unrelated business taxable income" defined in I.R.C. § 512. The unrelated business taxable income of such organization must be added to Virginia taxable income if it has not already been included in federal taxable income.

6. ESOP credit carryover. Federal law allows employers to claim a credit for contributions to an Employee Stock Ownership Plan (ESOP) and further provides that the amount of such contributions may not be deducted in computing federal taxable income. I.R.C. § 44G. Virginia law allows a subtraction for such contributions. See § 2, paragraph 11 of these regulations. Federal law allows the ESOP credit to be carried over to subsequent years and, if any ESOP credit remains unused at the end of the carryover period, the unused credit may be deducted. If any ESOP credit carryover is deducted in computing federal taxable income under I.R.C. § 404(f) such amount shall be added to federal taxable income in computing Virginia taxable income.

6. ESOP credit carryover. Federal law allows employers to claim a credit for contributions to an Employee Stock Ownership Plan (ESOP) and further provides that the amount of such contributions may not be deducted in computing federal taxable income. I.R.C. §44G. Virginia law allows a subtraction for such contributions. See § 2, paragraph 11 of these regulations. Federal law allows the ESOP credit to be carried over to subsequent years and, if any ESOP credit remains unused at the end of the carryover period, the unused credit may be deducted. If any ESOP credit carryover is deducted in computing federal taxable income under I.R.C. § 404(f) such amount shall be added to federal taxable income in computing Virginia taxable income.

§ 2. Subtractions:

Proposed Regulations

The purpose of the subtractions specified in § 58.1-402 of the Code of Virginia is to subtract from Virginia taxable income certain items included in federal taxable income. If an item was partially excluded or deducted in determining federal taxable income, then it shall be subtracted from Virginia taxable income only to the extent that it was included in federal taxable income. If an item has already been excluded from Virginia taxable income under this chapter, then it shall not be subtracted again under this section. The subtractions are:

1. Interest or dividends on obligations of the United States or Virginia:

a. "Obligation" means a debt obligation or security issued by the United States or any authority, commission or instrumentality of the United States or by the Commonwealth of Virginia or any of its political subdivisions, which obligation or security is issued in the exercise of the borrowing power of the United States or Virginia and is backed by the full faith and credit of the United States or Virginia.

b. Guarantees by the United States or Virginia of obligations of private individuals or corporations are merely contingent obligations of the United States or Virginia even though the guarantees may be backed by the full faith and credit of the United States or Virginia. The obligation does not become an obligation of the United States or Virginia because the guarantee and interest and dividends paid on such guaranteed obligations do not qualify for the subtraction unless specified exempted by statute.

c. Specific statutory exemptions exist for certain securities issued by particular federal or Virginia agencies or political subdivisions. If a federal or Virginia statute exempts from state taxation the interest or dividends on specific securities of a particular agency or political subdivision then such interest or dividends qualify for the subtraction.

For examples of specific statutory exemptions see § 15.1-1383 of the Code of Virginia and 13 U.S.C.A. § 2056.

d. Repurchase agreements are usually obligations issued by financial institutions which are secured by U.S. obligations exempt from Virginia income taxation under subparagraphs a or e above. In such cases the interest paid by the financial institutions to purchasers of repurchase agreements does not qualify for the subtraction. Repurchase agreements issued following current commercial practice will be regarded as obligations of the issuing financial institution. However, if the purchaser is regarded as the true owner of the underlying exempt obligation, the interest will qualify for the subtraction even though collected by the seller and distributed to the purchaser. Any claim of such ownership must be substantiated by a taxpayer claiming a subtraction.

2. Interest or dividends from pass-through entities:

a. Under federal law certain income received by a partnership, estate, trust or regulated investment company (pass-through entity) and distributed to a partner, beneficiary or shareholder (recipient) retains the same character in the hands of the recipient. If a pass-through entity receives interest or dividends on U.S. or Virginia obligations which are distributed to the recipients in a manner that the distributions retain their character in the hands of the recipients under federal law, then such interest or dividends may be subtracted by the recipients in computing Virginia taxable income.

b. A pass-through entity may invest in several types of securities, some of which are U.S. or Virginia obligations. When taxable income is commingled with exempt income all income is presumed taxable unless the portion of income which is exempt from Virginia income tax can be determined with reasonable certainty and substantiated. The determination must be made for each distribution to each shareholder. For example, if distributions are made monthly then the determination must be made monthly. As a particular matter, only pass-through entities which invest exclusively in U.S. or Virginia obligations, or which have extremely stable investment portfolios, will be likely to make such determinations.

e. Examples:

(1) ABC Fund, a regulated investment company, invests exclusively in U.S. Treasury notes and bills which are exempt from state taxation under 21 U.S.C.A. § 3124. All distributions are considered to be interest on U.S. Obligations and may be subtracted by the recipient.

(2) Virginia Fund, a regulated investment company, invests exclusively in obligations of Virginia and its political subdivisions. Distributions are considered to be interest on Virginia obligations and qualify for the subtraction to the extent that such distributions are included in the recipient's federal taxable income.

(3) XYZ Fund, a regulated investment company, invests in a variety of securities including obligations of the U.S., Virginia, other states, corporations and financial institutions (repurchase agreements). Due to the commingling of taxable and exempt income, the turnover in XYZ Fund's investments and the fluctuation in a shareholder's investment in XYZ Fund, all distributions are considered taxable income and do not qualify for the subtraction unless XYZ Fund determines the portion of distributions which is interest and dividends from U.S. and Virginia obligations for each distribution to each shareholder. Note that any portion of XYZ Fund's distribution

which are excluded from federal taxable income as interest on obligations of other states must be added to Virginia taxable income.

3. DISC dividends:

a. A domestic international sales corporation (DISC) is exempt from the federal income tax under I.R.C. § 991. Virginia law does not provide a similar exemption. Therefore a DISC is subject to Virginia tax if it is a domestic corporation or doing business in Virginia.

b. I.R.C. § 995 imputes certain earnings of a DISC to the DISC's shareholders as a distribution taxable as a dividend. Subsequent actual distributions are excluded from the shareholder's income as being first made out of previously taxed income. I.R.C. § 996(a)(1). The deemed distributions will be considered dividends pursuant to § 58.1-407 of the Code of Virginia (relating to allocation of dividend income). However, the provisions of § 58.1-446 may apply to a DISC.

c. If 50% or more of the income of a DISC was assessable in Virginia for the preceding year, or the last year in which the DISC had income, then to the extent that deemed distributions from such DISC were included in taxpayer's federal taxable income, such amounts shall be subtracted from federal taxable income. For the purpose of this subtraction, 50% or more of the income of a DISC shall be deemed assessable in Virginia if the DISC filed a Virginia income tax return for the preceding year, or the last year in which the DISC had gross income, and such return shows either that all income was taxable in Virginia or that 50% or more of the income was allocated or apportioned to Virginia.

4. State tax refunds. If federal taxable income included a refund or credit for overpayment of income taxes to this state or any other state, the amount of such refund or credit shall be subtracted from Virginia taxable income.

5. Foreign dividend gross up. I.R.C. § 78 requires corporations electing to claim a credit for taxes paid to a foreign government by a subsidiary to deem the amount of such taxes a dividend and includes such amount in federal taxable income. If I.R.C. § 78 requires the inclusion of an amount of federal taxable income then such amount, net of any expenses attributable to such amount, shall be subtracted from Virginia taxable income. A copy of I.R.S. form 1118, or similar form, shall be attached to the return to substantiate the subtraction.

6. WIN or Targeted Jobs credit. Federal law permits a taxpayer to claim a credit based upon certain wages paid. I.R.C. §§ 40 and 44B. If a WIN or Targeted Jobs

credit is elected I.R.C. § 280C bars the deduction of the wages on which the credit is based. To the extent such wages were not deducted from federal taxable income, they shall be subtracted from Virginia taxable income.

7. Subpart F income. If I.R.C. § 951 requires an amount to be included in federal taxable income, then such amount, net of any expenses attributable to such amount, shall be subtracted from Virginia taxable income.

8. Foreign source income. If federal taxable income includes any amount that is "foreign source income," as that term is defined in § 58.1-302 of the Code of Virginia, and the regulations thereunder, such amount may be subtracted.

9. Excess cost recovery. If the taxpayer included any excess cost recovery in its additions for taxable years beginning after December 31, 1981, then taxpayer may subtract a portion of such excess cost recovery in returns for taxable years beginning after December 31, 1983. See regulation VR 630-3-323.

10. Dividends received. To the extent included in federal taxable income there shall be subtracted from Virginia taxable income the dividends received from a corporation when the taxpaying corporation owns 50% or more of the voting power of all classes of stock of the payer.

11. ESOP contributions. Federal law allows employers to claim a credit for contributions made to an Employee Stock Ownership Plan (ESOP), and further provides that any ESOP contributions for which a credit is allowed may not be deducted in computing federal taxable income. I.R.C. § 44G. If any ESOP contributions are not deducted in computing federal taxable income because of the provisions of I.R.C. § 44G, such contributions may be subtracted in computing Virginia taxable income.

12. Qualified agricultural contributions:

a. Generally. The amount of any qualified agricultural contribution shall be subtracted from federal taxable income in determining Virginia taxable income.

b. Qualified contributions. Contributions that qualify for subtraction from federal taxable income are contributions of agricultural products made between January 1, 1985, and December 31, 1987, by a corporation engaged in the trade or business of growing or raising such products.

(1) To be subtractible, a contribution must be made to an organization exempt from federal income taxation under I.R.C. § 502(c)(3) and must meet the following tests: (i) the product contributed must be

Proposed Regulations

fit for human consumption, i.e., edible products; (ii) the use of the product by the donee must be related to the purpose or function for which the donee was granted exemption under I.R.C. § 501(c)(3) (for instance, contributions of crops to a foundation organized for scientific or literary purposes would not qualify, but contributions of crops to a nonprofit food bank would qualify); (iii) the contribution is not made in exchange for money, property, or service; and (iv) the donor must obtain from the donee a written statement representing that the donee's use and disposition of the product will be in accordance with its charitable mission. Such written statements also must list the type and quantity or volume of products contributed, state that the products donated are fit for human consumption, and state the use to which the donations will be put. Such written statements must be filed with the corporation's income tax return when the subtraction for qualified agricultural contributions is claimed.

(2) To be subtractible from federal taxable income under the above tests, the donee must make use of the agricultural products donated to it consistent with the purpose for which it was granted exemption under I.R.C. § 501(c)(3). Therefore, contributions of crops to an organization that does not itself provide food to the needy would not qualify, even if the donee in turn contributes the crops to an organization that provides food to the needy.

e. Agricultural products. Crops are the only agricultural products eligible for subtraction when donated. Thus, the subtraction is limited to contributions of products of the soil and does not include contributions of animal products.

d. Computation of subtraction. The subtraction for qualified agricultural contributions is equal to the lowest wholesale market price in the nearest regional market of the type of product(s) donated during the month(s) in which donations are made.

For the purposes of determining the lowest wholesale market price for a particular product, a corporation must use the lowest wholesale market price, regardless of grade or quality, published in the month of subtraction by the U.S. Department of Agriculture Market News Service on Fruits, Vegetables, Ornamentals, and Specialty Crops for the regional market nearest to the corporation's place of business.

e. Limitation on subtraction. The subtraction for qualified agricultural contributions shall be reduced by the amount of any other charitable deductions under I.R.C. § 170 relating to qualified agricultural contributions if the deductions are claimed on a corporation's federal return for the taxable year in which the contribution is made, or if the deductions

are eligible for carryover to subsequent taxable years under I.R.C. § 170. For example, a corporation which deducts charitable contributions of qualified agricultural products for federal and state income tax purposes must reduce its Virginia subtraction for qualified agricultural contributions by the amount of its charitable deductions for the same products. If the corporation's total charitable contributions of qualified agricultural products exceed the deduction ceiling set by federal law and the corporation is eligible to carryover deductions to subsequent years, the corporation must also subtract the deductions available for carryover from the value of its qualified agricultural contributions.

EXAMPLE: Corporation contributes one thousand 50-pound sacks of round white potatoes to a local nonprofit food bank. The corporation's basis in the contributed property is \$200, of which it claims \$100 as a charitable contribution on its 1986 federal income tax return and will carryover \$100 as a charitable deduction in its taxable year 1987 federal income tax return. During the month in which the contribution was made, the lowest wholesale market price for a 50-pound sack of round white potatoes published by the U.S. Department of Agriculture Market News Service in the regional market nearest the corporation's place of business was \$2. The corporation would be computed as follows:

Units contributed	1000
Lowest wholesale market price of unit x	\$ 2
.....	-\$2,000
Charitable deduction claimed on contribution ..	(\$100)
Charitable deduction carried over	(\$100)
Deduction for qualified agricultural contribution	(\$1,800)

Section revised 1/87

§ 3.2. Federal taxable income as reported.

The computation of Virginia taxable income begins with federal taxable income. The department relies on the amount and character of each item reported on the federal return and supporting schedules. When a taxpayer alleges an item should be treated differently on a Virginia return than it was on a federal return, the taxpayer must clearly show why different treatment is required. Generally, the department will not accept information which differs from federal forms and schedules if such difference would have a material impact on federal tax liabilities. The department presumes that where federal taxes are materially affected, taxpayers will take all necessary steps to ensure that the forms and schedules have been prepared appropriately.

Example: On its federal return, XYZ Corporation (XYZ) claimed an investment tax credit with respect to depreciable property. As a result of the federal credit, XYZ had to reduce the basis of such depreciable property

by a portion of the credit. Because there is no provision in the Code of Virginia for a "Virginia basis," and because there is no provision in the Code of Virginia which allows a subtraction for such item, XYZ may not adjust its Virginia taxable income for depreciation, gain or loss, or other item with respect to the federal basis reduction.

§ 3.3. Reconciling items.

Certain adjustments may be necessary to reconcile federal taxable income for Virginia purposes to federal taxable income as actually reported. Such adjustments may be required even though they are not "additions" or "subtractions" to federal taxable income as those terms are used in this regulation.

Example: Corporation XYZ files a consolidated federal return and a separate Virginia return. On its federal return, XYZ reported income from a subsidiary under the equity method of accounting. This financial accounting "income" was eliminated on the consolidated return through a consolidating elimination adjustment. This is a financial accounting adjustment, which can be distinguished from a taxable event such as a dividend. Because there was no income realized or recognized for federal income tax purposes, XYZ must adjust its federal taxable income as reported in order to determine federal taxable income for Virginia purposes. If XYZ had filed a separate federal return this would not have been included in federal taxable income, but would merely have been a reconciling item between "book" and "taxable" income. XYZ must attach a schedule to its Virginia return which clearly explains the nature of the adjustment.

§ 3.4. Affiliated corporations.

When affiliated corporations file federal and Virginia returns on a different basis, or file a federal consolidated return including corporations which are not subject to the Virginia corporate income tax, certain adjustments may be necessary in order to determine "federal taxable income" for Virginia purposes.

1. If an affiliated group files a consolidated federal return, but separate Virginia returns, then federal taxable income (before and after deductions for net operating losses, net capital losses, charitable contributions, or other items limited to or affected by taxable income) of each member of the group shall be computed as if separate federal returns had been filed. A similar computation shall be made for every other year which affects or is affected by a federal deduction for a net operating loss, net capital loss, charitable contribution, or other such item in the current year.

2. In determining federal taxable income as if separate returns had been filed, no effect shall be given to deferrals of any gain, loss, income, or deduction which may have been permitted as a result

of filing a federal consolidated return. Accordingly, any item which is recognized for federal tax purposes, but deferred in accordance with U.S. Treasury Regulation § 1.1502-13 (or similar provisions) as an "intercompany transaction" must be recognized for Virginia purposes in the year realized when determining "separate" federal taxable income for Virginia purposes.

3. Unless otherwise provided, elections made on a federal consolidated return regarding income, deductions, accounting methods, conventions, credits, or other elements affecting federal taxable income shall be considered to have been made by each separate company in determining its separate federal taxable income if such election could have been made as a separate company.

4. Whenever a net operating loss deduction must be redetermined on a separate company basis, the adjustments required by VR 630-3-402.3 must be made on a separate company basis in each year affected by the loss.

5. Companies filing combined or consolidated Virginia returns shall make the adjustments to federal taxable income required by VR 630-3-442.2 and VR 630-3-442.1, respectively.

6. If an election under § 338(h)(10) of the Internal Revenue Code is made (allowing a sale of stock in a subsidiary to be treated as a sale of the subsidiary's assets), the Virginia returns of any members of the selling group affected by such election shall reflect the amount and character of income recognized in the federal consolidated return.

Example 1. XYZ Corporation (XYZ) files a federal consolidated return with its parent corporation (P), and a separate Virginia return. During taxable year 1992, XYZ distributed appreciated property to P. In accordance with I.R.C. § 311(b), XYZ recognizes a gain on such transaction as if the appreciated property had been sold at its fair market value. On the federal consolidated return, the gain is deferred until such time as the appreciated property leaves the affiliated group. In determining XYZ's income as if it were a separate company, the income recognized under I.R.C. § 311(b) must be included in its federal taxable income for Virginia purposes, and shall be subject to Virginia tax in 1992, the year of the distribution.

Example 2. Assume the same facts as in Example 1. In taxable year 1994, XYZ is completely liquidated and 100% of its assets are distributed to P. No gain or loss is reported with respect to this transaction on the federal consolidated return. Because I.R.C. § 337 provides that XYZ does not recognize gain or loss as a result of the liquidation (regardless of consolidated return status), no adjustment is required for this

Proposed Regulations

transaction in determining XYZ's federal taxable income as if it were a separate company.

Example 3. ABC Corporation (ABC) files a federal consolidated return with its parent corporation (P) and other affiliated corporations. ABC files a separate Virginia return. On the federal consolidated return P, ABC, and the other affiliates claim the foreign tax credit. For purposes of ABC's federal taxable income as if it were a separate company, ABC may not elect to deduct foreign taxes in lieu of claiming the foreign tax credit.

Example 4. Parent Corporation (PC) files a consolidated federal return and a separate Virginia return. In taxable year 1993, PC disposed of Subsidiary 1 (S1). S1 was not subject to tax in Virginia, had no income from Virginia sources, and had never filed a Virginia return. In accordance with U.S. Treasury Regulation § 1.1502-19, PC was required to include in its 1993 federal taxable income an amount equal to the "excess loss account" computed with respect to its investment in S1. This amount represented losses realized by S1 in excess of PC's basis in S1, computed in accordance with U.S. Treasury Regulation § 1.1502-32. Because PC never filed a consolidated Virginia return, the losses of S1 were never deducted in determining Virginia taxable income. Accordingly, in determining federal taxable income for Virginia purposes, PC must adjust its federal taxable income as reported by removing the amount included in taxable income as excess loss account.

§ 3.5. Net operating losses.

Corporations claiming a net operating loss deduction (carryback or carryover) are required to include Virginia modifications attributable to the loss year in determining Virginia taxable income in accordance with VR 630-3-402.3.

VA.R. Doc. No. R94-387; Filed December 21, 1993, 2:57 p.m.

* * * * *

Title of Regulation: VR 630-3-402.1. Corporate Income Tax: Additions in Determining Virginia Taxable Income.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and

enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

Purpose: This regulation sets forth guidance and explains the procedures relating to the determination of Virginia taxable income.

Section 58.1-402 of the Code of Virginia was amended by Chapters 484 of the 1987 Acts of the General Assembly, Chapters 39 and 639 of the 1989 Acts of the General Assembly, and Chapter 678 of the 1992 Acts of the General Assembly.

VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the information previously contained in this regulation has been divided into four separate regulations. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402 now governs the determination of Virginia taxable income.

The amendments to this regulation reflect the legislative changes made to § 58.1-402 of the Code of Virginia, the separation of information previously contained in VR 630-3-402 into three new regulations, and department policy regarding additions required in determining Virginia taxable income.

VR 630-3-400 was initially adopted on September 14, 1984, but revised on February 1, 1987, with a retroactive effective date of January 1, 1985.

Substance: Section 1 of the regulation contains an outline and definitions.

Section 2 provides that the additions to Virginia taxable income are only added to federal taxable income to the extent such items are excluded or deducted from federal taxable income.

Additions to Virginia taxable income are made net of any related expenses that were disallowed in determining federal taxable income.

If an item excluded or deducted from federal taxable income has been included in Virginia taxable income by operation of another section of the Code of Virginia, the item will not be added again pursuant to this regulation.

Section 3 of the regulation provides that interest on the obligations of any state other than Virginia, or on the obligations of a political subdivision of any state other than Virginia, must be added to federal taxable income in determining Virginia taxable income. The addition to Virginia taxable income is net of expenses which were disallowed under § 265 of the Internal Revenue Code, as provided in the regulation. The regulation provides that zero coupon bonds, or equivalent types of obligations, may produce interest income that must be added to federal taxable income pursuant to this section.

Section 4 of the regulation provides that interest or dividends on United States obligations that are exempt from federal income tax but not from state income tax must be added to federal taxable income in determining Virginia taxable income. Such addition shall be net of any expenses which were disallowed under § 265 of the Internal Revenue Code, as provided in the regulation.

Section 5 of the regulation provides that any Virginia corporate income tax imposed by § 58.1-400 of the Code of Virginia deducted in determining federal taxable income must be added back in determining Virginia taxable income.

Any net income taxes or other taxes, including franchise and excise taxes which are based on, measured by, or computed with reference to net income, imposed by any other taxing jurisdiction and deducted in determining federal taxable income must be added back in determining Virginia taxable income.

A tax satisfies the net income requirement if its base is computed by reducing gross receipts to permit the recovery of significant costs and expenses attributable to such gross receipts. For this purpose, the environmental tax imposed pursuant to § 59A of the Internal Revenue Code is a tax based on net income that must be added back in determining Virginia taxable income.

A tax measured by capital stock, net worth, property or other measure unrelated to net income is not deemed to be a tax based on, measured by, or computed with reference to net income. In the event that a taxing authority imposes a tax on basis other than net income, but such tax only applies to the extent it exceeds a tax based on net income, such tax shall be added back in determining Virginia taxable income to the extent the total tax is (or would have been) determined by net income.

The minimum tax on telecommunications companies imposed pursuant to § 58.1-400.1 of the Code of Virginia applies in any year that such tax exceeds the corporate income tax. If a corporation deducts the minimum tax in determining federal taxable income, such tax shall be added back in determining Virginia taxable income to the extent the corporate income tax would have been imposed for such year.

Section 6 provides that unrelated business taxable income

of a tax exempt organization must be added to federal taxable income in determining Virginia taxable income.

Section 7 provides that any ESOP credit carryover that is deducted in computing federal taxable income under § 404(j) of the Internal Revenue Code shall be added to federal taxable income in determining Virginia taxable income.

Section 8 provides that, to the extent not already included in federal taxable income, Virginia taxable income shall include the amount required to be included in income for purposes of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the additions required in determining Virginia taxable income, and the impact of legislative changes.

Taxpayers will have greater comprehension of regulations if detailed guidance and examples are provided.

Taxpayers will be more aware of issues regarding additions, subtractions and net operating loss adjustments required in determining Virginia taxable income if separate regulations for these complex issues are promulgated.

Estimated Impact:

a. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. Number and Types of Regulated Entities: This regulation will impact all corporate taxpayers in determining their Virginia taxable income. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

Proposed Regulations

This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402 now governs the determination of Virginia taxable income.

2. This new regulation provides:

a. That the additions to Virginia taxable income are only added to federal taxable income to the extent such items are excluded or deducted from federal taxable income.

b. Additions to Virginia taxable income are made net of any related expenses that were disallowed in determining federal taxable income.

c. If an item excluded or deducted from federal taxable income has been included in Virginia taxable income by operation of another section of the Code of Virginia, the item will not be added again pursuant to this regulation.

d. That interest on the obligations of any state other than Virginia, or on the obligations of a political subdivision of any other state, must be added to federal taxable income in determining Virginia taxable income. The addition to Virginia taxable income is net of expenses which were disallowed under § 265 of the Internal Revenue Code. The regulation provides that zero coupon bonds, or equivalent types of obligations, may produce interest income that must be added back to federal taxable income.

e. That interest or dividends on United States obligations that are exempt from federal income tax but not from state income tax must be added to federal taxable income in determining Virginia taxable income. Such addition shall be net of any expenses which were disallowed under § 265 of the Internal Revenue Code.

f. That any Virginia corporate income tax imposed by § 58.1-400 of the Code of Virginia deducted in determining federal taxable income must be added back in determining Virginia taxable income.

g. Any net income taxes or other taxes, including franchise and excise taxes which are based on,

measured by, or computed with reference to net income imposed by any other taxing jurisdiction deducted in determining federal taxable income must be added back in determining Virginia taxable income.

h. A tax satisfies the net income requirement if its base is computed by reducing gross receipts to permit the recovery of significant costs and expenses attributable to such gross receipts. For this purpose, the environmental tax imposed pursuant to § 59A of the Internal Revenue Code is a tax based on net income that must be added back in determining Virginia taxable income.

i. A tax measured by capital stock, net worth, property or other measure unrelated to net income is not deemed to be a tax based on, measured by, or computed with reference to net income. In the event that a taxing authority imposes a tax on a basis other than net income, but such tax only applies to the extent it exceeds a tax based on net income, such tax shall be added back in determining Virginia taxable income to the extent the total tax is (or would have been) determined by net income.

j. The minimum tax on telecommunications companies imposed pursuant to § 58.1-400.1 of the Code of Virginia applies in any year that such tax exceeds the corporate income tax. If a corporation deducts the minimum tax in determining federal taxable income, such tax shall be added back in determining Virginia taxable income to the extent the corporate income tax would have been imposed for such year.

k. That unrelated business taxable income of a tax exempt organization must be added to federal taxable income in determining Virginia taxable income.

l. That any ESOP credit carryover that is deducted in computing federal taxable income under § 404(i) of the Internal Revenue Code shall be added to federal taxable income in determining Virginia taxable income.

m. That, to the extent not already included in federal taxable income, Virginia taxable income shall include the amount required to be included in income for purposes of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

VR 630-3-402.1. Corporate Income Tax: Additions in Determining Virginia Taxable Income.

§ 1. Definitions.

The following words and terms, when used in th

Proposed Regulations

Regulation, shall have the following meaning, unless the context clearly indicates otherwise:

"Corporate income tax" means the income tax imposed pursuant to § 58.1-400 of the Code of Virginia.

"Federal taxable income" means federal taxable income as defined by VR 630-3-402.

"Internal Revenue Code" or "I.R.C." means the Internal Revenue Code of 1986 and amendments thereto, as defined by § 58.1-301 of the Code of Virginia and VR 630-3-301.

"Virginia taxable income" means Virginia taxable income as defined by VR 630-3-402.

§ 2. Additions in determining Virginia taxable income; in general.

A. In determining Virginia taxable income, the items specified in §§ 3 through 8 of this regulation (and any other addition required by law on or after the effective date of this regulation) shall be added to federal taxable income, but only to the extent such items are excluded or deducted from federal taxable income.

B. Items required to be added back pursuant to this regulation shall be net of any related expenses that were disallowed in determining federal taxable income.

C. If an item excluded or deducted from federal taxable income has already been included in Virginia taxable income by operation of another section of the Code of Virginia, then the item will not be added again under § 58.1-402 of the Code of Virginia. No item will be added to Virginia taxable income more than once pursuant to this regulation.

§ 3. Interest on obligations of other states.

A. Interest on the obligations of any state other than Virginia, or on the obligations of a political subdivision of any state other than Virginia, must be added to federal taxable income in determining Virginia taxable income.

B. Section § 265 of the Internal Revenue Code prohibits the deduction of expenses allocable to, and interest paid on indebtedness incurred or continued to purchase or carry, obligations exempt from federal income tax. If a corporation has interest income on obligations of other states, and also has expenses or interest which were not deducted by operation of I.R.C. § 265, then the addition for determining Virginia taxable income shall generally be reduced by the portion of such expenses or interest which is attributable to the interest income on obligations of other states. The addition shall not be reduced by any expenses which were already deducted in determining federal taxable income.

Example. Corporation XYZ has \$3,000 of interest

income exempt from federal income tax, of which \$1,000 is on obligations of a political subdivision of Virginia, and \$2,000 is on obligations of a state other than Virginia. Application of I.R.C. § 265 barred the deduction of \$300 of expenses in determining federal taxable income. The Virginia addition for interest on obligations of other states is \$1,800, calculated as follows:

Interest on obligations of other states	\$2,000
Total interest exempt from federal taxation	3,000
Percent	66.667%
Expenses disallowed by § 265	300
Expenses related to non-Virginia interest (66.667% X 300)	200
Net addition (\$2,000-200)	\$1,800

C. If the interest income is on an obligation created by a compact or agreement to which Virginia is a party, such interest shall not be added in determining Virginia taxable income.

D. A taxpayer holding zero coupon bonds (or financial instruments which have otherwise been stripped of the right to receive interest payments) may be required to annually impute interest income on such bonds for purposes of determining basis in the bonds or for inclusion in federal taxable income. To the extent such imputed interest constitutes interest on obligations of other states, and has been excluded from federal taxable income, it shall be added to federal taxable income in determining Virginia taxable income.

§ 4. Interest or dividends from the United States.

A. Interest or dividends on obligations or securities of any authority, commission, or instrumentality of the United States exempt from federal income tax but not from state income tax, must be added to federal taxable income in determining Virginia taxable income.

B. If any related expenses were not deducted from federal taxable income by reason of I.R.C. § 265, then the addition in determining Virginia taxable income shall be reduced by a ratable portion of such expenses attributable to federal interest or dividends exempt from federal income tax.

§ 5. State income taxes.

A. If any Virginia corporate income tax imposed by § 58.1-400 of the Code of Virginia was deducted in determining federal taxable income, such amount shall be added to federal taxable income in determining Virginia taxable income.

B. If any net income taxes or other taxes, including franchise and excise taxes which are based on, measured by, or computed with reference to net income imposed by

Proposed Regulations

any other taxing jurisdiction were deducted in determining federal taxable income, such amount shall be added to federal taxable income in determining Virginia taxable income. A tax satisfies the net income requirement if, judged on the basis of its predominant character, the base of the tax is computed by reducing gross receipts to permit: (i) the recovery of the significant costs and expenses attributable, under reasonable principles, to such gross receipts; or (ii) recovery of such significant costs and expenses computed under a method that is likely to produce an amount that approximates, or is greater than, recovery of such significant costs and expenses. A tax based on net income, increased or decreased by specific items, is a tax based on net income. A tax based on federal taxable income, or federal taxable income with specific adjustments thereto, shall be considered a tax based on net income. A tax based on gross receipts, reduced by significant expenses and deductions, shall be considered a tax based on net income.

C. The environmental tax imposed pursuant to § 59A of the Internal Revenue Code is a tax determined by reference to net income and therefore, to the extent such tax was deducted in determining federal taxable income, must be added to federal taxable income in determining Virginia taxable income.

D. A tax measured by capital stock, net worth, property, or other measure unrelated to net income shall not be deemed to be a tax based on, measured by, or computed with reference to net income. A tax measured on gross receipts, without reduction for expenses or deductions shall not be deemed to be based on, measured by, or computed with reference to net income. In the event a taxing authority imposes a tax on a basis other than net income, but such tax only applies to the extent it exceeds a tax based on net income, such tax shall be added back in determining Virginia taxable income to the extent the total tax is (or would have been) determined by net income.

E. Section 58.1-400.1 of the Code of Virginia imposes a minimum tax on telecommunications companies (minimum tax) in any year that such tax exceeds the corporate income tax. If a corporation deducts the minimum tax in determining federal taxable income, such tax shall be added back in determining Virginia taxable income to the extent the corporate income tax imposed pursuant to § 58.1-400 of the Code of Virginia would have been imposed for such taxable year.

Example. Corporation ABC (ABC) is subject to tax in State X and in Virginia. For taxable year 1993, ABC deducted \$2,000 of tax paid to State X in determining federal taxable income. State X imposes an alternative tax on gross receipts, which is only imposed if it exceeds State X's tax on net income. For 1993, ABC determined that the net income tax owed to State X was \$1,500, but its alternative tax based on gross receipts was \$2,000. Accordingly, for 1993 ABC paid and deducted the higher

gross receipts tax of \$2,000. For taxable year 1993, ABC must add back \$1,500 in determining Virginia taxable income, which is the portion of the tax paid to State X attributable to a tax based on net income.

§ 6. Unrelated business taxable income.

Organizations which are exempt from federal income tax pursuant to Subchapter F of the Internal Revenue Code may be subject to tax if they have unrelated business income. In this case a tax is imposed on "unrelated business taxable income" as defined in § 512 of the Internal Revenue Code. The unrelated business taxable income of such organization must be added to federal taxable income in determining Virginia taxable income (to the extent not already included in federal taxable income).

§ 7. ESOP credit carryover.

Any ESOP credit carryover that is deducted in computing federal taxable income under § 404(i) of the Internal Revenue Code (prior to the repeal of § 404(i) by P.L. 98-369) shall be added to federal taxable income in determining Virginia taxable income.

§ 8. Accumulation distribution from trusts.

To the extent not already included in federal taxable income, Virginia taxable income shall include the amount required to be included in income for purposes of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

Example. Corporation XYZ (XYZ), a beneficiary of a Virginia trust (VT), receives an accumulation distribution from VT in taxable year 1992. VT reports the distribution to XYZ on Schedule J of 1992 federal Form 1041. On its federal return, XYZ computes its federal tax on the accumulation distribution on Form 4970. For Virginia purposes, XYZ must increase its 1992 federal taxable income by the amount on line 7 of Form 4970 to the extent that such income is not otherwise included in Virginia taxable income.

V.A.R. Doc. No. R94-388; Filed December 21, 1993, 2:58 p.m.

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Title of Regulation: VR 630-3-402.2. Corporate Income Tax: Subtractions and Adjustments in Determining Virginia Taxable Income.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

Purpose: This regulation sets forth guidance and explains the procedures relating to the determination of Virginia taxable income.

Section 58.1-402 of the Code of Virginia was amended by Chapters 484 of the 1987 Acts of the General Assembly, Chapters 39 and 639 of the 1989 Acts of the General Assembly, and Chapter 678 of the 1992 Acts of the General Assembly.

VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the information previously contained in this regulation has been divided into four separate regulations. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402 now governs the determination of Virginia taxable income.

The amendments to this regulation reflect the legislative changes made to § 58.1-402 of the Code of Virginia, the separation of information previously contained in VR 630-3-402 into three new regulations, and department policy regarding subtractions and adjustments required in determining Virginia taxable income.

VR 630-3-400 was initially adopted on September 14, 1984, but revised on February 1, 1987, with a retroactive effective date of January 1, 1985.

Substance: Section 1 of the regulation contains an outline and definitions.

Section 2 provides that the subtractions from Virginia taxable income are only allowed to the extent such items are included in federal taxable income.

If an item has been excluded from Virginia taxable income by operation of another section of the Code of Virginia, the item will not be subtracted again pursuant to this regulation.

If an item of income qualifies for a subtraction or

exclusion from Virginia taxable income pursuant to more than one section of the Code of Virginia, the taxpayer is limited to one subtraction for such item, but may utilize whichever subtraction is most beneficial to the taxpayer.

If an item does not qualify for a subtraction under this regulation, or under the Code of Virginia, no subtraction is allowed.

Section 3 of the regulation provides that interest on the obligations of the United States, to the extent exempted from state taxation under federal laws, shall be subtracted from federal taxable income.

Obligation means a debt, obligation or security issued by the United States or any authority, commission, or instrumentality of the United States, which obligation or security is issued in the exercise of the borrowing power and backed by the full faith and credit of the United States.

Guarantees by the United States of obligations of private individuals or corporations are merely contingent obligations of the United States, and thus interest paid on such obligations does not qualify for the subtraction.

Repurchase obligations are usually obligations issued by financial institutions which are secured by U. S. obligations exempt from Virginia income taxation. In such cases interest paid by the financial institution to purchasers of repurchase agreements will not qualify for the subtraction.

Interest paid on federal tax refunds, equipment purchase contracts, or other normal business transactions does not qualify for the subtraction.

The subtraction for U. S. interest must be determined net of any related expenses.

Section 4 of the regulation provides that interest on obligations of the Commonwealth of Virginia shall be subtracted to the extent included in federal taxable income. Such addition shall be net of any expenses which were disallowed under § 265 of the Internal Revenue Code, as provided in the regulation.

Section 5 of the regulation provides that income realized by a pass-through entity will generally have the same character in the hands of the recipient as in the hands of the pass-through entity.

Section 6 of the regulation provides a subtraction for certain DISC dividends. Section 995 of the Internal Revenue Code imputes certain earnings of a DISC to its shareholders as a taxable dividend. Subsequent actual distributions are excluded from the shareholder's income as being first made out of previously taxed income. If 50% or more of the income of a DISC was assessable in Virginia for the preceding year, or the last year in which the DISC had income, then to the extent deemed distributions from such DISC are included in the

Proposed Regulations

taxpayer's federal taxable income, such amounts shall be subtracted from Virginia taxable income. The subtraction for DISC dividends must be reduced to the extent of any related expenses.

Section 7 provides that if federal taxable income includes a refund or credit for overpayment of income taxes to Virginia or any other state, the amount of such refund or credit shall be subtracted from federal taxable income in determining Virginia taxable income. Generally, there are no offsetting expenses which directly relate to this income which reduce the Virginia subtraction.

Section 8 provides that income included in federal taxable income pursuant to § 78 of the Internal Revenue Code shall be subtracted in determining Virginia taxable income. Because § 78 income is only deemed to have been received, there are generally no expenses which reduce the Virginia subtraction for this item. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income.

Section 9 provides that to the extent a deduction for wages was disallowed by § 280C (a) of the Internal Revenue Code in determining federal taxable income, a subtraction shall be allowed in determining Virginia taxable income. Because this subtraction relates to a deduction which is disallowed in computing federal taxable income, it does not have to be reduced by any related expenses.

Section 10 provides that the amount of Subpart F income required to be included in federal taxable income pursuant to § 951 of the Internal Revenue Code shall be subtracted in determining Virginia taxable income. Because such income is only deemed to have been received, there are generally no expenses which reduce the Virginia subtraction. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income.

Section 11 provides that to the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income equal to the amount of foreign source income as defined by § 58.1-302 of the Code of Virginia and VR 630-3-302.2. The subtraction allowed by this section shall not include any amount which is allowed as a subtraction as foreign dividend gross up, Subpart F income, or dividends received.

Section 12 provides that for taxable years beginning on or after January 1, 1988, taxpayers may claim a subtraction in determining Virginia taxable income for the outstanding excess cost recovery as provided by § 58.1-323.1 of the Code of Virginia and VR 630-3-323.1.

Section 13 provides that to the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income for the amount of dividends

received from a corporation when the corporation receiving the dividend owns 50% or more of the voting power of all classes of stock of the payer. Foreign source dividends from corporations in which the taxpayer owns 50% or more of the voting power of all classes of the stock of the payer may be claimed as a subtraction pursuant to this section in lieu of the subtraction for foreign source income.

Section 14 provides that the amount of any qualified agricultural contribution shall be subtracted from federal taxable income in determining Virginia taxable income. Contributions that qualify for the subtraction in determining Virginia taxable income are contributions of agricultural products made by a corporation engaged in the trade or business of growing or raising such products. To qualify for the subtraction, a contribution must be made to a tax exempt organization and must meet the following tests: (i) the product must be edible; (ii) the use of the product must be related to the exempt function of the donee; (iii) the contribution is not made in exchange for money, property, or service; and (iv) the donor must obtain a written statement representing that the donee's use and disposition of the product will be in accordance with its charitable mission. The subtraction is equal to the lowest wholesale market price of the agricultural product donated in the nearest regional market during the month(s) in which donations are made.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the subtractions and adjustments required in determining Virginia taxable income, and the impact of legislative changes.

Taxpayers will have greater comprehension of regulations if detailed guidance and examples are provided.

Taxpayers will be more aware of issues regarding additions, subtractions and net operating loss adjustments required in determining Virginia taxable income if separate regulations for these complex issues are promulgated.

Estimated Impact:

a. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** This regulation will impact all corporate taxpayers in determining their Virginia taxable income. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402 now governs the determination of Virginia taxable income.

2. This new regulation provides:

a. That the subtractions from Virginia taxable income are only allowed to the extent such items are included in federal taxable income.

b. If an item has been excluded from Virginia taxable income by operation of another section of the Code of Virginia, the item will not be subtracted again pursuant to this regulation.

c. If an item of income qualifies for a subtraction or exclusion from Virginia taxable income pursuant to more than one section of the Code of Virginia, the taxpayer is limited to one subtraction for such item, but may utilize whichever subtraction is most beneficial to the taxpayer.

d. If an item does not qualify for a subtraction under this regulation, or under the Code of Virginia, no subtraction is allowed.

e. That interest on the obligations of the United States, to the extent exempted from state taxation under federal laws, shall be subtracted from federal taxable income.

f. Guarantees by the United States of obligations of private individuals or corporations do not qualify for the subtraction.

g. Repurchase obligations usually will not qualify for the subtraction.

h. Interest paid on federal tax refunds, equipment purchase contracts, or other normal business transactions does not qualify for the subtraction.

i. The subtraction for U. S. interest must be determined net of any related expenses.

j. That interest on obligations of the Commonwealth of Virginia shall be subtracted to the extent included in federal taxable income. Such addition shall be net of any expenses which were disallowed under § 265 of the Internal Revenue Code.

k. That income realized by a pass-through entity will generally have the same character in the hands of the recipient as in the hands of the pass-through entity.

l. A subtraction is allowed for certain DISC dividends. Distributions which are excluded from the shareholder's income as made out of previously taxed income are eligible for the Virginia subtraction if 50% or more of the income of a DISC was assessable in Virginia for the preceding year, or the last year in which the DISC had income. The subtraction for DISC dividends must be reduced to the extent of any related expenses.

m. That if federal taxable income includes a refund or credit for overpayment of income taxes to Virginia or any other state, the amount of such refund or credit shall be subtracted from federal taxable income in determining Virginia taxable income. Generally, there are no offsetting expenses which reduce the subtraction.

n. That income included in federal taxable income pursuant to § 78 of the Internal Revenue Code shall be subtracted in determining Virginia taxable income. Because § 78 income is deemed to have been received, there are generally no expenses which reduce the subtraction. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income.

o. That to the extent a deduction for wages was disallowed by § 280C (a) of the Internal Revenue Code in determining federal taxable income, a subtraction shall be allowed in determining Virginia taxable income. Because this subtraction relates to a deduction which is disallowed in computing federal taxable income, it does not have to be reduced by related expenses.

p. That the amount of Subpart F income required to be included in federal taxable income shall be

Proposed Regulations

subtracted in determining Virginia taxable income. Because such income is deemed to have been received, there are generally no expenses which reduce the Virginia subtraction. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income.

q. That to the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income equal to the amount of foreign source income as defined by § 58.1-302 of the Code of Virginia and VR 630-3-302.2. The subtraction allowed by this section shall not include any amount which is allowed as a subtraction as § 78 income, Subpart F income, or dividends received.

r. That for taxable years beginning on or after January 1, 1988, taxpayers may claim a subtraction in determining Virginia taxable income for the outstanding excess cost recovery as provided by § 58.1-323.1 of the Code of Virginia and VR 630-3-323.1.

s. That to the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income for the amount of dividends received from a corporation when the corporation receiving the dividend owns 50% or more of the voting power of all classes of stock of the payer. Foreign source dividends from corporations in which the taxpayer owns 50% or more of the voting power of all classes of the stock of the payer may be claimed as a subtraction pursuant to this section in lieu of the subtraction for foreign source income.

t. That the amount of any qualified agricultural contribution shall be subtracted from federal taxable income in determining Virginia taxable income. Contributions that qualify for the subtraction in determining Virginia taxable income are contributions of agricultural products made by a corporation engaged in the trade or business of growing or raising such products.

VR 630-3-402.2. Corporate Income Tax: Subtractions and Adjustments in Determining Virginia Taxable Income.

§ 1. Definitions.

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

“Corporate income tax” means the income tax imposed pursuant to § 58.1-400 of the Code of Virginia.

“Federal taxable income” means federal taxable income as defined by VR 630-3-402.

“Internal Revenue Code” or “I.R.C.” means the Internal Revenue Code of 1986 and amendments thereto, as defined by § 58.1-301 of the Code of Virginia and VR 630-3-301.

“Virginia taxable income” means Virginia taxable income as defined by VR 630-3-402.

§ 2. Subtractions in determining Virginia taxable income; in general.

A. In determining Virginia taxable income, the items specified in §§ 3 through 14 of this regulation shall be subtracted from federal taxable income.

B. The subtractions described in this regulation shall be subtracted from Virginia taxable income only to the extent they are included in federal taxable income.

C. If an item has already been excluded from Virginia taxable income by operation of another section of the Code of Virginia, it shall not be subtracted again under this regulation.

D. If an item of income qualifies for a subtraction or exclusion from Virginia taxable income pursuant to more than one section of the Code of Virginia, the taxpayer is limited to one subtraction for such item, but may utilize whichever subtraction is most beneficial to the taxpayer.

E. If an item does not qualify for a subtraction under this regulation, or under the Code of Virginia, no subtraction is allowed.

For example, no specific subtraction has been provided in the Code of Virginia for research expenses disallowed pursuant to § 280C(c) of the Internal Revenue Code. Accordingly, no subtraction for research expenses is allowed in determining Virginia taxable income even though such expenses were disallowed in determining federal taxable income as a result of claiming the federal research credit.

§ 3. Interest or dividends on obligations of the United States.

A. Interest or dividends on obligations of the United States and on obligations or securities of any authority, commission, or instrumentality of the United States, to the extent exempted from state taxation under federal laws, shall be subtracted from federal taxable income in determining Virginia taxable income.

B. For purposes of this section, “obligation” means a debt obligation or security issued by the United States or any authority, commission, or instrumentality of the United States, which obligation or security is issued in the exercise of the borrowing power of the United States and is backed by the full faith and credit of the United States.

C. Guarantees by the United States of obligations of

private individuals or corporations are merely contingent obligations of the United States even though the guarantees may be backed by the full faith and credit of the United States. The obligation does not become an obligation of the United States because of the guarantee, and interest and dividends paid on such guaranteed obligations do not qualify for the subtraction unless specifically exempted by federal or Virginia statute.

D. Specific statutory exemptions exist for certain securities issued by particular federal agencies or political subdivisions. If a federal statute exempts from state taxation the interest or dividends on specific securities of a particular agency or political subdivision then such interest or dividends qualify for the subtraction.

For an example of a specific statutory exemption, see the exemption for interest paid on obligations issued by Farm Credit Banks, codified at 12 U.S.C.A. § 2023.

E. Repurchase agreements are usually obligations issued by financial institutions which are secured by U.S. obligations exempt from Virginia income taxation. In such cases the interest paid by the financial institutions to purchasers of repurchase agreements does not qualify for the subtraction. Repurchase agreements issued following current commercial practices will be regarded as obligations of the issuing financial institution. However, if the purchaser is regarded as the true owner of the underlying exempt obligation, the interest will qualify for the subtraction even though collected by the seller and distributed to the purchaser. Any claim of such ownership must be substantiated by a taxpayer claiming a subtraction.

F. Interest paid on federal tax refunds, equipment purchase contracts, or other normal business transactions does not qualify for a subtraction pursuant to § 58.1-402 of the Code of Virginia.

G. The subtraction for interest or dividends on obligations of the United States and on obligations or securities of any authority, commission, or instrumentality of the United States must be reduced by expenses attributable to such interest or dividends, and by interest paid on indebtedness incurred or continued to purchase or carry such obligations.

§ 4. Interest on obligations of the Commonwealth of Virginia.

A. To the extent included in federal taxable income, interest on obligations of the Commonwealth of Virginia, or of any political subdivision or instrumentality thereof, shall be subtracted in determining Virginia taxable income.

B. For purposes of this section, "obligation" means a debt obligation or security issued by the Commonwealth of Virginia, or of any political subdivision or instrumentality thereof.

C. Guarantees by the Commonwealth of Virginia, or any political subdivision or instrumentality thereof, of obligations of private individuals or corporations are merely contingent obligations even though the guarantees may be backed by the full faith and credit of the guarantor. The obligation does not become an obligation of the Commonwealth of Virginia, or any political subdivision or instrumentality thereof, because of the guarantee, and interest paid on such guaranteed obligations does not qualify for the subtraction unless specifically exempted by the Code of Virginia.

D. Specific statutory exemptions exist for certain securities issued by particular Virginia agencies or political subdivisions. If a Virginia statute exempts from state taxation the interest on specific securities of a particular agency or political subdivision then such interest qualifies for the subtraction. For an example of a specific statutory exemption, see the exemption for obligations issued pursuant to the Industrial Development and Revenue Bond Act, codified at § 15.1-1383 of the Code of Virginia.

E. The subtraction for interest on obligations of the Commonwealth of Virginia, or any political subdivision or instrumentality thereof, must be reduced by the expenses attributable to such interest income and by interest paid on indebtedness incurred or continued to purchase or carry such obligations to the extent such expenses were deducted in determining federal taxable income.

§ 5. Interest or dividends from pass through entities.

A. Under federal law certain income realized by a partnership, estate, S corporation, or trust (pass through entity) and distributed (or deemed distributed) to a partner, beneficiary, or shareholder (recipient) retains the same character in the hands of the recipient as in the hands of the pass-through entity. If a pass-through entity receives interest or dividends on U.S. or Virginia obligations which is distributed to the recipients in such a manner that the distributions retain their character in the hands of the recipients under federal law, then such interest or dividends may be subtracted by the recipients in computing Virginia taxable income assuming that it otherwise qualifies for the subtraction.

B. Regulated investment companies pay dividends to their shareholders which may be classified as ordinary dividends, capital gain dividends, or exempt-interest dividends pursuant to § 852 of the Internal Revenue Code. Generally, the department recognizes that interest from exempt obligations received by a regulated investment company and passed through to stockholders retains its exempt status in the hands of the stockholders.

C. A regulated investment company can invest in several types of securities, some of which may be U.S. or Virginia obligations. When taxable income is commingled with exempt income, all income is presumed taxable unless the portion of the income which is exempt from

Proposed Regulations

Virginia income tax can be determined with reasonable certainty and substantiated. The determination must be made with respect to each distribution to each shareholder. Generally, where dividends are made to shareholders on a monthly basis, the department requires the regulated investment company to provide the shareholder with a breakdown of the dividends earned on a monthly basis. The department may accept other methods for determining the portion of the dividends that relate to tax exempt interest, such as on a percentage basis, if the department finds that such method reasonably reflects the source and nature of the dividends. However, the department will not issue advance rulings as to the tax-free status of any dividends where the determinations will be made on other than a monthly basis.

Example 1. ABC Fund, a regulated investment company, invests exclusively in U.S. Treasury notes and bills which are exempt from state taxation under 31 U.S.C.A. § 3124. All dividend distributions (not including capital gains) by ABC Fund are considered to be interest on U.S. obligations and may be subtracted from Virginia taxable income by the recipient.

Example 2. Virginia Fund, a regulated investment company, invests exclusively in obligations of Virginia and its political subdivisions. Dividend distributions (not including capital gains) by Virginia Fund are considered to be interest on Virginia obligations and qualify for the subtraction to the extent that such distributions are included in the recipient's federal taxable income.

Example 3. XYZ Fund, a regulated investment company, invests in a variety of securities including obligations of the U.S., Virginia, other states, corporations, and financial institutions (repurchase agreements). Due to the commingling of taxable and exempt income, the turnover in XYZ Fund's investments, and the fluctuation in a shareholder's investment in XYZ Fund, all distributions are considered taxable income and do not qualify for the subtraction unless XYZ Fund determines the portion of distributions which is interest and dividends from U.S. and Virginia obligations for each distribution to each shareholder. Any portion of XYZ Fund's distributions which are excluded from federal taxable income as interest on obligations of other states must be added in determining Virginia taxable income.

§ 6. DISC dividends.

A. A domestic international sales corporation (DISC) is exempt from the federal income tax under § 991 of the Internal Revenue Code. Virginia law does not provide a similar exemption. Therefore a DISC may be subject to Virginia tax pursuant to § 58.1-400 of the Code of Virginia and the regulations thereunder.

B. I.R.C. § 995 imputes certain earnings of a DISC to the DISC's shareholders as a distribution taxable as a dividend. Subsequent actual distributions are excluded

from the shareholder's income as being first made out of previously taxed income pursuant to I.R.C. § 996(a)(1). The deemed distributions will be considered dividends for the purpose of § 58.1-407 of the Code of Virginia (relating to allocation of dividend income). However, the provisions of § 58.1-446 of the Code of Virginia may apply to a DISC.

C. If 50% or more of the income of a DISC was assessable in Virginia for the preceding year, or the last year in which the DISC had income, then to the extent deemed distributions from such DISC are included in the taxpayer's federal taxable income, such amounts shall be subtracted from Virginia taxable income. For the purpose of this subtraction, 50% or more of the income of a DISC shall be deemed assessable in Virginia if the DISC filed a Virginia income tax return for the preceding year, or the last year in which the DISC had gross income, and such return shows either that all income was taxable in Virginia, or that 50% or more of the net income was allocated or apportioned to Virginia.

D. The subtraction for DISC dividends must be reduced to the extent of any expenses, determined in accordance with Generally Accepted Accounting Principles, that relate to such dividends.

§ 7. State tax refunds.

If federal taxable income includes a refund or credit for overpayment of income taxes to this state or any other state, the amount of such refund or credit shall be subtracted from federal taxable income in determining Virginia taxable income. Generally, there are no offsetting expenses which directly relate to this income which reduce the Virginia subtraction.

§ 8. Foreign dividend gross up.

A corporation which owns stock in certain foreign corporations may elect to claim the federal foreign tax credit with respect to foreign taxes deemed paid by such corporation as a result of its ownership in the foreign corporations. Such a corporation must include in its federal taxable income a deemed dividend equal to the amount of foreign taxes deemed paid pursuant to § 78 of the Internal Revenue Code. The amount of income included in federal taxable income pursuant to I.R.C. § 78 shall be subtracted in determining Virginia taxable income. Because I.R.C. § 78 income is only deemed to have been received, there are generally no offsetting expenses directly related to this income which reduce the Virginia subtraction for this item. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income. A copy of federal Form 1118, or similar form, shall be attached to the Virginia return to substantiate the subtraction.

§ 9. Targeted jobs credit.

Federal law permits a taxpayer to claim a credit based upon certain wages paid pursuant to § 51 of the Internal Revenue Code. § 280C (a) of the Internal Revenue Code bars a deduction in determining federal taxable income equal to the amount of the wages on which the credit is based. To the extent a deduction for such wages was disallowed by I.R.C. § 280C (a) in determining federal taxable income, a subtraction shall be allowed in determining Virginia taxable income. Because this subtraction relates to a deduction which is disallowed in computing federal taxable income, it does not have to be reduced by any related expenses.

§ 10. Subpart F income.

A corporation which owns stock in certain foreign corporations must include Subpart F income, as defined by § 952 of the Internal Revenue Code, in its federal taxable income as a deemed dividend. The amount of Subpart F income required to be included in federal taxable income pursuant to I.R.C. § 951 shall be subtracted in determining Virginia taxable income. Because I.R.C. § 951 income is only deemed to have been received, there are generally no offsetting expenses directly related to this income which reduce the Virginia subtraction. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income. A copy of Federal Form 1118, or similar form, shall be attached to the Virginia return to substantiate the subtraction.

§ 11. Foreign source income.

To the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income equal to the amount of foreign source income as defined by § 58.1-302 of the Code of Virginia and VR 630-3-302.2. Foreign source income, and the subtraction allowed by this section, shall not include any amount which is allowed as a subtraction under § 8 (Foreign dividend gross up), § 10 (Subpart F income) or § 13 (Dividends received) of this regulation.

§ 12. Excess cost recovery.

For taxable years beginning on or after January 1, 1988, taxpayers may claim a subtraction in determining Virginia taxable income for the outstanding excess cost recovery as provided by § 58.1-323.1 of the Code of Virginia. See VR 630-3-323.1 for detailed guidance in calculating the subtraction allowed by this section.

§ 13. Dividends received.

To the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income for the amount of dividends received from a corporation when the corporation receiving the dividend owns 50% or more of the voting power of all classes of stock of the payer. Dividends received from 50% or more

owned domestic corporations are generally deducted in determining federal taxable income. The subtraction for dividends pursuant to this section applies only to those dividends, or the portion thereof, remaining in federal taxable income after the federal deductions. Foreign source dividends from corporations in which the taxpayer owns 50% or more of the voting power of all classes of the stock of the payer may be claimed as a subtraction pursuant to this section in lieu of the subtraction for foreign source income as provided in § 11 of this regulation.

§ 14. Qualified agricultural contributions.

A. The amount of any qualified agricultural contribution shall be subtracted from federal taxable income in determining Virginia taxable income.

B. Contributions that qualify for the subtraction in determining Virginia taxable income are contributions of agricultural products made during taxable years beginning on and after January 1, 1989, and before January 1, 1994, by a corporation engaged in the trade or business of growing or raising such products.

C. To qualify for the subtraction, a contribution must be made to an organization exempt from federal income taxation pursuant to § 501(c)(3) of the Internal Revenue Code and must meet the following tests: (i) the product contributed must be fit for human consumption, i.e., edible products; (ii) the use of the product by the donee must be related to the purpose or function for which the donee was granted exemption under IRC § 501(c)(3) (for instance, contributions of crops to a foundation organized for scientific or literary purposes would not qualify, but contributions of edible crops to a nonprofit food bank would qualify); (iii) the contribution is not made in exchange for money, property, or service; and (iv) the donor must obtain from the donee a written statement representing that the donee's use and disposition of the product will be in accordance with its charitable mission. Such written statements also must list the type and quantity or volume of products contributed, state that the products donated are fit for human consumption, and state the use to which the donations will be put. Such written statements must be filed with the corporation's income tax return when the subtraction for qualified agricultural contributions is claimed.

D. Crops are the only agricultural products eligible for the subtraction pursuant to this section. Thus, the subtraction is limited to contributions of products of the soil and does not include contributions of animal products.

E. The subtraction for qualified agricultural contributions is equal to the lowest wholesale market price of the agricultural product donated in the nearest regional market during the month(s) in which donations are made. For the purpose of determining the lowest wholesale market price for a particular product, a

Proposed Regulations

corporation must use the lowest wholesale market price, regardless of grade or quality, published in the month that the donations were made by the U.S. Department of Agriculture Market News Service on Fruits, Vegetables, Ornamentals, and Specialty Crops for the regional market nearest to the corporation's place of business.

F. The subtraction for qualified agricultural contributions shall be reduced by the amount of any other charitable deductions allowed under I.R.C. § 170 relating to qualified agricultural contributions if the deductions are claimed on a corporation's federal return for the taxable year in which the contribution is made, or if the deductions are eligible for carryover to subsequent taxable years under I.R.C. § 170. For example, a corporation which deducts charitable contributions of qualified agricultural products for federal and state income tax purposes must reduce its Virginia subtraction for qualified agricultural contributions by the amount of its charitable deductions for the same products. If the corporation's total charitable contributions of qualified agricultural products exceed the deduction ceiling set by federal law and the corporation is eligible to carry over deductions to subsequent years, the corporation must also subtract the deductions available for carryover from the value of its qualified agricultural contributions.

Example. During 1992, Corporation XYZ contributes one thousand 50-pound sacks of round white potatoes to a local nonprofit food bank. The corporation's federal deduction for charitable contributions (limited to its basis in the contributed property) is \$200, of which it claims \$100 as a federal charitable contribution on its 1992 federal income tax return and will carry over and deduct \$100 as a federal charitable deduction its 1993 federal income tax return. During the month in which the contribution was made, the lowest wholesale market price for a 50-pound sack of round white potatoes published by the U.S. Department of Agriculture Market News Service in the regional market nearest the corporation's place of business was \$2. The corporation's deduction for its qualified agricultural contribution would be computed as follows:

Units contributed	1,000
Lowest wholesale market price of unit	x \$ 2
	\$2,000
Charitable deduction claimed on contribution (\$100)	
Charitable deduction carried over to 1993 (\$100)	
1993 subtraction for qualified agricultural contribution	\$1,800

§ 15. Adjustments to Virginia taxable income.

Certain corporations shall be required to make the transitional adjustments as provided in § 58.1-315 of the Code of Virginia.

VA.R. Doc. No. R94-389; Filed December 21, 1993, 3:03 p.m.

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Title of Regulation: VR 630-3-402.3. Corporate Income Tax: Net Operating Losses.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

Purpose: This regulation sets forth guidance and explains the procedures relating to net operating losses.

Section 58.1-402 of the Code of Virginia was amended by Chapters 484 of the 1987 Acts of the General Assembly, Chapters 39 and 639 of the 1989 Acts of the General Assembly, and Chapter 678 of the 1992 Acts of the General Assembly.

VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the information previously contained in this regulation has been divided into four separate regulations. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402 now governs the determination of Virginia taxable income.

The amendments to this regulation reflect the legislative changes made to § 58.1-402 of the Code of Virginia, the separation of information previously contained in VR 630-3-402 into three new regulations, and department policy regarding adjustments required in determining Virginia taxable income when net operating losses are present.

VR 630-3-400 was initially adopted on September 14, 1984, but revised on February 1, 1987, with a retroactive effective date of January 1, 1985.

Substance: Section 1 of the regulation contains an outline

and definitions. Many definitions have been added to the regulation to aid in its utility.

Section 2. There is no express authority in the Code of Virginia for a Virginia net operating loss, a net operating loss carryback or carryover. However, because the computation of Virginia taxable income begins with federal taxable income the starting point for determining Virginia taxable income is affected by the federal net operating loss deduction.

For Virginia purposes, the ability to utilize a net operating loss carryback or carryover is dependent on the taxpayer's ability to utilize the net operating loss carryback or carryover to reduce federal taxable income.

In determining Virginia taxable income, certain modifications are made to federal taxable income as provided by the Code of Virginia. These items may be elements of, or related to, federal taxable income for a loss year and are deemed to relate to the net operating loss. Modifications from a loss year follow the loss for Virginia purposes and affect Virginia taxable income as the net operating loss is absorbed.

To prevent double deduction or taxation for Virginia purposes, the definition of federal taxable income is modified accordingly in any year in which a net operating loss is absorbed. Federal limitations, rules and elections regarding the utilization of net operating losses control the ability to utilize such losses for Virginia purposes.

Section 3 A. In any loss year, a corporation is required to determine all of the modifications to federal taxable income required by the Code of Virginia. A corporation incurring a net operating loss may have Virginia taxable income and owe Virginia income tax after making the required modifications. A similar result may occur in any year in which a net operating loss is carried back or over.

Section 3 B. Virginia modifications attributable to a loss year follow the carryback or carryover of the net operating loss suffered in the loss year. In any year in which a loss is utilized to reduce federal taxable income, Virginia modifications attributable to such loss will be applied proportionately to the amount of the loss utilized.

Section 3 C. The Virginia taxable income of a multi-state corporation is separated into allocable and apportionable income. Because there is no provision for a separate Virginia net operating loss, income allocated out of Virginia taxable income cannot create or increase a Virginia net operating loss. Neither the allocable income nor the apportionment factor of the loss year is a modification which follows the net operating loss.

Section 3 D. Because the recovery of the outstanding balance of excess cost recovery in post 1987 taxable years pursuant to § 58.1-323.1 of the Code of Virginia has its own carryover and recovery provisions, it is not a modification that follows a net operating loss carryback or

carryover.

Section 3 E. No Virginia modifications follow a capital loss or charitable contribution.

Section 3 F. This regulation will be applied mutatis mutandis to railway or telecommunications companies required to make adjustments to net operating losses.

Section 4. Virginia modifications attributable to the loss year are combined, and the net sum of these loss year modifications follows the net operating loss to the year utilized. The net modifications, which may be positive or negative, will be added or subtracted accordingly in determining Virginia taxable income in the year in which the net operating loss is absorbed. If the net operating loss is utilized to reduce federal taxable income in more than one taxable year, the net modifications will be applied proportionately to the utilization of the loss. If Virginia taxable income in a loss year equals or exceeds zero, then all of the net operating loss and Virginia subtractions have been offset by Virginia additions. Accordingly, to prevent double taxation or deduction, a net positive Virginia modification equal to 100% of the loss shall follow the carryback or carryover of such loss.

Section 5. Generally, federal taxable income means federal taxable income as defined by § 63 of the Internal Revenue Code and any other income taxable under federal law. In order to prevent Virginia modifications associated with a net operating loss from being subject to double deduction or double taxation, the definition of federal taxable income is modified in any year in which a corporation incurs a net operating loss, or claims a net operating loss deduction. In determining the amount of a net operating loss under § 172(c) of the Internal Revenue Code, no deduction is allowed for a net operating loss deduction from any other year. Therefore, in a loss year, no net operating loss deductions from other years are absorbed. For Virginia purposes, federal taxable income in a loss year shall be determined without net operating loss deductions attributable to any other taxable year.

Section 5 C. If a net operating loss is carried back, and the federal taxable income in the carryback year is sufficient to fully absorb the loss, no adjustment is necessary to federal taxable income for Virginia purposes. If a net operating loss is carried back, and federal taxable income in the carryback year is insufficient to fully absorb the carryback, then for Virginia purposes federal taxable income is defined as zero.

Section 5 D. If a net operating loss is carried over, and the federal taxable income in the carryover year is sufficient to fully absorb the loss, no adjustment is necessary to federal taxable income for Virginia purposes. If a net operating loss is carried over, and federal taxable income in the carryover year is insufficient to fully absorb the carryover, then for Virginia purposes federal taxable income is defined as zero.

Proposed Regulations

Federal law permits a corporation to carry a net operating loss back to each of the 3 taxable years preceding the loss year, and then over to each of the 15 taxable years following the taxable year of the loss. Because Virginia law does not provide for a separate Virginia net operating loss, federal law and regulations regarding carrybacks and carryovers control the ability to utilize a net operating loss for Virginia purposes. The fact that a corporation has no Virginia source income or is not otherwise subject to tax in a carryover or carryback year does not affect the Virginia treatment.

If a corporation elects to relinquish the entire carryback period for federal purposes such election is binding for Virginia purposes. Any federal provision which acts to limit the availability of a net operating loss shall apply for Virginia purposes.

Corporations filing consolidated or combined Virginia returns may be subject to special rules where federal and Virginia returns are filed on a different basis or with different members. See VR 630-3-442.1 and VR 630-3-442.2.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the adjustments required in determining Virginia taxable income when net operating losses are present.

Taxpayers will have greater comprehension of regulations if detailed guidance and examples are provided.

Taxpayers will be more aware of issues regarding additions, subtractions and net operating loss adjustments required in determining Virginia taxable income if separate regulations for these complex issues are promulgated.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** This regulation will impact all corporate taxpayers that claim net operating losses in determining their Virginia taxable income. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402 now governs the determination of Virginia taxable income.

2. *This new regulation provides:*

a. *There is no express authority in the Code of Virginia for a Virginia net operating loss, a net operating loss carryback or carryover. However, because the computation of Virginia taxable income begins with federal taxable income the starting point for determining Virginia taxable income is affected by the federal net operating loss deduction.*

b. *For Virginia purposes, the ability to utilize a net operating loss carryback or carryover is dependent on the taxpayer's ability to utilize the net operating loss carryback or carryover to reduce federal taxable income.*

c. *In determining Virginia taxable income, certain modifications are made to federal taxable income as provided by the Code of Virginia. Modifications from a loss year follow the loss for Virginia purposes and affect Virginia taxable income as the net operating loss is absorbed.*

d. *To prevent double deduction or taxation for Virginia purposes, the definition of federal taxable income is modified accordingly in any year in which a net operating loss is absorbed. Federal limitations, rules and elections regarding the utilization of net operating losses control the ability to utilize losses for Virginia purposes.*

e. *In any loss year, a corporation is required to determine all of the modifications to federal taxable income required by the Code of Virginia. A corporation incurring a net operating loss may have Virginia taxable income and owe Virginia income tax after making the required modifications. A similar result may occur in any year in which*

net operating loss is carried back or over.

f. Virginia modifications attributable to a loss year follow the carryback or carryover of the net operating loss suffered in the loss year. In any year in which a loss is utilized to reduce federal taxable income, Virginia modifications attributable to such loss will be applied proportionately to the amount of the loss utilized.

g. Because there is no provision for a separate Virginia net operating loss, income allocated out of Virginia taxable income cannot create or increase a Virginia net operating loss. Neither the allocable income nor the apportionment factor of the loss year is a modification which follows the net operating loss.

h. The recovery of the outstanding balance of excess cost recovery in post 1987 taxable years pursuant to § 58.1-323.1 of the Code of Virginia has its own carryover and recovery provisions, and is not a modification that follows a net operating loss.

i. No Virginia modifications follow a capital loss or charitable contribution.

j. The net sum of loss year modifications follows the net operating loss to the year utilized. The net modifications, which may be positive or negative, will be added or subtracted accordingly in determining Virginia taxable income in the year in which the net operating loss is absorbed. If the net operating loss is utilized to reduce federal taxable income in more than one taxable year, the net modifications will be applied proportionately to the utilization of the loss. If Virginia taxable income in a loss year equals or exceeds zero, then all of the net operating loss and Virginia subtractions have been offset by Virginia additions, and a net positive Virginia modification equal to 100% of the loss shall follow the carryback or carryover of such loss.

k. Generally, federal taxable income means federal taxable income as defined by § 63 of the Internal Revenue Code and any other income taxable under federal law. In order to prevent Virginia modifications associated with a net operating loss from being subject to double deduction or double taxation, the definition of federal taxable income is modified in any year in which a corporation incurs a net operating loss, or claims a net operating loss deduction. In determining the amount of a net operating loss, no deduction is allowed for a net operating loss deduction from any other year. For Virginia purposes, federal taxable income in a loss year shall be determined without net operating loss deductions attributable to any other taxable year.

l. If a net operating loss is carried back, and the federal taxable income in the carryback year is

sufficient to fully absorb the loss, no adjustment is necessary for Virginia purposes. If a net operating loss is carried back, and federal taxable income in the carryback year is insufficient to fully absorb the carryback, then for Virginia purposes federal taxable income is defined as zero.

m. If a net operating loss is carried over, and the federal taxable income in the carryover year is sufficient to fully absorb the loss, no adjustment is necessary to federal taxable income for Virginia purposes. If a net operating loss is carried over, and federal taxable income in the carryover year is insufficient to fully absorb the carryover, then for Virginia purposes federal taxable income is defined as zero.

n. Federal law permits a corporation to carry a net operating loss back to each of the three taxable years preceding the loss year, and then over to each of the 15 taxable years following the taxable year of the loss. Because Virginia law does not provide for a separate Virginia net operating loss, federal law and regulations control the ability to utilize a net operating loss for Virginia purposes. The fact that a corporation has no Virginia source income or is not otherwise subject to tax in a carryover or carryback year does not affect the Virginia treatment.

o. If a corporation elects to relinquish the entire carryback period for federal purposes such election is binding for Virginia purposes. Any federal provision which acts to limit the availability of a net operating loss shall apply for Virginia purposes.

p. Corporations filing consolidated or combined Virginia returns may be subject to special rules where federal and Virginia returns are filed on a different basis or with different members. See VR 630-3-442.1 and VR 630-3-442.2.

VR 630-3-402.3. Corporate Income Tax: Net Operating Losses.

§ 1. Definitions.

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

“Carryback year” means any year preceding the loss year in which a deduction for a net operating loss (sustained in such loss year) is claimed pursuant to § 172(b) of the Internal Revenue Code for federal income tax purposes.

“Carryover year” means any year subsequent to the loss year in which a deduction for a net operating loss (sustained in such loss year) is claimed pursuant to § 172(b) of the Internal Revenue Code for federal income

Proposed Regulations

tax purposes.

"Federal taxable income" means taxable income as defined by § 63 of the Internal Revenue Code and any other income taxable to the corporation under federal law for the taxable year, except where otherwise defined or adjusted. For an example of an adjustment to federal taxable income to prevent double taxation or deduction, see § 5 of this regulation. For examples of a different definition of federal taxable income where consolidated or combined Virginia returns are filed on a different basis than returns filed for federal purposes, see VR 630-3-442.1 and VR 630-3-442.2, respectively. For examples of a different definition of federal taxable income where separate Virginia and consolidated federal returns are filed, see VR 630-3-402.

"Internal Revenue Code" or "I.R.C." means the Internal Revenue Code of 1986 and amendments thereto, as defined by § 58.1-301 of the Code of Virginia and VR 630-3-301.

"Loss year" means the taxable year in which the federal net operating loss was sustained.

"Net loss year modifications" means the net sum, which may be positive or negative, of the Virginia modifications attributable to a loss year.

"Net operating loss" means a federal net operating loss as defined by § 172(c) of the Internal Revenue Code.

"Net operating loss deduction" means a federal net operating loss carryback or carryover allowed as a deduction in a taxable year pursuant to § 172 of the Internal Revenue Code.

"Virginia modifications" means the additions specified in § 58.1-402 B of the Code of Virginia, the subtractions specified in § 58.1-402 C of the Code of Virginia (but not the subtraction for excess cost recovery in post 1987 taxable years), the adjustments required by § 58.1-402 D of the Code of Virginia, and the additional modification required by § 58.1-403 1 of the Code of Virginia, except where otherwise defined. See § 4 A 4 of this regulation, and VR 630-3-442.1 and VR 630-3-442.2 for consolidated and combined returns, respectively.

§ 2. In general.

There is no express authority in the Code of Virginia for a Virginia net operating loss, a Virginia net operating loss carryback, or a Virginia net operating loss carryover. However, the computation of Virginia taxable income, as defined by § 58.1-402 of the Code of Virginia, begins with federal taxable income. Federal taxable income is determined after the net operating loss deduction provided by § 172 of the Internal Revenue Code. Therefore, the starting point for determining Virginia taxable income is affected by the federal net operating loss deduction. A federal net operating loss carryback to a previous year

reduces federal taxable income in such year; the starting point for determining Virginia taxable income in a carryback year is changed by a federal net operating loss carryback. A federal net operating loss carryover to a subsequent year reduces federal taxable income in such year; the starting point for determining Virginia taxable income in a carryover year is reduced by a federal net operating loss carryover.

For Virginia purposes, the ability to utilize a net operating loss carryback or carryover is dependent on the taxpayer's ability to utilize the net operating loss carryback or carryover to reduce federal taxable income.

In determining Virginia taxable income, certain Virginia modifications are made to federal taxable income as provided by the Code of Virginia. Because these items may be elements of, or related to, federal taxable income for a loss year, they are deemed to relate to the net operating loss. See § 3 of this regulation. Modifications related to a net operating loss follow the loss for Virginia purposes; such modifications affect Virginia taxable income as the net operating loss is absorbed. See § 4 of this regulation. To prevent double deduction or taxation for Virginia purposes, the definition of federal taxable income is modified accordingly in any year in which a net operating loss is absorbed. See § 5 of this regulation. Federal limitations, rules and elections regarding the utilization of net operating losses control the ability to utilize such losses for Virginia purposes. See § 6 of this regulation. Taxpayers claiming a net operating loss carryback or carryover for Virginia purposes must provide certain information to the department, and file the appropriate forms and schedules. See §§ 7-8 of this regulation.

§ 3. Virginia modifications in the loss year.

A. Modifications in general. In arriving at Virginia taxable income, federal taxable income is modified by certain Virginia additions, subtractions, and adjustments. In any loss year, a corporation is required to determine all of the modifications to federal taxable income required by the Code of Virginia. A corporation incurring a net operating loss may have Virginia taxable income and owe Virginia income tax after making the required modifications to federal taxable income. A similar result may occur in any year in which a net operating loss is carried back or over.

B. Loss year modifications. Virginia modifications attributable to a loss year follow the carryback or carryover of the net operating loss suffered in the loss year. In any carryback or carryover year in which a net operating loss is utilized to reduce federal taxable income, Virginia modifications attributable to such net operating loss will be applied proportionately to the amount of the loss utilized in accordance with § 4 of this regulation.

C. Allocable income. Section 58.1-407 of the Code of Virginia and VR 630-3-407 provide for the allocation of

certain dividends. Additionally, the decision of the United States Supreme Court in *Allied-Signal, Inc. v. Director, Division of Taxation*, 112 S. Ct. 2251 (1992), provides that certain investment function income may not be apportioned if a unitary relationship does not exist between the payee and payor of the income, and if the income does not arise out of the operational activities of the taxpayer. See VR 630-3-421.1. Therefore, a corporation entitled to allocate and apportion its Virginia taxable income in accordance with § 58.1-406 of the Code of Virginia may be allowed to allocate certain income out of Virginia taxable income in determining its apportioned Virginia taxable income subject to tax. Because there is no provision for a separate Virginia net operating loss, income allocated out of Virginia taxable income cannot create or increase a Virginia net operating loss.

The Virginia taxable income of a multi-state corporation is separated into allocable and apportionable income. Neither the allocable income nor the apportionment factor of the loss year is a modification attributable to such loss year which follows the net operating loss.

D. ACRS subtractions.

1. The recovery of the outstanding balance of excess cost recovery in post 1987 taxable years pursuant to § 58.1-323.1 of the Code of Virginia is allowed as a subtraction in determining Virginia taxable income. Because this subtraction has its own carryover and recovery provisions, it is not a modification that follows a net operating loss carryback or carryover. See §§ 5 and 7 of VR 630-3-323.1.

2. ACRS additions and subtractions, required in taxable years beginning on and after January 1, 1982, and before January 1, 1988, are modifications that follow a net operating loss carryback or carryover. However, see § 8 of VR 630-3-323.1 where a net operating loss incurred in a taxable year prior to 1988 is deducted in a taxable year after 1987.

E. Capital losses and other items. No Virginia modifications follow a capital loss, charitable contribution or other carryover item which is not a net operating loss.

F. Other adjustments.

1. Railway companies may be required to adjust net operating losses in accordance with §§ 3 and 4 of VR 630-3-403.

2. Telecommunications companies may be required to adjust net operating losses in accordance with § 5 D of VR 630-3-400.1.

3. The provisions of this regulation will be applied *mutatis mutandis* to railway or telecommunications companies required to make such adjustments to net operating losses.

§ 4. Carryback or carryover of modifications.

A. In general. The Virginia modifications attributable to the loss year are combined, and the net sum of these loss year modifications will follow the net operating loss to the year in which the loss is utilized.

1. The net loss year modifications, which may be positive or negative, will be added or subtracted accordingly in determining Virginia taxable income in the year in which the net operating loss deduction is absorbed.

2. In the event a net operating loss deduction is fully utilized in a single carryback or carryover year, the entire net loss year modifications will be added or subtracted in such year. If the net operating loss is utilized to reduce federal taxable income in more than one taxable year, the net loss year modifications will be applied proportionately to the utilization of the net operating loss deduction.

3. For purposes of this regulation, the amount of net operating loss deduction attributable to a particular loss year that is considered to have been utilized in any carryback or carryover year shall be equal to:

i) The gross net operating loss deduction from such loss year available to reduce federal taxable income in such taxable year, reduced by

ii) The amount of such net operating loss which may be carried to a subsequent taxable year. For purposes of this subdivision, the federal carryover limitation period shall be ignored.

4. If Virginia taxable income in a loss year equals or exceeds zero, then all of the net operating loss and Virginia subtractions have been offset by Virginia additions. Accordingly, to prevent double taxation or deduction, a net positive Virginia modification equal to 100% of the net operating loss of the loss year shall follow the carryback or carryover of such loss.

5. In no event shall the amount of net operating loss deemed utilized exceed 100% of the net operating loss deduction attributable for such taxable year.

B. Examples.

Example 1. Corporation ABC (ABC) incurs a net operating loss in taxable year 1993. ABC determines its 1993 Virginia taxable income as follows:

Federal taxable income	(\$5,000)
Virginia modifications:	
State income taxes	2,500
Dividends from 50% owned co's	(1,000)
Virginia taxable income	(\$3,500)

Proposed Regulations

Apportionment percentage 95%
 Income subject to Virginia tax (\$3,325)

Modifications applied \$600 \$900

Note: ABC had no allocable income in 1993.

ABC has net loss year modifications of \$1,500 associated with the 1993 net operating loss (2,500-1,000). These modifications must be added to Virginia taxable income in the year or years in which the 1993 net operating loss is absorbed. The 1993 apportionment factor is not a modification that follows the 1993 net operating loss.

Example 2. Assume the same facts as in Example 1. ABC carries its entire net operating loss back to 1990. ABC determines its Virginia refund attributable to the net operating loss carryback as follows:

	1990 As Originally Filed	1990 After Carryback
Federal taxable income before carryback	\$10,000	\$10,000
Net operating loss carryback		(5,000)
Federal taxable income after carryback	\$10,000	\$5,000
Virginia modifications:		
Per original return	2,000	2,000
Associated with carryback		1,500
Virginia taxable income	\$12,000	\$8,500
Allocable dividends	(2,500)	(2,500)
Income subject to Apportionment	\$9,500	\$6,000
Apportionment factor	45%	45%
Income apportioned to Virginia	\$4,275	\$2,700
Dividends allocated to Virginia	0	0
Income subject to Virginia tax	\$4,275	\$2,700
-----	-----	-----
Virginia tax	\$257	\$162
-----	-----	-----
Refund due (257-162)		\$95

Example 3. Assume the same facts as in Example 1. ABC carries its net operating loss back to 1990. However, ABC has sufficient federal taxable income in 1990 to absorb only \$2,000 of the 1993 loss, leaving \$3,000 available for carryback to 1991. The net loss year modifications associated with the 1993 net operating loss, \$1,500, are applied as follows:

	1990	1991
Net operating loss absorbed	\$2,000	\$3,000
Percentage	40%	60%

Example 4. Corporation XYZ (XYZ) incurs a net operating loss in taxable year 1993. XYZ determines its 1993 Virginia taxable income as follows:

Federal taxable income	(\$1,000)
Virginia modifications:	
State income taxes	2,500
Subpart F income	(1,000)
Virginia taxable income	\$500
Allocable dividends	(750)
Income subject to apportionment	(\$250)
Apportionment percentage	75%
Income apportioned to Virginia	(\$188)
Dividends allocated to Virginia	0
Income subject to Virginia tax	(\$188)

For 1993, XYZ has Virginia taxable income of \$500. Accordingly, all of its net operating loss and Virginia subtractions have been used to offset Virginia additions. XYZ shall be deemed to have positive net loss year modifications of \$1,000 associated with the net operating loss. These modifications must be added to Virginia taxable income in the year or years in which the 1993 net operating loss is absorbed. Because allocable income cannot increase or create a Virginia net operating loss, 1993 allocable income will not be considered in the year or years in which the 1993 net operating loss is absorbed. The 1993 allocable income and apportionment factors are not modifications which follow the 1993 net operating loss.

§ 5. Determination of Virginia taxable income in carryback or carryover year.

A. Federal taxable income. Generally, federal taxable income means federal taxable income as defined by § 63 of the Internal Revenue Code and any other income taxable to the corporation under federal law for such taxable year. In order to prevent Virginia modifications associated with a net operating loss from being subject to double deduction or double taxation in a carryback or carryover year, the definition of federal taxable income is modified in any year in which a corporation incurs a net operating loss, or claims a net operating loss deduction.

B. Federal taxable income in loss year. In determining the amount of a net operating loss under § 172(c) of the Internal Revenue Code, no deduction is allowed for a net operating loss deduction from any other year because, in a loss year, federal taxable income is already less than zero. Therefore, in a loss year, no net operating loss deductions from other years are absorbed. For Virginia purposes, federal taxable income in a loss year shall be

determined without net operating loss deductions attributable to any other taxable year.

Example 1. In 1993, XYZ Corporation (XYZ) incurs a net operating loss of \$4,000, has a net operating loss carryover of \$2,000 from 1992, and has net 1993 Virginia modifications of \$500. On its 1993 federal income tax return, XYZ reports the following:

1993 net operating loss	(\$ 4,000)
Net operating loss carryover from 1992	(2,000)
Federal taxable income	(\$ 6,000)

For Virginia purposes, XYZ will determine its 1993 Virginia taxable income as follows:

Federal taxable income	(\$6,000)
Adjust: net operating loss carryover	2,000
Federal taxable income for Virginia purposes	(\$4,000)
Virginia modifications	500
Virginia taxable income	(\$ 3,500)

For 1993, XYZ will not owe Virginia income tax. The \$500 of net loss year modifications will follow the 1993 net operating loss to the year or years in which the loss is utilized.

Example 2. In 1993, White Corporation (White) incurs a net operating loss of \$1,000, has a net operating loss carryover of \$3,000 from 1992, and has net 1993 Virginia modifications of \$2,500. On its 1993 federal income tax return, White reports the following:

1993 net operating loss	(\$1,000)
Net operating loss carryover from 1992	(3,000)
Federal taxable income	(\$4,000)

For Virginia purposes, White will determine its 1993 Virginia taxable income as follows:

Federal taxable income	(\$4,000)
Adjust: net operating loss carryover	3,000
Federal taxable income for Virginia purposes	(\$1,000)
Virginia modifications	2,500
Virginia taxable income	\$1,500
Allocable dividends	(500)
Income subject to apportionment	\$1,000
Apportionment percentage	15%
Income apportioned to Virginia	150
Dividends allocated to Virginia	500
Income subject to Virginia tax	650

Virginia tax (6%)

\$39

For 1993, White will owe Virginia income tax of \$39. The \$3,000 net operating loss carryover from 1992 cannot reduce Virginia taxable income for 1993 because 1993 was a loss year. For 1993, White has Virginia taxable income of \$1,500. Accordingly, all of White's 1993 net operating loss and Virginia subtractions have been used to offset Virginia additions. The net operating loss from 1993 will have a net positive Virginia modifications of \$1,000, which shall follow the carryover of the 1993 net operating loss for Virginia purposes. The 1993 allocable income and apportionment factors are not modifications which follow the 1993 net operating loss.

C. Federal taxable income in a carryback year.

1. If a net operating loss is carried back, and the federal taxable income in the carryback year is sufficient to fully absorb the loss, no adjustment is necessary to federal taxable income for Virginia purposes.

2. If a net operating loss is carried back, and federal taxable income in the carryback year is insufficient to fully absorb the carryback, then for Virginia purposes federal taxable income is defined as zero.

Example 1. In 1993, XYZ Corporation (XYZ) incurs a net operating loss of \$5,000. In 1990, XYZ's federal taxable income, before the carryback, is \$25,000. Because the federal taxable income in 1990 is sufficient to fully absorb the net operating loss carryback, no adjustment is necessary to 1990 federal taxable income for Virginia purposes.

Example 2. In 1993, ABC Corporation (ABC) incurs a net operating loss of \$45,000, and has negative net loss year modifications of (\$3,000). ABC's federal taxable income, Virginia adjustments, allocable income, and apportionment percentages for 1990, 1991, and 1992 before the carryback are as follows:

	1990	1991	1992
Federal taxable income	\$10,000	\$5,000	\$15,000
Virginia modifications	(1,000)	3,500	(5,000)
Virginia taxable income	\$9,000	\$8,500	\$10,000
Allocable dividends	(500)	(400)	(600)
Income subject to apportionment	\$8,500	\$8,100	\$9,400
Apportionment percentage	95%	85%	90%
Income apportioned to Virginia	\$8,075	\$6,885	\$8,460
Dividends allocated to Virginia	0	0	0
Income subject to Virginia tax	\$8,075	\$6,885	\$8,460

Virginia tax (6%)	\$485	\$413	\$508

Proposed Regulations

ABC's Virginia taxable income after the net operating loss carryback is as follows:

	1990	1991	1992
Original federal taxable income	\$10,000	\$5,000	\$15,000
Net operating loss carryback	(10,000)	(5,000)	(15,000)
Federal taxable income for Virginia purposes *	0	0	0
Virginia modifications:			
Per original return	(1,000)	3,500	(5,000)
Associated with carryback	(667)	(333)	(1,000)
Virginia taxable income	(\$1,667)	\$3,167	(\$6,000)
Allocable dividends **	(500)	(400)	(600)
Income subject to apportionment	(\$2,167)	\$2,767	(\$6,600)
Apportionment percentage	95%	85%	90%
Income apportioned to Virginia	(\$2,059)	\$2,352	(\$5,940)
Dividends allocated to Virginia	0	0	0
Income subject to Virginia tax	(\$2,059)	\$2,352	(\$5,940)
-----	-----	-----	-----
Revised Virginia tax (6%)	0	141	0
Original Virginia tax	485	413	508
(Refund)	(\$485)	(\$272)	(\$508)
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* In each of the carryback years federal taxable is less than zero as a result of the gross net operating loss deduction available. However, for Virginia purposes, federal taxable income is defined as zero.

** Because allocable income cannot increase or create a Virginia net operating loss, allocable income from 1990 and 1992 will not be considered in any other year. Accordingly, dividend income which may be allocated out of Virginia in 1990 and 1992 will not reduce Virginia taxable income in any other year.

The balance of the 1993 net operating loss, \$15,000, will have a net negative Virginia modification \$1,000 (3,000-(667+333+1000)) which will follow the loss to post 1993 carryover years.

D. Federal taxable income in a carryover year.

1. If a net operating loss is carried over, and the federal taxable income in the carryover year is sufficient to fully absorb the loss, no adjustment is necessary to federal taxable income for Virginia purposes.

2. If a net operating loss is carried over, and federal taxable income in the carryover year is insufficient to fully absorb the carryover, then for Virginia purposes federal taxable income is defined as zero.

Example 1. In 1993, XYZ Corporation (XYZ) incurs a

net operating loss of \$15,000. XYZ has no prior federal taxable income, and must carry its 1993 net operating loss forward. In 1994, XYZ's federal taxable income, before the carryover, is \$25,000. Because the federal taxable income in 1994 is sufficient to fully absorb the net operating loss carryover, no adjustment is necessary to 1994 federal taxable income for Virginia purposes.

Example 2. In 1993, ABC Corporation (ABC) incurs a net operating loss of \$45,000, and has negative net loss year modifications of (\$3,000). ABC has no prior federal taxable income, and must carry its 1993 net operating loss forward. ABC's federal taxable income, Virginia modifications, and allocable dividends for 1994, 1995 and 1996 (without the carryover) are as follows:

	1994	1995	1996
Federal taxable income	\$10,000	\$5,000	\$15,000
Virginia modifications	(1,000)	3,500	(5,000)
Allocable dividends	1,700	2,000	1,500

ABC's Virginia taxable income after the net operating loss carryover is as follows:

	1994	1995	1996
Federal taxable inc. (without NOL)	\$10,000	\$5,000	\$15,000
Net operating loss carryover	(10,000)	(5,000)	(15,000)
Federal taxable income for Virginia purposes *	0	0	0
Virginia modifications:			
Incurred in year	(\$1,000)	\$3,500	(\$5,000)
Associated with carryover	(667)	(333)	(1,000)
Virginia taxable income	(\$1,667)	\$3,167	(\$6,000)
Allocable dividends **	(1,700)	(2,000)	(1,500)
Income subject to apportionment	(\$3,367)	\$1,167	(\$7,500)
Apportionment percentage	47%	65%	55%
Income apportioned to Virginia	(\$1,582)	\$759	(\$4,125)
Dividends allocated to Virginia	0	1	0
Income subject to Virginia tax	(\$1,582)	\$759	(\$4,125)
-----	-----	-----	-----
Virginia tax (6%)	0	\$46	0
-----	-----	-----	-----

* In each of the carryover years federal taxable is less than zero as a result of the gross net operating loss deduction available. However, for Virginia purposes, federal taxable income is defined as zero.

** Because allocable income cannot increase or create a Virginia net operating loss, allocable income from 1994 and 1996 will not be considered in any other year. Accordingly, dividend income which may be allocated out of Virginia in 1994 and 1996 will not reduce Virginia taxable income in any other year.

The balance of the 1993 net operating loss, \$15,000, will have a net negative Virginia modification \$1,000 (3,000(667+333+1000)) which will follow the loss to post 1996 carryover years.

§ 6. Federal carrybacks, carryovers, and elections.

A. In general. Federal law permits a corporation to carry a net operating loss back to each of the three taxable years preceding the loss year, and then over to each of the 15 taxable years following the taxable year of the loss. The loss must be carried to the earliest year first, and then to succeeding years until the entire loss has been applied. Because Virginia law does not provide for a separate Virginia net operating loss, federal law and regulations regarding carrybacks and carryovers control the ability to utilize a net operating loss to reduce Virginia taxable income. For Virginia purposes, a net operating loss will be considered to have been carried back or over to the same taxable year as for federal purposes. The fact that a corporation has no Virginia source income or is not otherwise subject to tax in a carryover or carryback year does not affect the Virginia treatment.

Example 1. Corporation ABC (ABC) incurs a net operating loss in 1993, which it carries back to 1990 for federal purposes. ABC was subject to tax in Virginia and filed Virginia tax returns during 1991, 1992, and 1993. During 1990, ABC was not subject to tax in Virginia and did not file a 1990 Virginia return. Although ABC was subject to tax in Virginia during 1993, the year of the loss, the 1993 net operating loss will not be available to reduce Virginia taxable income because it was carried back to 1990 and fully absorbed for federal purposes, a year in which ABC was not subject to Virginia tax. In this circumstance, ABC may not use the 1993 net operating loss to reduce Virginia taxable income in any other year.

Example 2. Corporation XYZ (XYZ) incurs a net operating loss in 1993, which it carries back to 1990 for federal purposes. XYZ was subject to tax in Virginia and filed Virginia tax returns during 1990. During 1993, XYZ was not subject to tax in Virginia and did not file a 1993 Virginia return. Although XYZ was not subject to tax in Virginia during 1993, the year of the loss, the 1993 net operating loss carryback will be available to reduce Virginia taxable income because it was carried back to and reduced federal taxable income in 1990, a year in which ABC was subject to Virginia tax. In this circumstance, ABC must determine Virginia modifications for 1993 as if it were fully subject to tax in 1993, and apply the 1993 net loss year modifications to 1990 in determining Virginia taxable income after the carryback.

B. Federal election. If a corporation elects to relinquish the entire carryback period for federal purposes in accordance with § 172(b)(3) of the Internal Revenue Code, such election is binding for Virginia purposes.

C. Other federal limitations. Any federal provision which acts to limit the availability of a net operating loss, such as §§ 381 and 382 of the Internal Revenue Code, shall apply for Virginia purposes.

D. Consolidated or combined Virginia returns. Corporations filing consolidated or combined Virginia returns may be subject to special rules where federal and Virginia returns are filed on a different basis or with different members. See VR 630-3-442.1 and VR 630-3-442.2. Corporations that file as part of a federal consolidated return, but file a separate Virginia return, may be subject to special rules in determining Virginia taxable income. See VR 630-3-442.1 and VR 630-3-402.

§ 7. Worksheet.

In any taxable year in which federal taxable income includes a net operating loss deduction, the following worksheet, or facsimile thereof, must be attached to the return to support the calculation of Virginia modifications for the loss year.

NET OPERATING LOSS MODIFICATION WORKSHEET
19....

1. Year net operating loss was incurred —
2. Federal net operating loss for year of loss —
3. Amount of federal net operating loss utilized in this carryback or carryover year. —
4. Percentage of net operating loss utilized in this carryback or carryover year. (Line 3 divided by Line 2) —
—
5. Virginia modifications for year of the loss:
 - 5.a Additions:
 - State income taxes —
 - Interest on obligations of other states —
 - Interest or dividends from the United States —
 - Esop credit adjustments —
 - Accumulation distributions from trusts —
 - Other (itemize) —
 - —
 - Total additions:
 -=====
 - 5.b Subtractions (enter as a positive number):

Proposed Regulations

U. S. Interest	—
Interest on obligations of the Commonwealth ...	—
Disc dividends	—
State tax refunds	—
Foreign dividend gross up	—
Subpart F income	—
Foreign source income	—
Dividends from 50% or more owned companies .	—
Qualified agricultural contributions	—
Other (itemize)	—
.....	—

Total subtractions:

.....=====

5.c Net loss year modifications (5a minus 5b)

.....=====

6. Amount of net loss year modifications to be applied to carryback or carryover year (Line 5c multiplied by Line 4)

.....=====

§ 8. Preparation of carryback year or carryover year return.

A. Carryback year return. If a corporation has filed an amended federal return (Form 1139, 1120X, etc.) to carry back a net operating loss, the amended return is treated as a change in federal taxable income for the year to which the loss is carried. The corporation may file an amended Virginia return (Form 500-NOLD, or other form as prescribed by the department) claiming a refund due to the change in federal taxable income resulting from the net operating loss. A net operating loss carryback shall not be considered for purposes of determining or adjusting any penalty which may be, or has been, assessed on the carryback year return.

The amended Virginia return must be filed on the prescribed form and contain the following forms and schedules:

1. Net operating loss modification worksheet, or facsimile.
2. If the net operating loss affects a consolidated or combined return year, a complete copy of the Virginia return for the loss year.

3. A complete copy of the federal Form 1139, 1120X or other federal form filed for the carryback.

4. Other information as prescribed by the department.

B. Carryover year return. In any year in which a net operating loss carryover is deducted in computing federal taxable income, the starting point for Virginia purposes will already include such carryover. The net loss year modifications attributable to the portion of such carryover utilized in the carryover year must be determined on the net operating loss modification worksheet, and included on the Virginia return with any other carryover year Virginia additions or subtractions in determining Virginia taxable income for the carryover year. The following information and schedules must accompany the carryover year return:

1. Net operating loss modification worksheet or facsimile.
2. If the net operating loss affects a consolidated or combined return year, a complete copy of the Virginia return for the loss year.
3. Other information as requested by the department.

V.A.R. Doc. No. R94-390; Filed December 21, 1993, 3:03 p.m.

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Title of Regulation: VR 630-3-403. Corporate Income Tax: Additional Modifications for Savings and Loan Associations, Railway Companies and Telecommunications Companies.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia

Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explains the unique adjustments that must be made by savings and loan associations, railway companies and telecommunications companies.

Section 58.1-403 of the Code of Virginia was amended by Chapter 614 of the 1987 Acts of the General Assembly and Chapter 899 of the 1988 Acts of the General Assembly.

The amendments to this regulation reflect the legislative changes made to § 58.1-403 of the Code of Virginia, and department policy in this area.

Substance: The amendments to § 2 incorporate the legislative change to § 58.1-403 of the Code of Virginia made by Chapter 614 of the 1987 Acts of the General Assembly. This Act restored the special bad debt deduction for savings and loan associations to the percentage of income (40%) that existed before the Tax Reform Act of 1986 reduced the federal deduction to 8.0%. The bad debt deduction for Virginia purposes is determined after federal taxable income has been adjusted by all of the additions and subtractions in § 58.1-402 of the Code of Virginia and increased by the federal bad debt deduction. An example of the calculation has been provided.

The amendments to § 3 clarify that railway companies must increase federal taxable income by any net operating loss deduction attributable to a taxable year beginning before January 1, 1979.

The amendments to § 4 make it clear that railway companies may modify their federal taxable income for Virginia purposes if a net operating loss incurred in a taxable year beginning on or after January 1, 1979, is carried back to a taxable year beginning before January 1, 1979.

The amendments to § 5 refer telecommunication companies to VR 630-3-400.1 for guidance in making the adjustments required for net operating losses.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the adjustments required, and the impact of legislative changes.

Savings and loan associations that claim a federal deduction for bad debts based on a percentage of income will receive a more favorable deduction for Virginia purposes.

Railway companies that have a net operating loss carryforward from a pre-1979 taxable year may carry the

loss forward for up to 15 years. Accordingly, the Virginia adjustments required for these companies will generally disappear after 1993 taxable years.

Telecommunications companies that have a net operating loss carryforward from a pre-1989 taxable year may carry the loss forward for up to 15 years. Accordingly, the Virginia adjustments required for these companies may exist through taxable years ending in 2003.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** Entities subject to the provisions of this regulation include savings and loan associations, and railway and telecommunications companies that have net operating loss deductions.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. Chapter 614 of the 1987 Acts of the General Assembly restored the special bad debt deduction for savings and loan associations to the percentage of income (40%) that existed before the Tax Reform Act of 1986 reduced the federal deduction to 8.0%. An example of the calculation has been provided.

2. The amendments clarify that railway companies must increase federal taxable income by any net operating loss deduction attributable to a taxable year beginning before January 1, 1979, and may modify their federal taxable income for Virginia purposes if a net operating loss incurred in a taxable year beginning on or after January 1, 1979, is carried back to a taxable year beginning before January 1, 1979.

3. The amendments refer telecommunication companies to VR 630-3-400.1 for guidance in making the adjustments required for net operating losses.

4. The regulation was adopted on September 14, 1984,

Proposed Regulations

effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

VR 630-3-403. Corporate Income Tax: Additional Modifications for Savings and Loan Associations, Railway Companies and Telecommunications Companies.

(A) § 1. In general.

In addition to the modifications set forth in Va. Code § 58.1-402 of the Code of Virginia for determining Virginia taxable income for corporations generally, the adjustments set forth in subsection (B) below § 2 of this regulation shall be made to the federal taxable income of savings and loan associations; and as set forth in subsections (C) and (D) below §§ 3 and 4 of this regulation for railway companies; and as set forth in § 5 of this regulation for telecommunications companies.

B. § 2. ~~Addition~~ Deductions for bad debts of savings and loan associations.

(1) A. If ~~the~~ Where a savings and loan association's federal bad debt deduction is based on a percentage of income pursuant to § 593 of the Internal Revenue Code of 1986, such amount the federal bad debt deduction shall be added back to federal taxable income for Virginia purposes. A Virginia bad debt deduction shall be allowed in lieu of the federal deduction. ~~After~~ The Virginia bad debt deduction shall be determined after federal taxable income has been adjusted by all of the additions and subtractions in Va. Code § 58.1-402 of the Code of Virginia and increased by the federal bad debt ~~addition~~ deduction. ~~a new~~ The Virginia bad debt deduction is determined by applying to the adjusted federal taxable income the same percentage which would have been used in determining the federal bad debt deduction under the Internal Revenue Code of 1954, as in effect immediately prior to the enactment of the Tax Reform Act of 1986 (Public Law 99-514) used to compute the federal bad debt deduction. The new Virginia bad debt deduction is then subtracted from the adjusted federal taxable income to arrive at Virginia taxable income.

(2) B. If the federal bad debt deduction is computed by a method other than the percentage of net income (such as the experience method) then no addition or subtraction is required for the bad debt deduction.

Example: Savings and Loan Company (S & L), a calendar year filer, has \$500,000 of operating income and \$500,000 of interest on United States obligations for

taxable year 1993. For 1993 S & L calculates its federal bad debt deduction as follows:

Operating income	\$500,000
Interest on U. S. obligations	500,000
	—
Income before bad debt deduction	\$1,000,000
Federal bad debt deduction (8.0%)	-80,000
	—
Federal taxable income	\$920,000

S & L determines its Virginia bad debt deduction and Virginia taxable income as follows:

Federal taxable income	\$920,000
Add: federal bad debt deduction (8.0%)	80,000
Less: interest on U. S. obligations	-500,000
	—
Subtotal	\$500,000
Virginia bad debt deduction (40%)*	200,000
	—
Virginia taxable income	\$300,000

* Prior to the Tax Reform Act of 1986, § 593 of the Internal Revenue Code of 1954 allowed a 40% deduction. For 1993 taxable years the federal deduction is limited to 8.0%, therefore for Virginia purposes the deduction is calculated using 40% as allowed under prior law.

(C) § 3. Addition for ~~NOLD~~ pre-1979 net operating loss deduction of railway companies.

If federal taxable income for any taxable year has been reduced by a Net Operating Loss Deduction (NOLD) attributable to a net operating loss occurring in a taxable year beginning before January 1, 1979, then such NOLD must be added to federal taxable income. There shall be added to federal taxable income the amount of any Net Operating Loss Deduction (NOLD) attributable to a taxable year beginning before January 1, 1979, to the extent federal taxable income was reduced by such NOLD.

(D) § 4. Subtraction for ~~NOLD~~ net operating loss deduction of railway companies.

(1) A. Because federal law requires ~~an~~ permits a NOLD to be carried back to the earliest year of the three preceding years in which there is income to be offset, a railway company suffering incurring a net operating loss in a taxable year beginning on or after January 1, 1979, might be required to ~~could~~ carry such loss back to taxable years beginning before January 1, 1979. Since a railway company was not subject to Virginia income tax for years beginning before January 1, 1979, it would receive no Virginia benefit from such ~~carryback~~, and the NOLD for other taxable years would be reduced or eliminated by the

required federal carryback the portion of such NOLD that is carried back to taxable years beginning before January 1, 1979.

(2) B. In this situation, railway companies must add back the NOLD actually allowed on their federal return for losses occurring in taxable years beginning on or after January 1, 1979. A new NOLD is computed for Virginia purposes following the federal law and regulations except that no such loss is carried back to a taxable year beginning before January 1, 1979.

(3) Example A 1. XYZ Co. is a railway company reporting on a calendar year basis. For the years 1976 - 1982 XYZ Co. had no additions or subtractions to federal taxable income except for an adjustment for net operating loss deductions. The income of XYZ is as follows:

	1975	1976	1977	1978	1979
Federal Taxable Income					
Before NOLD	50,000	50,000	25,000	(150,000)	75,000
NOLD	(50,000)	(50,000)	(25,000)	-	(25,000)
Fed. taxable income	-0-	-0-	-0-	-0-	50,000
Va. NOL Adjustment					25,000
Va. Taxable Income (Virginia Income Tax Not Imposed)					75,000

Under federal law the 1978 net operating loss is first carried back to offset 1975, 1976 and 1977 income. There would be \$25,000 of the NOL remaining to be carried forward and deducted on XYZ Co.'s 1979 federal return. Because the loss occurred in a taxable year beginning before December 31, 1978, the NOLD on the 1979 return must be added to federal taxable income to determine Virginia taxable income.

(4) Example B 2. Same facts as in Example A 1 except that the loss occurred in 1980. The income of XYZ is as follows:

	1977	1978	1979	1980	1981
Federal Taxable Income					
Before NOLD	25,000	25,000	75,000	(100,000)	75,000
NOLD	(25,000)	(25,000)	(50,000)	-	-0-
Fed. Taxable Income	-0-	-0-	25,000	-0-	75,000
Add Fed. NOLD			+50,000		
Va. NOL Adjustment (Virginia Income)			(75,000)		(25,000)
Va. Taxable Income (Tax Not Imposed)			-0-	-0-	50,000

Under federal law the 1980 net operating loss is first carried back to offset income in 1977 and 1978. The remaining \$50,000 NOL is carried back to the 1979 federal return.

Because the loss occurred in a taxable year beginning on or after January 1, 1979, the entire NOL will be available to offset Virginia income reported in taxable years beginning on or after January 1, 1979. The federal

NOLD of \$50,000 is first added to the 1979 federal taxable income and then a new Virginia NOL carryback is computed and subtracted. The federal laws and regulations are followed except that no NOL shall be carried back further than 1979. The result is that the carryback to 1979 is \$75,000 instead of \$50,000 and there is still \$25,000 of the NOL left to carryover to the 1981 return.

§ 5. Net operating loss deductions for telecommunications companies.

For taxable years beginning on or after January 1, 1989, telecommunications companies are subject to the Virginia corporate income tax imposed under § 58.1-400 of the Code of Virginia. Formerly, such companies were subject to the license tax on gross receipts, administered by the State Corporation Commission.

Telecommunications companies are required to make modifications to federal taxable income with respect to net operating losses in the computation of Virginia taxable income, as provided in VR 630-3-400.1.

V.A.R. Doc. No. R94-391; Filed December 21, 1993, 3:15 p.m.

* * * * *

Title of Regulation: VR 630-3-409. Corporate Income Tax: Property Factor.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: Section 58.1-203 of the Code of Virginia states that "the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department."

The department periodically reviews and revises regulations to reflect current policy and practice, under the authority granted to the Tax Commissioner.

Purpose: The purpose of this regulation is to provide guidance in the area of computing the property apportionment factor. The deletion of the methodology for computing a property apportionment factor with respect to partnership property is deleted in response to taxpayer confusion regarding the application of department policy in this area. Other cosmetic changes are made in order to clarify the existing regulation.

Substance: One amendment to the existing regulation deletes the methodology for computing corporate partners' property apportionment factor with respect to partnership property.

Proposed Regulations

Another amendment to the existing regulation states that property in transit will be deemed to be at the destination for purposes of determining the property factor.

Issues: By creating a separate regulation for the computation of apportionment factors for corporate partners, which includes the reference to partnership property deleted from this regulation, taxpayers are provided with clarification of department policy with respect to computing the apportionment factors of corporate partners.

By clarifying the treatment of property in transit in determining the property factor, taxpayers may more accurately compute their property apportionment factor.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. The department will attempt to minimize printing and mailing costs by printing and distributing this regulation in conjunction with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** All corporations subject to income tax in Virginia are subject to the provisions of this regulation. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

The existing regulation provided guidance with respect to computing the property apportionment factor for corporations. Specifically, it provides that the property factor is a fraction, the numerator of which is average property used in Virginia, and the denominator of which is the average amount of property utilized everywhere. Property is defined to include all real and tangible personal property in which a corporation has any right of use or possession.

One revision to this regulation clarifies that property in transit between locations shall be considered to be at the destination for purposes of determining its location for inclusion in the property factor.

An additional revision deletes the reference to computing the property factor for corporations that are general partners in a partnership. A new regulation will be promulgated to clarify and provide guidance with respect to the determination of a corporate partner's apportionment factor, with respect to the partnership property, payroll, and sales.

VR 630-3-409. Corporate Income Tax: Property Factor.

A: § 1. In general.

1: A. The property factor is a fraction. The numerator is the average value of real and tangible personal property which is used in Virginia. The denominator is the average value of real and tangible personal property which is used everywhere. Property shall be included in the property factor if it is:

a: 1. Owned or rented by taxpayer, and

b: 2. Used by taxpayer, and

e: 3. Effectively connected with the taxpayer's trade or business within the United States and the income from such trade or business is includible in both Virginia taxable income and federal taxable income.

B. The property factor numerator is computed by averaging the value of property at the beginning and end of the taxable year that is utilized in Virginia. The property factor denominator is computed by averaging the value of property at the beginning and end of the taxable year that is utilized everywhere. The capitalized rental property in Virginia and everywhere is added to the average of the beginning and ending of the taxable year property in computing the total property numerator and denominator, respectively. See VR 630-3-411 for guidance regarding the methodology for computing "average" property.

2: § 2. Property.

a: A. Property means includes all real and tangible personal property including land, mineral rights, buildings, machinery, inventory and any other real or tangible personal property in which the corporation has any right of use or possession. For valuation of property see Va. Reg. § VR 630-3-410. For explanation of "average value" see Va. Reg. § 630-3-411.

b: Partnership property. For purposes of the property factor each item of partnership property shall have the same character for a corporate general partner as if direct corporate ownership of the property existed. However, if the inclusion of partnership property in the property factor does not materially affect the factor and information is difficult to obtain then partnership property may be treated as intangible property and excluded from the property factor provided that such treatment is

adequately disclosed. See paragraph (E)(4) of Va. Reg. § 630-3-302.

e. *B. Leasehold Improvements.* For purposes of the property factor leasehold improvements are deemed to be owned by the lessee of the property to which the improvements are made regardless of any right the landlord may have to the improvements at the end of the lease term.

d. *C. Mining property.* A corporation engaged in the business of mining mineral ore, oil, gas or other natural resources or cutting timber may own or lease the real estate on which such operations are conducted or it may own or lease only the mineral rights to such property or some other interest in the operations. For purposes of computing the property factor the corporation is deemed to own or lease the property, mineral rights or other interest in such property and the value, as determined under Va. Reg. § VR 630-3-410, will be included in the property factor.

3. *D. "Owned or rented."* Property will be included in the property factor regardless of whether the corporation owns, rents or leases the property. Ownership or rental affects only the method used to determine

4. *"Used."* § 3. *Property not placed into use.*

a. *A.* Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor.

b. *B.* Property under construction during the taxable year (except inventoriable goods in process) shall be excluded from the factor until such property is actually used. If the property is partially used while under construction, the value of the property to the extent used shall be included in the property factor.

e. *C.* Mineral rights are used when placed in production or developed to the point where they could be placed in production but are held as reserves. Exploration and development do not place mineral rights in use for the property factor. But see Va. Reg. § VR 630-3-410 for valuation.

d. *D.* Once used or available for use, property shall remain in the property factor until its permanent withdrawal from use is established by an identifiable event such as its sale. The fact that a taxpayer ceases to actively use property does not, of itself, remove the property from the property factor because it is still available to be used. *The act of writing property off of a taxpayer's books and records is prima facie evidence that such property has been permanently withdrawn from use.*

§ 4. *Property available for use.*

e. *A.* Property is not permanently withdrawn from use by merely offering it for sale. Property offered for sale

shall be deemed available for use unless other circumstances clearly show that use of the property has been permanently abandoned.

f. *B.* Property which the corporation ceases to actively use in its operations but leases to others is still being used by the corporation to produce income and shall be included in the factor.

5. *C.* Property is effectively connected with the taxpayer's business within the United States if it is actually used or available to be used in taxpayer's trade or business. Generally any use of property which produces income, including rental income, is income from a trade or business. A taxpayer may have more than one trade or business. See Treasury Reg. U.S. Treasury Regulation § 1.861-4 for definition of "effectively connected...."

D. Property in transit between two locations shall be considered to be at the destination for purposes of the property factor. Moveable property such as vehicles are subject to special rules. See VR 630-3-410.

6. § 5. *Safe harbor leases.*

The Economic Recovery Tax Act of 1981 (ERTA) allows corporations to treat certain financial agreements concerning property as leases for federal income tax purposes even though such agreements would not be recognized as leases under the general property law of a state. Such agreements are treated as leases for purposes of the Virginia income tax to the same extent that they are treated as leases for federal income tax. Thus the "lessee" will be treated as a corporation renting property, and the value of the property will be included in the property factor. The "lessor" will be treated as a corporation owning property and the value of the property will be included in the property factor.

B. § 6. *Examples.*

These principles are illustrated by the following examples:

Example 1: On June 30, 1981 1993, taxpayer shut down its manufacturing operations in State X and announced its intention to sell the land, buildings and machinery. The property was sold on October 31, 1982 1994. The value of the manufacturing plant is included in the property factor until November 1, 1982 1994.

Example 2: Same as example (1) 1 except that in addition to closing the plant taxpayer removed all equipment from the plant, relocated key employees and awarded severance pay to other employees. The plant is included in the property factor until July 1, 1981 1993.

Example 3: Same as example (1) 1 except that the plant was rented on a month to month basis until the plant was sold. The plant is included the property factor until November 1, 1982 1994.

Proposed Regulations

Example 4: On June 30, ~~1981~~ 1993, taxpayer closed its manufacturing plant and leased the building under a 5-year lease on October 1, ~~1981~~ 1993. The plant is included in the property factor for all of ~~1981~~ 1993 and subsequent years.

Example 5: The taxpayer operates a chain of retail grocery stores. On June 30, ~~1981~~ 1993, taxpayer closes Store A which is then remodeled into three small retail stores such as a dress shop, dry cleaner, and barber shop. The new stores are advertised for lease on November 1, ~~1981~~ 1993. The property remains in the property factor for all of ~~1981~~ 1993 and subsequent years.

Example 6: Taxpayer, a retailer, owns a 10 story building. The first floor is used by taxpayer as a retail store. The remaining floors are rented to various businesses as offices. The entire building is included in the property factor.

VA.R. Doc. No. R94-392; Filed December 21, 1993, 3:05 p.m.

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Title of Regulation: VR 630-3-411. Corporate Income Tax: Average Value of Property.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: Section 58.1-203 of the Code of Virginia states that "the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department."

The department periodically reviews and revises regulations to reflect current policy and practice, under the authority granted to the Tax Commissioner.

Purpose: The purpose of this regulation is to provide guidance in computing the property apportionment factor. Specifically, guidance was needed with respect to computing the average property amount for corporations acquired pursuant to an election under § 338(h)(10) of the Internal Revenue Code, because of possible problems in properly reflecting Virginia taxable income in the acquisition year.

Substance: This regulation is amended to require monthly averaging in determining the property numerator of a corporation acquired pursuant to an election under § 338(h)(10) of the Internal Revenue Code (a "target corporation").

Another amendment clarifies that an acquired target

corporation's individual property fluctuations will not cause an affiliated group filing a Virginia consolidated return to be required to use monthly averaging to determine its property factor.

Issues: An election made under § 338(h)(10) of the Internal Revenue Code requires that a target corporation revalue its assets at their fair market value on the date the target corporation is sold. Without the amendment to the regulation requiring monthly averaging in this circumstance, the property numerator and denominator of the target corporation could possibly be distorted in the year of the asset revaluation.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. The department will attempt to minimize printing and mailing costs by printing and distributing this regulation in conjunction with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** All corporations subject to income tax in Virginia are subject to the provisions of this regulation. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

The existing regulation provides guidance with respect to how the "average" value of property for purposes of determining the property apportionment factor is determined: either (i) by averaging the amounts owned at the beginning and ending of the year, or (ii) by using property amounts averaged on a monthly basis.

The regulation has been revised to include a requirement that under an election pursuant to § 338(h)(10) of the Internal Revenue Code, a target corporation will be required to use monthly averaging in determining its Virginia property numerator in the year of the sale deemed to occur when ownership of a target corporation is transferred from a seller to a buyer.

The regulation has also been revised to clarify when a consolidated group may be required to use monthly averaging, when the group has as a member a target corporation acquired pursuant to an election under § 338(h)(10) of the Internal Revenue Code.

VR 630-3-411. Corporate Income Tax: Average Value of Property.

A. § 1. In general.

1. A. The average value of property shall be determined by averaging the value of the amount owned as of the beginning and end of the taxable year; ~~but~~. However, the department may require the averaging of monthly values owned during the taxable year if reasonably required to reflect properly the average value of the corporation's property.

2. B. Averaging by monthly values may be elected by the taxpayer ~~and will~~, regardless of whether the department requires it.

C. Averaging by monthly values will generally be required by the Department (i) if there is substantial fluctuation in the values of the property during the taxable year; or (ii) where if a substantial amount of property is acquired after the beginning of the taxable year or disposed of before the end of the taxable year, or (iii) for the Virginia income tax return of a target corporation in an election under § 338(h)(10) of the Internal Revenue Code, in the year of the deemed sale of the target's assets. Taxpayer may elect to average by monthly values whether or not the department requires it.

In the case of a target corporation participating in an election under § 338(h)(10) of the Internal Revenue Code, and which is a member of an affiliated group filing a Virginia income tax return on a consolidated basis, the target corporation's individual property fluctuations because of the election will not be deemed to cause a substantial fluctuation in property value for the consolidated group. Rather, a substantial fluctuation will be deemed to occur if the property of the entire consolidated group for any month is outside a range of values which is the average of the beginning and ending of the group's taxable year property plus or minus 25%.

3. D. Substantial fluctuations in the values of property will be deemed to exist if the value for any month is outside a range of values which is the average of the beginning and ending value plus or minus 25%.

4. E. The taxpayer may elect to compute the average value of rental property by one of the following methods:

a. 1. The net annual rental rate of property rented at the beginning and end of the taxable year may be averaged and multiplied by eight, or

b. 2. The net annual rental rate of property rented at

the beginning of each month may be averaged and multiplied by eight, or

e. 3. The total rent paid for all property for the taxable year may be multiplied by eight. This method is deemed equivalent to monthly averaging, or

~~d.~~ 4. The department may require a taxpayer to determine the average value of property by using method ~~(b)~~ 2 and ~~(e)~~ 3.

B. § 2. Examples.

Example 1. Taxpayer reports on a calendar year. The value of property at the end of the preceding year (and therefore the beginning value for this year) was \$1,250. The value of property at the end of each month for this year is as follows:

January	1,300	July	5,000
February	1,350	August	7,500
March	1,500	September	10,000
April	1,700	October	12,000
May	2,000	November	4,000
June	3,000	December	2,000

The average of the beginning and ending values is \$1,625.

$$1,250 + 2,000 = 3,250/2 = 1,625$$

However, there is substantial fluctuation in the monthly values.

$$1,625 - 25\% = 1,218.75; 1,625 + 25\% = 2,031.25$$

Because the property values for some of the months is outside the acceptable range of fluctuation (\$1,218.75 to \$2,031.25) the department requires that the property be averaged monthly.

The total of the 12 monthly values is \$51,350 and the average value is \$4,279.

Example 2. Assume that an affiliated group of corporations exists where the parent is selling one of its subsidiaries, and that all affected have elected to have the sale of the stock of the subsidiary be treated as a sale of assets pursuant to § 338(h)(10) of the Internal Revenue Code. The affiliated group is on a calendar year, and sells the subsidiary on April 1. The final Virginia return of the subsidiary as a member of the selling group will include a property factor computed using the monthly average of property from January through March.

V.A.R. Doc. No. R94-394; Filed December 21, 1993, 3:05 p.m.

Proposed Regulations

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Title of Regulation: VR 630-3-420. Corporate Income Tax: Railway Companies; Apportionment.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: Section 58.1-203 of the Code of Virginia states that "the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department."

The department periodically reviews and revises regulations to reflect current policy and practice, under the authority granted to the Tax Commissioner.

Purpose: The purpose of this regulation is to provide guidance to railway companies in computing their apportionment factor.

Substance: This regulation has had only minor revisions so that it will conform with the provisions of the Virginia Administrative Process Act

Issues: NONE

Estimated Impact:

a. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. The department will attempt to minimize printing and mailing costs by printing and distributing this regulation in conjunction with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. Number and Types of Regulated Entities: All corporations subject to income tax in Virginia are subject to the provisions of this regulation. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

d. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has had only minor changes made to it, so that it will conform to the requirements of the Virginia Administrative Process Act.

VR 630-3-420. Corporate Income Tax: Railway Companies; Apportionment.

A. In general: Railway companies are required to apportion income by use of a special factor. The factor is a fraction, the numerator of which is the revenue car miles in Virginia and the denominator of which is revenue car miles everywhere.

B. § 1. Definitions.

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

1. "Railway company" means any corporation subject to regulation as a railway company by the U.S. Interstate Commerce Commission.

2. "Income" subject to apportionment means the entire Virginia taxable income of the corporation except income allocable under Va. Reg. § VR 630-3-407.

"Railway company" means any corporation subject to regulation as a railway company by the U.S. Interstate Commerce Commission.

3. "Revenue car mile" means the movement of loaded car equipment a distance of one mile determined in accordance with the Uniform System of Accounts for Railroad Companies of the Interstate Commerce Commission.

§ 2. In general.

Railway companies are required to apportion income using a special factor. The factor is a fraction, the numerator of which is the revenue car miles in Virginia, and the denominator of which is revenue car miles everywhere.

VAR. Doc. No. R94-394; Filed December 21, 1993, 3:05 p.m.

* * * * *

Title of Regulation: VR 630-3-431. Corporate Income Tax: Energy Income Tax Credit - Taxable Years Beginning Before January 1, 1988.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section

for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explains the procedures relating to the energy income tax credit which was available to taxpayers in taxable years beginning before January 1, 1988.

Substance: The amendments to § 1 move the definitions to the beginning of the regulation, and update references to the appropriate Internal Revenue Code section.

The amendments to § 2 make it clear that the credit expired for taxable years beginning on or after January 1, 1988. Also, references to Internal Revenue Code § 44C were changed to § 23 in accordance with the federal recodification of this section.

The amendments to § 3 G make it clear that unused credits cannot be refunded.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the adjustments required, and the impact of legislative changes.

Section 58.1-431 of the Code of Virginia does not apply in taxable years beginning on or after January 1, 1988. This regulation, and the amendments thereto, provide guidance in determining the amount of credit allowed prior to the expiration of the credit.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the

regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** Entities subject to the provisions of this regulation include corporations which claimed the energy credit prior to January 1, 1988. Because the statute of limitations has generally expired for this credit, few taxpayers are likely to be affected.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. *Definitions were consolidated in the first section of the regulation.*

2. *The regulation makes it clear that the provisions of § 58.1-431 of the Code of Virginia only applied to property placed in service before January 1, 1988.*

3. *The references to § 44C of the Internal Revenue Code were changed to § 23 in accordance with the federal recodification of this section.*

4. *The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.*

5. *The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.*

VR 630-3-431. Energy Income Tax Credit - Taxable Years Beginning Before January 1, 1988.

§ 1. Definitions.

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

"Renewable energy source expenditures" means an expenditure by a corporation subject to Virginia income

Proposed Regulations

tax made on or after January 1, 1983, and before January 1, 1988, for renewable energy source property installed and located in Virginia. The term does not include any expenditure made for, or allocable to, any of the following: (i) labor of the taxpayer; (ii) a swimming pool or other energy storage medium whose primary function is other than the storage of energy; (iii) the cost of maintenance of an installed system; or (iv) the cost of leasing renewable energy source property.

"Renewable energy source property" includes any solar energy property, wind energy property, or geothermal energy property, as these terms are defined in § 23 of the Internal Revenue Code and U. S. Treasury Regulation 1.23-2, except that: (i) references to a "dwelling" shall be interpreted to mean "building or complex of buildings"; and (ii) restrictions to "principal residence" and "residential use" shall be ignored.

"§ 23 of the Internal Revenue Code" means § 23 of the Internal Revenue Code of 1986 (formerly § 44C of the Internal Revenue Code of 1954), prior to the repeal of § 23 by Public Law 101-508 in 1990.

(A) § 2. In general.

A. Effective for taxable years beginning on and after January 1, 1983, and before January 1, 1988, a credit is allowed against the income tax liability of a corporation for a portion of "renewable energy source expenditures" as defined by Section 44C of the Internal Revenue Code (IRC) of 1954 (as amended 1982) and the regulations thereunder except as modified by this regulation.

(1) B. Termination of federal credit. If the federal renewable energy source income tax credit is terminated prior to January 1, 1988, all references herein to IRC Section 44C § 23 of the Internal Revenue Code and its accompanying regulations shall mean the statute and regulations as they exist at the date of termination.

(2) C. Qualifying expenditures. This credit is applicable only to qualifying renewable energy source expenditures (as defined in subsection (B) below) installed in, on, or in connection with a building or complex of buildings located in Virginia. No credit is allowed for energy conservation expenditures regardless of the fact that such expenditures also qualify for federal credit under IRC Section 44C § 23 of the Internal Revenue Code.

(3) D. Credit amount. A credit, in the amounts set forth below, but not in excess of \$1,000 per expenditure, is allowable for expenditures made within the specified time period. An expenditure will be deemed made when original installation of the renewable energy source property is completed or, in the case of an expenditure in connection with the construction or reconstruction of a building, when the building is completed and available for use by the taxpayer. See subsection (C)(1).

Percentage of

Expenditure Allowable as Credit	Period In Which Expenditure Is Made
25%	January 1, 1983, through December 31, 1984
20%	January 1, 1985, through December 31, 1985
15%	January 1, 1986, through December 31, 1986
10%	January 1, 1987, through December 31, 1987

Renewable energy source expenditures made prior to January 1, 1983, or after December 31, 1987, do not qualify for this credit.

(4) E. Limitations and carryover. Only one \$1,000 credit is allowed for each expenditure. The credit allowable in any taxable year may not exceed the actual tax liability of a corporation for such year; however, if an otherwise allowable credit exceeds the tax liability, such excess may be carried forward to the succeeding taxable year until used. No excess credit may be carried to a taxable year beginning on or after January 1, 1989.

(B) Definitions. (1) Renewable Energy Source Expenditures: (a) the term "renewable energy source expenditures" means an expenditure by a corporation subject to Virginia income tax made on or after January 1, 1983 and before January 1, 1988 for renewable energy source property (as defined in (2) of this paragraph) installed and located in Virginia:

(b) The term "renewable energy source expenditure" does not include any expenditure made for, or allocable to, any of the following:

(i) labor of the taxpayer;

(ii) a swimming pool or other energy storage medium whose primary function is other than the storage of energy;

(iii) the cost of maintenance of an installed system; or

(iv) the cost of leasing renewable energy source property.

(2) Renewable energy source property. The term "renewable energy source property" includes any solar energy property, wind energy property, geothermal energy property, or certain property specified by the Secretary of the U.S. Treasury as these terms are defined in Section 44C IRC and Treasury Regulation Section 1.44C-2, except that:

(a) References to a "dwelling" shall be interpreted

Proposed Regulations

to mean "building or complex of buildings."

(b) Restrictions to "principal residence" and "residential use" shall be ignored.

(C) § 3. Special rules.

(1) *A. When expenditures are treated as made.* In general, an expenditure is treated as made when original installation of the renewable energy source property is completed. In the case of renewable energy source property which is included in the construction of a new building or the reconstruction of an existing building, the expenditure is treated as made when construction has progressed to the point where the building may be put to its intended use by the taxpayer even though comparatively minor items remain to be finished or performed in order to conform to the plans or specifications of the completed building.

(2) *B. Expenditures financed with federal, etc., grants.* Qualified expenditures financed with federal, state, or other grants shall be taken into account for purposes of computing the energy credit only if such grants are subject to Virginia income tax.

(3) *C. Joint occupancy.* If two or more corporations (or other persons) jointly occupy a building or complex of buildings during any portion of a calendar year, the amount of the credit allowable by reason of renewable energy source expenditures shall be determined by treating all of the joint occupants as one corporate taxpayer whose taxable year is such calendar year. The credit shall be allocated to such joint occupants according to the expenditures of each joint occupant.

(4) *D. Joint ownership.*

(a) *1. If renewable energy source property is owned by two or more corporations (or other persons) and such property serves two or more buildings or complex of buildings then each corporation may treat its share of the cost of such property as a separate expenditure related to its own building or complex of buildings.*

(b) *2. Example :* Corporations A, B, and C own buildings in an industrial park. A owns one building, B owns two buildings, and C owns one building, but it rents its building to Corporation D; a corporation. The corporations agree to build a solar hot water heater to serve the four buildings, the cost to be divided on a per building basis. The renewable energy source property is completed on November 1, 1984, at the cost of \$40,000. Corporation A's share of the expenditure is \$10,000 and Corporation A may claim a credit of \$1,000 (10,000 x 25%, limited to \$1,000). Corporation B's share of the expenditure is \$20,000 and Corporation B may also claim a credit of \$1,000 (20,000 x 25% limited to \$1,000 for the complex of buildings). Corporations C and D are treated as joint

occupants and their share of the expenditure is \$10,000. If C and D each pay half of the cost for the building, each may claim a credit of \$500.

(5) *E. Recordkeeping.* A taxpayer claiming an energy income tax credit shall maintain records that clearly identify the renewable energy source property with respect to which an energy income tax credit is claimed, and substantiate its cost to the taxpayer, any labor costs properly allocable to the on site preparation, assembly or original installation of renewable energy source property which is paid for by the taxpayer, and the method used for allocating such labor costs. Such records shall be retained so long as the contents thereof may become material in the administration of the Virginia income tax.

(6) *F. Separate expenditures, effect on \$1,000 limitation.*

(a) *1. All costs incurred in purchasing, constructing, and installing a renewable energy source system in, on, or in connection with a building, or complex of buildings, shall be considered a single expenditure. All renewable energy source property installed in, on, or in connection with a building, or a complex of buildings, shall be deemed part of a single system.*

(b) *2. In the case of a renewable energy source system consisting of separate components capable of functioning independently, which are installed or constructed in stages, the energy income tax credit may be claimed with respect to each component as each is completed, provided that no more than \$1,000 is claimed as a credit with respect to the entire system.*

(7) *G. Carry over of unused credit to subsequent years.* If any portion of an otherwise allowable energy income tax credit is not used solely because it exceeds the income tax liability of the corporation, the unused portion of the credit may be carried to the succeeding taxable year and added to any credit allowable for that taxable year. No credit is allowable for expenditures made on or after January 1, 1988; however, a credit can be carried to the succeeding taxable year beginning on or after January 1, 1988. No credit can be carried to a taxable year beginning on or after January 1, 1989. *Unused credits cannot be refunded.*

V.A.R. Doc. No. R94-395; Filed December 21, 1993, 3:16 p.m.

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Title of Regulation: VR 630-3-440. Corporate Income Tax: Accounting.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section)

Proposed Regulations

for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985 effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explains the procedures relating to accounting periods, accounting methods, and adjustments to federal taxable income which may be required for Virginia purposes.

The amendments to this regulation reflect the department policy regarding adjustments which may be necessary when taxpayers change their federal taxable year or federal accounting method(s).

Substance: The amendments to § 2 provide that where a corporation has a taxable year of less than 12 months, the taxable income does not need to be prorated because the corporate tax does not contain graduated rates. However, if short taxable years would affect the limitation of a credit or other modification, proration shall be required.

The amendments to § 3 B provides that information used for apportionment purposes shall be consistent with and, if possible, reconciled to information contained in the federal income tax return.

The amendments to § 4 B provide that adjustments under § 481 of the Internal Revenue Code also apply in determining Virginia taxable income. As previously provided in Public Document (P.D.) 90-20 (11/15/90), adjustments required by § 481 of the Internal Revenue Code apply for Virginia purposes regardless of whether the taxpayer was subject to tax in Virginia during the year the accounting method was changed.

A member of a federal consolidated return may be required to make certain adjustments to its federal taxable income if it files a Virginia return on a different basis than its federal return. If, after having made such adjustments, a federal change in accounting method would

result in double taxation or deduction for Virginia purposes, than an adjustment shall be allowed to the extent of such duplication.

Examples of the treatment of § 481 adjustments are provided.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to adjustments required as a result of changes in federal accounting methods or taxable years.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** Entities subject to the provisions of this regulation include corporations which change their federal taxable year, or their method(s) of accounting. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. The amendments to the regulation provide:

a. Where a corporation has a taxable year of less than 12 months, the taxable income does not need to be prorated because the corporate tax does not contain graduated rates. However, if short taxable years would affect the limitation of a credit or other modification, proration shall be required.

b. Information used for apportionment purposes shall be consistent with and, if possible, reconciled to information contained in the federal income tax return.

c. Adjustments under § 481 of the Internal Revenue

Code apply in determining Virginia taxable income. Adjustments required by § 481 of the Internal Revenue Code apply for Virginia purposes regardless of whether the taxpayer was subject to tax in Virginia during the year the accounting method was changed.

d. A member of a federal consolidated return may be required to make certain adjustments to its federal taxable income if it files a Virginia return on a different basis than its federal return. If, after having made such adjustments, a federal change in accounting method would result in double taxation or deduction for Virginia purposes, than an adjustment shall be allowed to the extent of such duplication.

2. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985 effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

3. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

VR 630-3-440. Corporate Income Tax: Accounting.

A: § 1. Accounting periods.

A corporation shall use the same taxable year for Virginia tax purposes as is used for federal income tax purposes.

B: § 2. Change of accounting periods.

1. A. If a corporation's taxable year is changed for federal income tax purposes, its taxable year for Virginia tax purposes shall be similarly changed.

2. B. If a change in a corporation's taxable year results in a taxable period of less than twelve months, no proration is required because the corporate tax rate is a flat 6% corporation income tax imposed under § 58.1-400 of the Code of Virginia does not contain graduated rates. However, if a credit or modification to an item of income is affected by annual limitations in such a manner that short taxable years would defeat the purpose of the limitation, then the taxable income shall be prorated in such a manner as to give effect to the annual limitation. See VR 630-3-323.1 4 E for an example. However, if a corporation is required to annualize its federal taxable income and prorate the federal income tax, then the Virginia taxable income shall be similarly annualized and the tax prorated.

C: § 3. Accounting methods.

1. A. Virginia taxable income is defined as federal taxable income with certain additions, subtractions, and modifications. Therefore, Virginia taxable income will always be based upon the same accounting methods as used for federal purposes.

2. B. To the extent the allocation and apportionment formulas use information not required in computing federal taxable income, the information used for apportionment purposes shall be consistent with and, if possible, reconciled to information contained in the federal income tax return. See Va. Reg. §§ VR 630-3-407 through VR 630-3-420.

D: § 4. Change of accounting methods.

A. If a corporation's method of accounting is changed for federal income tax purposes, its method of accounting for Virginia tax purposes must be similarly changed. Since Virginia taxable income is based upon federal taxable income, any accounting adjustments for federal purposes for any taxable year shall also apply to the computation of Virginia taxable income.

B. If a taxpayer changes its accounting method and prorates income and expense amounts over a four-year period pursuant to § 481 of the Internal Revenue Code, the adjustments made to federal taxable income for any taxable year also apply to the computation of Virginia taxable income for the same taxable year. The Code of Virginia contains no modification to allow for the addition or subtraction of the additional income or losses recognized as a result of a change in accounting methods.

This treatment of § 481 of the Internal Revenue Code adjustments applies regardless of whether the taxpayer was subject to tax under § 58.1-400 of the Code of Virginia during the year the accounting method was changed.

A corporation may be required to make certain adjustments to its federal taxable income in order to determine federal taxable income for "Virginia purposes." For example, a member of a federal consolidated return may be required to make certain adjustments to federal taxable income if it files a separate Virginia return, and may be required to include income or deductions in its Virginia taxable income at different times than such items are included for federal purposes. If, after having made such adjustments, a federal change in accounting method would result in double taxation or deduction for Virginia purposes, than an adjustment shall be allowed to the § 481 adjustment for Virginia purposes to the extent of such double taxation or deduction.

Example 1. Corporation A files a separate Virginia return, and a consolidated federal return. On the federal consolidated return, Corporation A is permitted to defer the gain on certain intercompany sales to affiliated companies. Because Corporation A does not file a consolidated Virginia return, it is not

Proposed Regulations

permitted to defer these sales for Virginia purposes. Corporation A must adjust its "separate company" federal taxable income for Virginia purposes to include the gain from the deferred intercompany sale transactions. Corporation A changes its federal method of accounting with respect to inventory, and as a consequence must increase its federal taxable income for 4 years in accordance with § 481 of the Internal Revenue Code. The § 481 adjustment includes the income previously reported in Virginia with respect to the intercompany sales. Corporation A may adjust the § 481 adjustment for Virginia purposes to the extent it can clearly demonstrate the portion of the adjustment that is (or was) already included in Virginia taxable income.

Example 2. In 1992, Corporation B, a calendar year filer, changed from the cash basis to the accrual method of accounting for federal income tax purposes. As a result of this change, certain income and expense amounts were required to be accrued as of the first day of the 1992 taxable year. In accordance with § 481 of the Internal Revenue Code, these adjustments were prorated over a four year period, and included in federal taxable income beginning in 1992. Corporation B first became subject to tax in Virginia in 1993. Because the § 481 adjustment is included in federal taxable income, Corporation B must include the § 481 adjustment in its 1993 Virginia taxable income even though it was not subject to tax in Virginia in 1992, the year of the change in accounting method.

VA.R. Doc. No. R94-396; Filed December 21, 1993, 3:07 p.m.

* * * * *

Title of Regulation: VR 630-3-443. Corporate Income Tax: Prohibition of Worldwide Consolidation or Combination.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance in determining if an affiliated group of corporations can or cannot include a controlled foreign corporation in a Virginia consolidated or combined return.

Substance: The amendments to subsection A provide that even though a controlled foreign corporation may be excluded from a consolidated or combined return, such corporation may be subject to tax on some or all of its income, and may be required to file a return with the department. The fact that a controlled foreign corporation is subject to tax or required to file a return, does not mean that such corporation may be included in a Virginia consolidated return.

The amendments to subsection B provide that the a foreign corporation is defined by reference to U. S. Treasury Regulation § 301.7701-5.

The amendments to subsection C provide that the income of a controlled foreign corporation is derived from sources without the United States if such corporation is not subject to income tax on its world-wide income under § 11 of the Internal Revenue Code, or less than 80% of the gross income of such controlled foreign corporation is considered to be effectively connected with the conduct of a U. S. trade or business for purposes of § 882 of the Internal Revenue Code.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the adjustments required, and the impact of legislative changes.

Section 58.1-443 of the Code of Virginia precludes the filing of a combined or consolidated return which includes a controlled foreign corporation. This regulation provides clear guidance to taxpayer in determining when a corporation is a controlled foreign corporation.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved

with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include affiliated groups that contain a controlled foreign corporation. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

The amendments to this regulation provide:

1. Even though a controlled foreign corporation may be excluded from a consolidated or combined return, such corporation may be subject to tax on some or all of its income, and may be required to file a return with the department. The fact that a controlled foreign corporation is subject to tax or required to file a return does not mean that such corporation may be included in a Virginia consolidated return.

2. A foreign corporation is defined by reference to U. S. Treasury Regulation § 301.7701-5.

3. The income of a controlled foreign corporation is derived from sources without the United States if such corporation is not subject to income tax on its world-wide income under § 11 of the Internal Revenue Code, or less than 80% of the gross income of such controlled foreign corporation is considered to be effectively connected with the conduct of a U. S. trade or business.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

VR 630-3-443. Corporate Income Tax: Prohibition of worldwide consolidation or combination.

§ 1. In general.

A. A consolidated or combined Virginia return may shall not include a controlled foreign corporation the income of which is derived from sources without the United States. *Although a controlled foreign corporation may be excluded from a consolidated or combined return, such corporation may still be subject to tax in Virginia on some or all of its income, and may be required to file a return with the department. See VR 630-3-402. The fact that a controlled foreign corporation is subject to tax in Virginia or is required to file a Virginia return does not mean that such corporation may be included in a Virginia consolidated return. See VR 630-3-442.1.*

±. B. A controlled foreign corporation is a corporation which:

a. 1. Is organized under the laws of a foreign country a foreign corporation as defined by U. S. Treasury Regulation § 301.7701-5 , and

b. 2. Has its commercial domicile in a foreign country, and

e. 3. Is an affiliate of "affiliated" as defined in § 58.1-302 of the Code of Virginia with one or more corporations having income from Virginia sources.

±. C. The income of a controlled foreign corporation is derived from sources without the United States if:

a. 1. Such controlled foreign corporation is not subject to income tax under the laws of the United States on its world-wide income under § 11 of the Internal Revenue Code , and or

b. Dividends paid by such controlled foreign corporation would qualify as "income from foreign sources under § 58.1-302.

2. Less than 80% of the gross income of such controlled foreign corporation is considered to be effectively connected with the conduct of a U. S. trade or business for purposes of § 882 of the Internal Revenue Code.

VA.R. Doc. No. R94-397; Filed December 21, 1993, 3:17 p.m.

Title of Regulation: VR 630-3-445. Corporate Income Tax: Consolidation of Accounts.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted

Proposed Regulations

by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explains the procedures whereby the department will require related entities to file on a consolidated basis, or permit such consolidation upon application by the taxpayer.

The amendments to this regulation reflect department policy.

Substance: The amendments to § 1 A provide that the accounts of two or more related trades or businesses may be consolidated if the department determines such consolidation is necessary to accurately distribute or apportion gains, profits, income, deductions, or capital between or among such trades or businesses.

As provided in § 1 B, this regulation applies to situations where the federal taxable income is correctly stated, but income subject to Virginia taxation is inaccurate.

As provided by § 1 C, a taxpayer may apply to the department for permission to consolidate in accordance with the instructions therein.

As provided in § 2, permission for consolidation under this regulation may be granted if adequate separate accounting records are maintained, the entities are related, the entities are subject to Virginia taxation, and the entities are owned by the same interests, as described therein.

As provided in § 2 E, the department will generally not permit the consolidation of two or more corporations that are not otherwise eligible for consolidation pursuant to VR 630-3-442.1 except where the department finds consolidation necessary to accurately determine Virginia taxable income.

Other duplicative language has been deleted.

Issues: Regulatory provisions should be revised periodically

to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the adjustments required, and the impact of legislative changes.

The department has the authority to consolidate two or more entities where such consolidation is necessary to accurately determine the income subject to Virginia taxation. Taxpayers may also apply for permission to consolidate pursuant to the terms and conditions contained herein.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** Entities subject to the provisions of this regulation include related entities that must be consolidated in order to accurately reflect income subject to tax in Virginia. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. *The accounts of two or more related trades or businesses may be consolidated if the department determines such consolidation is necessary to accurately distribute or apportion gains, profits, income, deductions, or capital between or among such trades or businesses.*

2. *This regulation applies to situations where the federal taxable income is correctly stated, but income subject to Virginia taxation is inaccurate.*

3. *A taxpayer may apply to the department for consolidation in accordance with the instructions therein.*

4. *Permission for consolidation under this regulation*

may be granted if adequate separate accounting records are maintained, the entities are related, the entities are subject to Virginia taxation, and the entities are owned by the same interests as described therein.

5. The department will generally not permit the consolidation of two or more corporations that are not otherwise eligible for consolidation pursuant to VR 630-3-442.1 except where the department finds consolidation necessary to accurately determine Virginia taxable income.

6. Other duplicative language has been deleted.

7. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

8. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

VR 630-3-445. Corporate Income Tax: Consolidation of Accounts.

PART I. GENERAL PROVISIONS.

A. § 1.1. In general.

1. A. This section allows the Department of Taxation to consolidate the accounts of two or more related trades or businesses which are owned or controlled directly or indirectly by the same interests and liable to taxation under this chapter, may be consolidated if the department determines such consolidation is necessary to accurately distribute or apportion gains, profits, income, deductions, or capital between or among such trades or businesses. See VR 630-3-446 if one of the related trades or businesses is a corporation.

B. This section applies to situations in which the federal taxable income of related trades or businesses has been accurately stated but the income subject to Virginia taxation is inaccurate.

C. A taxpayer may request permission to consolidate accounts of related trades or businesses by filing an amended return using the proposed consolidation. The taxpayer shall attach an explanation of the nature and cause of the distortion of income from Virginia sources and an explanation of why the consolidation of accounts is necessary in order to make an accurate distribution or apportionment of gains, profits, income, deductions, or capital between or among such related trades or

businesses. If the department finds account consolidation is necessary, the tax shall be adjusted accordingly.

PART II. ELIGIBILITY FOR CONSOLIDATION.

§ 2.1. Record maintenance.

A trade or business is eligible for consolidation only if it maintains its own accounting records and is required to make a separate report of income to the department or any other taxing authority.

§ 2.2. Related.

Consolidation is permitted only if the entities seeking consolidation are doing business together either directly or indirectly. Such business dealing may consist of buying and selling goods, services, or other property, or borrowing or lending money or other property.

§ 2.3. Subject to taxation.

In order to be eligible for account consolidation, a trade or business must be subject to taxation under Chapter 3 of Title 58.1 of the Code of Virginia.

1. A sole proprietorship is subject to taxation if the owner is subject to Virginia income tax.

2. A partnership is subject to taxation if it has income from Virginia sources.

3. A corporation is subject to taxation if it has income from Virginia sources and is subject to Virginia income tax.

4. An electing small business under Subchapter S of the Internal Revenue Code is subject to taxation if it has income from Virginia sources and is subject to Virginia income tax.

5. An estate or trust is subject to taxation if it has income from Virginia sources.

§ 2.4. Owned directly or indirectly by same interests.

The trades or businesses seeking account consolidation must be owned or controlled directly or indirectly by the same interests. Two or more related trades or businesses are owned or controlled directly or indirectly by the same interests if they are (i) related parties, as defined in § 267(b) of the Internal Revenue Code, or (ii) trades or businesses under common control as defined in § 52(b) of the Internal Revenue Code.

§ 2.5. Corporations.

The department will not permit the consolidation of two or more corporations pursuant to § 58.1-445 of the Code of Virginia where such corporations would not be eligible

Proposed Regulations

to file a consolidated return pursuant to VR 630-3-442.1 except in those situations where the department finds consolidation necessary to accurately determine Virginia taxable income.

2. If related trades or businesses have been conducted in such a manner that income is inaccurately stated, the Internal Revenue Service will usually apply I.R.C. § 482 to make necessary adjustments. This section applies to situations in which the federal taxable income is accurately stated but the income from Virginia sources taxable by Virginia is inaccurate.

3. If one of the related trades or businesses is a corporation, Va. Code § 58.1-446 may also apply.

B. Definitions:

1. "Trades or businesses" means any trade or business which keeps its own accounting records and which is required to make a separate report of its income to the Department of Taxation or any other taxing authority.

2. "Related."

Trades or businesses are related if they are doing business with each other directly or indirectly. Such business dealings may consist of buying and selling of goods, services or other property, or borrowing or lending money or other property.

3. "Liable to taxation under this chapter."

A trade or business is liable to taxation under this chapter if:

a. in the case of a sole proprietorship, the owner is subject to Virginia income tax;

b. in the case of a partnership, any of the partners is subject to Virginia income tax;

c. in the case of a corporation, it is subject to Virginia income tax;

d. in the case of an electing small business under Subchapter S of the Internal Revenue Code, any of the shareholders is subject to Virginia income tax;

e. in any case where an owner, partner or shareholder is an estate or trust, either the estate or trust is subject to Virginia income tax or any beneficiary is subject to Virginia income tax on distributions from such estate or trust.

4. "Owned or controlled directly or indirectly."

A trade or business is owned or controlled directly or indirectly by another person or entity if such other person or entity has substantial influence over the

manner in which the business is conducted. Substantial influence may be exerted by owners, shareholders, partners and others depending upon the facts and circumstances of each case.

5. "Same interests."

Two or more related trades or businesses are owned or controlled directly or indirectly by the same interests if any one person or entity, or group of persons or entities acting together, has enough ownership or control of each trade or business to have substantial influence over the manner in which the business is conducted. The nature of the ownership or control interest does not have to be identical for each trade or business.

6. "Accurate distribution or apportionment."

The purpose of this section is to assure that items of income, gain, profit, deductions and capital are properly distributed or apportioned between taxpayers who may be taxable at different rates, by different methods or in different states.

7. "Consolidate the accounts."

If the Department finds it necessary to consolidate the accounts of two or more related trades or businesses then the accounts will be adjusted in order to accurately distribute or apportion gains, profits, income, deductions or losses of such trades or businesses.

8. "Request of the taxpayer."

A taxpayer may request permission to consolidate accounts of related trades or businesses by filing an amended return using the proposed consolidation and shall attach an explanation of nature and cause of the distortion of income from Virginia sources and an explanation of why the consolidation of accounts is necessary in order to make an accurate distribution or apportionment of gains, profits, income, deductions or capital between or among such related trades or businesses. If the Department finds that consolidation is necessary, the tax shall be adjusted accordingly.

VA.R. Doc. No. R94-398; Filed December 21, 1993, 3:08 p.m.

* * * * *

Title of Regulation: VR 630-3-446.1. Corporate Income Tax: Foreign Sales Corporations (REPEALING).

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section)

Proposed Regulations

for additional information)

Basis: Section 58.1-203 of the Code of Virginia states that "the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department."

The department periodically reviews and revises regulations to reflect current policy and practice, under the authority granted to the Tax Commissioner.

Purpose: This regulation previously provided guidance with respect to when adjustments were required under § 58.1-446 of the Code of Virginia for corporate affiliated groups having Domestic International Sales Corporations (DISC's) as members.

Substance: This regulation has been repealed because (i) DISC's no longer exist under federal income tax law, and (ii) the existing regulations under § 58.1-446 of the Code of Virginia provide adequate guidance for interest-charge DISC's.

Issues: NONE

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. The department will attempt to minimize printing and mailing costs by printing and distributing this regulation in conjunction with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** All corporations subject to income tax in Virginia are subject to the provisions of this regulation. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

The regulation provides guidance with respect to adjusting the income of affiliated groups under § 58.1-446 of the Code of Virginia, if such groups had a Domestic International Sales Corporation (DISC) as a member. This regulation is being repealed because: (i)

DISC's no longer exist under federal income tax law, and (ii) the existing regulations under § 58.1-446 provide adequate guidance for with respect to Interest-Charge DISC's.

VA.R. Doc. No. R94-399; Filed December 21, 1993, 3:17 p.m.

* * * * *

Title of Regulation: VR 630-3-449. Corporate Income Tax: Supplemental Accounts.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: Section 58.1-203 of the Code of Virginia states that "the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department."

The department periodically reviews and revises regulations to reflect current policy and practice, under the authority granted to the Tax Commissioner.

Purpose: This purpose of this regulation is to provide the Department of Taxation with the authority to request additional information during the course of an office or field audit if the department determines that the information is necessary to compute an entity's tax.

Additionally, this regulation permits the department to impose a penalty if the requested is not supplied within a reasonable time after the department's written demand.

Substance: No substantive changes were made to the existing regulation. Minor changes were made in order to clarify the regulation, and so that the regulation would fall with the guidelines of the Virginia Administrative Process Act.

Issues: NONE

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. The department will attempt to minimize printing and mailing costs by printing and distributing this regulation in conjunction with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

Proposed Regulations

b. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. Number and Types of Regulated Entities: All corporations subject to income tax in Virginia are subject to the provisions of this regulation. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

d. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has had only minor revisions made to it, which were made so that it would conform to the provisions of the Virginia Administrative Process Act.

VR 630-3-449. Corporate Income Tax: Supplemental reports.

A: § 1. Audits.

During the course of an office or field audit the department may request additional information if the auditor, or other person designated by the department, determines that the information is necessary to compute the tax. For example, when an adjustment is contemplated under Va. Code § 58.1-446 the department will ask for a copy of the federal return of the Domestic International Sales Company.

B: § 2. Penalty.

If the additional information or supplemental report requested by the department is not supplied within a reasonable time after the department's written demand, the penalty under Va. Code § 58.1-450 of the Code of Virginia may be imposed.

VA.R. Doc. No. R94-400; Filed December 21, 1993, 3:18 p.m.

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Title of Regulation: VR 630-3-453. Corporate Income Tax: Extension of Time for Filing Returns.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and

enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explains the procedures for obtaining an extension of time for filing a Virginia corporate income tax return, and imposition of the penalty under this section.

Section 58.1-453 of the Code of Virginia was amended by Chapter 362 and 456 the 1991 Acts of the General Assembly. The amendments to this regulation reflect the legislative changes made to § 58.1-453 of the Code of Virginia, and related departmental policy.

Substance: The amendments to § 1 provide that where a corporation has been granted a federal extension of time to file, a Virginia extension will be granted to a date six months after the original Virginia due date or 30 days after the extended federal due date, whichever is later. This is in accordance with the 1991 legislative changes.

The amendments to § 3 C provide that the penalty imposed by § 58.1-453 of the Code of Virginia will be imposed in addition to interest, and in addition to the penalty imposed under § 58.1-455 of the Code of Virginia.

The amendments to § 5 provide that the department will accept a timely filed Virginia extension request signed by the taxpayer or by a person acting under a power of attorney on behalf of the taxpayer. If the taxpayer has received a federal extension, the department will accept a timely filed Virginia extension signed by the same person authorized to sign the taxpayer's federal extension. This policy was previously published in Virginia Tax Bulletin 93-2, 2/22/93.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the adjustments required, and the impact of legislative changes.

The regulation provides clear guidance to taxpayers and practitioners with respect to filing an extension request for a Virginia corporate income tax return.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** Entities subject to the provisions of this regulation include corporations that obtain an extension of time to file a corporate tax return. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

The amendments to the regulation provide:

1. *Where a corporation has been granted a federal extension of time to file, a Virginia extension will be granted to a date six months after the original Virginia due date or 30 days after the extended federal due date, whichever is later.*

2. *The penalty imposed by § 58.1-453 of the Code of Virginia will be imposed in addition to interest, and in addition to the penalty imposed under § 58.1-455 of the Code of Virginia.*

3. *If the taxpayer has received a federal extension, the department will accept a timely filed Virginia extension signed by the same person authorized to sign the taxpayer's federal extension.*

4. *The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.*

5. *The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.*

VR 630-3-453. Corporate Income Tax: Extension of time for filing returns.

A. § 1. Automatic extension.

1. A. Whenever a corporation has been granted an extension of time for filing by the Internal Revenue Service, or by operation of the Internal Revenue Code or regulations thereunder, a similar extension will be granted to a date six months after the original Virginia due date or 30 days after the extended federal due date but not later than six months after the due date required by Virginia law. In other words, an extension will not be granted beyond the fifteenth day of the tenth month following the close of the taxable year, whichever is later.

Example. In 1994, Target Co. was acquired by Buyer, Inc. Prior to its acquisition, Target Co., a calendar year filer, filed its Virginia and federal income tax returns on a separate and consolidated basis, respectively. Buyer, Inc., whose taxable year ends March 31, files a consolidated federal return. Since Target Co.'s separate Virginia return would otherwise be due before Buyer, Inc.'s federal consolidated return, the selling corporation may delay the filing of Target Co.'s Virginia income tax return until the 15th day of the 4th month after the close of Buyer, Inc.'s taxable year.

2. B. A penalty will be imposed unless a tentative tax return is filed and the tax paid as provided in subsection (C) § 3 of this regulation .

B. § 2. Good cause extension.

1. A. When no federal extension has been granted, the department may grant an extension for filing if the taxpayer shows good cause for requesting such an extension. The extension may not exceed six months.

2. B. A penalty will be imposed unless a tentative tax return is filed and the tax paid as provided in subsection (C) § 3 of this regulation .

C. § 3. Tentative tax return.

1. A. Any corporation requesting an extension of time for filing its return must file a tentative tax return with the request. The tentative tax return must estimate the tax liability of the corporation and be accompanied by payment of the balance due after allowance for prior payments of estimated tax and prior tentative tax returns, if any.

2. B. Interest will accrue under Va. Code § 58.1-1812 of the Code of Virginia on any unpaid tax liability from the due date of the return without regard to any extensions until paid . This section extends only the date for filing a return, not the date for payment of the tax.

3. C. If the underestimation of the balance of tax due

Proposed Regulations

exceeds ten percent of the actual tax liability, a penalty will be imposed. The penalty is one half of 1.0% per month for each month or fraction thereof from the original due date for the filing of the income tax return to the date of payment. The penalty will be imposed in addition to interest under Va. Code § 58.1-1812 of the Code of Virginia and in addition to the penalty imposed under § 58.1-455 of the Code of Virginia.

D. § 4. Application procedure.

The extension request and tentative tax return must be filed ~~before~~ *no later than* the original due date of the return *using forms prescribed by the department*. An additional extension may be requested if filed before the expiration of a previous extension. Requests will not be acknowledged or returned unless the request for extension is denied. ~~A copy of each extension request and tentative tax return shall be attached to the income tax return when filed.~~

§ 5. Signature authority.

The department will accept a timely filed Virginia extension request signed by the taxpayer or by a person acting under a power of attorney on behalf of the taxpayer. If the taxpayer has received a federal extension, the department will accept a timely filed Virginia extension request signed by the same person authorized to sign the taxpayer's federal extension.

VA.R. Doc. No. R94-401; Filed December 21, 1993, 3:18 p.m.

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Title of Regulation: VR 630-3-500. Corporate Income Tax: Declarations of Estimated Income Tax Required.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January

1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explains the procedures relating to declarations of estimated income taxes. The amendments to this regulation reflect department policy.

Substance: The amendments to § 1 A provide that a tax liability of less than \$1,000 in a preceding year does not automatically exempt a corporation from filing estimated taxes in the subsequent year.

The amendments to § 1 B provide that the declaration of estimated tax may only be amended once in each interval between installment dates.

The amendments to § 2 make it clear that a telecommunications company subject to tax pursuant to § 58.1-400.1 of the Code of Virginia must make estimated tax payments pursuant to this regulation if the total estimated tax due, less credits allowed, can be reasonably expected to exceed \$1,000. For this purpose, "estimated tax" includes the corporate income tax and the minimum tax on telecommunications companies.

The amendments to § 3 provide that declarations are to be made on forms prescribed by the department, which will be provided in preprinted format by the department wherever possible. However, the failure of the department to provide a form will not excuse a taxpayer from making a declaration.

The amendments to § 5 provide that filing a registration application or declaration of estimated tax is not an election of a method of reporting. Also, duplicative language has been deleted.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to declarations of estimated income taxes.

The regulation provides necessary guidance to corporations and telecommunications companies with respect to filing declarations of estimated taxes.

Estimated Impact:

a. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations.

Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include corporations that file declarations of estimated tax. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

The amendments to the regulation provide:

1. A tax liability of less than \$1,000 in a preceding year does not automatically exempt a corporation from filing estimated taxes in the subsequent year.

2. The declaration of estimated tax may only be amended once in each interval between installment dates.

3. A telecommunications company subject to tax pursuant to § 58.1-400.1 of the Code of Virginia must make estimated tax payments pursuant to this regulation if the total estimated tax due, less credits allowed, can be reasonably expected to exceed \$1,000. For this purpose, "estimated tax" includes the corporate income tax and the minimum tax on telecommunications companies.

4. Declarations are to be made on forms prescribed by the department, which will be provided in preprinted format wherever possible. However, the failure of the department to provide a form will not excuse a taxpayer from making a declaration.

5. Filing a registration application or declaration of estimated tax is not an election of a method of reporting.

6. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

7. The regulation has been revised and restated to conform to The Virginia Register Form, Style and

Procedure Manual.

VR 630-3-500. Corporate Income Tax: Declarations of Estimated Income Tax Required.

A. § 1. In general.

A. Every corporation which expects can reasonably expect its income tax liability to exceed \$1,000 for the taxable year is required to file a declaration of estimated tax and to pay the tax in installments during the taxable year. The fact that a corporation had a tax liability of less than \$1,000 for the preceding taxable year does not mean the corporation is automatically exempt from this filing requirement in the subsequent taxable year.

B. The payments of estimated tax are considered payments on account of the income tax for the taxable year and shall be applied toward payment of the income tax upon filing of the income tax return for the taxable year.

C. The declaration of estimated tax may be amended with each installment and subsequent payments adjusted accordingly. In accordance with VR 630-3-501, only one amendment may be filed in the interval between installment dates.

D. Except in extraordinary circumstances, no refund of estimated tax can be made until the income tax return is filed. ~~except in extraordinary circumstances. For example, if a~~

Example. A credit union pays which paid estimated tax without realizing that it is exempt from income tax under Va. Code § 58.1-401 of the Code of Virginia ; it would be entitled to a refund of estimated tax because a credit union is unions are not required to file an income tax return returns .

B. § 2. Who to must file.

1. A. A declaration of estimated tax shall be made by every corporation which is subject to the Virginia income tax under Va. Code § 58.1-400 and § 58.1-400.1 of the Code of Virginia if its income tax less the credit allowable under Va. Code §§ 58.1-430 (relating to credit for investments under the Neighborhood Assistance Act of 1981) and 58.1-431 (relating to the Energy Income Tax Credit) the corporate income tax imposed under § 58.1-400 of the Code of Virginia and the minimum tax on telecommunications companies imposed under § 58.1-400.1 of the Code of Virginia for the taxable year, less the credits allowed by the Code of Virginia, can reasonably be expected to exceed \$1,000.

2. B. The term "estimated tax" means the amount which the corporation estimates as the amount of the income tax for the taxable year less the amount which the corporation estimates as the sum of any credit allowable against the income tax under Va. Code §§ 58.1-430 and 48.1-431

Proposed Regulations

corporate income tax imposed under § 58.1-400 of the Code of Virginia and the minimum tax on telecommunication companies imposed under § 58.1-400.1 of the Code of Virginia for the taxable year, less the sum of the credits allowed by the Code of Virginia. For the purpose of determining if a declaration of estimated tax is required, a refund of income tax for the prior taxable year, which the corporation requests be applied toward the estimated tax for the subsequent taxable year, is not an allowable credit but a payment of the estimated tax. For example,

Example. ABC Corp. a corporation which estimates its 1984 1993 income tax to be \$2,500, its Energy Income Tax Credit Neighborhood Assistance Act Credit to be \$1,000 and which has a refund from 1983 of \$300 has an "estimated tax" of . ABC requested that the department apply its 1992 refund of \$300 to its 1993 estimated tax. ABC Corp.'s 1993 estimated tax is \$1,500 (\$2,500 - 1,000 = \$1,500). ABC Corp.'s quarterly installment payments equal \$375 (\$1,500/4). Since ABC Corp. requested the department to apply its 1992 refund to its 1993 estimated tax, the \$300 refund may will be applied toward the first quarterly installment payment of \$375 (1,500/4) (leaving a balance due of \$75).

E. § 3. Contents of declaration.

1. A. The declaration of estimated tax shall be made on form 500-ES using forms prescribed by the department. For the purpose of making the declaration, the estimated tax should be based upon the amount of federal taxable income for used to calculate the federal estimated tax plus the estimated net Virginia modifications. Such amounts of federal taxable income and net Virginia modifications should be determined upon the basis of facts and circumstances existing as at of the time prescribed for the declarations as well as those reasonably to be which may be reasonably anticipated for during the taxable year.

2. B. Taxpayers should request the applicable form from the department in ample time to have their declaration prepared, verified, and filed with the department on or before the date prescribed for filing. When possible the department will provide preprinted copies of the applicable form to taxpayers by annual mail. However, the fact that the department does not provide a taxpayer with the applicable form will not excuse a taxpayer from making a declaration. Copies of form 500-ES will so far as possible be furnished taxpayers by the Department. A taxpayer will not be excused from making a declaration; however, by the fact that no form has been furnished. Taxpayers not supplied with the proper form should make application therefor to the Department in ample time to have their declarations prepared, verified, and filed with the Department on or before the date prescribed for filing the declaration. If the prescribed form is not available, a statement disclosing the estimated income tax should be filed as a tentative substitute declaration within the prescribed time, accompanied by the payment of the

required installment. Such tentative declaration should be supplemented, without unnecessary delay, by a declaration made on the proper form.

D. § 4. Short taxable year.

A. If a corporation expects its income tax less allowable credits to exceed \$1,000 for a short taxable year then such, the corporation shall must make a declaration of estimated tax.

B. If the short taxable year results from a change in accounting period, the tax shall be placed on an annual basis to determine if the annualized tax exceeds \$1,000. The tax shall be placed on an annual basis by multiplying the expected income tax less allowable credits by 12 and dividing by the number of months in the short taxable year.

E. § 5. Consolidated and combined returns.

1. Affiliated groups of corporations which have properly elected, or received permission, to file Virginia income tax returns on a consolidated or combined basis shall also make declarations of estimated tax on a consolidated or combined basis. The filing of a registration application or declaration of estimated tax is not an election of a method of reporting. For additional information on separate, consolidated and combined returns see VR 630-3-442, VR 630-3-442.1, and VR 630-3-442.2, respectively.

2. Corporations registering with the State Corporation Commission for the privilege of doing business in Virginia will receive a "Combined Registration Application" to register the corporation for Sales and Use, Withholding, Litter and Income taxes. Corporations which have decided to file their Virginia income tax returns on a consolidated or combined basis at the time of registration should so indicate on the application. An affiliated group of corporations makes an election to file returns on a separate, consolidated or combined basis when two or more members of the affiliated group file their first income tax returns. Thereafter the affiliated group must obtain permission from the Department to change the method of reporting. Members of the affiliated group which become subject to Virginia income tax in subsequent years must use the method of reporting previously elected by the group. For additional information on separate, consolidated and combined returns see Va. Reg. § 630 3 442. The filing of a registration application or declaration of estimated tax is not an election of a method of reporting.

VA.R. Doc. No. R94-402; Filed December 21, 1993, 3:19 p.m.

* * * * *

Title of Regulation: VR 630-3-503. Corporate Income Tax: Instructions for Filing Estimated Taxes.

Proposed Regulations

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14, 1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explains the procedures relating to the payment of estimated taxes.

The amendments to this regulation reflect the department's policy regarding estimated tax payments.

Substance: The amendments to § 1 provide that declarations shall be filed using prescribed forms, and signed as provided therein.

The amendments to § 2 provide the manner in which payment shall be made, and the types of acceptable checks.

The amendments to § 3 provide guidance for filing estimated tax payments for affiliated groups filing consolidated or combined returns.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to filing declarations of estimated taxes.

Estimated Impact:

a. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt

to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include corporations which file estimated tax payments. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. *Declarations shall be filed using prescribed forms, and signed as provided therein.*

2. *The regulation provides the manner in which payment shall be made, and the types of checks which are acceptable.*

3. *The regulation provides guidance for filing estimated tax payments by affiliated groups filing consolidated or combined returns.*

4. *The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.*

5. *The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.*

VR 630-3-503. Corporate Income Tax: Instructions for Filing Estimated Taxes.

§ 1. Where to file declarations of estimated tax.

A. *The declaration of estimated tax and all installments shall be made using forms prescribed by the department, and mailed to the Department of Taxation, P.O. Box 1500, Richmond, VA ~~23212~~ Virginia 23212-1500. The declaration shall be prepared in accordance with the instructions provided by the department for such forms.*

Proposed Regulations

B. The declaration must be signed by a duly authorized officer of the corporation each time an initial or amended declaration of estimated tax is made. No signature is required with subsequent installment payments where a declaration of estimated tax has been previously made for the taxable year, and such declaration is not being amended.

§ 2. Payment of estimated tax.

A. A check or money order made payable to the "Virginia Department of Taxation" must accompany each declaration and subsequent installment payment for which a payment is due. The taxpayer's Virginia account number must be indicated on the check. Every payment made to the department must be accompanied by the prescribed form or voucher in order to assure that the payment is timely credited to the taxpayer's account.

B. The department will accept checks drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or money orders in payment for estimated taxes, provided such checks or money orders are collectible in United States currency at par. For purposes of this regulation, "money order" means: a United States postal, bank, express or telegraph money order; or a money order issued by a domestic building and loan association. The department may refuse to accept any check or money order where there is good reason to believe that such check or money order will not be honored upon presentation.

C. The person who tenders any check or money order in payment for taxes is not released from his liability until the check or money order is paid; and, if the check is not duly paid, he shall also be liable for all legal penalties and interest to the same extent as if such check or money order had not been tendered.

§ 3. Consolidated or combined returns.

An affiliated group filing a consolidated or combined return shall file a declaration of estimated tax on the same basis as a single corporation for each taxable year. A consolidated or combined return shall be considered the return of a single taxpayer for purposes of §§ 58.1-500, 58.1-501, 58.1-502, 58.1-503, and 58.1-504 of the Code of Virginia.

VA.R. Doc. No. R94-403; Filed December 21, 1993, 3:19 p.m.

* * * * *

Title of Regulation: VR 630-3-504. Corporate Income Tax: Failure to Pay Estimated Income Tax.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: March 14, 1994 - 10 a.m.

Written comments may be submitted until March 14,

1994.

(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia. Pursuant to this section, the Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department.

The department periodically reviews and revises regulations to reflect current policy, practice, and legislative changes. The amendments made to the regulation are within the broad authority granted to the Tax Commissioner in this area.

The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985 effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations. The regulation has been revised and restated to conform to The Virginia Register Form, Style and Procedure Manual.

Purpose: This regulation sets forth guidance and explains the procedures relating to the underpayment penalty for failure to pay timely estimates of income tax.

Section 58.1-15 of the Code of Virginia was amended by Chapter 484 of the 1987 Acts of the General Assembly, and Chapters 316 and 331 of the 1991 Acts of the General Assembly. These amendments affect the rate of interest which applies in determining the penalty under § 58.1-504 of the Code of Virginia.

The amendments to this regulation reflect the legislative changes made to § 58.1-15 of the Code of Virginia, and department policy regarding the underpayment penalty for failure to pay estimated taxes.

Substance: The amendments to § 1 move the definitions to the beginning of the regulation, add new definitions to the regulation, and amend the existing definitions.

The amendments to § 2 provide that except for the exceptions in § 3 of the regulation, a penalty as provided in § 4 shall be imposed.

The amendments to § 3 clarify the exceptions to the underpayment penalty.

Exception 1 - Prior Years Tax. For this exception, the prior year's tax is equal to the sum of the corporate income tax and the minimum tax on telecommunications companies imposed under § 58.1-400.1 of the Code of Virginia, but without reduction for any credits allowed against the tax. For this purpose, the prior years return is deemed to show a liability for tax regardless of whether

some or all of such tax was offset by credits. For purposes of exception 1, the amount of prior year's tax must be paid in timely installments in the current year even though the preceding year's tax did not exceed the estimated tax filing threshold of § 58.1-500 of the Code of Virginia.

Exception 2 - Tax on prior year's income using current year rates. For this exception, the prior year's return does not have to show a tax liability, and any credits allowed on the prior year's return may be offset against the tax calculated using the tax calculated using the current year's rates. For purposes of exception 2, the amount of prior year's tax must be paid in timely installments in the current year even though the preceding year's tax did not exceed the estimated tax filing threshold of § 58.1-500 of the Code of Virginia.

The amendments to § 4 provide that the rate of interest used to determine the underpayment penalty shall be the rate of interest established pursuant to § 6621 of the Internal Revenue Code plus 2% as provided in § 58.1-15 of the Code of Virginia.

The amendments to § 5 provide guidance to affiliated corporations filing consolidated and combined returns in determining the penalty provided by this regulation or the exceptions thereto.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to the underpayment penalty, and the impact of legislative changes.

Estimated Impact:

a. **Projected Cost to Agency:** In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation, and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

b. **Source of Funds:** The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

c. **Number and Types of Regulated Entities:** Entities subject to the provisions of this regulation include corporations which pay estimated income taxes. Since the purpose of this regulation is to publicize current policy, it is anticipated that the regulation will have minimal impact on the regulated entities.

d. **Projected Cost to Regulated Entities:** It is anticipated that the regulated entities will incur no additional costs

because of this regulation revision.

Summary:

This regulation has been revised as follows:

1. The definitions have been moved to the beginning of the regulation, new definitions have been added, and existing definitions were amended.

2. The amendments clarify the exceptions to the underpayment penalty.

Exception 1 - Prior Years Tax. For this exception, the prior year's tax is equal to the sum of the corporate income tax and the minimum tax on telecommunications companies imposed under § 58.1-400.1 of the Code of Virginia, but without reduction for any credits allowed against the tax. For this purpose, the prior years return is deemed to show a liability for tax regardless of whether some or all of such tax was offset by credits. For purposes of exception 1, the amount of prior year's tax must be paid in timely installments in the current year even though the preceding year's tax did not exceed the estimated tax filing threshold of § 58.1-500 of the Code of Virginia.

Exception 2 - Tax on prior year's income using current year rates. For this exception, the prior year's return does not have to show a tax liability, and any credits allowed on the prior year's return may be offset against the tax calculated using the tax calculated using the current year's rates. For purposes of exception 2, the amount of prior year's tax must be paid in timely installments in the current year even though the preceding year's tax did not exceed the estimated tax filing threshold of § 58.1-500 of the Code of Virginia.

3. The amendments provide that the rate of interest used to determine the underpayment penalty shall be the rate of interest established pursuant to § 6621 of the Internal Revenue Code plus 2.0% as provided in § 58.1-15 of the Code of Virginia.

4. The amendments provide guidance to affiliated corporations filing consolidated and combined returns in determining the penalty provided by this regulation or the exceptions thereto.

5. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985 effective date of the amendments to The Virginia Register Act (§ 9-6.15:1 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

6. The regulation has been revised and restated to

Proposed Regulations

conform to The Virginia Register Form, Style and Procedure Manual.

VR 630-3-504. Failure to Pay Estimated Income Tax.

(A) § 1. Definitions.

The following definitions apply only to the computation of the addition to the tax for failure to pay estimated tax.

(1) Underpayment : With respect to any installment, the underpayment is the excess of

(a) the installment which would be required to be paid if the estimated tax were equal to 90% of the income tax shown on the income tax return for the taxable year (or the amount to the tax, if no return was filed) over

(b) the amount, if any, of the installment paid on or before the last day prescribed for payment of the installment.

(2) Tax or income tax : For the purpose of computing the addition to the tax, the term "tax" means the income tax shown on the income tax for the taxable year less the credits allowed by Va. Code §§ 58.1-430 and 58.1-431.

(3) Period of underpayment: The addition is computed with respect to each installment for which there is an underpayment. The period of underpayment begins with the date the installment was required to be paid and ends on the earlier of:

(a) the 15th day of the 4th month following the close of the taxable year; or

(b) the date on which any portion of the underpayment is paid. A payment of estimated tax on any installment date shall be considered a payment of previous underpayment only to the extent such payment exceeds the installment which would be required to be paid if the estimated tax were equal to 90% of the income tax.

(4) Rate: The rate applied to each underpayment to determine the amount of the addition to the tax shall be the interest rate determined under Va. Code § 58.1-15.

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

"Exception 1" means the exception to the addition to the tax based on the prior year's tax pursuant to subdivision 1 of § 3 of this regulation.

"Exception 2" means the exception to the addition to the tax based on the prior year's income using current

year rates pursuant to subdivision 2 of § 3 of this regulation.

"Exception 3" means the exception to the addition to the tax based on annualized income pursuant to subdivision 3 of § 3 of this regulation.

"Period of underpayment" begins with the date the installment was required to be paid and ends on the earlier of: (i) the 15th day of the 4th month following the close of the taxable year; or (ii) the date on which any portion of the underpayment is paid. A payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the installment required to be paid based on 90% of the income tax for the taxable year.

"Rate" means the interest rate determined under § 58.1-15 of the Code of Virginia.

"Tax" or "income tax" means the sum of the corporate income tax imposed under § 58.1-400 of the Code of Virginia and the minimum tax on telecommunications companies imposed under § 58.1-400.1 of the Code of Virginia for the taxable year, less the sum of the credits allowed by the Code of Virginia. For purposes of this regulation, a refund of income tax for the prior taxable year, which the corporation requests be applied toward the estimated tax for the subsequent taxable year, is not a credit but a payment of the estimated tax.

"Underpayment" means, with respect to any installment, the excess of (i) the installment which would be required to be paid if the estimated tax were equal to 90% of the income tax shown on the income tax return for the taxable year (or 90% of the amount of the tax, if no return was filed) over (ii) the amount, if any, of the installment paid on or before the last day prescribed for payment of the installment.

§ 2. Determination of addition to the tax.

In the case of any underpayment, except as provided in § 3 of this regulation, there shall be added to the tax for the taxable year an amount equal to the underpayment multiplied by the rate provided in § 4 of this regulation for the period of the underpayment.

(B) § 3. Exceptions to the addition to the tax .

The addition to the tax will not be imposed for any underpayment of any installment of estimated tax if, on or before the last date prescribed for payment of the installment, the total amount of all payments of estimated tax made equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the least of the following amounts three exceptions :

(1) 1. Exception 1 - Prior year's tax. The tax shown

on the corporation's return for the preceding taxable year, provided that the preceding taxable year was a taxable year of 12 months and a return showing a liability for tax was filed for such year. For the purpose of this exception purposes of Exception 1, the credits allowable under Va. Code § 58.1-430 and 58.1-431 shall not be taken into account in determining the prior year's tax shall be equal to the sum of the corporate income tax imposed under § 58.1-400 of the Code of Virginia and the minimum tax on telecommunications companies imposed under § 58.1-400.1 of the Code of Virginia as shown on the prior year's return, but without reduction for any credits allowed against the tax. For purposes of Exception 1, the prior year's return will be deemed to show a liability for tax if a tax was imposed under § 58.1-400 or § 58.1-400.1 of the Code of Virginia, regardless of whether some or all of such tax was offset by credits. For purposes of meeting Exception 1, the amount of the preceding year's tax must be paid in timely installments in the current year even though the preceding year's tax did not exceed the estimated tax filing threshold contained in § 58.1-500 of the Code of Virginia.

Example: Corporation XYZ (XYZ) is a calendar year filer for federal income tax purposes. For 1992, XYZ's Virginia corporate income tax return was for a full 12 months, and contained the following information:

Corporate income tax (§ 58.1-400)	\$1,000
Neighborhood assistance credit (§ 58.1-430)	-900
Credit for conservation tillage (§ 58.1-433)	-100
	—
Net tax liability	\$ 0

For 1993 estimated tax purposes XYZ's prior year return (1992) was for a full 12-month period, and reflected a liability for tax (\$1,000). For purposes of Exception 1, XYZ's prior year tax liability is \$1,000. XYZ must pay the \$1,000 of estimated tax in timely installments in 1993 in order to rely on Exception 1 regardless of the fact that estimated taxes were not required in 1992 under the estimated tax filing threshold contained in § 58.1-500 of the Code of Virginia.

~~(2)~~ **2. Exception 2 - Tax on prior year's income using current year's rates.** An amount equal to a the tax determined on the basis of using the tax rates for applicable to the current taxable year, but otherwise on the basis of the facts shown on the return for the preceding year and the law applicable to such the preceding year; in the case of a corporation required to file a return for such preceding taxable year. For purposes of Exception 2, the prior year's return does not have to show a tax liability, and any credits allowed on the prior year's return may be netted against the tax calculated using the current year's

rates. The estimated tax filing threshold contained in § 58.1-500 of the Code of Virginia does not eliminate the need to pay a prior year's tax of \$1,000 or less in timely installments for purposes of Exception 2.

Example: Corporation ABC (ABC) is a calendar year filer for federal income tax purposes. For 1992, ABC's Virginia corporate income tax return was for a full 12 months, and contained the following information:

Taxable income	\$50,000
Corporate income tax (§ 58.1-400)	\$3,000
Neighborhood assistance credit (§ 58.1-430)	-2,500
Credit for conservation tillage (§ 58.1-433)	-500
Net tax liability	\$ 0

For 1993, the corporate tax rate remains unchanged at 6%. For 1993 estimated tax purposes, ABC's tax liability on prior year income using current year rates is \$0, determined as follows:

Prior year's taxable income	\$50,000
Corporate income tax at current rates	\$3,000
Prior year neighborhood assistance credit	-2,500
Prior year credit for conservation tillage	-500
Prior year tax at current year rates	\$ 0

~~(3)~~ **3. Exception 3 - Tax on annualized income.**

~~(a)~~ **a.** An amount equal to 90% of the income tax for the taxable year computed by placing on an annual basis the taxable income

(1) For the first 3 months of the taxable year, ~~in~~ if the ease of an installment was required to be paid in the 4th month.

(2) Either for the first 3 months or for the first 5 months of the taxable year (whichever results in no addition being imposed), ~~in~~ if the ease of an installment was required to be paid in the 6th month.

(3) Either for the first 6 months or for the first 8 months of the taxable year (whichever results in no addition being imposed), ~~in~~ if the ease of an installment was required to be paid in the 9th month.

(4) Either for the first 9 months or for the first 11 months of the taxable year (whichever results in no addition being imposed), ~~in~~ if the ease of an installment was required to be paid in the 12th month.

~~(b)~~ **b.** The taxable income shall be placed on an annual basis for the purpose of exception ~~(3)~~

Proposed Regulations

Exception 3 by first multiplying the taxable income by 12 and dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9 or 11, as the case may be). A taxpayer whose taxable year consists of 52 or 53 weeks shall use the procedure set forth in U.S. Treasury Regulation § 1.6655-2(a)(4) to place its taxable income on an annual basis. In determining the applicability of ~~this exception~~ *Exception 3*, there must be an accurate determination of the amount of income, deductions, and Virginia modifications for the appropriate period, that is, for the 3, 5, 6, 8, 9 or 11 months of the taxable year.

surviving corporation.

E. Exceptions 1 and 2 shall be based on the tax returns originally filed by the corporation. Subsequent amendments to such taxable year shall not be considered for purposes of this regulation.

F. For purposes of Exceptions 1 and 2 of this regulation, the prior year's return shall be considered to have been filed if such return is filed on or before the final due date for the return of the current taxable year.

VA.R. Doc. No. R94-404; Filed December 21, 1993, 3:21 p.m.

§ 4. Rate applied to underpayment.

As provided in § 58.1-15 of the Code of Virginia, the rate used to determine the addition to the tax for purposes of this regulation shall be the rate of interest established pursuant to § 6621 of the Internal Revenue Code plus 2.0%. For purposes of this regulation, the rate which applies during the third month following such taxable year shall also apply during the first 15 days of the fourth month following such taxable year.

§ 5. Consolidated or combined returns.

A. Generally, an affiliated group filing a consolidated or combined Virginia return will be treated as one taxpayer for purposes of determining the addition for underpayment of estimated taxes, or for purposes of applying the exceptions contained in § 3 of this regulation.

B. If a consolidated or combined return was filed for the preceding taxable year, but separate returns are filed for the current taxable year, Exceptions 1 and 2 shall be applied to each separate corporation by determining the prior year's tax or the prior year's facts as if each company had filed a separate return for the prior year.

C. If separate returns were filed for the preceding taxable year, but a consolidated or combined return is filed for the current taxable year, the prior year's tax for Exception 1 shall be equal to the sum of the taxes imposed under §§ 58.1-400 and 58.1-400.1 of the Code of Virginia on all of the affiliates included in the consolidated or combined return. For purposes of Exception 1, all the affiliates must have filed a return showing a tax liability for the preceding taxable year, and each such year must have been a taxable year of at least 12 months. For purposes of Exception 2, the prior year's tax will be determined using current year rates and be based on the facts contained in the prior year returns filed by all of the affiliates contained in the consolidated or combined return, as if a consolidated or combined return (as applicable) had been filed for such previous year.

D. Where two or more corporations are merged, with one corporation surviving, Exceptions 1 and 2 shall be based solely on the prior year's tax or facts of the

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.

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: VR 120-99-03. Regulation for the Control of Motor Vehicle Emissions.

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

Effective Date: April 1, 1994.

Summary:

The regulation concerns the enhanced emissions inspection program and is summarized below:

1. The geographic coverage of the program consists of the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

2. Also included are vehicles which operate primarily in these areas, regardless of registration address.

3. The enhanced emissions inspection consists of several tests. Vehicles will get a combination of tests based on model year and weight class. The tests are:

a. *IM240 exhaust test* - A test of a vehicle's exhaust emissions while operating during a simulated driving cycle.

b. *Pressure test* - A test of the vehicle's fuel supply system to detect excessive vapor leakage.

c. *Purge test* - A test of the vehicle's system of recycling gasoline fumes from the charcoal canister into the fuel combustion process.

d. *Two-speed exhaust test* - A test of a vehicle's exhaust emissions while operating at idle and at 2500 rpm.

e. *Emissions control device* - A visual inspection of the emissions control equipment which the manufacturer was required to install.

4. The type of test given will be based on the following:

a. *IM240 exhaust test* - 1968 and newer cars and trucks weighing up to 8500 pounds.

b. *Pressure & purge tests* - 1971 and newer cars and

trucks weighing up to 8500 pounds.

c. *Two-speed exhaust test* - 1968 and newer vehicles from 8500 pounds to 26,000 pounds.

d. *Emissions control device* - 1973 and newer vehicles.

5. *The inspection fee for all vehicles will be \$20 for the initial test; retests will be free if accomplished within 14 days.*

6. *Administrative costs will be covered by an additional fee at the time of registration of \$2.00 per vehicle, per annum.*

7. *Inspections or waivers will be valid for two years regardless of transfers of ownership.*

8. *In order to be granted a waiver, a motor vehicle must have failed an initial test and a retest and at least \$450 must have been spent in valid repair of emissions-related equipment. This cost is adjusted annually according to the Consumer Price Index.*

9. *Enforcement of this program is by denial of motor vehicle registration until inspection has been accomplished. This process is being established cooperatively with the Virginia Department of Motor Vehicles.*

10. *Inspection facility operations are restricted to testing of vehicle emissions and related administrative procedures. Facilities are granted permits and inspection personnel are licensed by the Director of the Department of Environmental Quality.*

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: Cindy Berndt, State Air Pollution Control Board, 629 E. Main Street, Richmond, VA 23240, telephone (804) 762-4373. There may be a charge for copies.

VR 120-99-03. Regulations for the Control of Motor Vehicle Emissions.

PART I. DEFINITIONS.

§ 1.1. *General.*

Final Regulations

A. For the purpose of this regulation and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in § 1.2.

B. Unless specifically defined in the Virginia Motor Vehicle Emissions Control Law or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 1.2. Terms defined.

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

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Affected motor vehicle" means any vehicle which:

1. Was manufactured for the 1968 model year or a more recent model year;
2. Is designed for the transportation of persons or property;
3. Is powered by an internal combustion engine; and
4. Is more than one year old measured from the date such vehicle was first titled.

The term "affected motor vehicle" does not mean any:

1. Vehicle which has a weight greater than 26,000 pounds gross vehicle weight rating (GVWR);
2. Vehicle powered by a diesel engine;
3. Motorcycle;
4. Vehicle which, at the time of its manufacture, was not designed to meet emissions standards set or approved by the federal government; [~~or~~]
5. Any antique motor vehicle as defined in § 46.2-100 of the Code of Virginia and licensed pursuant to § 46.2-730 of the Code of Virginia [; or]
- [6. Any vehicle powered by an electric motor.]

"Base of operations" means, for motor vehicles registered by the Virginia Department of Motor Vehicles and garaged outside of the program area, the area within which the affected motor vehicle is primarily driven. A vehicle is primarily driven in the program area if the vehicle is operated in the program area for an amount of annual mileage equal to or greater than 50% of its annual mileage or 6,000 miles, whichever is greater.

"Board" means the State Air Pollution Control Board or its designated representative.

"Calibration" means establishing or verifying the total response curve of a measurement device using several different measurements having precisely known quantities.

"Calibration gases" means gases of precisely known concentrations which are used as references for establishing or verifying the calibration curve of a measurement device.

"Canister" means a mechanical device capable of absorbing and retaining hydrocarbon vapors.

"Catalytic converter" means a post combustion device which oxidizes hydrocarbon and carbon monoxide gases or reduces oxides of nitrogen or both.

"Certificate of emissions inspection" means a document, device, or symbol, whether recorded in written or electronic form, as prescribed by the director and issued pursuant to this regulation, which indicates that (i) an affected motor vehicle has satisfactorily complied with the emissions standards and passed the emissions inspection provided for in this regulation; (ii) the requirement of compliance with the emissions standards has been waived; or (iii) the affected motor vehicle has failed the emissions inspection.

"Chargeable inspection" means an initial inspection, or a reinspection that occurs 15 days or later after the initial inspection, on an affected motor vehicle, for which the station owner is entitled to collect an inspection fee. No fee shall be paid for inspections that are incomplete, or inspections that are ordered by the department for referee purposes or on-road test failures.

"Compliance document" means any document, device, or symbol which contains statistical, quality control, or quality assurance information required by the department under this regulation for the purpose of evaluating the performance of the enhanced emissions inspection program against state or federal standards or requirements.

"Composite" means the average emission rate, expressed as grams per mile (gpm) as determined by the IM240 test procedure using the averaging method described in EPA High-Tech Technical Guidance, § 85.2205(b) (see Appendix A).

"Consent agreement" means an agreement that the owner or any other person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with this regulation, by mutual agreement of the owner or any other person and the board. A consent agreement may include agreed upon civil charges.

"Consent order" means a consent agreement issued as an order. Such orders may be issued without a hearing.

"Constant volume sampler" means a device which collects all of a vehicle's exhaust emissions, which

accurately measures gas volume corrected to standard conditions, and consists of those devices which are subject to the specifications of EPA High-Tech Technical Guidance, § 85.2226(b) (see Appendix A).

"Curb idle" means vehicle operation whereby the transmission is disengaged and the engine is operated with the throttle in the closed or idle stop position with the resultant engine speed between 300 and 1,100 revolutions per minute (rpm), or at another [idle] speed if so specified by the manufacturer.

"Data handling system" means all the computer hardware, software and peripheral equipment used by the station owner to conduct emissions inspections and manage the enhanced emissions inspection program.

"Date of resale" means the date [on] which an affected motor vehicle is sold by a motor vehicle dealer to any person other than another motor vehicle dealer.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Driving cycle" means a predetermined schedule for acceleration and deceleration of a motor vehicle within a prescribed period of time.

"Dynamometer" means a device consisting of at least two rollers and associated equipment for absorption of force or energy from a motor vehicle.

"Emissions control equipment" means those parts, assemblies or systems and related parts in or on a vehicle originally installed by the manufacturer for the purpose of reducing emissions.

"Emissions inspection" means an [enhanced emissions] inspection of a motor vehicle performed by an emissions inspector [employed by working at] an emissions inspection station [or fleet emissions inspection station], using the tests, procedures, and provisions set forth in this regulation [~~or VR 120-99-01~~ and requirements for enhanced emissions inspections set forth in 40 CFR Part 51, Subpart S] .

"Emissions inspection station" means a test-only facility which has obtained an emissions inspection station permit from the director authorizing the facility to perform emissions inspections in accordance with the provisions of this regulation.

"Emission standard" means any provision of Part IV which prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution. For the purposes of the transient exhaust emissions (IM240)

test, the standard includes a composite standard, which is a value averaged over the duration of the test driving cycle, and a Phase 2 standard, which is only the second portion of the test driving cycle.

"Emissions testing equipment" means, for the purposes of § 2.1 E, equipment which consists only of those devices which are subject to the specifications of EPA High-Tech Technical Guidance, § 85.2226(c) (see Appendix A).

"Enhanced emissions inspection program" means a motor vehicle emissions inspection system including inspection procedures, emissions standards, and equipment as provided in 40 CFR Part 51, Subpart S and consistent with applicable requirements of the federal Clean Air Act. The director shall administer the enhanced emissions inspection program. Such program shall require biennial inspections at official emissions inspection stations in accordance with this regulation.

"Error of omission" means the failure of a test procedure to identify an affected motor vehicle which is emitting air pollutants at a rate greater than allowed by an applicable emission standard.

"Facility" means something that is built, installed or established to serve a particular purpose including, but not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means 42 USC 7401 et seq.

"Federal employee" means civilian or military personnel employed or stationed at a federal facility, including contractor personnel, for more than 60 days in a calendar year.

"Federal facility" means a facility or complex that is owned, leased, or operated by a U.S. government agency, including parking areas provided to federal employees at the facility.

"Fleet" means 20 or more motor vehicles which are owned, operated, leased or rented for use by a common owner or have been consigned for maintenance to a common facility.

"Fleet emissions inspection station" means any inspection facility which complies with § 46.2-1184 of the Motor Vehicle Emissions Control Law and which is operated [as a test-only emissions inspection facility, consistent with federal requirements,] under a permit issued to a qualified fleet owner, lessee, or consignee as determined by the director.

"Formal hearing" means [~~board processes~~ administrative proceedings] other than those informational or factual inquiries of an informal nature provided in §§ 9-6.14:7.1 and 9-6.14:11 of the Administrative Process Act

Final Regulations

and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8 of the Administrative Process Act in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 9-6.14:12 of the Administrative Process Act in connection with case decisions.

“Gas span” means the adjustment of an exhaust gas analyzer to correspond with known concentrations of span gases.

“Gross vehicle weight rating (GVWR)” means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and expressed on a permanent identification label affixed to the motor vehicle.

“Heavy duty vehicle” means any affected motor vehicle (i) which is rated at more than 8,500 pounds GVWR or (ii) which has a vehicle curb weight of more than 6,000 pounds and has a basic frontal area in excess of 45 square feet.

“Implementation schedule” means the schedule of events, including tasks and completion dates specified by the department which bind the station owner to completion of performance requirements by specific calendar dates.

“IM240 test” means the exhaust emissions test procedure described in EPA High-Tech Technical Guidance, § 85.2221 (see Appendix A).

“Inspection fee” means the amount of money that the station owner may collect from the motor vehicle owner for each chargeable inspection.

“Inspection network” means all of the enhanced emissions inspection stations, including the equipment contained within, which are operated at specific geographic locations for the purpose of carrying out this regulation.

“Light duty truck” means any affected motor vehicle (i) which is rated at 6,000 pounds GVWR or less or is rated at 8,500 pounds GVWR or less and has a basic vehicle frontal area of 45 square feet or less; and (ii) which meets any one of the following criteria:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.
2. Designed primarily for transportation of persons and has a capacity of more than 12 persons.
3. Equipped with special features enabling off-street or off-highway operation and use.

“Light duty vehicle” means an affected motor vehicle that is a passenger car or passenger car derivative capable of seating 12 passengers or less.

“Loaded vehicle weight (LVW)” means the weight of a vehicle’s standard equipment and a nominally filled fuel tank plus 300 pounds.

“Locality” means a city, town, or county created by or pursuant to state law.

“Model year” means, except as may be otherwise defined in this regulation, the motor vehicle manufacturer’s annual production period (as determined by the U.S. Environmental Protection Agency) which may include the time period from January 1 of the calendar year prior to the stated model year to December 31 of the calendar year of the stated model year; provided that, if the manufacturer has no annual production period, the term “model year” shall mean the calendar year of manufacture. For the purpose of this definition, model year is applied to the vehicle chassis, irrespective of the year of manufacture of the vehicle engine.

“Motor vehicle” means any vehicle as defined in § 46.2-100 of the Code of Virginia as a motor vehicle.

“Motor vehicle dealer” means a person who is licensed by the Department of Motor Vehicles in accordance with §§ 46.2-1500 and 46.2-1508 of the Code of Virginia.

“Motor vehicle emissions repair facility” means a facility which is engaged in the business of repairing motor vehicle emissions control equipment and related systems.

“Motor vehicle inspection report” means a report of the results of an emissions inspection, indicating whether the motor vehicle has passed, failed, has been rejected, or has obtained an emissions inspection waiver, and is used by the motor vehicle owner to document emissions-related repairs performed on the motor vehicle subsequent to failure of an emissions inspection. The report shall accurately identify the motor vehicle and shall include inspection results, recall information, warranty and repair information, and a unique identification number.

“Motor vehicle owner” means any person who owns, leases, operates, or controls a motor vehicle or fleet of motor vehicles.

“Order” means any decision or directive of the board, including special orders, emergency special orders, consent orders, and orders of all types, rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of this regulation. Unless specified otherwise in this regulation, orders shall only be issued after the appropriate administrative proceeding.

“Owner” means any person who owns, leases, operates, controls or supervises a source, and shall also mean motor vehicle owners and emissions inspection station owners if not specified.

“Party” means any person named in the record who

actively participates in the administrative proceeding or offers comments through the public participation process. The term "party" also means the department.

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

"Phase 2" means that portion of the driving cycle described in EPA High-Tech Technical Guidance, § 85.2221(e)(1) (see Appendix A) that occurs from second 94 to second 239.

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Pressure test" means a physical test of the evaporative emission control system on a motor vehicle which vents emissions of volatile organic compounds from the fuel tank and fuel system to an on-board emission control device, and prevents their release to the ambient air under normal vehicle operating conditions.

"Program area" means the territorial area encompassed by the boundaries of the following localities: Arlington County, Fairfax County, Fauquier County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

"Public hearing" means an informal proceeding, 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 a matter on which a decision of the board is pending.

"Purge test" means a test which measures the instantaneous purge flow in standard liters per minute from the canister to the motor intake manifold, based upon computation of the total volume of the flow in standard liters over a prescribed driving cycle, or an equivalent procedure approved by the department.

"Quality assurance plan" means the plan, approved by the department, which the station owner shall develop and implement to ensure that: (i) materials and procedures which are incorporated into the construction and operation of the vehicle emissions inspection program conform to appropriate specifications, (ii) the inspection network is capable of being operated in accordance with this regulation, and (iii) the facilities and equipment will be properly maintained throughout the life of the program.

"Referee station" means those facilities in an emissions inspection station operated or used by the department to: (i) determine program effectiveness; (ii) resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations; and (iii) provide such other

technical support and information, as appropriate, to emissions inspection stations and motor vehicle owners.

"Reinspection" means a type of inspection selected when a request for an inspection is accompanied by a completed motor vehicle inspection report indicating a previous failure, and summarizing the repair work and costs associated with the attempt by the motor vehicle owner to bring the motor vehicle into compliance.

"Station owner" means any person who owns, leases, operates, controls or supervises an emissions inspection station.

"Stoichiometric" means the complete chemical oxidation of a substance; as applied to pure hydrocarbon fuels, it means complete combustion of the fuel to carbon dioxide and water, with no residual free oxygen.

"Tactical military vehicle" means any motor vehicle designed to military specifications or a commercially designed motor vehicle modified to military specifications to meet direct transportation support of combat, tactical, or military relief operations, or training of personnel for such operations.

"Tampering" means to alter, remove or otherwise disable or reduce the effectiveness of emissions control equipment on a motor vehicle.

"Test-only" means any emissions inspection station that performs only motor vehicle emissions inspections and other procedures and functions authorized by this regulation.

"Tier 1" means new gaseous and particulate tail pipe emission standards for use in certifying new light duty vehicles and light duty trucks [which begin to be] phased in [beginning] with the 1994 model year [and are completely phased-in in the 1996 model year] as promulgated by the U.S. Environmental Protection Agency.

"Two-speed idle test" means a vehicle exhaust emissions test which measures the concentrations of pollutants in the exhaust gases of an engine (i) while the motor vehicle transmission is not propelling the vehicle and (ii) while the engine is operated at both curb idle and at a nominal engine speed of 2,500 rpm.

"Variance" means the temporary exemption of a station owner or other person from specific provisions of this regulation, or a temporary change in this regulation as it applies to a station owner or other person.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Virginia Register Act" means Chapter 1.2 (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia.

"Virginia Motor Vehicle Emissions Control Law" means

Final Regulations

Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

PART II. GENERAL PROVISIONS.

§ 2.1. Applicability and authority of the department.

A. The provisions of this regulation, unless specified otherwise, apply to the following:

1. Any owner of an affected motor vehicle specified in subsection B of this section [(i) on or after July 1, 1995, or (ii) later upon written notification of the enhanced emissions inspection requirement by the Department of Environmental Quality or the Department of Motor Vehicles] .

2. Any owner of an emissions inspection station [or fleet emissions inspection station,] or any person who conducts an emissions inspection [on or after July 1, 1995] .

B. The provisions of this regulation, unless specified otherwise, apply to the following affected motor vehicles:

1. Any affected motor vehicle registered by the Virginia Department of Motor Vehicles and garaged within the program area.

2. Any affected motor vehicle registered by the Virginia Department of Motor Vehicles and garaged outside of the program area but with a base of operations in the program area.

3. Any affected motor vehicle (i) owned or operated by a U.S. government agency located within the program area, (ii) operated on or commuting to a federal facility within the program area, or (iii) owned or operated by a U.S. government agency located outside the program area but with a base of operations in the program area.

4. Any affected motor vehicle (i) owned or operated by a state or local government agency located within the program area, (ii) operated on or commuting to a state or local government facility within the program area, or (iii) owned or operated by a state or local government agency located outside the program area but with a base of operations in the program area.

C. The provisions of this regulation, unless specified otherwise, apply in the program area.

D. The provisions of this regulation, unless specified otherwise, apply only to those pollutants for which emission standards are set forth in Part IV.

E. A manufacturer or distributor of emissions testing equipment is prohibited from owning or operating an emissions inspection station or having financial interest in

an emissions inspection station except that a manufacturer or distributor may lease equipment to, or provide financing for emissions inspection equipment to, owners or operators of such stations. [Manufacturers and distributors are further qualified as follows:

1. A person who purchases emissions testing equipment and incorporates it into a system which includes other equipment, such as dynamometers or constant volume samplers, is not considered to be a manufacturer of emissions testing equipment.

2. A person who purchases components and repackages or otherwise adapts them for use in a system is not a manufacturer of emissions testing equipment if at least one of the components so purchased conforms to the definition of emissions testing equipment.

3. A distributor is a person who stands between the manufacturer and the retail seller and makes no alterations or additions to the product prior to sale to the retail seller. A person who purchases emissions testing equipment from a manufacturer or distributor and includes it as a component of a system which it sells is not considered to be a distributor of emissions testing equipment.]

F. By the adoption of this regulation, the board confers upon the department the administrative, enforcement and decision making authority enumerated herein.

G. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on the specific documents incorporated and their availability may be found in Appendix A.

§ 2.2. Establishment of regulations and orders.

A. Regulations for the Control of Motor Vehicle Emissions are established to implement the provisions of the Virginia Motor Vehicle Emissions Control Law and the federal Clean Air Act.

B. Regulations for the Control of Motor Vehicle Emissions shall be adopted, amended or repealed in

accordance with the provisions of the Motor Vehicle Emissions Control Law, Articles 1 and 2 of the Administrative Process Act, and the Public Participation Procedures in Appendix E of VR 120-01.

C. Regulations, amendments and repeals shall become effective as provided in § 9-6.14:9.3 of the Administrative Process Act, except in no case shall the effective date be less than 60 days after adoption by the board.

D. If necessary in an emergency situation, the board may adopt, amend or stay a regulation under § 9-6.14:4.1 of the Administrative Process Act, but such regulation [or stay of regulation] shall remain effective no longer than one year unless readopted following the requirements of subsection B of this section.

§ 2.3. Enforcement of regulations, permits, licenses and orders.

A. Whenever the department has reason to believe that a violation of any provision of this regulation or any permit, license or order has occurred, notice shall be served on the alleged violator or violators, citing the applicable provision of this regulation, the permit, license, or order or any combination thereof involved and the facts on which the alleged violation is based. The department may act as the agent of the board to obtain compliance through one of the following enforcement proceedings:

1. **Administrative proceedings.** The department may negotiate to obtain compliance through administrative means. Such means may be a variance, consent agreement or any other mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance.

2. **Judicial proceedings.** The department may obtain compliance through legal means pursuant to § 46.2-1187 or § 46.2-1187.2 of the Virginia Motor Vehicle Emissions Control Law.

B. Nothing in this section shall prevent the department from making efforts to obtain voluntary compliance through conference, warning or other appropriate means.

C. Case decisions regarding the enforcement of regulations, orders, licenses and permits shall be made by the director or board. Case decisions of the director [and or] the board that are made pursuant to a formal hearing may be regarded as a final decision of the board and appealed pursuant to § 2.5. Case decisions of the director that are made pursuant to an informal proceeding may be (i) appealed to the board pursuant to § 2.5; or (ii) may be regarded as a final decision of the board and appealed pursuant to § 2.5.

§ 2.4. Hearings and proceedings.

A. The primary hearings and proceedings associated with the promulgation and enforcement of statutory provisions are as follows:

1. For the public hearing and informational proceeding required before considering regulations, authorized under § 46.2-1180 of the Virginia Motor Vehicle Emissions Control Law, the procedure for a public hearing and informational proceeding shall conform to (i) § 9-6.14:7.1 of the Administrative Process Act and (ii) the Public Participation Procedures in Appendix E of VR 120-01.

2. For the public hearing required before considering variances and amendments to and revocation of variances, the procedure for a public hearing shall conform to the provisions of § 2.6.

3. For the informal proceeding used to make case decisions, the procedure for an informal proceeding shall conform to § 9-6.14:11 of the Administrative Process Act.

4. For the formal hearing for the enforcement or review of orders, licenses and permits and for the enforcement of regulations, the procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act.

B. The board may adopt policies and procedures to supplement the statutory procedural requirements for the various proceedings cited in subsection A of this section.

C. Records of hearings and proceedings may be kept in one of the following forms:

1. Oral statements or testimony at any public hearing or informational proceeding will be stenographically or electronically recorded, and may be transcribed to written form.

2. Oral statements or testimony at any informal proceeding will be stenographically or electronically recorded, and may be transcribed to written form.

3. Formal hearings will be recorded by a court reporter, or electronically recorded for transcription to written form.

D. Availability of records of hearings and proceedings shall be as follows:

1. A copy of the transcript of a public hearing or informational proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. A copy of the transcript of an informal proceeding, if transcribed, will be provided within a reasonable

Final Regulations

time to any person upon receipt of a written request and payment of cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

3. Any person desiring a copy of the transcript of a formal hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

§ 2.5. Appeal of case decisions.

A. Any station owner, motor vehicle owner or other party significantly affected by any action of the board taken without a formal hearing [~~or by inaction of the board,~~] may request a formal hearing in accordance with § 9-6.14:12 of the Administrative Process Act, provided a petition requesting such hearing is filed with the board. In cases involving actions of the board, such petition shall be filed within 30 days after notice of such action is mailed or delivered to such owner or party requesting notification of such action.

[B. In cases where the board fails to make a case decision, the station owner, motor vehicle owner, or other party significantly affected, may provide written notice to the board that a decision is due in accordance with §§ 9-6.14:11 and 9-6.14:12 of the Administrative Process Act.]

[~~B. C.~~ C.] Prior to any formal hearing, an informal fact finding shall be held pursuant to § 9-6.14:11 of the Administrative Process Act, unless the named party and the board consent to waive the informal proceeding and go directly to a formal hearing.

[~~C. D.~~ D.] Any decision of the board resultant from a formal hearing shall constitute the final decision of the board.

[~~D. E.~~ E.] Judicial review of a final decision of the board shall be afforded in accordance with § 9-6.14:16 of the Administrative Process Act.

[~~E. F.~~ F.] Nothing in this section shall prevent disposition of any case by consent.

[~~F. G.~~ G.] Any petition for a formal hearing or any notice or petition for an appeal by itself shall not constitute a stay of decision or action.

§ 2.6. Variances.

A. The board may in its discretion grant variances to any provision of this regulation after an investigation and public hearing. If a variance is appropriate, the board shall issue an order to this effect. Such order shall be subject to amendment or revocation at any time [for reasons specified in the order] .

B. The board shall adopt variances and amend or

revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the program area of the subject, date, time and place of the public hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance and the hearing record shall remain open for a minimum of 10 days after the hearing for the purpose of receiving additional public comment.

§ 2.7. Right of entry.

Whenever it is necessary for the purposes of this regulation, the department may enter, at reasonable times, any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys, audits or investigations as authorized by § 46.2-1187.1 of the Virginia Motor Vehicle Emissions Control Law.

§ 2.8. Conditions on approvals.

A. The board or director may impose conditions upon permits, licenses and other approvals issued pursuant to this regulation, (i) which may be necessary to carry out the policy of the Virginia Motor Vehicle Emissions Control Law and (ii) which are consistent with this regulation. Except as specified herein, nothing in this regulation shall be understood to limit the power of the department in this regard.

B. A station owner or license or permit applicant may consider any condition imposed by the board or director as a denial of the requested permit, license, or other approvals, which shall entitle the applicant to appeal the decision of the department to the board pursuant to § 2.5.

§ 2.9. Procedural information and guidance.

A. The department may adopt detailed policies and procedures which:

1. Request data and information in addition to and in amplification of the provisions of this regulation;
2. Specify the methods and means to determine compliance with applicable provisions of this regulation;
3. Set forth the format by which all data and information should be submitted; and
4. Set forth how the regulatory programs should be implemented.

B. In cases where this regulation specifies that procedures or methods shall be approved by, acceptable to or determined by the board or department, the station owner, motor vehicle owner or any other affected person may request information and guidance concerning the

proper procedures and methods and the board or the department shall furnish in writing such information on a case-by-case basis.

§ 2.10. Export and import of motor vehicles.

A. A person may remove the catalyst and fuel fill inlet restrictor from used motor vehicles scheduled for shipment to or from a foreign country provided that:

1. The export or import of the motor vehicle meets the provisions of subsection B of this section; and
2. The removal of the emissions control equipment does not take place prior to 10 days before the vehicle is turned over to the port authorities and the reinstallation of the emissions control equipment takes place within 10 days after receipt of the vehicle by the motor vehicle owner from the port authorities in the United States, if such equipment is required for the vehicle configuration.

B. To be exempted under the provisions of subsection A of this section, the motor vehicle must:

1. Be exported or imported under a U.S. Environmental Protection Agency approved catalyst control program; or
2. Be exported or imported under a Department of Defense privately owned vehicle import control program; or
3. Be entered through U.S. Customs under cash bond and formal entry procedures (19 CFR Part 12 - Special classes of merchandise), and be modified to bring it into conformity with applicable federal motor vehicle emission standards (40 CFR Part 86 - Control of air pollution from new motor vehicle engines: Certification and test procedures).

§ 2.11. Relationship of state regulations to federal regulations.

A. In order for the Commonwealth to fulfill its obligations under the federal Clean Air Act, some provisions of this regulation are required to be approved by the U.S. Environmental Protection Agency and when approved those provisions become federally enforceable.

B. In cases where this regulation specifies that procedures or methods shall be approved by, acceptable to or determined by the board or department or specifically provides for decisions to be made by the board or department, it may be necessary to have such actions (approvals, determinations, exemptions, exclusions, or decisions) reviewed and confirmed as acceptable or approved by the U.S. Environmental Protection Agency in order to make them federally enforceable. Determination of which state actions require federal confirmation or approval and the administrative mechanism for making

associated confirmation or approval decisions shall be made on a case-by-case basis in accordance with U.S. Environmental Protection Agency regulations and policy.

§ 2.12. Delegation of authority.

In accordance with the Motor Vehicle Emissions Control Law, the director, or in his absence a designee acting for him, may perform any act of the board provided under this regulation.

§ 2.13. Availability of information.

A. Emission data in the possession of the department shall be available to the public without exception.

B. Any other records, reports or information in the possession of the department shall be available to the public with the following exception:

The department shall consider such records, reports or information, or particular part thereof, confidential in accordance with the Virginia Uniform Trade Secrets Act (§ 59.1-336 et seq. of the Code of Virginia), upon a showing satisfactory to the department by any station owner that such records, reports or information, or particular part thereof, meet the criteria in subsection C of this section and the station owner provides a certification to that effect signed by a responsible person for such owner. Such records, reports or information, or particular part thereof, may be disclosed, however, to other officers, employees or authorized representatives of the Commonwealth of Virginia and the U.S. Environmental Protection Agency concerned with carrying out the provisions of the Motor Vehicle Emissions Control Law and the federal Clean Air Act.

C. In order to be exempt from disclosure to the public under subsection B of this section, the record, report or information must satisfy the following criteria:

1. Information for which the station owner has been taking and will continue to take measures to protect confidentiality;
2. Information that has not been and is not presently reasonably obtainable without the consent of the station owner or motor vehicle owner by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;
3. Information which is not publicly available from sources other than the station owner; and
4. Information the disclosure of which would cause substantial harm to the station owner.

PART III INSPECTION PROCEDURES.

Final Regulations

§ 3.1. General provisions.

A. Unless otherwise provided by this regulation, the owner of any affected motor vehicle shall have the motor vehicle emissions inspected biennially in accordance with this regulation.

B. Any affected motor vehicle presented for a vehicle emissions inspection and inspected in accordance with this regulation shall receive a Motor Vehicle Inspection Report, and a Certificate of Emissions Inspection (electronic record) shall be recorded for that vehicle which may be used for vehicle registration, as described in § 3.2

C. An emissions inspection shall be conducted at a test-only emissions inspection station [or fleet emissions inspection station by a licensed emissions inspector] .

D. A motor vehicle may be presented for an emissions inspection at any time during normal business hours.

E. The motor vehicle shall receive an emissions inspection based on the vehicle applicability conditions in § 3.3 and the emission test standards in Part IV.

F. The motor vehicle owner shall provide information to the department or the station owner at the time of reinspection regarding the repair which has been performed on vehicles which fail the emissions inspection.

G. The station owner shall provide to any motor vehicle owner whose vehicle fails an emissions inspection, and any motor vehicle emissions repair facility, information which has been collected as a result of emissions-related diagnostics and repairs and shall do so without prejudice for or against any repair facility.

§ 3.2. Motor vehicle registration.

A. A certificate of emissions inspection is valid for use in applying for registration of an affected motor vehicle for a period not to exceed the valid period specified in subsections [A ~~or~~] B [or C] of this section as applicable.

B. From the date a motor vehicle passes an emissions inspection, or receives a waiver, the certificate of emissions inspection recorded for that motor vehicle shall be valid for a period not to exceed 27 months.

C. From the date a motor vehicle receives a dealer deferment of an emissions inspection, according to [the application requirements of subsection C of] § 8.2, the certificate of emissions inspection recorded for that motor vehicle shall be valid for a period not to exceed 15 months.

D. For the purpose of motor vehicle registration, an affected motor vehicle subject to the enhanced motor vehicle emissions inspection program shall no longer be in compliance with this regulation and the Motor Vehicle

Emissions Control Law at such time as the valid period of the certificate of emissions inspection expires.

§ 3.3. Motor vehicle inspection applicability.

A. Each affected light duty vehicle and light duty truck of model year 1968 and newer shall be inspected in accordance with the IM240 test procedures (transient exhaust emissions test).

B. Each affected light duty vehicle and light duty truck of model years [~~1971~~ 1973] and newer shall also be inspected in accordance with the following inspection procedures:

1. Pressure test (evaporative system integrity test); and

2. Purge test (evaporative system purge test).

C. Each affected heavy duty vehicle of model years 1968 and newer shall be inspected in accordance with a two-speed idle emission test, and all heavy duty vehicles of model year 1973 and newer shall also be tested according to the emissions control equipment inspection procedures (tampering check) as described in § 3.5 E.

D. For any other affected motor vehicle which receives a two-speed idle test in lieu of an IM240 test due to exception procedures developed by the department, such vehicles may also be tested according to the emissions control equipment inspection procedures (tampering check) as described in § 3.5 E.

§ 3.4. Motor vehicle eligibility for emissions inspections.

Eligibility for an emissions inspection shall be based upon the following criteria:

1. The vehicle does not discharge visible air pollutants for longer than five consecutive seconds after the engine has been brought up to operating temperature;

2. Any manufacturer's recall for emission related repairs or equipment replacement has been resolved by the motor vehicle owner and proof of such repair or replacement has been received by the emissions inspection station from the entity designated by the U.S. Environmental Protection Agency as the national clearinghouse of emissions-related recall notification data, the respective vehicle manufacturer or its representative; and

3. The vehicle passes a pretest qualification check, which includes the following requirements:

- a. There is no fuel leak in or around the engine area, fuel tank, or lines, which causes wetness or pooling of fuel;

- b. There is no leaking of engine oil, coolant or

other fluid (except for air conditioner condensate) immediately preceding the inspection period;

c. There is no obvious exhaust leak which would prohibit valid sampling;

d. There is no missing or loose tail pipe section which would prohibit proper connection to the constant volume sampler system;

e. For any motor vehicle that receives an IM240 test, there is no drive axle tire which has tread across all major tread grooves less than a depth of at least 2/32 inch, measured at three locations; which has exposed cords, signs of tread separation, or other structural damage; or which is severely underinflated;

f. There is no evidence that the vehicle is in overheated condition; and

g. There is no other mechanical condition or circumstance which might cause injury to inspection personnel, damage to the station or inspection equipment, or will affect the validity of the inspection.

§ 3.5. Emissions inspection procedures.

A. The enhanced emissions inspection shall consist of the following three tests, or alternative procedures approved by the department:

1. **IM240 test.** The IM240 test shall be performed in accordance with the procedure specified in 40 CFR 51.357(a)(11) and EPA High-Tech Technical Guidance, § 85.2221 (see Appendix A). It shall consist of a 240 second measurement of mass emissions from the vehicle's exhaust pipe. It shall utilize a constant volume sampler and exhaust gas analyzer while the vehicle is driven through a computer monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle. The driving cycle shall include acceleration, deceleration, and idle operating modes.

2. **Purge test.** The purge test shall be performed in accordance with the procedures specified in 40 CFR 51.357(a)(9) and EPA High-Tech Technical Guidance, § 85.2221 (see Appendix A). It shall be used to measure the total purge flow occurring in the vehicle's evaporative system during the IM240 test. The purge flow measurement system shall be connected to the purge portion of the evaporative system in a series between the canister and the engine.

3. **Pressure test.** The pressure test shall be performed in accordance with the procedures specified in 40 CFR 51.357(a)(10). It shall be used to determine the presence, if any, of leaks in the vehicle's fuel system. The test shall consist of pressurizing the vehicle's fuel

system and monitoring for pressure decay for up to two minutes.

B. Two-speed idle emissions test.

1. The two-speed idle emissions test shall be conducted using equipment which meets the operating and performance specifications of: (i) EPA High-Tech Technical Guidance, §§ 85.2221 and 85.2226 (see Appendix A), or (ii) specifications of 40 CFR Part 51, Appendix D to Subpart S, Paragraph (I), and shall follow the procedures of 40 CFR Part 51, Appendix B to Subpart S, Paragraph (II), except as noted below:

a. The idle test standards to be used to determine that the vehicle has passed or failed the test shall be those emission standards contained in Part IV.

b. If the equipment specified in EPA High-Tech Technical Guidance, § 85.2226 (see Appendix A) is used, the sample probe shall meet the specifications of EPA High-Tech Technical Guidance, § 85.2226(b)(2) (see Appendix A), except that it shall be capable of collecting exhaust from all affected motor vehicles, including heavy duty vehicles up to 26,000 GVWR.

2. For determining compliance with the emission standards of Part IV, all [~~concentration values will be reported on a dry gas basis~~ data shall be reduced and reported according to procedures acceptable to the department] . Prior to using any equipment specified in EPA High-Tech Technical Guidance, § 85.2226 (see Appendix A), the station owner must receive approval from the department for the method that will be used to calculate emissions concentrations.

C. Fast pass test.

Any affected motor vehicle which receives the IM240 test specified in subsection A of this section shall be found in compliance with subdivisions A 1, and A 2 if applicable, of this section before the end of the driving cycle if the following conditions are met:

1. That up to the time of termination of the test, the motor vehicle has been tested on a driving cycle for which the U.S. Environmental Protection Agency has determined that a fast pass test can be conducted;

2. That the test procedure conforms to one of the fast pass test procedures specified in EPA High-Tech Technical Guidance, § 85.2205 (see Appendix A), and that the emissions from the affected motor vehicle meet the emission standards of EPA High-Tech Technical Guidance, § 85.2205(a)(5) (see Appendix A); and

3. The department has determined that implementation of the fast pass test procedure will not result in a net increase in the errors of omission of the test

Final Regulations

procedure as compared with the test procedures specified in subdivisions A 1 and A 2 of this section.

D. Second chance test.

1. Two-speed idle test. If a motor vehicle fails the two-speed idle test by virtue of having emissions levels of less than 1.5 times each applicable emission standard, and if such test does not include any preconditioning phase, the vehicle shall be entitled to an immediate second chance test using the same test procedure after a conditioning procedure appropriate for the vehicle type, as determined by the department.

2. IM240 test. If a motor vehicle fails the Phase 2 standards of the IM240 test by virtue of having emission levels of less than 1.5 times each applicable emission standard and the vehicle has experienced a wait time, between arrival at the testing facility and initiation of the IM240 test of more than 30 minutes, then the motor vehicle shall be entitled to an immediate second chance test using the same test procedures.

E. Emissions control equipment inspections.

1. For 1973 and newer motor vehicles that are required to receive an enhanced emissions inspection, the motor vehicle may be required to pass an emissions control equipment inspection (tampering check) if such checks are needed to comply with state or federal laws or regulations which require vehicles to be equipped with emissions control equipment. The vehicle shall fail the tampering check, and the emissions inspection, if required equipment has been subjected to tampering. Tampering checks may include:

a. Examining the emissions control information decal under the hood or checking the reference manual or applications guide to determine if the vehicle, as certified for sale or use within the United States, (i) should be equipped with a catalytic converter, thermostatic air cleaner system, positive crankcase ventilation system, exhaust gas recirculation system, fuel evaporative system, air pump/injection system, or (ii) requires the use of unleaded fuel.

b. Visually inspecting for the presence and operability of the catalytic converter, thermostatic air cleaner system, positive crankcase ventilation system, exhaust gas recirculation system, fuel evaporative system, air pump/injection system, and fuel fill inlet restrictor.

2. For 1973 and newer motor vehicles that receive an idle emissions test pursuant to § 3.3 C or D, the vehicle shall be required to pass an emissions control equipment inspection (tampering check) if such checks are needed to comply with state or federal laws or

regulations which require certain vehicles to be equipped with certain emissions control equipment. The vehicle shall fail the tampering check, and the emissions inspection, if required equipment has been subjected to tampering. Tampering checks may include:

a. Examining the emissions control information decal under the hood or checking the reference manual or applications guide to determine if the vehicle, as certified for sale or use within the United States, should (i) be equipped with a catalytic converter, thermostatic air cleaner system, positive crankcase ventilation system, exhaust gas recirculation system, fuel evaporative system, air pump/injection system, or (ii) requires the use of unleaded fuel.

b. Visually inspecting for the presence and operability of the catalytic converter, thermostatic air cleaner system, positive crankcase ventilation system, exhaust gas recirculation system, fuel evaporative system, air pump/injection system, and fuel fill inlet restrictor.

3. Determination of the presence of emissions control equipment shall be performed by visual observation using a mirror, video camera, or other visual device.

4. If the motor vehicle fails the fuel fill inlet restrictor inspection, the catalytic converter shall also be failed pending a department test to determine whether the converter has been contaminated with lead. The fuel fill inlet restrictor as well as the catalytic converters, and, if applicable, exhaust gas oxygen (O₂) sensors shall be replaced in order to pass a retest and to ensure the efficient operation of emissions control equipment. Any exception from this subsection shall be verified by a department approved performance test.

5. Any motor vehicle which fails a vehicle emissions control equipment inspection will be considered to have failed the emissions inspection; however, all other portions of the emissions inspection will be conducted irrespective of the results of the emissions control equipment inspection.

PART IV. TEST STANDARDS.

§ 4.1. Vehicle emission test exhaust phase-in standards.

From the date [of program in calendar year 1995 enhanced emissions inspections begin, under subsection A of § 2.1,] and until such time as the program has been operational for two years, the following exhaust emissions standards shall apply. Except where noted, all standards are based upon the IM240 test and EPA High-Tech Technical Guidance, § 85.2205 (see Appendix A).

Final Regulations

1. 1994 model year and newer Tier 1 light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	0.80 gpm	.50 gpm
Carbon Monoxide:	15.0 gpm	12.0 gpm
Oxides of Nitrogen:	2.0 gpm	reserved

2. 1991 [to 1995] model year [~~and newer pre-Tier non-Tier~~] 1 light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	1.20 gpm	.75 gpm
Carbon Monoxide:	20.0 gpm	16.0 gpm
Oxides of Nitrogen:	2.5 gpm	reserved

3. 1983 to 1990 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	2.00 gpm	1.25 gpm
Carbon Monoxide:	30.00 gpm	24.0 gpm
Oxides of Nitrogen:	3.0 gpm	reserved

4. 1981 to 1982 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	2.00 gpm	1.25 gpm
Carbon Monoxide:	60.00 gpm	48.0 gpm
Oxides of Nitrogen:	3.0 gpm	reserved

5. 1980 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	2.00 gpm	1.25 gpm
Carbon Monoxide:	60.00 gpm	48.0 gpm
Oxides of Nitrogen:	6.00 gpm	reserved

6. 1977 to 1979 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	7.5 gpm	5.00 gpm
Carbon Monoxide:	90.00 gpm	72.00 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

7. 1975 to 1976 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	7.5 gpm	5.00 gpm
Carbon Monoxide:	90.00 gpm	72.00 gpm
Oxides of Nitrogen:	9.0 gpm	reserved

8. 1973 to 1974 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	10.00 gpm	6.00 gpm
Carbon Monoxide:	150.00 gpm	120.00 gpm
Oxides of Nitrogen:	9.0 gpm	reserved

9. 1968 to 1972 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	10.00 gpm	6.0 gpm
Carbon Monoxide:	150.00 gpm	120.00 gpm
Oxides of Nitrogen:	10.0 gpm	reserved

10. 1994 model year and newer Tier 1 light duty trucks 1 less than 6000 GVWR and greater than 3750 LVW.

	Composite	Phase 2
Hydrocarbons:	1.00 gpm	0.63 gpm
Carbon Monoxide:	20.0 gpm	16.0 gpm
Oxides of Nitrogen:	2.5 gpm	reserved

11. 1994 model year and newer Tier 1 light duty trucks 1 less than 6000 GVWR and less than 3750 LVW.

	Composite	Phase 2
Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	15.0 gpm	12.0 gpm
Oxides of Nitrogen:	2.0 gpm	reserved

12. 1991 [to 1995] model year [~~and newer pre-Tier non-Tier~~] 1 light duty trucks 1 (less than 6000 GVWR).

	Composite	Phase 2
Hydrocarbons:	2.40 gpm	1.50 gpm
Carbon Monoxide:	60.0 gpm	48.0 gpm
Oxides of Nitrogen:	3.0 gpm	reserved

13. 1988 to 1990 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	3.20 gpm	2.00 gpm
Carbon Monoxide:	80.0 gpm	64.0 gpm
Oxides of Nitrogen:	3.5 gpm	reserved

14. 1984 to 1987 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	3.20 gpm	2.00 gpm
Carbon Monoxide:	80.0 gpm	64.0 gpm
Oxides of Nitrogen:	3.5 gpm	reserved

Final Regulations

Hydrocarbons: 3.20 gpm 2.00 gpm
 Carbon Monoxide: 80.0 gpm 64.0 gpm
 Oxides of Nitrogen: 7.0 gpm reserved

15. 1979 to 1983 model year light duty trucks
 1.

Composite Phase 2

Hydrocarbons: 7.50 gpm 5.00 gpm
 Carbon Monoxide: 100.0 gpm 80.0 gpm
 Oxides of Nitrogen: 7.0 gpm reserved

16. 1975 to 1978 model year light duty trucks
 1.

Composite Phase 2

Hydrocarbons: 8.00 gpm 5.00 gpm
 Carbon Monoxide: 120.0 gpm 96.0 gpm
 Oxides of Nitrogen: 9.0 gpm reserved

17. 1973 to 1974 model year light duty trucks
 1.

Composite Phase 2

Hydrocarbons: 10.0 gpm 6.0 gpm
 Carbon Monoxide: 150.0 gpm 120.0 gpm
 Oxides of Nitrogen: 9.0 gpm reserved

18. 1968 to 1972 model year light duty trucks
 1.

Composite Phase 2

Hydrocarbons: 10.00 gpm 6.00 gpm
 Carbon Monoxide: 150.0 gpm 120.0 gpm
 Oxides of Nitrogen: 10.0 gpm reserved

19. 1994 model year and newer Tier 1 light
 duty trucks 2 greater than 6000 GVWR and
 greater than 5750 LVW.

Composite Phase 2

Hydrocarbons: 2.40 gpm 1.50 gpm
 Carbon Monoxide: 60.0 gpm 48.0 gpm
 Oxides of Nitrogen: 4.0 gpm reserved

20. 1994 model year and newer Tier 1 light
 duty trucks 2 greater than 6000 GVWR and less
 than 5750 LVW.

Composite Phase 2

Hydrocarbons: 1.00 gpm 0.63 gpm
 Carbon Monoxide: 20.0 gpm 16.0 gpm
 Oxides of Nitrogen: 2.5 gpm reserved

21. 1991 [to 1995] model year [and newer

~~pre-Tier~~ non-Tier] 1 light duty trucks 2
 (greater than 6000 GVWR).

Composite Phase 2

Hydrocarbons: 2.40 gpm 1.50 gpm
 Carbon Monoxide: 60.0 gpm 48.0 gpm
 Oxides of Nitrogen: 4.5 gpm reserved

22. 1988 to 1990 model year light duty trucks
 2.

Composite Phase 2

Hydrocarbons: 3.20 gpm 2.00 gpm
 Carbon Monoxide: 80.0 gpm 64.0 gpm
 Oxides of Nitrogen: 5.0 gpm reserved

23. 1984 to 1987 model year light duty trucks
 2.

Composite Phase 2

Hydrocarbons: 3.20 gpm 2.00 gpm
 Carbon Monoxide: 80.0 gpm 64.0 gpm
 Oxides of Nitrogen: 7.0 gpm reserved

24. 1979 to 1983 model year light duty trucks
 2.

Composite Phase 2

Hydrocarbons: 7.50 gpm 5.00 gpm
 Carbon Monoxide: 100.0 gpm 80.0 gpm
 Oxides of Nitrogen: 7.0 gpm reserved

25. 1975 to 1978 model year light duty trucks
 2.

Composite Phase 2

Hydrocarbons: 8.00 gpm 5.00 gpm
 Carbon Monoxide: 120.0 gpm 96.0 gpm
 Oxides of Nitrogen: 9.0 gpm reserved

26. 1973 to 1974 model year light duty trucks
 2.

Composite Phase 2

Hydrocarbons: 10.0 gpm 6.0 gpm
 Carbon Monoxide: 150.0 gpm 120.0 gpm
 Oxides of Nitrogen: 9.0 gpm reserved

27. 1968 to 1972 model year light duty trucks
 2.

Composite Phase 2

Hydrocarbons: 10.00 gpm 6.00 gpm
 Carbon Monoxide: 150.0 gpm 120.0 gpm

Final Regulations

Oxides of Nitrogen: 10.0 gpm reserved

28. 1981 model year and newer heavy duty vehicles. Idle test standards shall be:

Hydrocarbons: 550 ppm
Carbon Monoxide: 3.0 %

29. 1975 to 1980 model year heavy duty vehicles. Idle test standards shall be:

Hydrocarbons: 550 ppm
Carbon Monoxide: 5.0 %

30. 1971 to 1974 model year heavy duty vehicles. Idle test standards shall be:

Hydrocarbons: 850 ppm
Carbon Monoxide: 6.0 %

31. 1968 to 1970 model year heavy duty vehicles. Idle test standards shall be:

Hydrocarbons: 1250 ppm
Carbon Monoxide: 9.0 %

§ 4.2. Vehicle emission test exhaust final standards.

The following exhaust emissions standards shall apply beginning [~~July 1, 1997, or after~~] two years [~~from the after~~] commencement of [~~program operations, whichever is sooner~~] enhanced emissions inspections under subsection A of § 2.1]. Except where noted otherwise, all standards are based upon the IM240 test and EPA High-Tech Technical Guidance, § 85.2205 (see Appendix A).

1. 1994 model year and newer Tier 1 light duty vehicles.

	Composite	Phase 2
--	-----------	---------

Hydrocarbons:	0.60 gpm	.40 gpm
Carbon Monoxide:	10.0 gpm	8.0 gpm
Oxides of Nitrogen:	1.5 gpm	reserved

2. 1983 [~~and newer~~] to 1995] model year [~~pre-Tier non-Tier~~] 1 light duty vehicles.

	Composite	Phase 2
--	-----------	---------

Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	15.00 gpm	12.0 gpm
Oxides of Nitrogen:	2.0 gpm	reserved

3. 1981 to 1982 model year light duty vehicles.

	Composite	Phase 2
--	-----------	---------

Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	30.00 gpm	24.0 gpm

Oxides of Nitrogen: 2.0 gpm reserved

4. 1980 model year light duty vehicles.

	Composite	Phase 2
--	-----------	---------

[Hydrocarbons:	0.80 gpm	0.55 gpm
Hydrocarbons:	0.80 gpm	0.50 gpm]
Carbon Monoxide:	30.00 gpm	24.0 gpm
Oxides of Nitrogen:	4.00 gpm	reserved

5. 1977 to 1979 model year light duty vehicles.

	Composite	Phase 2
--	-----------	---------

Hydrocarbons:	3.00 gpm	2.00 gpm
Carbon Monoxide:	65.00 gpm	52.00 gpm
Oxides of Nitrogen:	4.0 gpm	reserved

6. 1975 to 1976 model year light duty vehicles.

	Composite	Phase 2
--	-----------	---------

Hydrocarbons:	3.00 gpm	2.00 gpm
Carbon Monoxide:	65.00 gpm	52.00 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

7. 1973 to 1974 model year light duty vehicles.

	Composite	Phase 2
--	-----------	---------

Hydrocarbons:	7.00 gpm	4.50 gpm
Carbon Monoxide:	120.00 gpm	96.00 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

8. 1968 to 1972 model year light duty vehicles.

	Composite	Phase 2
--	-----------	---------

Hydrocarbons:	7.00 gpm	4.50 gpm
Carbon Monoxide:	120.00 gpm	96.00 gpm
Oxides of Nitrogen:	7.0 gpm	reserved

9. 1994 model year and newer Tier 1 light duty trucks 1 less than 6000 GVWR and greater than 3750 LVW.

	Composite	Phase 2
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Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	13.0 gpm	10.0 gpm
Oxides of Nitrogen:	1.8 gpm	reserved

10. 1994 model year and newer Tier 1 light duty trucks 1 less than 6000 GVWR and less than 3750 LVW.

Final Regulations

	Composite	Phase 2
Hydrocarbons:	0.60 gpm	0.40 gpm
Carbon Monoxide:	10.0 gpm	8.0 gpm
Oxides of Nitrogen:	1.5 gpm	reserved

11. 1988 [to 1995] model year [~~and newer pre-Tier non-Tier~~] 1 light duty trucks 1 (less than 6000 GVWR).

	Composite	Phase 2
Hydrocarbons:	1.60 gpm	1.00 gpm
Carbon Monoxide:	40.0 gpm	32.0 gpm
Oxides of Nitrogen:	2.5 gpm	reserved

12. 1984 to 1987 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	1.60 gpm	1.00 gpm
Carbon Monoxide:	40.0 gpm	32.0 gpm
Oxides of Nitrogen:	4.5 gpm	reserved

13. 1979 to 1983 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	3.40 gpm	2.00 gpm
Carbon Monoxide:	70.0 gpm	56.0 gpm
Oxides of Nitrogen:	4.5 gpm	reserved

14. 1975 to 1978 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	4.00 gpm	2.50 gpm
Carbon Monoxide:	80.0 gpm	64.0 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

15. 1973 to 1974 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	7.0 gpm	4.5 gpm
Carbon Monoxide:	120.0 gpm	96.0 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

16. 1968 to 1972 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	7.00 gpm	4.50 gpm
Carbon Monoxide:	120.0 gpm	96.0 gpm
Oxides of Nitrogen:	7.0 gpm	reserved

17. 1994 model year and newer Tier 1 light duty trucks 2 greater than 6000 GVWR and greater than 5750 LVW.

	Composite	Phase 2
Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	15.0 gpm	12.0 gpm
Oxides of Nitrogen:	2.0 gpm	reserved

18. 1994 model year and newer Tier 1 light duty trucks 2 greater than 6000 GVWR and less than 5750 LVW.

	Composite	Phase 2
Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	13.0 gpm	10.0 gpm
Oxides of Nitrogen:	1.8 gpm	reserved

19. 1988 [~~and newer~~ to 1995] model year [~~pre-Tier~~] non-Tier] 1 light duty trucks 2 (greater than 6000 GVWR).

	Composite	Phase 2
Hydrocarbons:	1.60 gpm	1.00 gpm
Carbon Monoxide:	40.0 gpm	32.0 gpm
Oxides of Nitrogen:	3.5 gpm	reserved

20. 1984 to 1987 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	1.60 gpm	1.00 gpm
Carbon Monoxide:	40.0 gpm	32.0 gpm
Oxides of Nitrogen:	4.5 gpm	reserved

21. 1979 to 1983 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	3.40 gpm	2.00 gpm
Carbon Monoxide:	70.0 gpm	56.0 gpm
Oxides of Nitrogen:	4.5 gpm	reserved

22. 1975 to 1978 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	4.00 gpm	2.50 gpm
Carbon Monoxide:	80.0 gpm	64.0 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

23. 1973 to 1974 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	7.0 gpm	4.5 gpm
Carbon Monoxide:	120.0 gpm	96.0 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

24. 1968 to 1972 model year light duty trucks
2.

	Composite	Phase 2
Hydrocarbons:	7.00 gpm	4.50 gpm
Carbon Monoxide:	120.0 gpm	96.0 gpm
Oxides of Nitrogen:	7.0 gpm	reserved

25. Heavy duty vehicles. The applicable emission standards of subsection A of this section shall apply to these vehicles.

§ 4.3. Pressure test standards.

A. In order to pass the pressure test, a motor vehicle's evaporative system shall maintain a system pressure above eight inches of water for two minutes after being pressurized to 14 +/- 0.5 inches of water.

B. If a vehicle's canister is missing or damaged, if hoses are missing or disconnected, or if the gas cap is missing, a vehicle shall not pass the pressure test.

§ 4.4. Purge test.

In order to pass the purge test, a motor vehicle's total purge system flow must measure at least one liter over the course of the IM240 test, or equivalent method approved by the department. Any measurement below the background electronic noise specification in EPA High-Tech Technical Guidance, § 85.2227(a)(2)(vi) (see Appendix A) shall not be included in the total flow calculation.

§ 4.5. Engine and fuel changes.

A. For any vehicle which has undergone a fuel conversion or has had the original engine replaced, the emissions standards and applicable emissions control equipment requirements for the year and model of the vehicle body/chassis, as per the registration or title, or for the replacement engine if it is newer, shall apply.

1. For those diesel-powered vehicles which have been converted to gasoline-powered engines, the emissions standards and applicable emissions control equipment for the equivalent year, make, and model of the gasoline-powered vehicle, per the registration or title, or for the engine if it is newer, shall apply.

2. For those gasoline or diesel-powered vehicles which have been converted to alternative fuels for which there is no federal certified configuration or for which no emissions standards have been adopted or

approved by the U.S. Environmental Protection Agency, the most stringent emissions standards and applicable emissions control equipment for the equivalent year, make, and model of the vehicle chassis, per the registration or title, shall apply.

3. For those vehicles which have the capability or are equipped to operate on gasoline and an alternative fuel, the vehicle shall be subject to the emissions inspection while operating on gasoline.

B. For those vehicles that were assembled by other than a licensed manufacturer, such as "kit-cars," the applicable emissions control equipment and emissions standards shall be based on a determination of the model year of the vehicle engine. The model year of the vehicle engine shall be presumed to be that stated by the motor vehicle owner, unless it is determined by physical inspection of the vehicle engine by the department that the model year of the engine is other than that stated by the motor vehicle owner.

PART V. INSPECTION EQUIPMENT.

§ 5.1. Computerized inspection systems.

A. Measurements on motor vehicles subject to vehicle emissions inspection requirements shall be performed by computerized inspection systems.

B. Computerized inspection systems shall conform to all specifications for performance features and functional characteristics contained in 40 CFR 51.358.

§ 5.2. Enhanced equipment specifications.

A. All dynamometers, constant volume samplers, and analytic instruments used in performing IM240 exhaust tests shall conform to all specifications for such equipment contained in EPA High-Tech Technical Guidance, § 85.2226 (see Appendix A) or equivalent equipment approved by the U.S. Environmental Protection Agency.

B. All equipment used to perform the pressure test shall conform to all specifications and requirements contained in EPA High-Tech Technical Guidance, § 85.2227 [(a) (b)] (see Appendix A).

C. All equipment used to perform the purge test shall conform to all specifications and requirements contained in EPA High-Tech Technical Guidance, § 85.2227 [(b) (a)] (see Appendix A).

D. When practicable, the equipment used in subsections B and C of this section shall be noninvasive to the components of the motor vehicle.

E. Equipment approved as equivalent to that required in subsection A, B, or C of this section by the U.S. Environmental Protection Agency may be used if

Final Regulations

approved by the department.

§ 5.3. Two-speed idle test equipment specifications.

A. All equipment used to perform the idle test shall conform to all specifications and requirements contained in § 5.2 A or, in the alternative, 40 CFR Part 51, Appendix D to Subpart S, Paragraph (I).

B. All equipment used to perform pressure testing on vehicles which receive an idle emissions test shall conform to all specifications and requirements contained in EPA High-Tech Technical Guidance, § 85.2227(a) (see Appendix A).

C. When practicable, the equipment used in subsection B of this section shall be noninvasive to the components of the motor vehicle.

D. Equipment approved as equivalent to that required in subsections A or B of this section by the U.S. Environmental Protection Agency may be approved by the department.

PART VI. QUALITY CONTROL.

§ 6.1. General requirements.

A. Each owner of a vehicle emissions inspection station shall ensure that all equipment used at the station is properly calibrated and maintained and that calibration and maintenance records and control charts are accurately created, recorded, and maintained according to § 12.8 A.

B. Preventative maintenance shall be performed on all inspection equipment on a periodic basis, not less than one time per month.

C. Computerized analyzers shall automatically record quality control check information, lockouts, attempted tampering, and any other recordable circumstances which should be monitored to assure quality control such as those circumstances which require a service technician to work on the equipment.

§ 6.2. Equipment requirements.

To assure test accuracy, all IM240, idle test, pressure and purge test equipment shall be maintained according to demonstrated good engineering practices. At a minimum, the following requirements shall be met:

1. Computer monitoring and control of quality assurance checks and quality control charts shall be used whenever possible.

2. [~~Frequency of~~] Quality control checks shall be in accordance with the requirements set forth in 40 CFR Part 51, Appendix A to Subpart S.

§ 6.3. Document security.

A. Measures shall be taken to maintain the security of all documents by which compliance with the inspection requirement is established or evaluated including, but not limited to, certificates of emissions inspection, vehicle inspection reports, and repair receipts or documents. This section shall in no way require the use of paper documents but shall apply if they are used.

B. Compliance documents shall be counterfeit resistant. Such measures as special fonts, water marks, ultra-violet inks, encoded magnetic strips, unique bar-coded identifiers, and difficult to acquire materials may be used to accomplish this requirement.

C. All vehicle inspection reports shall be printed with a unique serial number and an official seal.

D. Measures shall be taken to assure that compliance documents cannot be stolen or removed without being damaged.

E. Each vehicle inspection report shall have a transaction identification number printed on the face of the document which is unique to both the emissions inspection record and the certificate of emissions inspection which documents the emissions inspection.

PART VII. CONSUMER PROTECTION AND QUALITY ASSURANCE.

§ 7.1. Consumer protection.

A. The department shall ensure that appropriate consumer protection measures are implemented pursuant to subdivision A 5 of § 46.2-1180 of the Virginia Motor Vehicle Emissions Control Law and 40 CFR 51.368.

B. Emissions inspection stations shall be of sufficient number and location so as to comply with the convenience criteria in [~~subdivision 2 of~~] this subsection to the satisfaction of the department. At a minimum there must be at least one emissions inspection station located in each of the following localities unless the board grants an exception for a station location: Arlington County, Fairfax County, Fauquier County, Loudoun County, Prince William County, Stafford County, and the City of Alexandria.

The department shall ensure that emissions inspection stations are conveniently located, and, based on the garaged address of the vehicle population, located such that:

1. At least 85% of affected motor vehicles are within [~~a~~] five linear miles of an emissions inspection station;

2. At least 95% of affected motor vehicles are within [

a] 12 linear miles of an emissions inspection station;
and

3. At least 99% of affected motor vehicles are within [a] 20 linear miles of an emissions inspection station.

C. The station owner shall ensure that the operation of the emissions inspection stations comprising its inspection network satisfies the operating reliability standards set forth in 40 CFR 51.359 and 40 CFR Part 51 Appendix A to Subpart S. In order to achieve these standards, the station owner shall be required to utilize reliable equipment and establish and implement effective ongoing programs of preventive maintenance, spare parts provisioning, and repair or replacement of defective or worn out equipment.

D. The station owner shall ensure that the number and location of inspection lanes shall be such that the daily average waiting time for vehicles in line for inspection shall not exceed 15 minutes per vehicle for more than five days in any calendar month at any emissions inspection station.

[Except as authorized by the department for closings on state holidays,] emissions inspection stations shall be open for a minimum of 55 hours per week, including at least one evening (until 7 p.m. or later) and not less than five hours on Saturdays.

The station owner shall not, for any reason other than equipment failure, close [a lane] or operate a lane with fewer than the required number of personnel when there are three or more vehicles at all other operating lanes.

E. For each vehicle which fails the emissions inspection, the vehicle inspection report shall include a message, approved by the department, which advises the motorist of any known emissions control equipment warranty by the vehicle manufacturer that may be available.

F. The provisions of this section shall not apply to fleet emissions inspection stations.

§ 7.2. Quality assurance.

A. The station owner shall develop and maintain a quality assurance plan, in accordance with 40 CFR 51.363 and approved by the department, to identify, correct, and prevent fraud, waste and abuse and to determine (i) whether procedures are being followed and are adequate, (ii) whether equipment is operating accurately, and (iii) whether other problems might exist which would adversely affect program performance.

B. The quality assurance plan shall also include provisions to ensure that:

1. The emissions inspection stations are constructed and operated in conformity with the design and equipment specifications approved by the department

for such stations;

2. The testing and electronic data processing equipment and components and other items which are installed in emissions inspection stations conform to specifications approved by the department and described in 40 CFR Part 51, Subpart S and EPA High-Tech Technical Guidance (see Appendix A);

3. The inspection network, with all equipment and furnishings installed and in place, is capable of being operated in accordance with the technical requirements set forth in the documents identified in subdivision 2 of this subsection and approved by the department; and

4. At all times, emissions inspection stations and equipment are maintained in good operating condition; and repair and replacements are installed in accordance with a department approved obsolescence schedule.

§ 7.3. Audit requirements.

The department shall perform periodic record audits, equipment audits, and overt and covert performance audits of emissions inspection stations on a regular basis to determine whether station owners, inspectors, or other station personnel are correctly performing all tests and other required functions based on procedures established or approved by the department. The department may perform other audits as may be necessary to comply with state or federal regulations.

§ 7.4. Emissions inspection station operating standards.

A. It will be the obligation of the station owner to design, build, or otherwise procure, and oversee the operation of each emissions inspection station in accordance with the operating standards and other requirements set forth in this regulation, 40 CFR Part 51, Subpart S, and EPA High-Tech Technical Guidance (see Appendix A).

B. The station owner shall comply with the following standards at each emissions inspection station:

1. Equipment failures or any related repairs or replacement activities (except regularly scheduled repairs or replacements) shall not result in the entire emissions inspection station being shut down in excess of one working day for any single event or in excess of a total of two working days in any month; and

2. Equipment failures or any related repair or replacement activities (except regularly scheduled repairs or replacements) shall not result in inspection lane downtime in excess of one working day for any single event nor more than a total of 12 hours in any week.

Final Regulations

C. The station owner shall be required to conduct an effective preventive maintenance program, which shall contain the following elements as a minimum:

1. Daily calibration checks;
2. Periodic recalibrations;
3. Periodic cleaning and maintenance of all equipment in accordance with the manufacturer's specifications by checklist;
4. Daily visual inspection of equipment by checklist; and
5. Recording of maintenance and calibration.

D. The department may order corrective actions to bring emissions inspection stations into compliance with the provisions of subsection A of this section. Such action may include, but is not limited to:

1. Changes in operating procedures, personnel practices, or hours of operation;
2. Redesign, repair, or replacement of operating equipment or software;
3. Construction, equipping, and operation of additional inspection facilities or inspection lanes;
4. The acquisition and maintenance of additional spare parts; and
5. Improvements in the station owner's quality assurance plan.

E. Any emissions inspection station shall be available at any reasonable time for an inspection by the department of the calibration and proper operation of all equipment.

F. Any documentation necessary to enable the department to perform calibration checks shall be available at all times at each emissions inspection station.

G. With reasonable notice, access shall be available during nonworking hours to perform any checks which the department does not wish to perform during normal work hours.

H. Any defective condition which would adversely affect the accuracy of inspections shall be corrected immediately.

I. If so ordered by the department, any inspection lane affected by a defective condition shall be closed and no further testing shall be conducted in such lane until objective evidence proves that the defective condition has been corrected and the resumption of testing in each such lane has been approved by the department.

[J. The provisions of subsection B of this section shall

apply to fleet emissions inspection stations.]

§ 7.5. Referee stations.

A. The department shall conduct referee inspections and shall ensure (i) that appropriate referee stations are established or (ii) that inspection lanes at emissions inspection stations are reserved as needed, to:

1. Determine program effectiveness;
2. Resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations; and
3. Provide such other technical support and information, as appropriate, to emissions inspection stations and motor vehicle owners.

B. The referee shall have the authority to determine the compliance status of any motor vehicle whose owner has disputed the results of any previous inspection, waiver determination, or any other provision of this regulation.

§ 7.6. Sign posting.

A. All emissions inspection stations shall post a department approved sign designating the location as an official vehicle emissions control program inspection station in a conspicuous location on the permitted premises, available to the public and approved by the department.

B. All emissions inspection stations will post the applicable exhaust emissions standards prescribed in Part IV in a conspicuous location on the permitted premises, available to the public, and approved by the department.

C. All emissions inspection stations shall post in a conspicuous location in a clearly legible fashion a department approved sign indicating the fees charged for emissions inspections and other state-sanctioned activities, such as vehicle registration activities.

D. All emissions inspection stations shall post all signs that are issued or required by the department in a location approved by the department.

E. Signs shall be posted in a manner that does not violate local sign ordinances or codes.

F. The provisions of this section shall not apply to fleet emissions inspection stations.

PART VIII. TEMPORARY EXEMPTIONS, DEFERMENTS, AND WAIVERS.

§ 8.1. Temporary exemptions.

A. The motor vehicle owner or lessee may request a

temporary exemption from the department in the event that a vehicle subject to the emissions inspection requirements is not available for an inspection due to: (i) the vehicle being temporarily displaced from the program area, (ii) the vehicle being inoperative, or (iii) the motor vehicle owner's or lessee's absence or incapacity during the 90 day period prior to the vehicle's required emissions inspection date. The department will review such requests and determine, on a case-by-case basis according to the above criteria, the degree to which the vehicle is unavailable and whether it warrants an exemption.

B. Exemptions from the requirements for emissions control equipment due to non-availability of parts may be made by the department based on research by the vehicle owner and the department.

C. If the department agrees to an exemption request, it shall issue a temporary exemption, appropriate to demonstrated need, for a period not to exceed two years.

§ 8.2. Deferments.

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

B. Upon a request by a motor vehicle dealer, provided the department confirms the validity of the dealer certification required by subsection C of this section, used vehicles of the current model year and the four immediately preceding model years, being held for resale in a motor vehicle dealer's inventory, shall receive a one year emissions inspection deferment. The deferment shall be noted on the certificate of emissions inspection, which may be applied toward vehicle registration according to § 3.2.

C. A motor vehicle dealer shall apply to the department for the deferment of emissions inspection, as provided for in this section, provided that the dealer certifies in writing that the emissions control equipment on the motor vehicle was operating in accordance with the manufacturer's or distributor's warranty at the date of resale. Such certification shall include, but not be limited to:

1. The type of the test or analysis done for the purpose of determining compliance with this subsection;
2. The name of the dealer or facility which performed the test or analysis required by subdivision 1 of this subsection;
3. A statement that the vehicle has not failed its most recent emissions inspection;
4. A statement that the vehicle has not previously received a testing deferment under this section;

5. The manufacturer, model, model year, engine size, fuel type, and vehicle identification number;

6. The remaining warranty on the emissions control equipment;

7. A statement, in prominent or bold print, that the certification in no way warrants or guarantees that the vehicle complied with the emission standards used in the Virginia enhanced emissions inspection program, or similar language approved by the department; and

8. A statement that the customer has a right to request an emissions inspection, which may be at the expense of the customer, in lieu of a dealer deferment.

D. A dealer may apply for such deferment no more than 90 days prior to the registration of the vehicle.

E. The department shall issue a deferment upon satisfactory review of the information submitted according to subsection C and shall provide notification of such deferment to the Department of Motor Vehicles.

F. The dealer shall provide to a person considering purchasing the vehicle the information required in subsection C prior to the purchase.

G. For the purposes of subsection B of this section, any used motor vehicle will be considered to be one model year old on the first day of October of the calendar year that numerically corresponds to the model year described on the vehicle title or registration, and shall increase in age by one year on each first day of October thereafter.

§ 8.3. Waivers.

A. A motor vehicle shall qualify for a two-year vehicle emissions inspection waiver in the event that such vehicle has failed the initial inspection, has subsequently failed a reinspection, and the vehicle owner provides written proof of the following to the department:

1. Since the initial inspection, at least \$450 (using 1990 as the base year and [adjusted] annually [~~adjusting~~] by the Consumer Price Index [on January 1 of each year]) has been spent by the motor vehicle owner on the maintenance and repair of the vehicle's engine system, emissions control equipment, or other emissions-related equipment;
2. That such repairs were appropriate to the cause of the inspection failure;
3. For 1980 and newer vehicles, proof that repairs were made at an emissions repair facility;
4. For 1979 and older vehicles, proof that repairs were made at an emissions repair facility or by the

Final Regulations

motor vehicle owner;

5. For vehicle emissions control equipment that may be covered by warranty protection by the manufacturer or as described in § 207(b) of the federal Clean Air Act, such warranty coverage shall be used to obtain needed repairs before expenditures can be applied toward the cost limits in this subsection; and, when applicable, a written statement provided to the department from a manufacturer's representative in the case that § 207(b) warranty protection has been denied or is otherwise not available for the vehicle;

6. Any emissions control equipment or part thereof which has been removed, damaged, or rendered inoperable, has been replaced and restored to the manufacturer's intended operating condition; and

7. Costs incurred by the motor vehicle owner to restore the vehicle's emissions control equipment to operation pursuant to subdivision 6 of this subsection shall not be applied toward the cost limits in this subsection.

B. The department may verify the written proof above by a visual check to confirm that such repairs have been made and by determination of the validity of the written proof.

C. The department shall issue waivers upon the satisfactory review of the information submitted according to subsection A of this section.

[~~D. Exceptions to waiver requirements in this section may be granted by the department on a case-by-case basis for financial hardship or nonavailability of replacement vehicle emissions control equipment.~~]

PART IX. ON-ROAD TESTING.

§ 9.1. General requirements.

The department [~~may shall~~] conduct [random] on-road testing [on at least 0.5%] of motor vehicles subject to the vehicle emissions inspection requirements. On-road testing [~~may shall~~] be accomplished by roadside pullovers or remote sensing, or both, according to procedures to be developed by the department.

§ 9.2. On-road test methods: roadside pullovers; remote sensing.

A. The roadside pullover procedure may utilize a tailpipe emissions test and other visual and equipment checks as may be determined by the department.

B. Remote sensing may utilize an infrared or alternative remote sensing device to measure exhaust emissions.

§ 9.3. Failure procedures.

A. Motor vehicles which (i) are determined to be out of compliance with on-road testing, and (ii) have an emissions inspection valid period greater than six months from the date of the on-road test, shall be required to pass [~~a follow-up~~ an emissions] inspection at an emissions inspection station within 30 days of notification of the failure. Notification may be immediate or by mail.

B. Failure to have the [~~follow-up~~] emissions inspection required under subsection A of this section shall constitute failure of the required emissions inspection and result in notification to the Virginia Department of Motor Vehicles of a failed certificate of emissions inspection.

PART X. FEDERAL FACILITIES.

§ 10.1. General requirements.

A. Federal facilities located within the program area shall be subject to the enhanced emissions inspection program, and shall ensure compliance with the program, according to Title I, § 118 of the Clean Air Act.

B. The program applies to affected motor vehicles (i) operated on or commuting to the federal facility regardless of where the vehicles are registered, and (ii) affected motor vehicles owned, leased, or operated by the federal government or federal employees.

C. This requirement shall not apply to vehicles which operate on or commute to federal facilities less than 60 calendar days per year.

§ 10.2. Proof of compliance.

A. Each federal facility administrator or his designee shall provide the department with proof of compliance with this regulation by March 31 of each year, covering the preceding calendar year.

B. Such proof shall consist of a report, in a format approved by the department, which identifies, at a minimum:

1. A listing of each affected motor vehicle that has complied with all requirements of this regulation, its date of compliance, and the means of compliance as described in subsection C of this section;

2. A listing of each affected motor vehicle that has not complied with all requirements of this regulation and the reasons therefor; and

3. A plan for action necessary to ensure that vehicles in noncompliance with this part are brought into compliance.

C. The federal facility administrator shall use one of the

following means to establish proof of compliance:

1. Presentation of a valid and compliant vehicle inspection report from any enhanced emissions inspection program approved by the U.S. Environmental Protection Agency;
2. Presentation of proof of vehicle registration identifying a garaged address within the program area; or
3. Any other means approved by the department.

PART XI. FEES.

§ 11.1. Inspection fees.

A. An inspection fee of \$20 for each chargeable inspection is to be paid to the owner of the emissions inspection station in cash or other tender, as may be required by the department.

B. If a vehicle is determined to be ineligible to take a vehicle emission inspection due to the eligibility requirements described in subdivision 1 of § 3.4, the inspection fee will not be collected.

C. If a vehicle fails to pass a vehicle emission inspection, there shall be no charge for the first reinspection of that vehicle, provided that the first reinspection takes place within 14 days of the initial inspection.

D. There shall be no charge for referee inspections or for follow up inspections due to failure of on-road testing.

§ 11.2. Administrative fees.

A. Beginning July 1, 1994, the owner of any motor vehicle subject to registration in Virginia and subject to the enhanced emissions inspection program by virtue of the locality in which it is registered shall pay two dollars per year to the Virginia Department of Motor Vehicles at the time of registration.

B. Owners of affected motor vehicles not registered in the program area by the Virginia Department of Motor Vehicles but subject to the enhanced emissions inspection program by virtue of their base of operations shall remit \$2.00 per vehicle per year to the department according to a schedule and procedure developed by the department.

C. Fees collected through the requirements of this section shall be deposited in the Virginia Emissions Inspection Program Fund, as provided in § 46.2-1182.2 of the Code of Virginia.

D. State and local governmental units and agencies shall be exempt from the administrative fee requirement of this section.

PART XII. EMISSIONS INSPECTION [STATION] PERMITS AND OPERATION.

§ 12.1. Applicability: emissions inspection stations; fleet emissions inspection stations.

A. Except as provided in subsection B of this section, the provisions of this part apply to the operation of any emissions inspection station.

The provisions of this part apply in the program area.

B. A person to whom there are 20 or more vehicles registered or consigned for maintenance may be permitted as a fleet emissions inspection station and [~~conduct~~ emissions inspections of that fleet may have enhanced emissions inspections of that fleet conducted on the premises consistent with the following requirements:

1. Fleet vehicles shall be subject to the same test requirements using the same quality control standards as nonfleet vehicles.

2. Emissions inspectors performing emissions inspections at fleet emissions inspection stations shall be licensed by the department and wholly independent of the fleet owner.

3. An emissions inspection from a fleet emissions inspection station is valid for registration purposes for the fleet vehicles only] .

[~~Unless otherwise excluded,~~] A fleet emissions inspection station shall comply with all applicable requirements for an enhanced emissions inspection program.

§ 12.2. General.

A. The director may issue or deny permits and approve procedures and other instructions for the operation of emissions inspection stations.

B. Any decisions of the director made pursuant to this part may be appealed pursuant to § 2.5 of this regulation.

C. No owner or other person shall operate any facility for the purpose of conducting emissions inspections without first obtaining from the director a permit to operate the facility as an emissions inspection station.

D. No facility shall be represented as an emissions inspection station unless the facility holds a valid emissions inspection permit issued by the director according to the provisions of this part.

E. Vehicle Inspection Reports shall be issued and Certificates of Emissions Inspection recorded only by emissions inspection stations holding valid permits issued by the department.

Final Regulations

F. All emissions inspection station operations shall be conducted in accordance with this regulation.

G. Permits are valid for time periods determined by the director, not to exceed two years.

H. Permits shall be issued for specific emissions inspection stations and are valid only for the emissions inspection station to which they are issued.

I. All emissions inspection station permits shall be posted in a conspicuous place on the permitted premises, approved by the department.

J. All emissions inspection stations shall cooperate with the department during the conduct of audits, investigations and complaint resolutions.

K. All emissions inspection stations, except fleet emissions inspection stations, shall conduct emissions inspections during normal business hours and shall inspect every vehicle presented for inspection within a reasonable time period.

L. All emissions inspection stations, except fleet emissions inspection stations, shall have adequate emissions inspectors on duty during normal business hours.

M. As a fleet emissions inspection station, no inspections shall be conducted for the employees or general public, but only on vehicles owned or leased by the [*business common owner*], or consigned for maintenance to the facility.

§ 12.3. Applications.

A. Applications for permits shall be signed by the corporate president or by another duly authorized agent of the corporation; or by an equivalently responsible officer in the case of organizations other than corporations; or, in other cases, by the owner; or, in the case of governmental entities, by the highest executive official of such entities [or his designee]. A person is a duly authorized agent only if the authorization responsible officer in the case of organizations other than corporations. Such signature shall constitute personal affirmation that the statements made in the application are true and complete to the best of the knowledge and belief of the signer.

B. An application is required to identify each facility for which application is made to become an emissions inspection station. A separate application is not required for each location.

C. The director may combine the requirements of and applications for permits required by this part, for emissions inspection stations within an inspection network, into one application.

§ 12.4. Information required.

A. Each application for a permit shall include such information as may be required by the department to determine compliance with applicable requirements of this regulation. The information required shall include, but is not limited to, the following:

1. The name of the applicant.

2. The location of the facility.

3. Demonstration that:

a. The inspection equipment in each facility for which a permit is requested complies with the inspection equipment provisions of Part V;

b. The station owner, station personnel, and inspection equipment comply with the quality control provisions of Part VI;

c. Each facility, as a part of the inspection network, complies with the consumer protection provisions of § 7.1; and

d. Each facility complies with the provisions of §§ 7.2 through 7.5.

4. Proof of business ownership, articles of incorporation, partnership agreements, and lease agreements.

5. Certification of conformity with local zoning, use, or business licensing laws, ordinances or regulations.

B. The applicant shall provide any other information that the department deems necessary to review the conformity with this regulation.

[C. The applicant shall provide any subsequent changes to the information required under subsection A of this section within 30 days of such change.]

§ 12.5. Standards and conditions for granting permits.

A. No permit for an emissions inspection station may be issued unless the director determines that:

1. The construction of the inspection station or inspection network has been completed in accordance with design and specifications approved by the department;

2. The testing, electronic data processing, and other equipment and items required by this regulation have been properly installed in each emissions inspection station, and other facilities within the inspection network if applicable;

3. A plan for the hiring and training of all necessary

personnel to operate each emissions inspection station and the data handling system has been completed; and

4. The station owner has complied with all other requirements of this regulation which pertain to emissions inspection stations.

B. Permits shall not be issued to facilities which have permits currently revoked or under suspension by the director until such suspension or revocation period has elapsed and the permit applicant has satisfied all permit requirements as provided in this regulation.

C. No permit shall be issued pursuant to this section unless it is shown to the satisfaction of the director that the emissions inspection station shall operate without causing a violation of the applicable provisions of this regulation.

D. For fleet emissions inspection stations, no permit shall be issued until the director determines that the applicant:

1. Maintains an established place of business for the applicant's fleet of vehicles;
2. Has obtained approved machinery, tools and equipment to adequately conduct the required emissions inspection in the manner prescribed by this regulation;
3. Employs properly trained and licensed personnel to perform the necessary labor; and
4. Agrees to provide test records and data as prescribed by this regulation.

E. Permits issued under this section shall contain, but not be limited to, the following elements:

1. The location of the facility;
2. The name of the permittee;
3. The expiration date of the permit; and
4. Other requirements as may be necessary to ensure compliance with this regulation.

§ 12.6. Action on permit application.

A. After receipt of an application or any additional information, the department shall advise the applicant of any deficiency in such application or information.

B. When supported by justification which the department deems adequate, the director may, upon request by a station owner, extend the expiration date of a permit by a period not to exceed 180 days for the purpose of allowing sufficient time for a station owner to

correct such deficiencies in the application as have been identified by the department and to allow completion of the application review by the department.

C. Processing time for a permit is normally 90 days following receipt of a complete application. The department may extend this time period if additional information is required. Processing steps may include, but not be limited to:

1. Completion of a preliminary review and a preliminary decision of the director;
2. Inspection or audit of the facility, provided an inspection has not been conducted within the last six months; and
3. Completion of the final review and the final decision of the director.

D. The director normally will take action on all applications after completion of the review, unless more information is needed. The director shall issue the permit or notify the applicant in writing of its decision, with its reasons, not to issue the permit.

E. Within five days after receipt of the permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the department upon request.

§ 12.7. Monitoring requirements.

A. Station owners shall install, calibrate, operate and maintain equipment for continuously monitoring and recording the performance of inspection equipment and station personnel, and to establish and maintain records, and make periodic emission reports as the department may prescribe. These requirements shall be conducted in a manner acceptable to the department.

B. The requirements under subsection A of this section shall be carried out in accordance with the provisions contained in Parts V, VI, and VII, as applicable, or by other means acceptable to the board.

§ 12.8. Recordkeeping and reporting requirements.

A. Station owners shall establish and maintain records, provide notifications and reports, revise reports, report emissions inspection or monitoring results in a manner and form and using procedures as the department may prescribe. Any records, notifications, reports, or tests required under this section shall be retained by the station owner for at least two years following the date of such records, notifications, reports or tests.

B. All emissions inspection stations shall have records available for inspection by the department any time during normal business hours.

Final Regulations

C. All unused vehicle inspection reports and other documents and devices shall be kept in a secure location and only be available to emissions inspectors or authorized personnel, as approved by the department.

D. Missing or stolen vehicle inspection reports or other official documents or devices shall be reported to the department within 24 hours.

E. Emissions inspection stations shall be accountable for all documents issued to them by the department.

F. Emissions inspection stations shall maintain a file of the name, address, and identification number of all currently employed emissions inspectors and shall provide the file to the department upon request.

§ 12.9. [Name change or] transfer of [permits ownership] .

A. No person shall transfer a permit from one facility to another.

B. In the case of a transfer of ownership or name change of an emissions inspection station, the new station owner shall abide by any current permit issued to the previous station owner or to the same station owner under the previous emissions inspection station name. The new station owner shall notify the department of the change in ownership or emissions inspection station name or both within 10 days of the [transfer change] .

§ 12.10. Expiration, renewal, suspension and revocation of permits.

A. In cases where an emissions inspection station is operational, a permit or any renewal thereof shall be valid for a period not to exceed two years from the date of issuance.

Upon expiration of the permit, the emissions inspection station shall no longer be authorized to perform inspections.

Not less than 180 days prior to the expiration date of the permit, the station owner shall make application for renewal of the permit if the applicant desires to continue operation of that emissions inspection station.

The department will endeavor to notify emissions inspection stations prior to the expiration of their permit. However, it is the responsibility of the emissions inspection station to have a current valid permit.

B. Renewals of permits shall be subject to the same provisions of this regulation as are original permits.

C. The director may suspend the permit of any emissions inspection station or fleet emissions inspection station upon a determination that the performance of the facility or its personnel is not in conformance with the

conditions of the permit.

The director shall notify the applicant in writing of its decision, with its reasons, to suspend a permit.

Within five days of notification of suspension, emissions inspection stations shall surrender to the department all permits, forms, data media and documents issued by the department.

[It is the responsibility of the emissions inspection station to notify the department of the termination of a suspension period and apply to the director for reinstatement. Within 10 days of the suspension, the director shall hold a formal hearing, after providing the owner with reasonable notice as to the time and place of the hearing, to affirm or cancel such suspension.

The department will endeavor to notify emissions inspection stations prior to the expiration of their permit. However, it is the responsibility of the emissions inspection station to have a current valid permit.]

D. Upon a final decision by the director that [a an] emissions inspection station is shut down permanently, the director shall revoke the permit by written notification to the station owner and remove the emissions inspection station from the inspection network; and the emissions inspection station shall not commence operation without a permit being issued under the applicable provisions of this part.

Nothing in this regulation shall be construed to prevent the director and the station owner from making a mutual determination that an emissions inspection station is shutdown permanently prior to any final decision rendered under this subsection.

The director shall notify the applicant in writing of its decision, with its reasons, to revoke a permit.

Within five days of notification of revocation, emissions inspection stations shall surrender to the department all permits, forms, data media and documents issued by the department.

[Within 10 days of the revocation, the director shall hold a formal hearing, after providing the owner with reasonable notice as to the time and place of the hearing, to affirm or cancel such revocation.]

§ 12.11. Amendments to permits.

A. Amendments to permits issued under this part may be initiated by the director or the permittee.

B. A permittee shall request an amendment of a permit by applying to the director. The permittee shall include a statement of the reasons why amending the permit is necessary.

C. The director may order appropriate [~~changes~~ amendments] to any permit whenever it is determined that [~~the conditions of the permit will not be sufficient~~ such amendments are necessary] to meet the requirements of this regulation.

D. [Substantive] permit amendments shall be processed in the same manner and under the same requirements as permits issued under this section.

E. Permit amendments shall not be used to extend the term of the permit.

§ 12.12. Enforcement.

[~~A. Permits obtained by false statement or misrepresentation may be revoked or suspended.~~]

[~~B. A.~~] Permits issued under this section shall be subject to such terms and conditions set forth in the permit as the director may deem necessary to ensure compliance with all applicable standards and requirements.

[~~C. B.~~] Regardless of the provisions of § 12.10, the director may revoke or suspend any permit prior to its expiration date if the permittee:

1. Willfully makes material misstatements in the permit application or any amendments thereto [, or in any subsequent report or information required to be submitted to the director or department in connection with such a permit] ; or

2. Fails to comply with the terms or conditions of the permit.

[~~D. C.~~] The director may suspend, under such conditions and for such period of time as the director may prescribe, any permit for any of the grounds for revocation contained in § 12.10 or for any other violations of this regulation.

[~~E. D.~~] Violation of this regulation shall be grounds for revocation of permits issued under this section and are subject to the civil charges, penalties and all other relief contained in § 46.2-1187 of the Virginia Motor Vehicle Emissions Control Law.

[~~F. E.~~] The director shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit.

PART XIII. EMISSIONS INSPECTOR TRAINING AND LICENSING.

§ 13.1. Applicability.

A. This part shall apply to any person [~~employed by~~ working at] an emissions inspection station or fleet

emissions inspection station as an emissions inspector.

B. The provisions of this part apply to both initial licenses and any renewals of licenses.

§ 13.2. General.

A. The director is authorized to issue or deny licenses to persons to conduct emissions inspections at an emissions inspection station.

B. Licenses are valid only for the person to whom they are issued and valid only at the emissions inspection stations identified on the application.

C. No person shall be represented as an emissions inspector without holding a valid license issued by the director.

D. Certificates of emissions inspection and vehicle inspection reports shall be issued only by emissions inspectors [~~employed by working at~~] emissions inspection stations and fleet emissions inspection stations.

E. Qualification for an emissions inspector license may be required according to § 13.9 G.

F. All emissions inspectors shall cooperate with the department during the conduct of audits, investigations and complaint resolution.

G. Licenses shall be available [~~to~~ for inspection by] department personnel upon request.

§ 13.3. Applications.

Applications for emissions inspector licenses shall be made to the department by each applicant and the issuance of the licenses shall be administered by the department.

§ 13.4. Information required.

The applicant shall provide proof of having passed the written test procedures administered by an emissions inspection station in the program area and the practical test administered by the department.

§ 13.5. Standards and conditions for granting licenses.

A. The director shall issue a license to any person, based upon applications submitted by the applicant, so qualified or requalified under requirements of this part.

B. The emissions inspector shall pass both the written test as required in §§ 13.4 and 13.6 and the practical test administered by the department.

C. Both types of tests shall be administered in such a manner as to allow the trainee to demonstrate the ability to conduct a proper inspection, to properly use

Final Regulations

equipment, and to follow other procedures.

D. A score of 80% is required to pass the written test.

E. Inability to conduct any test procedure in the practical test shall constitute a failure of the test.

§ 13.6. Testing of applicants.

A. The written test shall be administered by a station owner.

The instructional materials for the inspector training program may not be used until approved by the department, along with a description of the written test. Changes to the instructional materials and written tests shall be approved by the department prior to use.

An applicant shall demonstrate knowledge, skill, and competence concerning the conduct of emissions inspections. Such knowledge, skill and competence shall be demonstrated by completing training courses conducted by the station owner and approved by the department and by passing a qualification test including, but not limited to, knowledge of the following:

1. Impact of automobile emissions on air quality;
2. Purpose, function, and goal of inspection program;
3. Vehicle emissions and standards;
4. Inspection regulations and procedures;
5. Technical details of the test procedures and rationale for their design;
6. Public relations;
7. Complaint handling.
8. Emission control system purpose and function, configuration, and inspection;
9. Test equipment operation, calibration, and maintenance;
10. Quality control procedures and their purpose;
11. Safety and health issues related to the inspection process; and
12. Various types of motor vehicle emissions control tampering.

B. The practical test shall be administered by the department and shall determine the applicants ability to physically perform all functions of the required emissions inspection procedures. The practical test shall include, but not be limited to:

1. Vehicle data entry;
2. Customer contact procedures including any special procedures required for handicapped or disabled customers;
3. Preparation and positioning of the vehicle and the testing equipment for the inspection;
4. Operation of vehicles, including four-wheel-drive vehicles, for the complete driving cycle on the transient dynamometer;
5. Performance of exhaust emissions, purge, and pressure tests;
6. Performance of the emissions control equipment inspection (tampering check);
7. Detachment of emissions inspection equipment from the vehicle;
8. Operation of computerized inspection monitoring and recording equipment;
9. Provision of inspection results and diagnostic and repair information to the motorist; and
10. Calibration of all applicable equipment.

The department shall provide information on the requirements of the practical test to any applicant.

§ 13.7. Records and reporting requirements.

Emissions inspectors shall keep their current mailing address and stations of employment on file with the station owner and the department.

§ 13.8. Transfer of licenses.

A. Emissions inspectors may be licensed to perform emissions inspections at more than one permitted emissions inspection station [only] after notification to the department.

B. Emissions inspectors changing employment location must [have their license amended by notify] the department within two weeks to include the new inspection stations, or exclude stations no longer applicable [; prior to performing emission inspections] .

§ 13.9. Expiration and renewal of licenses.

A. Licenses are valid for two years.

B. Upon expiration of the license, the emissions inspector shall no longer be authorized to perform emissions inspections.

C. The department will endeavor to notify inspectors

prior to the expiration of their license. However, it is the responsibility of the emissions inspector to have a current valid license.

D. Upon notification of revocation or suspension, the inspector shall surrender to the department all licenses issued to him by the director.

E. Inspectors shall be required to pass refresher courses every two years, or more frequently if required by the department, in order to maintain their license.

F. Upon the determination by the department of the necessity of technically updating the qualifications for emissions inspectors, and upon development or approval of retraining courses and retesting requirements for emissions inspectors to demonstrate said qualifications, holders of emissions inspectors licenses shall be required to requalify.

G. Emissions inspectors shall be required to requalify within 90 days from the date of written notification by the department and notice shall be mailed to the address of record as maintained by the department.

The notice shall inform the person of the necessity of requalification and the nature of such skills, systems, and procedures requiring the retraining for the continued performance of the emissions inspection.

The notice shall give the name and location of training sources approved or accredited for purposes of retraining, shall state the necessity of requalification by a certain date, the nature and evidence of documentation to be filed with the department evidencing such requalification, and state that failure to requalify within said period of time shall result in suspension or revocation of the emissions inspector license.

§ 13.10. Enforcement.

A. Licenses obtained by false statement or misrepresentation may be revoked.

B. Licenses which have not been relinquished to the department at the termination of employment as an emissions inspector by the station owner may be revoked.

C. Licenses may be revoked if the licensee fails to requalify at the request of the department or according to the schedule approved by the department.

D. Violation of these regulations shall be grounds for revocation of or suspension of licenses issued under this part.

E. The department shall notify the applicant in writing of a decision, with reasons, to change, suspend or revoke a license.

APPENDIX A.

DOCUMENTS INCORPORATED BY REFERENCE.

I. General.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout this regulation, documents of the types specified below have been incorporated by reference.

1. Code of Federal Regulations.

2. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in Section II.

B. Any reference in this regulation to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (1993) in effect July 1, 1993. In making reference to the Code of Federal Regulations, 40 CFR Part 51 means Part 51 of Title 40 of the Code of Federal Regulations; 40 CFR 51.351 means Section 51.351 in Part 51 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this appendix any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this appendix may be examined by the public at the office of the Air Programs Section, Department of Environmental Quality, Eighth Floor, Ninth Street Office Building, 200-202 North Ninth Street, Richmond, Virginia between 8:30 a.m. and 4:30 p.m. of each business day.

II. Specific documents.

A. The following document from the U.S. Environmental Protection Agency is incorporated herein by reference: Revised technical guidance document "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications," EPA-AA-EPSP-IM-93-1, July 1993 (EPA High-Tech Guidance).

B. Copies may be obtained from: U.S. Environmental Protection Agency, Air and Radiation Branch, 401 M Street, S.W., Washington, D.C. 20460.

VA.R. Doc. No. R94-419; Filed December 22, 1993, 11:40 a.m.

DEPARTMENT OF HEALTH (STATE BOARD OF)

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which

Final Regulations

excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 355-27-01. Rules and Regulations Governing the Licensing of Commercial Blood Banks and Minimum Standards and Qualifications for Noncommercial and Commercial Blood Banks (REPEALED).

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

Effective Date: February 9, 1994.

Summary:

Article 3 (§ 32.1-139 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, which provided the basis for this regulation, was repealed by Chapter 203 of the 1993 Acts of Assembly. The General Assembly passed legislation eliminating the statutory requirements for this regulation because blood banks in Virginia, as in all other states, are regularly inspected and licensed by the Food and Drug Administration. Further, the regulation was based entirely on standards for blood banks prescribed by the Food and Drug Administration. Accordingly, the General Assembly decided that the safety of the blood supply in Virginia could be ensured by the regulatory efforts of the Food and Drug Administration alone, and that there was no need for the state to duplicate the same service.

V.A.R. Doc. No. R94-350; Filed December 9, 1993, 11:06 a.m.

BOARD OF HISTORIC RESOURCES

Title of Regulation: VR 390-01-03. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.

Statutory Authority: § 10.1-2205 of the Code of Virginia.

Effective Date: February 9, 1994.

Summary:

The 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 regulation sets out procedures for written notification to property owners and local

governments, along with a requirement for public hearings in certain cases, prior to a designation by the board. Finally, the 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.

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 H. Bryan Mitchell, Department of Historic Resources, 221 Governor Street, Richmond, VA 23219, telephone (840) 786-3143. There may be a charge for copies.

VR 390-01-03. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.

PART I. DEFINITIONS; APPLICABILITY.

§ 1.1. Definitions.

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

"Board" means the Virginia Board of Historic Resources.

"Building" means a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. "Building" may also refer to a historically related complex such as a courthouse and jail or a house and barn.

"Chief elected local official" means the mayor of the city or town or the chairman of the board of supervisors of the county in which the property is located.

"Department" means the Department of Historic Resources.

"Designation" means an act of official recognition by the Board of Historic Resources designed to educate the public to the significance of the designated resource and to encourage local governments and property owners to take the designated property's historic, architectural, archaeological and cultural significance into account in their planning, the local government comprehensive plan, and their decision making. Designation, itself, shall not regulate the action of local governments or property owners with regard to the designated property.

"Director" means the Director of the Department of Historic Resources.

"District" means a geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history. A district includes local tax parcels that have separate owners. For purposes of this regulation, a historic district does not mean a locally established historic zoning district pursuant to § 15.1-503.2 of the Code of Virginia.

"Nomination form" means the form prescribed by the board for use by any person in presenting a property to the board for designation by the board.

"Object" means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment. Examples of objects include boats, monuments, and fixed pieces of sculpture.

"Owner" or "owners" means those individuals, partnerships, corporations or public agencies holding fee simple title to property. "Owner" or "owners" does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

"Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

"Structure" means a man-made work composed of interdependent and interrelated parts in a definite pattern of organization. In addition to buildings, structures include bridges, dams, canals, docks, walls, and other engineering works.

"Virginia Landmarks Register" means the official list of properties designated by the board pursuant to § 10.1-2204(1) of the Code of Virginia, or by the board's predecessor boards, as constituting the principal historical, architectural, and archaeological resources that are of local, statewide, or national significance.

§ 1.2. Applicability.

This regulation pertains specifically to the designation of property by the board for inclusion in the Virginia Landmarks Register. Parallel evaluation criteria and administrative procedures applicable to nominations of properties to the National Park Service by the department director are set out in a separate regulation.

PART II. GENERAL PROVISIONS.

§ 2.1. General provisions.

The board is solely responsible for designating eligible properties for inclusion in the Virginia Landmarks Register.

Any person or organization may submit a completed nomination form to the director for consideration by the board. The form shall include the descriptive and analytical information necessary for the board to determine whether the property meets the evaluation criteria for designation. Any person or organization may also request the board's consideration of any previously prepared nomination form on record with the department.

In determining whether to include a property in the Virginia Landmarks Register, the board shall evaluate the property according to the Virginia Landmarks Register Criteria for Evaluation, as set out in Part III of this regulation.

Prior to the formal designation of property by the board, the director shall follow the procedures set out in § 4.1 of this regulation concerning notification to property owners and chief local elected officials. Prior to the formal designation by the board of a historic district, the director shall also follow the procedures set out in § 4.2 of this regulation for conducting a public hearing.

PART III. VIRGINIA LANDMARKS REGISTER CRITERIA FOR EVALUATION.

§ 3.1. Historic significance.

A. In determining whether to designate a district, site, building, structure or object to the Virginia Landmarks Register, the board must determine whether the district, site, building, structure, or object has historic significance. A resource shall be deemed to have historic significance if it meets one or more of the following four criteria:

1. The resource is associated with events that have made a significant contribution to the broad patterns of our history; or
2. The resource is associated with the lives of persons significant in our past; or
3. The resource embodies the distinctive characteristics of a type, period, or method of construction or design, or represents the work of a master (for example, an individual of generally recognized greatness in a field such as architecture, engineering, art, or planning or a craftsman whose work is distinctive in skill or style), or possesses high artistic values, or is a district that taken as a whole embodies one or more of the preceding characteristics, even though its components may lack individual distinction; or
4. The resource has yielded or is likely to yield, normally through archaeological investigation,

Final Regulations

information important in understanding the broad patterns or major events of prehistory or history.

B. A Virginia Landmarks Register resource can be of national historic significance, of statewide historic significance, or of local historic significance. The board shall use the following criteria in determining the level of significance appropriate to the resource:

1. A property of national significance offers an understanding of the history of the nation by illustrating the nationwide impact of events or persons associated with the property, its architectural type or style, or information potential.

2. A property of statewide historic significance represents an aspect of the history of Virginia as a whole.

3. A property of local historic significance represents an important aspect of the history of a county, city, town, cultural area, or region or any portions thereof.

§ 3.2. Integrity.

In addition to determining a property's significance, the board shall also determine the property's integrity. A property has integrity if it retains the identity for which it is significant. In order to designate a property, the board must determine both that the property is significant and that it retains integrity. To determine whether a property retains integrity, the board shall consider the seven aspects set out here. Based on the reasons for a property's significance the board shall evaluate the property against those aspects that are the most critical measures of the property's integrity. The seven aspects are:

1. *Location* – the place where the historic property was constructed or the place where the historic event occurred. In cases such as sites of historic events, the location itself, complemented by the setting, is what people can use to visualize or recall the event.

2. *Design* – the combination of elements that create the form, plan, space, structure, and style of the property. Design results from the conscious decisions in the conception and planning of a property and may apply to areas as diverse as community planning, engineering, architecture, and landscape architecture. Principal aspects of design include organization of space, proportion, scale, technology, and ornament.

3. *Setting* – the physical environment of the historic property, as distinct from the specific place where the property was built or the event occurred. The physical features that constitute setting may be natural or man-made, and may include topographic features, vegetation, simple man-made features such as paths or fences, and relationships of a building to

other features or to open space.

4. *Materials* – the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property. The integrity of materials determines whether or not an authentic historic resource still exists.

5. *Workmanship* – the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. Workmanship may be expressed in vernacular methods of construction and plain finishes or in highly sophisticated configurations and ornamental detailing. It may be based on common traditions or innovative period techniques. Examples of workmanship include tooling, carving, painting, graining, turning, or joinery.

6. *Feeling* – the property's expression of the aesthetic or historic sense of a particular period of time. Although it is itself intangible, feeling depends upon the presence of physical characteristics to convey the historic qualities that evoke feeling. Because it is dependent upon the perception of each individual, integrity of feeling alone will never be sufficient to support designation for inclusion in the Virginia Landmarks Register.

7. *Association* – the direct link between an important historic event or person and a historic property. If a property has integrity of association, then the property is the place where the event or activity occurred and is sufficiently intact that it can convey that relationship.

§ 3.3. Boundaries for historic properties.

Boundaries for a historic district, property, building, structure, object or site are selected to encompass, but not to exceed, the full extent of the significant resources or land area making up the resources. The area should be large enough to include all historic features of the property, but should not include "buffer zones" or acreage not directly contributing to the significance of the property. The following features are to be used to mark the boundaries, as they reflect the resources: (i) legally recorded boundary lines; or (ii) natural topographic features such as ridges, valleys, rivers, and forests; or (iii) man-made features such as stone walls, hedgerows, the curblines of highways, streets, and roads; or (iv) areas of new construction.

§ 3.4. Additional criteria considerations.

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that are less than 50 years old shall not be

considered eligible for the Virginia Landmarks Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within one or more of the following categories:

1. A religious property deriving primary significance from architectural or artistic distinction or historical importance; a religious property shall be judged solely on these secular terms to avoid any appearance of judgment by government about the merit of any religion or belief; or
2. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
3. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life; or
4. A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
5. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
6. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
7. A property less than 50 years old if it is of exceptional importance.

§ 3.5. Revisions to properties listed in the Virginia Landmarks Register.

Four justifications exist for altering a boundary of a property previously listed in the Virginia Landmarks Register:

1. Professional error in the initial nomination;
2. Loss of historic integrity;
3. Recognition of additional significance;
4. Additional research documenting that a larger or smaller area should be listed.

The board shall approve no enlargement of a boundary unless the additional area possesses previously unrecognized significance in American history, architecture, archeology, engineering or culture. The board

shall approve no diminution of a boundary unless the properties being removed do not meet the Virginia Landmarks Register criteria for evaluation.

§ 3.6. Removing properties from the Virginia Landmarks Register.

Grounds for removing properties from the Virginia Landmarks Register are as follows:

1. The property has ceased to meet the criteria for listing in the Virginia Landmarks Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing;
2. Additional information shows that the property does not meet the Virginia Landmarks Register criteria for evaluation;
3. Error in professional judgment as to whether the property meets the criteria for evaluation; or
4. Prejudicial procedural error in the designation process.

PART IV. PUBLIC NOTICE AND PUBLIC HEARINGS.

§ 4.1. Written notice of proposed nominations.

In any county, city, or town where the board proposes to designate property for inclusion in the Virginia Landmarks Register, the department shall give written notice of the proposal to the governing body and to the owner, owners, or the owner's agent of property proposed to be designated as a historic landmark building, structure, object, or site, or to be included in a historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide.

§ 4.2. Public hearing for historic district; notice of hearing.

Prior to the designation by the board of a historic district, the department shall hold a public hearing at the seat of government of the county, city, or town in which the proposed historic district is located or within the proposed historic district. The public hearing shall be for the purpose of supplying additional information to the board. The time and place of such hearing shall be determined in consultation with a duly authorized representative of the local governing body, and shall be scheduled at a time and place that will reasonably allow for the attendance of the affected property owners. The department shall publish notice of the public hearing once a week for two successive weeks in a newspaper published or having general circulation in the county, city, or town. Such notice shall specify the time and place of

Final Regulations

the public hearing at which persons affected may appear and present their views, not less than six days or more than 21 days after the second publication of the notice in such newspaper. In addition to publishing the notice, the department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent of each parcel of real property to be included in the proposed historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide. Notice required to be given to owners by this section may be given concurrently with the notice required to be given to the owners by § 4.1 of this regulation. A complete copy of the nomination report and a map of the historic district showing the boundaries shall be sent to the local jurisdiction for public inspection at the time of notice. The notice shall include a synopsis of why the district is significant. The department shall make and maintain an appropriate record of all public hearings held pursuant to this section.

§ 4.3. Mailings and affidavits; concurrent state and federal notice.

The department shall send the required notices by first class mail to the last known address of each person entitled to notice, as shown on the current real estate tax assessment books. A representative of the department shall make an affidavit that the required mailings have been made. In the case where property is also proposed for inclusion in the National Register of Historic Places pursuant to nomination by the director, the department may provide concurrent notice of and hold a single public hearing on the proposed state designation and the proposed nomination to the National Register.

§ 4.4. Public comment period.

The local governing body and property owners shall have at least 30 days from the date of the notice required by § 4.1, or, in the case of a historic district, 30 days from the date of the public hearing required by § 4.2 to provide comments and recommendations, if any, to the director. The director shall bring all comments received to the attention of the board.

PART V. REVIEW AND ACTION BY THE DIRECTOR AND THE BOARD ON VIRGINIA LANDMARKS REGISTER PROPOSALS.

§ 5.1. Requests for designations.

In addition to directing the preparation of Virginia Landmarks Register nominations by the department, the director shall act according to this section to ensure on behalf of the board that the Virginia Landmarks Register nomination process is open to any person or organization.

The director shall respond in writing within 60 days to

any person or organization submitting a completed Virginia Landmarks Register nomination form or requesting board consideration for any previously prepared nomination form on record with the department. The response shall indicate whether or not the information on the nomination form is complete, whether or not the nomination form adequately evaluates the property according to the criteria set out in Part III of this regulation, and whether or not the property appears to meet the Virginia Landmarks Register criteria for evaluation set out in Part III. If the director determines that the nomination form is deficient or incomplete, the director shall provide the applicant with an explanation of the reasons for that determination, so that the applicant may provide the necessary additional documentation.

If the nomination form appears to be sufficient and complete, and if the property appears to meet the Virginia Landmarks Register criteria for evaluation, the director shall comply with the notification requirements in Part IV of this regulation and schedule the property for presentation to the board. The director may require the applicant to provide a complete, accurate, and up-to-date list and annotated tax parcel map indicating all property owners entitled to written notification pursuant to Part IV of this regulation. Within 60 days of receipt of a sufficient and complete nomination and of all information necessary to comply with Part IV of this regulation, the director shall notify the applicant of the proposed schedule for consideration of the nomination form by the board.

If the nomination form is sufficient and complete, but the director determines that the property does not appear to meet Virginia Landmarks Register criteria for evaluation, the director shall notify the applicant, the owner, and the board of his determination within 60 days of receipt of the nomination form. The director need not process the nomination further, unless directed to do so by the board.

§ 5.2. Consideration by the board.

The director shall submit completed nomination forms and comments concerning the significance of a property and its eligibility for the Virginia Landmarks Register to the board. Any person or organization supporting or opposing the designation of a property by the board may petition the board in writing or orally either to accept or reject a proposed designation. The board shall review the nomination form and any comments received concerning the property's significance and eligibility for the Virginia Landmarks Register. The board shall determine whether or not the property meets the Virginia Landmarks Register criteria for evaluation set out in Part III of this regulation. Upon determining that the property meets the criteria, the board may proceed to designate the property, unless the owner or majority of owners object to the designation pursuant to § 5.3 of this regulation and § 10.1-2206.2 of the Code of Virginia.

§ 5.3. Owner objections.

Upon receiving the notification required by § 4.1 of this regulation, any owner or owners of property proposed for designation by the board shall have the opportunity to concur in or object to that designation. Property owners who wish to object to designation shall submit to the director a notarized statement certifying that the party is the sole or partial owner of the property, as appropriate, and objects to the designation. If an owner whose name did not appear on the current real estate tax assessment list used by the director pursuant to § 4.3 certifies in a written notarized statement that the party is the sole or partial owner of a nominated property, such owner shall be counted by the director in determining whether a majority of owners has objected. The board shall take no formal action to designate the property or district for inclusion in the Virginia Landmarks Register if the owner of a property, or the majority of owners of a single property with multiple owners, or a majority of the owners in a district, have objected to the designation. These objections must be received prior to the meeting of the board at which the property is considered for designation. Where formal designation has been prevented by owner objection, the board may reconsider the property for designation upon presentation of notarized statements sufficient to indicate that the owner or majority of owners no longer object to the designation. In the case of a reconsideration, the notification procedures set out in Part IV shall apply.

Each owner of property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

§ 5.4. Boundary changes.

The director or the board may initiate the process for changing the boundaries of a previously listed Virginia Landmarks Register property upon concluding that one or more of the conditions set out in § 3.4 of this regulation has been met. In addition, any person or organization may petition in writing to have a boundary changed.

A boundary alteration shall be considered as a new property nomination. In the case of boundary enlargements the notification procedures set out in Part IV of this regulation shall apply. However, only the additional area proposed for inclusion in the Virginia Landmarks Register shall be used to determine the property owners and the adjacent property owners to receive notification pursuant to §§ 4.1 and 4.2 of this regulation. Only the owners of the property in the additional area shall be counted in determining whether a majority of owners object to listing in the Virginia Landmarks Register. In the case of a proposed diminution of a boundary, the director shall notify the property owners and the chief elected local official and give them at least 30 days to comment prior to formal action by the board.

§ 5.5. Removal of property from the Virginia Landmarks

Register.

The director or the board may initiate the process for removing property from the Virginia Landmarks Register upon concluding that one or more of the conditions set out in § 3.6 of this regulation have been met. Where the director or the board initiates the process, the director shall notify the property owner or owners and the chief elected local official and give them at least 30 days to comment prior to formal action by the board. In addition, any person or organization may petition in writing for removal of a property from the Virginia Landmarks Register by setting forth the reasons the property should be removed on the grounds established in § 3.6 of this regulation.

Upon receipt of a petition for removal of property from the Virginia Landmarks Register, the director shall notify the petitioner within 45 days as to whether the petition demonstrates that one or more of the conditions set out in § 3.6 have been met. Upon finding that one or more of those conditions have been met, the director shall notify the property owners and the chief elected local official and give them at least 30 days to comment prior to formal action by the board. Upon a finding by the director that none of those conditions have been met, the petitioner may appeal to the board as set out in § 6.1 of this regulation.

PART VI. APPEALS.

§ 6.1. Appeals.

Any person or local government may appeal to the board the failure or refusal of the director to present a property to the board, upon decision of the director not to present the property for any reason when a completed nomination form or a petition for removal of property from the Virginia Landmarks Register had been submitted to the director pursuant to § 5.1 or § 5.5 of this regulation. The failure of the director to respond to an applicant within the schedule set out in § 5.1 of this regulation for completed nominations or the schedule set out in § 5.5 for removal petitions may be deemed a failure or refusal to present the property to the board. Upon the request of the board, the director shall complete the applicable notification and hearing requirements of this regulation and shall present the nomination form or the petition for removal to the board for its consideration.

Subject to the provisions of the Code of Virginia and of this regulation, the board has all final decision-making authority for adding properties to the Virginia Landmarks Register, for revising previous designations, and for removing properties from the Virginia Landmarks Register.

VA.R. Doc. No. R94-363; Filed December 17, 1993, 3:14 p.m.

Final Regulations

NPS Form 10-900
(Oct. 1990)

OMB No. 10024-0018

REGISTRAR OF REGULATIONS
93 SEP 17 AM 11: 07

United States Department of the Interior
National Park Service

**National Register of Historic Places
Registration Form**

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in how to complete the National Register of Historic Places Registration Form (National Register Bulletin 16A). Complete each item by marking "X" in the appropriate box or by entering the information requested. If an item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, dates and narrative items on continuation sheets (NPS Form 10-900a), use a typewriter, word processor, or computer, to complete all items.

1. Name of Property
 historic name _____
 other names/site number _____

2. Location
 street & number _____ not for publication
 city or town _____ vicinity _____
 state _____ code _____ county _____ code _____ L.D. code _____

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended, I hereby certify that this _____ nomination
 request for determination of eligibility meets the documentation standards for registering properties in the National Register of
 Historic Places and meets the procedural requirements listed in 36 CFR Part 60. In my opinion, this property
 meets does not meet the National Register criteria. I recommend that the property be considered significant
 nationally statewide locally (). See continuation sheet for additional comments.)

Signature of certifying official/file _____ Date _____
 State of Federal agency and bureau _____

In my opinion, the property meets does not meet the National Register criteria. () See continuation sheet for additional
 comments.)

Signature of certifying official/file _____ Date _____
 State of Federal agency and bureau _____

4. National Park Service Certification

I hereby certify that the property is
 entered in the National Register
 determined eligible for the
 National Register
 determined not eligible for the
 National Register
 removed from the National
 Register
 other (explain) _____

Signature of the Keeper _____ Date of Action _____

Name of Property _____ County and State _____

5. Classification
 Ownership of Property (Check only one box)
 private
 public-local
 public-State
 public-Federal

Category of Property (Check only one box)
 buildings
 district
 site
 structure
 object

Number of Resources within Property (Do not include previously-listed resources in the count.)
 Contradicting _____ Noncontributing _____
 buildings _____ sites _____
 structures _____ objects _____
 Total _____

Name of related multiple property listing (Enter "N/A" if property is not part of a multiple property listing) _____

Number of contributing resources previously listed in the National Register _____

6. Function or Use
 Historic Functions (Enter categories from instructions) _____
 Current Functions (Enter categories from instructions) _____

7. Description
 Architectural Classification (Enter categories from instructions) _____
 Materials (Enter categories from instructions) _____
 foundation _____
 walls _____
 roof _____
 other _____

Narrative Description (Describe the historic and current condition of the property on one or more continuation sheets.)

Name of Property _____ County and State _____

10. Geographical Data

Acreage of Property _____

UTM References
(Place additional UTM references on a continuation sheet.)

1 Zone Existing _____ Northing _____

2 Zone Existing _____ Northing _____

3 Zone Existing _____ Northing _____

4 _____ See continuation sheet

Verbal Boundary Description
(Describe the boundaries of the property on a continuation sheet.)

Boundary Justification
(Explain why the boundaries were selected on a continuation sheet.)

11. Form Prepared By

name/title _____

organization _____ date _____

street & number _____ telephone _____

city or town _____ state _____ zip code _____

Additional Documentation
Submit the following items with the completed form:

Continuation Sheets

Maps

A USGS map (7.5 or 15 minute series) indicating the property's location.

A sketch map for historic districts and properties having large acreage or numerous resources.

Photographs

Representative black and white photographs of the property.

Additional Items
(Check with the SHPO or FPO for any additional items)

Property Owner
(Complete this item at the request of SHPO or FPO.)

name _____ telephone _____

street & number _____ state _____ zip code _____

city or town _____

Paperwork Reduction Act Statement: This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 et seq.).

Estimated Burden Statement: Public reporting burden for this form is estimated to average 18.1 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, P.O. Box 3713, Washington, D.C. 20513.

Name of Property _____ County and State _____

8. Statement of Significance

Applicable National Register Criteria
(Mark "x" in one or more boxes for the criteria justifying the property for National Register listing.)

A Property is associated with events that have made a significant contribution to the broad patterns of our history.

B Property is associated with the lives of persons significant in our past.

C Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.

D Property has yielded, or is likely to yield, information important in prehistory or history.

Criteria Considerations
(Mark "x" in all the boxes that apply.)

Property is:

A owned by a religious institution or used for religious purposes.

B removed from its original location.

C a birthplace or grave.

D a cemetery.

E a reconstructed building, object, or structure.

F a commemorative property.

G less than 50 years of age or achieved significance within the past 50 years.

9. Major Bibliographical References

Narrative Statement of Significance
(Explain the significance of the property on one or more continuation sheets.)

Bibliography
(Use the book, articles, and other sources used in preparing this form on one or more continuation sheets.)

Primary location of additional data:

State Historic Preservation Office

Other State agency

Federal agency

Local government

University

Other _____

Name of repository: _____

Previous documentation on file (NPS):

preliminary determination of individual listing (36 CFR 67) has been requested

previously listed in the National Register

previously determined eligible by the National Register

designated a National Historic Landmark

recorded by Historic American Buildings Survey

recorded by Historic American Engineering

Final Regulations

NPS Form 10-800a
(8-81)

OAS Approval No. 1054-018

United States Department of the Interior
National Park Service

REGISTRAR OF REGULATIONS

**National Register of Historic Places
Continuation Sheet**

93 SEP 17 AM 11: 07

Section number _____ Page _____

DEPARTMENT OF HISTORIC RESOURCES

Title of Regulation: VR 392-01-02. Evaluation Criteria and Procedures for Nominations of Property to the National Register or for Designation as a National Historic Landmark.

Statutory Authority: § 10.1-2202 of the Code of Virginia.

Effective Date: February 9, 1994.

Summary:

The 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 regulation sets out procedures for written notification to property owners and local governments, along with a requirement for public hearings in certain cases, prior to the nomination of property by the director to the National Park Service. Finally, the 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.

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 H. Bryan Mitchell, Department of Historic Resources, 221 Governor Street, Richmond, VA 23219, telephone (804) 786-3143. There may be a charge for copies.

VR 392-01-02. Evaluation Criteria and Procedures for Nomination of Property to the National Register or for Designation as a National Historic Landmark.

PART I. DEFINITIONS; APPLICABILITY.

§ 1.1. Definitions.

"Building" means a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. "Building" may also refer to a historically related complex such as a courthouse and jail

or a house and barn.

"Chief elected local official" means the mayor of the city or town or the chairman of the board of supervisors of the county in which the property is located.

"Department" means the Department of Historic Resources.

"Determination of eligibility" means a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed on the National Register.

"Director" means the Director of the Department of Historic Resources. The Director of the Department is the State Historic Preservation Officer (SHPO) for Virginia.

"District" means a geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history. A district includes local tax parcels that have separate owners. For purposes of this regulation, a historic district does not mean a locally established historic zoning district pursuant to § 15.1-503.2 of the Code of Virginia.

"Keeper of the National Register of Historic Places" or "keeper" means the individual who has been delegated the authority by the National Park Service to list properties and determine their eligibility for the National Register.

"National Register of Historic Places" or "National Register" means the list established by the National Historic Preservation Act of 1966 for the purpose of identifying properties of value for their significance in history, architecture, archaeology, engineering, or culture.

"National Historic Landmark" is a resource designated by the Secretary of the Interior as having national significance.

"Nominate" means to propose that a district, site, building, structure, or object be listed in or determined eligible for listing in the National Register of Historic Places by preparing and submitting to the keeper a nomination form, with accompanying maps and photographs which adequately document the property and are technically and professionally correct and sufficient. The nomination form shall be the National Register nomination form prescribed by the keeper.

"Object" means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment. Examples of objects include boats,

Final Regulations

monuments, and fixed pieces of sculpture.

"Owner" or "owners" means those individuals, partnerships, corporations or public agencies holding fee simple title to property. "Owner" or "owners" does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

"Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

"State Review Board" means that body, appointed by the State Historic Preservation Officer pursuant to the National Historic Preservation Act (P.L. 89-665), as amended, whose members represent the professional fields of American history, architectural history, historic architecture, prehistoric and historic archaeology, and other professional disciplines, and may include citizen members. The State Review Board reviews and approves National Register nominations concerning whether or not they meet the criteria for evaluation prior to their submittal to the National Park Service.

"Structure" means a man-made work composed of interdependent and interrelated parts in a definite pattern of organization. In addition to buildings, structures include bridges, dams, canals, docks, walls, and other engineering works.

§ 1.2. Applicability.

This regulation pertains specifically to the director's nomination of property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark. Parallel evaluation criteria and administrative procedures applicable to the designation of properties by the Virginia Board of Historic Resources are set out in a separate regulation.

PART II. GENERAL PROVISIONS.

§ 2.1. General provisions.

The director, as State Historic Preservation Officer, is responsible for identifying and nominating eligible properties to the National Register of Historic Places. The State Historic Preservation Officer supervises the preparation of nomination forms for submission to the National Park Service.

Any person or organization may submit a completed National Register nomination form to the director; any person or organization may also request the director's consideration of any previously prepared nomination form on record with the department.

In determining whether to nominate a property to the National Register, the director shall evaluate the property according to the National Park Service's National Register Criteria for Evaluation, as set out in Article 1 of Part III of this regulation. In determining whether to nominate a property for designation as a National Historic Landmark, the director shall evaluate the property according to the National Park Service's National Historic Landmark Criteria, as set out in Article 2 of Part III of this regulation.

Prior to submitting a nomination of property to the National Park Service, the director shall follow the procedures set out in § 4.1 of this regulation concerning notification to property owners and chief local elected officials. Prior to submitting a nomination for a historic district, the director shall also follow the procedures set out in § 4.2 of this regulation for conducting a public hearing.

The director shall also conduct the nomination process pursuant to all applicable federal regulations as set out in 36 Code of Federal Regulations, Part 60 and in accordance with additional guidance issued by the National Park Service. Where this regulation establishes a more rigorous standard for public notification than does the corresponding federal regulation, this regulation shall apply. However, pursuant to § 10.1-2202 of the Code of Virginia, no provision of this regulation shall be construed to require the director to conduct the National Register nomination process or the National Historic Landmark nomination process in a manner that is inconsistent with the requirements of federal law or regulation.

PART III. RESOURCE EVALUATION CRITERIA.

Article 1. National Register Criteria for Evaluation.

§ 3.1. Historic significance.

A. In determining whether to nominate a district, site, building, structure or object to the National Register, the director must determine whether the district, site, building, structure or object has historic significance. A resource shall be deemed to have historic significance if it meets one or more of the following four criteria:

1. The resource is associated with events that have made a significant contribution to the broad patterns of our history; or
2. The resource is associated with the lives of persons significant in our past; or
3. The resource embodies the distinctive characteristics of a type, period, design, or method of construction, or represents the work of a master (for example, an individual of generally recognized greatness in a field such as architecture, engineering,

art, or planning, or a craftsman whose work is distinctive in skill or style), or possesses high artistic values, or is a district that taken as a whole embodies one or more of the preceding characteristics, even though its components may lack individual distinction; or

4. The resource has yielded or is likely to yield, normally through archaeological investigation, information important in understanding the broad patterns or major events of prehistory or history.

B. A National Register resource can be of national historic significance, of statewide historic significance, or of local historic significance. The director shall use the following criteria in determining the level of significance appropriate to the resource:

1. A property of national significance offers an understanding of history of the nation by illustrating the nationwide impact of events or persons associated with the property, its architectural type or style, or information potential.

2. A property of statewide historic significance represents an aspect of the history of Virginia as a whole.

3. A property of local historic significance represents an important aspect of the history of a county, city, town, cultural area, or region or any portions thereof.

§ 3.2. Integrity.

In addition to determining a property's significance, the director shall also determine the property's integrity. A property has integrity if it retains the identity for which it is significant. In order to nominate a property to the National Register, the director must determine both that the property is significant and that it retains integrity. To determine whether a property retains integrity, the director shall consider the seven aspects set out here. Based on the reasons for a property's significance the director shall evaluate the property against those aspects that are the most critical measures of the property's integrity. The seven aspects are:

1. Location – the place where the historic property was constructed or the place where the historic event occurred. In cases such as sites of historic events, the location itself, complemented by the setting, is what people can use to visualize or recall the event.

2. Design – the combination of elements that create the form, plan, space, structure, and style of the property. Design results from the conscious decisions in the conception and planning of a property and may apply to areas as diverse as community planning, engineering, architecture, and landscape architecture. Principal aspects of design include organization of space, proportion, scale, technology,

and ornament.

3. Setting – the physical environment of the historic property, as distinct from the specific place where the property was built or the event occurred. The physical features that constitute setting may be natural or man-made, and may include topographic features, vegetation, simple man-made features such as paths or fences, and relationships of a building to other features or to open space.

4. Materials – the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property. The integrity of materials determines whether or not an authentic historic resource still exists.

5. Workmanship – the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. Workmanship may be expressed in vernacular methods of construction and plain finishes or in highly sophisticated configurations and ornamental detailing. It may be based on common traditions or innovative period techniques. Examples of workmanship include tooling, carving, painting, graining, turning, or joinery.

6. Feeling – the property's expression of the aesthetic or historic sense of a particular period of time. Although it is itself intangible, feeling depends upon the presence of physical characteristics to convey the historic qualities that evoke feeling. Because it is dependent upon the perception of each individual, integrity of feeling alone will never be sufficient to support nomination to the National Register.

7. Association – the direct link between an important historic event or person and a historic property. If a property has integrity of association, then the property is the place where the event or activity occurred and is sufficiently intact that it can convey that relationship.

§ 3.3. Boundaries for historic properties.

Boundaries for a historic district, property, building, structure, object or site are selected to encompass, but not to exceed, the full extent of the significant resources or land area making up the resource. The area should be large enough to include all historic features of the property, but should not include "buffer zones" or acreage not directly contributing to the significance of the property. The following features are to be used to mark the boundaries, as they reflect the resources: (i) legally recorded boundary lines; or (ii) natural topographic features such as ridges, valleys, rivers, and forests; or (iii) man-made features such as stone walls, hedgerows, the curblines of highways, streets, and roads; or (iv) areas of new construction.

Final Regulations

§ 3.4. Additional criteria considerations.

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that are less than 50 years old shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within one or more of the following categories:

1. A religious property deriving primary significance from architectural or artistic distinction or historical importance: a religious property shall be judged solely on these secular terms to avoid any appearance of judgment by government about the merit of any religion or belief; or
2. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
3. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life; or
4. A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
5. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
6. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
7. A property less than 50 years old if it is of exceptional importance.

§ 3.5. Revisions to properties listed in the National Register.

Four justifications exist for altering a boundary of a property previously listed in the National Register:

1. Professional error in the initial nomination;
2. Loss of historic integrity;
3. Recognition of additional significance;

4. Additional research documenting that a larger or smaller area should be listed.

The director shall recommend no enlargement of a boundary unless the additional area possesses previously unrecognized significance in American history, architecture, archeology, engineering or culture. The director shall recommend no diminution of a boundary unless the properties recommended for removal do not meet the National Register criteria for evaluation.

§ 3.6. Removing properties from the National Register.

Grounds for removing properties from the National Register are as follows:

1. The property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing;
2. Additional information shows that the property does not meet the National Register criteria for evaluation;
3. Error in professional judgment as to whether the property meets the criteria for evaluation; or
4. Prejudicial procedural error in the nomination or listing process.

Article 2.

National Historic Landmark Criteria for Evaluation.

§ 3.7. Historic significance.

In determining whether to nominate a resource for designation as a National Historic Landmark, the director must determine whether the resource has national significance. The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering and culture. A resource shall be deemed to have national significance for the purpose of this section if it meets one or more of the following six criteria:

1. The resource is associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or
2. The resource is associated importantly with the lives of persons nationally significant in the history of the United States; or
3. The resource represents some great idea or ideal of

the American people; or

4. The resource embodies the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

5. The resource is composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

6. The resource has yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

§ 3.8. Integrity.

In addition to determining the property's significance, the director shall determine its integrity. As set out in § 3.2 of this regulation, a property's integrity is assessed by examining its location, design, setting, materials, workmanship, feeling, and association. A property nominated for designation as a National Historic Landmark must retain a high degree of integrity.

§ 3.9. Additional National Historic Landmark criteria considerations.

Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties less than 50 years old are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

1. A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or

2. A building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the nation's history and the association consequential; or

3. A site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or

4. A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or

5. A cemetery that derives its primary national significance from graves of persons of transcendent importance, or from an exceptionally distinctive design or from an exceptionally significant event; or

6. A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or

7. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or

8. A property less than 50 years old, if it is of extraordinary national importance.

PART IV. PUBLIC NOTICE AND PUBLIC HEARINGS.

§ 4.1. Written notice of proposed nominations.

In any county, city, or town where the director proposes to nominate property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark, the department shall give written notice of the proposal to the governing body and to the owner, owners, or the owner's agent of property proposed to be nominated as a historic landmark building, structure, object, or site, or to be included in a historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide. The department shall send this written notice at least 30 but not more than 75 days before the State Review Board meeting at which the nomination will be considered.

§ 4.2. Public hearing for historic district; notice of hearing.

Prior to the nomination of a historic district, the department shall hold a public hearing at the seat of government of the county, city, or town in which the proposed historic district is located or within the proposed historic district. The public hearing shall be for the purpose of supplying additional information to the director. The time and place of such hearing shall be determined in consultation with a duly authorized representative of the local governing body, and shall be scheduled at a time and place that will reasonably allow for the attendance of the affected property owners. The department shall publish notice of the public hearing once

Final Regulations

a week for two successive weeks in a newspaper published or having general circulation in the county, city, or town. Such notice shall specify the time and place of the public hearing at which persons affected may appear and present their views, not less than six days or more than 21 days after the second publication of the notice in such newspaper. In addition to publishing the notice, the department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent of each parcel of real property to be included in the proposed historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide. Notice required to be given to owners by this section may be given concurrently with the notice required to be given to the owners by § 4.1 of this regulation. A complete copy of the nomination report and a map of the historic district showing the boundaries shall be sent to the local jurisdiction for public inspection at the time of notice. The notice shall include a synopsis of why the district is significant. The department shall make and maintain an appropriate record of all public hearings held pursuant to this section.

§ 4.3. Mailings and affidavits; concurrent state and federal notice.

The department shall send the required notices by first class mail to the last known address of each person entitled to notice, as shown on the current real estate tax assessment books. A representative of the department shall make an affidavit that the required mailings have been made. In the case where property is also proposed for inclusion in the Virginia Landmarks Register pursuant to designation by the Virginia Board of Historic Resources, the department may provide concurrent notice of the proposed state designation and the proposed nomination to the National Register.

§ 4.4. Public comment period.

The local governing body and property owners shall have at least 30 days from the date of the notice required by § 4.1, or, in the case of a historic district, 30 days from the date of the public hearing required by § 4.2 to provide comments and recommendations, if any, to the director.

PART V. REVIEW AND SUBMISSION OF NOMINATIONS TO THE NATIONAL REGISTER.

§ 5.1. Requests for nominations.

In addition to directing the preparation of National Register nominations by the department, the director shall act according to this section to ensure that, in accordance with federal regulations, the National Register nomination process is open to any person or organization.

The director shall respond in writing within 60 days to any person or organization submitting a completed National Register nomination form or requesting consideration of any previously prepared nomination form on record with the department. The response shall indicate whether or not the information on the nomination form is complete, whether or not the nomination form adequately evaluates the property according to the criteria set out in Part III of this regulation, and whether or not the property appears to meet the National Register criteria for evaluation set out in Part III. If the director determines that the nomination form is deficient or incomplete, the director shall provide the applicant with an explanation of the reasons for that determination, so that the applicant may provide the necessary additional documentation.

If the nomination form appears to be sufficient and complete, and if the property appears to meet the National Register criteria for evaluation, the director shall comply with the notification requirements in Part IV of this regulation and schedule the property for presentation to the State Review Board. The director may require the applicant to provide a complete, accurate, and up-to-date list and annotated tax parcel map indicating all property owners entitled to written notification pursuant to Part IV of this regulation. Within 60 days of receipt of a sufficient and complete nomination form and of all information necessary to comply with Part IV of this regulation, the director shall notify the applicant of the proposed schedule for consideration of the nomination form by the State Review Board.

If the director determines that the nomination form is sufficient and complete, but that the property does not appear to meet National Register criteria for evaluation, the director need not process the nomination, unless requested to do so by the Keeper of the National Register pursuant to the appeals process set out in § 6.1 of this regulation.

Upon action on a nomination by the State Review Board, the director shall, within 90 days, submit the nomination to the National Park Service, or, if the director does not consider the property eligible for the National Register, so advise the applicant within 45 days.

§ 5.2. Consideration by the State Review Board.

The director shall submit completed nomination forms or the documentation proposed for submission on the nomination forms and comments concerning the significance of a property and its eligibility for the National Register to the State Review Board. The State Review Board shall review the nomination forms or documentation proposed for submission on the nomination forms and any comments received concerning the property's significance and eligibility for the National Register. The State Review Board shall determine whether or not the property meets the National Register criteria for evaluation and make a recommendation to the

director to approve or disapprove the nomination.

§ 5.3. Submission of nominations to the National Park Service.

The director shall review nominations approved by the State Review Board, along with all comments received. If the director finds the nominations to be adequately documented and technically, professionally, and procedurally correct and sufficient and in conformance with National Register criteria for evaluation, the director may submit them to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. The director shall include all written comments received and all notarized statements of objection with the nomination when it is submitted to the keeper.

If the director and the State Review Board disagree on whether a property meets the National Register criteria for evaluation, the director may submit the nomination with his opinion concerning whether or not the property meets the criteria for evaluation and the opinion of the State Review Board to the Keeper of the National Register for a final decision on the listing of the property. The director shall submit such disputed nominations if so requested within 45 days of the State Review Board meeting by the State Review Board or the chief elected local official of the county, city, or town in which the property is located but need not otherwise do so.

Any person or organization which supports or opposes the nomination of a property by a State Historic Preservation Officer may petition the keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the keeper substantively review the nomination.

§ 5.4. Owner Objections.

Upon receiving the notification required by § 4.1 of this regulation, the owners of property proposed for nomination shall have the opportunity to concur in or object to the nomination. Any owner or owners of a private property who wish to object shall submit to the director a notarized statement certifying that the party is the sole or partial owner of the private property, as appropriate, and objects to the listing. If an owner whose name did not appear on the current real estate tax assessment list used by the director pursuant to § 4.3 certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property, such owner shall be counted by the director in determining whether a majority of owners has objected. If the owner of a private property, or the majority of the owners of a single private property with multiple owners, or the majority of the owners in a district, have objected to the nomination prior to the submittal of a nomination, the director shall submit the nomination to the keeper only for a determination of eligibility for the National

Register. In accordance with the National Historic Preservation Act, the keeper shall determine whether the property meets the National Register criteria for evaluation, but shall not add the property to the National Register.

Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

§ 5.5. Boundary changes.

The director may initiate the process for changing the boundaries of a previously listed National Register property upon concluding that one or more of the conditions set out in § 3.4 of this regulation has been met. In addition, any person or organization may petition in writing to have a boundary changed.

A boundary alteration shall be considered as a new property nomination. In the case of boundary enlargements the notification procedures set out in Part IV of this regulation shall apply. However, only the additional area proposed for nomination to the National Register shall be used to determine the property owners and the adjacent property owners to receive notification pursuant to §§ 4.1 and 4.2 of this regulation. Only the owners of the property in the additional area shall be counted in determining whether a majority of private owners object to listing in the National Register. In the case of a proposed diminution of a boundary, the director shall notify the property owners and the chief elected local official and give them an opportunity to comment prior to submitting any proposal to the Keeper of the National Register.

§ 5.6. Removal of property from the National Register.

The director may initiate the process for removing property from the National Register upon concluding that one or more of the conditions set out in § 3.6 of this regulation have been met. In addition, any person or organization may petition in writing for removal of a property from the National Register by setting forth the reasons the property should be removed on the grounds established in § 3.6 of this regulation. With respect to nominations determined eligible for the National Register because the owners of private property object to listing, anyone may petition for reconsideration of whether or not the property meets the criteria for evaluation using these procedures.

The director shall notify the affected owner or owners and chief elected local official and give them an opportunity to comment prior to submitting a petition for removal.

The director shall respond in writing within 45 days of receipt to petitions for removal of property from the National Register. The response shall advise the petitioner

Final Regulations

of the director's views on the petition. A petitioner desiring to pursue his removal request must notify the director in writing within 45 days of receipt of the written views on the petition.

Within 15 days after receipt of the petitioner's notification of intent to pursue his removal request, the director shall notify the petitioner in writing either that the State Review Board will consider the petition on a specified date or that the petition will be forwarded to the keeper after notification requirements have been completed. The director shall forward the petitions to the keeper for review within 15 days after notification requirements or State Review Board consideration, if applicable, have been completed. The director shall also forward all comments received.

PART VI. NOMINATION APPEALS.

§ 6.1. Appeals.

Any person or local government may appeal to the keeper the failure or refusal of the director to nominate a property, upon decision of the director not to nominate a property for any reason when a National Register nomination form had been submitted to the director pursuant to § 5.1 of this regulation, or upon failure of the director to submit a nomination recommended by the State Review Board.

VA.R. Doc. No. R94-362; Filed December 17, 1993, 3:15 p.m.

OWB No. 10024-0018

NPS Form 10-900
(Oct. 1990)

REGISTRAR OF REGULATIONS

93 SEP 17 AM 11:07

United States Department of the Interior
National Park Service

National Register of Historic Places Registration Form

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in *How to Complete the National Register of Historic Places Registration Form*. If an item does not apply to the property being documented, enter "N/A." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of Property
 Historic name _____
 other names/sic number _____

2. Location
 street & number _____ not for publication
 city or town _____ vicinity
 state _____ code _____ county _____ ZIP code _____

3. State/Federal Agency Certification
 As the designated authority under the National Historic Preservation Act, as amended, I hereby certify that this _____ nomination
 request for determination of eligibility meets the documentation standards for registering properties in the National Register of
 Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property
 meets does not meet the National Register criteria. I recommend that this property be considered significant
 nationally statewide locally. (See continuation sheet for additional comments.)

Signature of certifying official Title _____ Date _____
 State of Federal agency and bureau _____

In my opinion, the property meets does not meet the National Register criteria. (See continuation sheet for additional comments.)

Signature of certifying official Title _____ Date _____
 State or Federal agency and bureau _____

4. National Park Service Certification
 I hereby certify that the property is
 entered in the National Register
 determined eligible for the
 National Register
 determined not eligible for the
 National Register
 removed from the National
 Register
 other, (explain) _____

Signature of the Registrar _____
 Date of Action _____

Name of Property _____
 County and State _____

5. Classification
 Ownership of Property (Check as many boxes as apply)
 private
 public-local
 public-State
 public-Federal

Category of Property (Check only one box)
 buildings
 district
 site
 structure
 object

Number of Resources within Property (Do not include previously listed resources in the count)
 Contributing _____ Noncontributing _____
 buildings _____ sites _____
 structures _____ objects _____
 Total _____

Name of related multiple property listing (Enter "N/A." if property is not part of a multiple property listing)

Number of contributing resources previously listed in the National Register

6. Function or Use
 Historic Functions (Enter categories from instructions)

 Current Functions (Enter categories from instructions)

7. Description
 Architectural Classification (Enter categories from instructions)

 Materials (Enter categories from instructions)
 foundation _____
 walls _____
 roof _____
 other _____

Narrative Description (Describe the historic and current condition of the property on one or more continuation sheets.)

Name of Property _____ County and State _____

8. Statement of Significance

Applicable National Register Criteria

(Mark in one or more boxes for the criteria qualifying the property for National Register listing.)

- A** Property is associated with events that have made a significant contribution to the broad patterns of our history.
- B** Property is associated with the lives of persons significant in our past.
- C** Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
- D** Property has yielded, or is likely to yield, information important in prehistory or history.

Areas of Significance

(Enter categories from instructions)

Period of Significance

Criteria Considerations

(Mark in all the boxes that apply.)

Property is:

- A** owned by a religious institution or used for religious purposes.
- B** removed from its original location.
- C** a birthplace or grave.
- D** a cemetery.
- E** a reconstructed building, object, or structure.
- F** a commemorative property.
- G** less than 50 years of age or achieved significance within the past 50 years.

Significant Dates

Significant Person

(Complete if Criterion B is marked above.)

Cultural Affiliation

Architect/Builder

Narrative Statement of Significance

(Explain the significance of the property on one or more continuation sheets.)

9. Major Bibliographical References

Bibliography

(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS):

- preliminary determination of individual listing (36 CFR 67) has been requested
- previously listed in the National Register
- previously determined eligible by the National Register
- designated a National Historic Landmark
- recorded by Historic American Buildings Survey
- recorded by Historic American Engineering

Primary location of additional data:

- State Historic Preservation Office
- Other State agency
- Federal agency
- Local government
- University
- Other

Name of repository:

Name of Property _____ County and State _____

10. Geographical Data

Acreage of Property

UTM References

(Place additional UTM references on a continuation sheet.)

1 Zone Easting Northing
 2 _____

3 Zone Easting Northing
 4 _____

See continuation sheet

Verbal Boundary Description

(Describe the boundaries of the property on a continuation sheet.)

Boundary Justification

(Explain why the boundaries were selected on a continuation sheet.)

11. Form Prepared By

name/title _____
 organization _____ date _____
 street & number _____ telephone _____
 city or town _____ state _____ zip code _____

Additional Documentation

Submit the following items with the completed form:

Continuation Sheets

Maps

- A USGS map (7.5 or 15 minute series) indicating the property's location.
- A Sketch map for historic districts and properties having large acreage or numerous resources.

Photographs

Representative black and white photographs of the property.

Additional items

(Check with the SHPO or FPO for any additional items)

Property Owner

(Complete this item at the request of SHPO or FPO.)

name _____
 street & number _____ telephone _____
 city or town _____ state _____ zip code _____

Paperwork Reduction Act Statement: This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 et seq.).

Estimated Burden Statement: Public reporting burden for this form is estimated to average 18.1 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, P.O. Box 37170, Washington, DC 20517-0170.

NPS Form 10-9004
(2-83)

OMB Approval No. 1084-0118

United States Department of the Interior
National Park Service

REGISTRAR OF REGULATIONS

**National Register of Historic Places
Continuation Sheet**

93 SEP 17 AM 11: 07

Section number _____ Page _____

Final Regulations

DEPARTMENT OF STATE POLICE

Title of Regulation: VR 545-00-01. Public Participation Policy.

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

Effective Date: February 9, 1994.

Summary:

This agency's Public Participation Policy is amended to identify specific public participation procedures consistent with the recent revisions to the Administrative Process Act. The policy will now provide for use of ad hoc advisory groups, standing advisory committees or consultation with interested groups or individuals, under specific circumstances, to assist with drafting or formation of regulations.

Summary of Public Comment and Agency Response: No public comments was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Major Jerry S. Conner, Department of State Police, 7700 Midlothian Turnpike, Richmond, VA 23225, telephone (804) 674-2060. There may be a charge for copies.

VR 545-00-01. Public Participation Policy.

§ 1. Policy.

It is the policy of the Department of State Police to seek public participation when proposing regulation or substantial changes to present regulations.

§ 2. Definitions.

"Agency" means the Department of State Police.

"Superintendent" means the Superintendent of the Department of State Police.

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations.

B. 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 these guidelines.

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

1. Name of the 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 regulation;

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

7. Supporting documents, as appropriate.

D. The Superintendent shall form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups and individuals registering interest in working with the agency to assist in the drafting or formation of regulations when:

1. The Superintendent, in his sole discretion, determines to form an ad hoc advisory group, utilize a standing committee, or consult with groups or individuals; and

2. The agency receives written comments from at least 25 persons during the comment period of the notice of intended regulatory action requesting the Superintendent to form an ad hoc advisory group, utilize a standing committee, or consult with individuals or groups.

The decisions as to whether or not to use an ad hoc group, standing advisory committee, or consult with groups and individuals as well as the membership of such groups or committees shall rest with the Superintendent.

E. No public hearing shall be held in conjunction with these procedures unless directed by the Superintendent, or required pursuant to § 9-6.14:7.1 C of the Code of Virginia.

§ 2. Guidelines: § 4. General.

A. When the Department of State Police proposes regulations or substantial changes to present regulations, a notice of intent will be published in The Virginia Register. The notice will request input from interested parties and will contain information as outlined in the Virginia Register Form, Style and Procedure Manual.

B. The Department of State Police will mail a notice of proposed regulatory action to known interested parties and add to the mailing list as groups and individuals express an interest in the agency's regulatory activities.

The notice of proposed regulatory action shall include:

1. Subject of proposed regulation;
2. Purpose of proposed regulation;
3. Request for comments from interested parties;
4. Name, address, and telephone number of contact person; and
5. Date for submission of comments by interested parties.

C. The agency shall file a "Notice of Comment Period" and its proposed regulations with the Registrar of Regulations as required by § 9-6.14:7.1 of the Code of Virginia. Such notice shall establish the last date on which written comments will be accepted from interested parties.

D. Final regulations shall be published in The Virginia Register and shall become effective 30 days after publication.

V.A.R. Doc. No. R94-353; Filed December 10, 1993, 10:57 a.m.

* * * * *

REGISTRAR'S NOTICE: Due to its length, the final regulation filed by the Department of State Police is not being published; however, in accordance with § 9-6.14:22 of the Code of Virginia, a summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations, 910 Capitol Square, Room 262, Richmond, VA 23219 and at the Department of State Police, 7700 Midlothian Turnpike, Richmond, VA 23225.

Title of Regulation: VR 545-01-07. Motor Vehicle Safety Inspection Rules and Regulations.

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

Effective Date: February 9, 1994.

Summary:

The proposed amendments are explained below:

1. The table of contents is completely revised and reformatted.

2. Page 5 is identified by number. The mailing address and zip code for the Safety Division is corrected to reflect the change effective April 6, 1992. Two new telephone numbers for inspection supplies are included.

3. Page 7, the Guidelines for the Administration of Virginia's Annual Motor Vehicle Inspection Program requires correction of three nonsubstantive errors from previous printings. First, the language (except paragraph 36 and 45b) listed in the first column of Class I offenses should read (except paragraph 37 and 46b). Section 52 should be added to the list of section violations constituting Class I offenses. Section 51 should be deleted from the list of section violations constituting Class II offenses.

Page 8, the Guidelines for the Administration of Virginia's Annual Motor Vehicle Inspection Program requires correction of a nonsubstantive error from previous printings. The list of Class III offenses reference to § 16, paragraphs 36 and 45b, should be changed to § 16, paragraphs 37 and 46b.

Amend the Guidelines for the Administration of Virginia's Annual Motor Vehicle Inspection Program by defining the active life of Class IV offenses as 24 months from the date of the offense and identifying combination offenses, three Class I offenses, two Class II offenses or one Class III offense, during the active life of any Class IV offense as grounds for suspension of inspection privileges. All other classes of offense provide for enhanced corrective action for designated combinations of offenses within a 24-month period. To assure uniform applications of corrective actions enhanced action is necessary in these specific cases. The active life of 24 months for Class IV violation is commensurate with the active life of all other offenses. This period has traditionally been observed, but is not specifically defined.

4. Page numbers 2, 3, and 4 are properly assigned the Governor's Proclamation.

5. Page 1, Foreword, spelling error corrected in title. The page number is properly assigned.

6. Section 1, paragraph 9 is amended to require posting of the safety inspector's license expiration date with the previously required listing of all employees licensed to perform inspections. This rule is established in an effort to reduce the occurrence of expired safety inspector's licenses. By posting the license expiration dates prominently in the inspection lane there will be a constant reminder to inspectors of the need for license renewal.

7. Section 5, paragraph 12 is amended to require submission of inspection sticker receipts in numerical order. Section 5, paragraph 14 is amended to require approval sticker receipts to be filed in numerical order at the inspection station. These administrative rules will greatly improve the efficiency at the Safety Division headquarters by reducing the time and effort expended during complaint investigations. Inspection station management has been encouraged to submit and maintain receipts numerically for many years.

Final Regulations

This policy will give greater substance to this advice.

Section 5 is amended by adding paragraph 15. This amendment provides for replacement of lost or damaged inspection stickers by Safety Division troopers. Section 46.2-1164 of the Code of Virginia is added to the Reference Section at the beginning of § 5.

8. Section 6, paragraph 7 is amended to require the duplicate copies of rejection stickers to be forwarded to the Safety Division in numerical order. The copies must be filed in numerical order at the inspection station. This rule will allow for ready location of receipts on file at inspection stations and reduce the effort required by filing clerks at Safety Division headquarters processing these inspection records.

9. Amend Section 8, by adding paragraph 31 a. This revision requires rejection of any vehicle if the brake hoses or lines are stretched or extended so as not to allow suspension movement. This revision is consistent with Federal Motor Carrier Safety Regulation 393.45 and Society of Automotive Engineers Standard J1406. Both recommend attachment of brake hoses so as to minimize tension and provide for balance jounce (wheel upward limit) and rebound (wheel downward limit).

10. Section 11, paragraph 1 a is amended to identify the fully compressed position as a condition under which shock absorbers do not function properly. The purpose of automotive shock absorbers is to obtain damping of suspension systems. Systems are damped when energy is dissipated by forces opposing vibratory motion. The shock absorber must balance wheel jounce and rebound. The device is totally ineffective to accomplish this task when fixed in the fully extended or compressed position.

Amend Section 11, paragraph 4, by adding subparagraph 4 a to prohibit modifications to vehicles which raise the vehicle's body more than three inches above the manufacturer's attachment points or frame rail. The original manufacturer's spacers, washers or bushings are to be excluded from measurement of the modifications. This rule is established in accordance with the 1992 amendment to § 46.2-1063 of the Code of Virginia.

Amend Section 11, paragraph 23 c by adopting standards for steering lash/travel consistent with the Code of Federal Regulations.

Amend Section 11, paragraph 35 to include the Ball Joint Wear Tables.

Update and reorganize the Ball Joint Wear Tables by integrating the existing standards with the specifications for 1989 through 1992 model vehicles recognized by the Motor Vehicle Manufacturer's

Association of the United States, Inc. Reference will be made to the tables by title, rather than the page number the tables are assigned.

11. The amendment to § 12 defines a fifth wheel and upper coupler assembly, which interfaces with a fifth wheel to complete the connection. This distinguishes between fifth wheel type connectors and ball and socket or hitch and coupling connectors which are required to be equipped with emergency chains. These definitions are consistent with Federal Motor Carrier Regulations and Standards of the American Society of Automotive Engineers.

12. Section 14, paragraph 13 a is revised to correct an error from previous printing. The note following this paragraph referenced paragraphs 36 and 45 b of § 16. The reference paragraphs should be 37 and 46 b.

A revision is made to include new Type 1 and 2 headlamps in the location illustration of § 14, page 5. Specific installation locations are designated for 1G1, 2G1, 2H1, 9005 and 9006 replacement sealed beam and replacement bulb headlights.

13. Section 46.2-1090.1 of the Code of Virginia is added to the list of reference sections for § 16.

Section 16, paragraph 1 is revised to include seven general types of auxiliary lamps. Paragraph 1 a is revised to include Daytime Running Lamps (DRL's).

Section 16 is amended by adding subparagraphs 2 a and 2 b. Paragraph 2 a permits the use of roof-mounted flashing white or amber warning lamps of an approved type on school buses. Paragraph 2 b permits the use of octagonal stop signal arms which meet Federal Motor Vehicle Safety Standard specifications on school buses. Roof-mounted flashing lights were authorized by the 1992 Session of the General Assembly.

Section 16, paragraph 5 is revised by adding vehicles owned by the Department of Corrections to be equipped with blue or blue and red lights as designated by the Director of the Department of Corrections. The language "showing to the front" is struck from the paragraph. School buses should be omitted from paragraph 5, as lights for these type vehicles are covered in paragraph 2. The word "combination" is added to paragraph 5 to clarify that a combination of red and white lights is allowed. Vehicles of the Department of Emergency Services are permitted to be equipped with red or red and white warning lights. Vehicles owned by ambulance drivers employed by privately owned ambulance services are permitted to be equipped with two flashing or steady burning red or red and white lights.

Section 16, paragraph 8 is amended by revising

paragraph b and adding paragraph c. These changes provide for the use of amber flashing, blinking or alternating lights on vehicles used by law-enforcement personnel in the enforcement of laws governing motor vehicle parking, government owned law-enforcement vehicles provided the lights are used for giving directional warning and vehicles used to provide escort for funeral processions. An amber flashing, blinking or alternating light may be mounted on the rear of any vehicle used to transport petroleum products. These changes are made consistent with recent changes in the Code of Virginia.

Paragraphs 53 through 59 are added to define DRL's and inspection criteria. The federal Department of Transportation issued a final rule allowing daytime running lamps on all vehicles. This rule became effective February 10, 1993, and preempts state law. These changes in the inspection rules are consistent with the federal rule.

14. Section 18, paragraph 1 is revised to correct an error from a previous printing. The noted reference to § 53 is changed to § 55.

The diagram following § 18, paragraph 12 is corrected by adding an explanation for the use of 180° lights. This explanation was omitted from the July 1, 1991, printing of these regulations.

15. Section 19, paragraph 5 is amended to require a center high mount stop light on all multipurpose passenger vehicles manufactured for 1994 or subsequent model year. Multipurpose passenger vehicles with an overall width of 80 or more inches or a gross vehicle weight rating of 10,000 pounds or more are not required to be equipped with such light. This amendment to the regulations is consistent with Federal Motor Vehicle Safety Standards, final rule effective September 1, 1993.

16. Section 21 is revised to delete the requirement to inspect for and reject if sunshading material is not of a type approved for use by the Superintendent of State Police. The General Assembly amended the Code of Virginia to no longer require approval of this material by the Superintendent.

17. Section 29, paragraph 2 a is revised and paragraph 2 b is added adopting the standards and specifications of the Society of Automotive Engineers, Inc., and Federal Motor Vehicle Safety Standard Number 209 for seat belt anchorage and attachment hardware. Inquiries are directed to the nearest Safety Division office.

18. Section 46.2-909 is added to the Code of Virginia references for § 35. The title of this section is revised to include seats. The section is amended by adding paragraphs 8 and 9. These paragraphs require seats, which are securely fastened, to accommodate

motorcycle operators or passengers. Motorcycles with a designated passenger position must be equipped with a foot rest for such passenger. These changes make inspection rules consistent with the Code of Virginia.

19. The proposed revisions to § 44 will delete that portion of the table setting forth minimum specifications for brake adjustment concerning air disc brake push rod limits. These standards were based on manufacturer's specifications which are no longer valid.

20. Section 47, paragraph 2 is amended to require rejection of vehicles over 10,000 pounds equipped with power steering if the power steering belt is missing.

Section 47, paragraph 4 c is amended by adopting standards for steering lash/travel consistent with the Code of Federal Regulations.

Section 47, paragraph 10 a 1 is amended by deleting any reference to vehicles with a gross vehicle weight rating of 10,000 or less.

Paragraph 10 a 2 is added to § 47 to require rejection of excessively worn and improperly adjusted wheel bearings. Any missing or inoperative wheel bearing locking device will also require rejection.

21. The amendment to § 49 defines a fifth wheel and upper coupler assembly, which interfaces with a fifth wheel to complete the connection. This distinguishes between fifth wheel type connectors and ball and socket or hitch and coupling connectors which are required to be equipped with emergency chains. These definitions are consistent with Federal Motor Carrier Regulations and Standards of the American Society of Automotive Engineers.

22. Section 51 is amended by adding an illustration to identify proper headlamp locations for specific headlamps used on vehicles with a gross vehicle weight rating in excess of 10,000 pounds.

23. Section 46.2-1090.1 of the Code of Virginia is added to the list of reference sections for § 53.

Section 53, paragraph 1 is revised to include seven general types of auxiliary lamps. Paragraph 1 a is revised to include daytime running lamps (DRL's.)

Section 53 is amended by adding subparagraphs 1 b (1) and 1 b (2). Paragraph 1 b (1) permits the use of roof-mounted flashing white or amber warning lamps of an approved type on school buses. Paragraph 1 b (2) permits the use of octagonal stop signal arms which meet Federal Motor Vehicle Safety Standard specifications on school buses. Roof-mounted flashing lights were authorized by the 1992 Session of the General Assembly.

Final Regulations

Paragraph 4 is amended by including Department of Corrections vehicles designated by the Director of the Department of Corrections to those vehicles permitted to be equipped with blue or blue and red lights. The language "showing to the front" is deleted in line 2. Vehicles of the Department of Emergency Services are permitted to be equipped with red or red and white warning lights. School buses should be omitted from paragraph 4 as lights on these vehicles are covered in paragraph 1 b (2). The word "combination" is added to paragraph 4 to clarify that a combination of red and white lights is allowed. Ambulance drivers employed by privately owned ambulance services may equip their vehicles with two flashing or steady burning red or red and white lights.

Subparagraph c is added to paragraph 7 to permit the use of an amber flashing, blinking or alternating light on the rear of any vehicle used to transport petroleum products.

Paragraphs 52 through 58 are added to define DRL's and inspection criteria. The federal Department of Transportation issued a final rule allowing daytime running lamps on all vehicles. This rule became effective February 10, 1993, and preempts state law. These changes in the inspection rules are consistent with the federal rule.

24. Section 46.2-1018 of the Code of Virginia is added to the reference section in § 55. Paragraph 10 is revised by substituting "35 ft." for "40 ft." for those vehicles required to be equipped with reflex reflectors in lieu of clearance lights consistent with the Code of Virginia.

25. Section 58 is revised to delete the requirement to inspect for and reject if sunshading material is not of a type approved for use by the Superintendent of State Police. The General Assembly amended the Code of Virginia to no longer require approval of this material by the Superintendent.

26. Section 66, paragraph 2 a is revised and paragraph 2 b is added adopting the standards and specifications of the Society of Automotive Engineers, Inc., and Federal Motor Vehicle Safety Standard Number 209 for seat belt anchorage and attachment hardware. Inquiries are directed to the nearest Safety Division office.

27. The revision to the Approved Equipment Section defines six additional types of safety glass or safety glazing material approved for use in vehicles. The specific uses and locations for installation are provided for the six additional materials and more closely defined for eight existing types of safety glass or safety glazing. These changes are consistent with the standards of the American National Standards Institute, Inc., and Federal Motor Vehicle Safety Standard Number 205.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Major Jerry S. Conner, Department of State Police, 7700 Midlothian Turnpike, Richmond, VA 23225, telephone (804) 674-2060. There may be a charge for copies.

VA.R. Doc. No. R94-359; Filed December 10, 1993, 11:22 a.m.

* * * * *

Title of Regulation: VR 545-01-11. Regulations Governing Purchases of Handguns in Excess of One Within a 30-Day Period.

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

Effective Date: February 9, 1994.

Summary:

Chapter 486 of the 1993 Acts of Assembly (HB 1592) amended § 18.2-308.2:2 of the Code of Virginia by adding a subsection N, making it unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day period. Purchases in excess of the limit may be made upon completion of an enhanced background check by special application to the Department of State Police. The Superintendent of State Police is required to promulgate regulations for the implementation of the application process. The regulations establish the requirements and procedures for obtaining a certificate authorizing the purchase of more than one handgun within a 30-day period, including a dealer transaction reporting requirement, an appeal process and a procedure for training and authorizing local law-enforcement agencies to issue the certificate.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Major Jerry S. Conner, Department of State Police, 7700 Midlothian Turnpike, Richmond, VA 23225, telephone (804) 674-2060. There may be a charge for copies.

VR 545-01-11. Regulations Governing Purchases of Handguns in Excess of One Within a 30-Day Period.

PART I. REPORTS BY DEALERS.

§ 1.1. Notification of sale or transfer.

A. Any dealer in firearms who completes a sale or transfer of a handgun without having been advised by the Department of State Police if its records indicate the buyer or transferee is prohibited from possessing or

transporting a firearm by state or federal law, because the dealer was not so advised by the end of the dealer's next business day, or was told by the State Police that a response would not be available by the end of the dealer's next business day, shall notify the Department of State Police of the sale or transfer by telephone as soon as possible, but in no event later than the end of the dealer's next business day.

B. Any dealer in firearms who requests and receives criminal history record information in connection with an intended sale or transfer of a handgun which indicates the prospective purchaser or transferee is not prohibited from possessing or transporting a firearm by state or federal law shall notify the Department of State Police by telephone as soon as possible, but in no event later than the end of the dealer's next business day, whenever the dealer determines that the sale or transfer will not be completed.

PART II. APPLICATIONS.

§ 2.1. Application for multiple handgun purchase.

Any person desiring to purchase in excess of one handgun within any 30-day period shall make application under oath, on Form SP-207, Multiple Handgun Purchase Application. The applicant shall deliver such application in person to State Police Administrative Headquarters, 7700 Midlothian Turnpike, Richmond, Virginia, a division headquarters or area office of the Department of State Police, or to any local law-enforcement agency certified by the Department of State Police as its agent to receive such applications.

§ 2.2. Identification requirements.

At the time of delivery of the application form required by § 2.1 of these regulations, the applicant shall present two forms of identification, at least one of which is a photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense, which was issued at least 60 days prior to presentation. In addition, the applicant shall produce documentation of residence, which must show an address identical to that shown on the photo-identification form. Documentation of residence may be in any of the forms allowed under subsection B of § 18.2-308.2:2 of the Code of Virginia.

§ 2.3. Transfer to someone other than applicant.

If the application indicates that the purchase is for the purpose of further transfer of a handgun or handguns to someone other than the applicant, the applicant shall also provide the name, social security number, sex, height, weight, race, all residence addresses within the past five years, date of birth, place of birth, and citizenship of the person or persons to whom the further transfer is to be made.

§ 2.4. Evaluation of application.

The application must demonstrate to the satisfaction of the Department of State Police that the purpose of the purchase of more than one handgun within any 30-day period is bona fide and lawful, and is not prohibited or illegal under any federal, state or local law. In evaluating such application, the Department of State Police may consider the number, type and model of handguns to be purchased pursuant to this application or any other application made by the applicant within the past 12 months, the type and model of handgun purchased during the same month under the provisions of § 18.2-308.2:2 of the Code of Virginia, the intended use for such handguns applied to be purchased and the relationship between the intended use and the number and type of handguns applied for in this application and any other application made by the applicant within the past 12 months.

PART III. ENHANCED BACKGROUND CHECK.

§ 3.1. Enhanced background check.

A. Upon receipt of a completed application form, a division headquarters or area office of the Department of State Police or a local law-enforcement agency certified by the Department of State Police as its agent to receive such applications shall transmit the application, in accordance with policies and procedures prescribed by the Department of State Police, to State Police Administrative Headquarters. Upon receipt at Administrative Headquarters, the Department of State Police will conduct an enhanced background check of the applicant and any person to whom any handgun to be purchased is to be transferred. This check will include a search of all available criminal history record information, including national, state, and local indices. The Department of State Police will make inquiry of the local law-enforcement agency or agencies having jurisdiction in the applicant's and any transferees' place or places of residence within the past five years as to any factors which would make the proposed purchase illegal under federal, state, or local law prior to approval of any transaction.

B. The enhanced background check shall be conducted without delay, and shall be completed as soon as possible after receipt of the application at Administrative Headquarters. However, in case of electronic failure or other circumstances beyond the control of the State Police, the State Police shall complete the enhanced background check as soon as possible after the circumstances causing the delay have been corrected or overcome.

C. Before granting a multiple purchase certificate, the Department of State Police or its agents may make such inquiry of the applicant and others as the Department of State Police may deem necessary to determine that the application is bona fide and that the information contained in the application is true and accurate. The

Final Regulations

Department of State Police shall not issue a multiple purchase certificate until satisfied that the requirements of § 18.2-308.2:2 of the Code of Virginia and these regulations have been met.

PART IV. CERTIFICATE.

§ 4.1. Issuance of certificate.

Upon being satisfied that the proposed purchase meets the requirements of § 18.2-308.2:2 of the Code of Virginia and these regulations, the Department of State Police shall forthwith issue or authorize its agent to issue to the applicant a nontransferable certificate which shall be valid for seven days from the date of issue, authorizing the purchase of a specified number and type of handguns. The State Police or its agent shall make one attempt to contact the applicant to notify him of the issuance or denial of the certificate at a telephone number provided by the applicant at the time of delivery of the application.

§ 4.2. Retention of certificate.

Upon delivery of the certificate issued pursuant to § 4.1 of these regulations, a prospective transferor may proceed to transfer the number and type of handguns specified in the certificate provided the transferor has complied with the provisions of § 18.2-308.2:2 B of the Code of Virginia. If the transferor is a dealer in firearms as defined in § 54.1-4200 of the Code of Virginia, the certificate shall be surrendered to the transferor by the applicant prior to the consummation of such sale, and shall be kept on file at the transferor's place of business for a period of not less than two years. If the transferor is not a dealer in firearms, the transferor shall attest in writing on the reverse of the certificate, indicating the date the transfer was completed, and the transferee shall return the certificate to the office which issued the certificate. The returned certificate shall then be forwarded to State Police Administrative Headquarters.

PART V. APPEALS.

§ 5.1. Appealing the denial of a certificate.

Any person denied a certificate for the purchase of more than one handgun within any 30-day period may appeal such denial to the Superintendent of State Police. Such appeal shall be in writing, setting forth any grounds which the applicant wishes to be considered. The Superintendent of State Police shall consider each such appeal, and notify the applicant in writing of his decision within five business days after the day on which the appeal is received.

PART VI. AGENTS.

§ 6.1. Agents certified to receive applications and issue certificates.

A. Any local law-enforcement agency may request that it be certified as an agent for the Department of State Police to receive applications and issue certificates pursuant to these regulations. Any such request shall be in writing, directed to the Superintendent of State Police, and shall designate a particular individual or individuals within the local agency who will perform these duties. Only such designated individuals shall accept applications or issue certificates. Prior to certification of a local law-enforcement agency as an agent, each of its designated individuals must successfully complete a four-hour training course provided by the Department of State Police. Upon receipt of a request from a local law-enforcement agency and the successful completion of the prescribed training course by its designated individuals, the Superintendent of State Police shall certify such agency as an agent for the Department of State Police to receive applications and issue certificates pursuant to these regulations.

B. Any agent certified as provided in subsection A of this section shall have the authority to receive applications and issue certificates pursuant to these regulations in accordance with policies and procedures prescribed by the Department of State Police.

PART VII. REPLACEMENT OF LOST OR STOLEN HANDGUN.

§ 7.1. Replacement of handgun.

A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately may purchase a single handgun without obtaining the certificate required by these regulations, even if the person has previously purchased a handgun within a 30-day period, provided the person provides the transferor with a summary of the official police report from the law-enforcement agency that took the report of the lost or stolen handgun on Form SP-194, Lost/Stolen Handgun Report. If the official police report from the law-enforcement agency that took the report of the lost or stolen handgun contains all the information required by Form SP-194, then the law-enforcement agency may attach a copy of the official police report to Form SP-194 in lieu of completing the summary on the form.

VA.R. Doc. No. R94-351; Filed December 13, 1993, 10:31 a.m.

SP-65 Rev. 7-1-93

DEPARTMENT OF STATE POLICE VIRGINIA FIREARMS TRANSACTION RECORD All entries on this form must be in ink.		Multiple Handgun Certificate No. Lost/Stolen Handgun Report No.	TRANSFEROR'S TRANSACTION Serial No. <u>LS 23116</u> <input type="checkbox"/> \$2.00 Phone Request <input type="checkbox"/> Fee Collected \$5.00 <input type="checkbox"/> Mail Request
--	--	--	---

SECTION A - MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Notices and Instructions on back)

1. Transferee's (Buyer's) Name (Last, First, Middle) _____

2. Social Security No. _____

3. Male Female

4. Height _____

5. Weight _____

6. Race _____

7. Residence Address (No., Street, City, County, State, Zip Code) _____

8. Date of Birth (Month, Day, Year) _____

9. Place of Birth (City and State or City, Foreign Country) _____

10. Are You a United States Citizen?
 Yes No
 If No, Enter Immigration Identification Number: _____

11. CERTIFICATION OF TRANSFEREE (Buyer) - An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question.

a. Have you purchased a handgun from any source within the last thirty (30) days?	d. Are you a fugitive from justice?
b. Are you under indictment for a felony in any court or for a crime punishable by imprisonment for a term exceeding one year?	e. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance.
c. Have you ever been convicted in any court of a felony or a crime punishable by imprisonment for a term exceeding one year? (NOTE: a "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored).	f. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?
	g. Have you been discharged from the Armed Forces under dishonorable discharge?
	h. Are you an alien illegally in the United States?
	i. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship?

I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal and State law. I also understand that the making of any false oral or written statement or the exhibiting of any false misrepresented identification with respect to this transaction is a crime punishable as a felony. I hereby consent to having the transferor (seller) obtain criminal history record information about me in connection with this transaction.

TRANSFEREE'S (Buyer's) SIGNATURE _____ DATE _____

SECTION B - TO BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and Instructions on back)

12. Type of identification and number (driver's license or other identification number which shows name, date of birth, place of residence, and signature).
 A. Driver's License Number (Date Issued: / /)
 DMV Identification Card Number _____
 B. Secondary identification (Specify Type) Number _____
 C. Type of Identification Provided to Establish Citizenship or Legal Alien Status _____

13. Name of issuing agency of the photo identification used to verify identity _____

On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm (s) described below to the person identified in Section A.

14. TYPE (Pistol, Revolver, Rifle, Shotgun)	15. MODEL (Name and Number)	16. CALIBER	17. SERIAL NO.	18. MANUFACTURER
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____

19. NO. OF FIREARMS BY CATEGORY
 Pistols _____ Rifles _____
 Revolvers _____ Shotguns _____

20. DEALER IDENTIFICATION NUMBER
 DIN: _____

21. FEDERAL FIREARMS LICENSE NO. _____

22. JURISDICTION OF SALE (County, City) _____

THE PERSON MAKING THE ACTUAL FIREARMS SALE MUST COMPLETE ITEMS 23 THROUGH 26

23. HANDGUN SALE COMPLETED YES NO

24. TRANSFEROR'S (Seller's) SIGNATURE _____

25. TRANSFEROR'S TITLE _____

26. TRANSACTION DATE _____

DO NOT WRITE BELOW THIS LINE (To be completed by State Police)

APPROVED NOT APPROVED (Signature) _____ (Date) _____

(Superintendent or Designee)

NOTICE

The approval for the transfer of the listed firearm(s) indicates that a criminal history record information check has been conducted by the Virginia State Police pursuant to Section 18.2-308.2:2, Code of Virginia. Based on the results of that check there is no information that would prohibit the transferee from possessing or transporting a firearm by State or Federal law.

INSTRUCTIONS TO TRANSFEREE (BUYER)

The transferee (buyer) of a firearm will in every instance personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons excluding the transferor (seller). Two persons (other than the seller) will then sign as witnesses to the buyer's answers and signature.

The transferee (buyer) of a handgun will be eligible to purchase only one handgun within a 30-day period unless such transferee (buyer) is a licensed firearms dealer, is exempt pursuant to State Code 18.2-308.2:2 (N) 2, or has been approved and issued a Multiple Handgun Purchase Certificate by the Virginia State Police which is valid for 7 days from the date of issuance and bears a unique identification number.

The transferee (buyer) of an assault firearm will be required to provide citizenship status pursuant to State Code 18.2-308.2:2 (B).

TRANSFEREE (BUYER) RIGHTS

I understand that if I am denied the right to purchase a firearm on the basis of criminal history information, I may exercise my right of access to and review and correct that information under State Code 9-192, or may initiate civil action pursuant to State Code 9-194 within a 30-day period.

INSTRUCTION'S TO TRANSFEROR (SELLER)

Should the buyer's name be illegible, the transferor (seller) shall print the buyer's name above the name printed by the buyer.

The transferor (seller) of the firearm(s) will, in every instance, ensure that the form is completed in its entirety in accordance with procedures set forth by the Virginia State Police, including:

- 1. Verifying and documenting the name of the issuing agency of the photo-identification used to verify identity, document the name of the secondary form of identification used to verify residency and the name of the identification used to establish citizenship or legal alien status for assault firearms purchased.

93 DEC 21 AM 10:32

Ensure that a duplicate or new issued photo-identification issued by the Department of Motor Vehicles contains an issuance date of no later than 90 days prior to the date of sale.

Ensure that the number of firearms by category intended to be sold, mailed, transported, or otherwise disposed of is separately indicated on the form.

If a transaction approved by the State Police involves the registration of a handgun, and the transferor prints that the transaction was NOT COMPLETED, the transferor will be held liable for any and all consequences that may result from the sale of the handgun.

SP-207, 7-1-93

NO. MP- 001913

NOTICE

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE
MULTIPLE HANDGUN PURCHASE APPLICATION**

SECTION A. MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER). (See instructions on back).

1. Transferee's (Buyer's) Name (Last, First, Middle)	2. Driver's License No./ DMV I. D. Card No.	3. <input type="checkbox"/> Male <input type="checkbox"/> Female	4. Height	5. Weight	6. Race
7. Current Address (No., Street, City, State, Zip Code) Telephone No. () Previous Address (No., Street, City, State, Zip Code)	8. Date of Birth Month Day Year	9. Place of Birth (City, State or City, Foreign Country)		10. Are you a citizen of the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, enter Immigration No.	

11. Number and Type of Handgun(s) to be Purchased **THIS BLOCK TO BE COMPLETED BY ISSUING AGENCY ONLY**

Pistol(s) _____ Revolver(s) _____

Date Certificate Issued: _____
Date Certificate Expires: _____

CERTIFICATION OF TRANSFEREE (BUYER). AN UNTRUTHFUL ANSWER MAY SUBJECT YOU TO CRIMINAL PROSECUTION.

12. Provide Brief Statement of the Circumstances Requiring Additional Handgun (s) Purchase:

13. I hereby swear or affirm that the information above is true and correct. I understand that the making of a false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this application is a crime punishable as a felony.

TRANSFEREE'S (BUYER'S) SIGNATURE: _____ Date: _____

Sworn to and Subscribed before me this _____ day of _____, 19 _____

Signature of Official Administering Oath: _____

Title: _____ Commission Expiration Date: _____

SECTION B. MUST BE COMPLETED BY ISSUING AGENCY. (See instructions on back).

14. Additional Handgun Purchase Shall Be Used For: (Check Appropriate Box).

A. Lawful Business Use C. Collector Series, For Collectors
B. Lawful Personal Use D. Bulk Purchase From Estate Sales

15. Multiple Handgun Purchase Certificate
 Approved Approval No. _____ If Not Approved, Explain: _____
 Not Approved _____

Issuing Agency _____
and Address: _____

Signature of Issuing Official _____

Date: / /

The Multiple Handgun Purchase Application, Section A, shall be completed in full by the transferee (buyer) and approved by the issuing agency prior to the issuance of a Multiple Handgun Certificate pursuant to 18.2-308.2:2 (N) 1, Code of Virginia.

INSTRUCTIONS TO TRANSFEREE (BUYER)

NOTICE - SEPARATE EACH COPY PRIOR TO COMPLETING REVERSE SIDE

The transferee (buyer) applying to purchase multiple handguns will in every instance personally complete Section A of this form. However, if the buyer is unable to read and/or write, the answers may be written by other persons excluding the transferor (seller). Two persons (other than the seller) will sign as witnesses to the buyer's answers and signature. The transferee (buyer) must certify under oath that the information provided on the form is true and correct.

If the handgun (s) being purchased is a gift, the name, race, sex, and date of birth of the recipient (s) shall be included in the statement on line 12 of the form.

Additional space provided for previous addresses (last five years)

Address: _____

Address: _____

Address: _____

Address: _____

Address: _____

INSTRUCTIONS TO ISSUING AGENCY

Upon receiving the application form, the issuing official will ensure that the transferee (buyer) applying for a Multiple Handgun Purchase Certificate provides appropriate identification as provided for in 18.2-308.2:2 (B) 1.

SP-208, 7-1-93

NO. MP- 001913

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE
MULTIPLE HANDGUN PURCHASE CERTIFICATE

Transferee's (Buyer's) Name (Last, First, Middle)	Driver's License No./ DMV I. D. Card No.	<input type="checkbox"/> Male <input type="checkbox"/> Female	Height	Weight	Race
Current Address (No., Street, City, State, Zip Code)	Date of Birth Month Day Year	Place of Birth (City, State or City, Foreign Country)	Are you a citizen of the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Telephone No. ()	Previous Address (No., Street, City, State, Zip Code)		If No, enter Immigration No.		
Number and Type of Handgun(s) to be Purchased Pistol(s) _____ Revolver(s) _____		Date Certificate Issued: _____ Date Certificate Expires: _____			

Certificate Valid for Seven Days
from Date of Issuance

Approval Signature _____

INSTRUCTIONS TO TRANSFEROR (SELLER)

The Multiple Handgun Purchase Certificate shall be surrendered by the transferee (buyer) prior to the consummation of such sale and shall be attached to the Virginia Firearms Transaction Form (SP-65), and shall be kept on file at the transferor's place of business for inspection as provided for in 54.1-4201 (c), Code of Virginia, for a period of not less than two years.

The Multiple Handgun Purchase Certificate shall be valid for seven days from date of issuance.

I hereby certify that the Firearm(s) approved for purchase was/were transferred on _____
(Date of Transfer)

Transferor's Signature: _____

Date: _____

SP-194, 7-1-93

TO BE COMPLETED BY AGENCY TAKING LOST/STOLEN REPORT

Department of State Police Lost/Stolen Handgun Report <small>All entries on this form must be in ink.</small>	No. LS - 009208
---	-----------------

1. Reporting Agency:	2. Reported By:	3. Date: / /
----------------------	-----------------	--------------

4. Name of Handgun Owner: Last First Middle

5. Address: Number Street City State Zip Code

6. Date Handgun Acquired by Owner:	7. Handgun Reported <input type="checkbox"/> Lost <input type="checkbox"/> Stolen
------------------------------------	---

8. Handgun Description <input type="checkbox"/> Pistol <input type="checkbox"/> Revolver	Model (Name and Number)	Caliber	Serial No.	Manufacturer
--	----------------------------	---------	------------	--------------

9. Location of Loss or Theft: (County, City, State)	10. Type Location <input type="checkbox"/> House/Residence <input type="checkbox"/> Street/Highway <input type="checkbox"/> Auto/Vehicle <input type="checkbox"/> Other/Unknown If other, explain _____
--	--

11. Date Loss or Theft of Handgun Reported to Law Enforcement Agency / /	12. Date Loss or Theft of Handgun Reflected on Official Police Report / /
---	--

13. Case Number: _____

Signature of Official Completing Form: _____
Rank/Title

Date: / /

93 DEC 13 AM 10:32
 DEPARTMENT OF POLICE

NOTICE

The Lost/Stolen Handgun Report shall be issued only as a verification of a lost or stolen handgun, and report must adhere to the provisions of 18.2-308.2:2(N) 2.F., Code of Virginia.

INSTRUCTIONS TO REPORTING OFFICIAL

1. Law enforcement agency taking report.
2. Law enforcement official taking report.
3. Date of Lost/Stolen Handgun Report.
4. Name of handgun owner reporting loss or theft.
5. Address of handgun owner reporting loss or theft.
6. Date handgun came into possession of owner (if known).
7. Self-explanatory.
8. Self-explanatory.
9. Self-explanatory.
10. Type of location from which handgun was reported lost or stolen. If other, explain.
11. Self-explanatory.
12. Self-explanatory.
13. Investigative Case Number.

Title of Regulation: VR 545-01-12. Regulations Governing the Creation of a Criminal Firearms Clearinghouse.

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

Effective Date: February 9, 1994.

Summary:

Chapter 834 of the 1993 Acts of Assembly (HB 1885) enacted § 52-25.1 of the Code of Virginia by adding a section concerning the reporting of seized, forfeited, found, or confiscated firearms. The Superintendent of State Police is to establish and maintain 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 possession of any state or local law-enforcement agency which are believed to have been used in the commission of a crime. The Superintendent is to adopt and promulgate regulations prescribing the form for reporting this information and the time and manner of the submission of this information. The regulations establish the requirements and procedures for reporting this information.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Major Jerry S. Conner, Department of State Police, 7700 Midlothian Turnpike, Richmond, VA 23225, telephone (804) 674-2060. There may be a charge for copies.

VR 545-01-12. Regulations Governing the Creation of a Criminal Firearms Clearinghouse.

**PART I.
DEFINITIONS.**

§ 1.1. Definitions.

The following terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

“VCIN” means Virginia Criminal Information Network.

“Virginia Firearms Clearinghouse” means the central repository for information gathered pursuant to § 52-25.1 of the Code of Virginia.

**PART II.
VIRGINIA FIREARMS CLEARINGHOUSE.**

§ 2.1. Creation of clearinghouse.

The Department of State Police will create a

clearinghouse as a central repository for information of any firearm that is seized, forfeited, found, or otherwise coming into the possession of any state or local law-enforcement agency which is believed to have been used in the commission of a crime.

§ 2.2. Reference to clearinghouse.

The clearinghouse will be known as the “Virginia Firearms Clearinghouse” and shall be referred to as such.

**PART III.
METHOD OF REPORTING.**

§ 3.1. Reporting form.

A state or local law-enforcement agency that has seized, forfeited, found, or otherwise recovers a firearm in accordance with § 52-25.1 of the Code of Virginia shall notify the Department of State Police by a form provided by the State Police (SP-187). The form will contain the following information: (i) serial number or other identifying information on the firearm, (ii) a brief description of the circumstances under which the firearm came into the possession of the law-enforcement agency, including the crime which was or may have been committed with the firearm, (iii) the name or other identifying information on the person from whom the firearm was taken, (iv) the original place of sale and the chain of possession of the firearm, (v) the disposition of the firearm and any other information the Superintendent may require.

§ 3.2. Submission of form.

A. The information required on the form should be submitted to the clearinghouse via VCIN (if available), as soon as possible after coming into the possession of the agency, and should include all available information at the time of submission.

B. A completed form (SP-187) will be sent to the Department of State Police within seven business days once all of the requested information has been obtained. For the purposes of this regulation, the State Police address will be: Department of State Police, Virginia Firearms Clearinghouse, P.O. Box 85141, Richmond, Virginia 23285-5141.

§ 3.3. Forms accepted.

The form provided by the State Police will be the only form accepted by the State Police. Locally produced forms will be unacceptable.

§ 3.4. Copies of forms.

The State Police will provide copies of the Virginia Firearms Clearinghouse form (SP-187) to all state and local law-enforcement agencies by July 1, 1993.

V.A.R. Doc. No. R94-352; Filed December 13, 1993, 10:32 a.m.

SP-187 7-1-93

**VIRGINIA DEPARTMENT OF STATE POLICE
CRIMINAL FIREARMS CLEARINGHOUSE**

(All entries on this form must be typewritten or in ink)

GENERAL INFORMATION			
1. Date of Report	2. Date Administrative Message Sent	3. Administrative Message Number	
4. Agency Reporting	5. ORI Number	6. Case Number	
7. Investigating Officer Last Name	8. First Name	9. MI	
DESCRIPTION OF FIREARM			
10. Manufacturer	11. Type	12. Model	
13. Caliber or Gauge	14. Magazine or Cylinder Capacity	15. Barrel Length	
16. Finish	17. Serial Number	18. Country of Origin	
19. Other Identifying Marks			
LAW ENFORCEMENT POSSESSION INFORMATION			
20. L/E Possession Date		21. Disposition of Firearm	
<input type="checkbox"/> Seized <input type="checkbox"/> Forfeited <input type="checkbox"/> Found <input type="checkbox"/> Other (Explain)			
22. Crime Committed with the Firearm		23. Brief Description Under which the firearm came into possession of the law enforcement agency	
PERSON FROM WHOM FIREARM WAS TAKEN			
24. Last Name	25. First Name	26. MI	
27. Address	28. City	29. State	30. Zip Code
31. Date of Birth	32. <input type="checkbox"/> Adult <input type="checkbox"/> Juvenile	33. Social Security Number	34. Race
		35. Sex	
ORIGINAL FIREARM PURCHASE INFORMATION			
36. Transaction Date	37. Dealer Name	38. FPL Number	
39. Address	40. City	41. State	42. Zip Code
43. Original Purchaser Last Name	44. First Name	45. MI	
46. Address	47. City	48. State	49. Zip Code
CHAIN OF POSSESSION OF FIREARM AFTER INITIAL PURCHASE (Most Recent First)			
50. Acquisition Date	51. Last Name	52. First Name	53. MI
54. Address	55. City	56. State	57. Zip Code
58. Acquisition Date	59. Last Name	60. First Name	61. MI
62. Address	63. City	64. State	65. Zip Code
66. Acquisition Date	67. Last Name	68. First Name	69. MI
70. Address	71. City	72. State	73. Zip Code
74. Signature (Agency Head or Designee)			

INSTRUCTIONS FOR COMPLETING CRIMINAL FIREARMS CLEARINGHOUSE FORM

GENERAL INFORMATION (1 through 9) - Self Explanatory

DESCRIPTION OF FIREARM (10 through 19)

- Manufacturer:** Enter the entire name shown on firearm.
- Type:** Enter the NCIC Weapon Type Code (Refer to NCIC Code Manual, Part 3, Section 3)
- Model:** The model designation can be a letter or numerical designation, brand name, or a combination thereof.
- Caliber or Gauge:** (Refer to NCIC Code Manual, Section 1, Part 3)
- Magazine or Cylinder Capacity:** For revolvers, show the number of cartridges which the cylinder will hold. For pistols, show the magazine capacity, if possible. For derringers, show the number of barrels.
- Barrel Length:** Always measure revolvers from the muzzle to the face of the cylinder; pistols from the muzzle to the face of the bolt with the slide in the forward position. Derringers are measured from the muzzle to the face of the bolt with the barrel components locked. Measure to the nearest one-half inch and record in decimal point format, i.e., 4.5 inches.
- Finish:** Enter the NCIC Weapon Color and Finish Code (Refer to NCIC Code Manual, Part 3, Section 4)
- Serial Number:** Include letter prefix, suffix, code numbers, or letters over or under the serial number.
- Country of Origin:** Enter the NCIC Country Code (Refer to NCIC Code Manual, Part 6, Section 2). The Country may appear under the grips or other hidden locations.
- Other Identifying Marks:** Any markings, including importers name, grip medallion markings, proof-marks, grip composition, and type. For semiautomatic pistol, indicate if exposed-hammer or hammerless type. For revolver, indicate if side-swing cylinder, top-break, or solid frame, with or without loading gate. Also indicate if with or without side-ejector housing. State if revolver has a spur trigger or trigger guard.

LAW ENFORCEMENT POSSESSION INFORMATION (20 through 23)

- L/E Possession Date:** Enter the date the firearm came into the possession of the Law Enforcement Agency and check whether the firearm was seized, found, forfeited, or other. If other is checked, enter a short description.
- Disposition of Firearm:** Explain the disposition of the firearm, i.e., Destroyed, Forfeited, etc.
- Crime Committed with the Firearm:** Use appropriate Virginia Code Section, i.e., 18.2-30.
- Brief Description Under which the firearm came into possession of the law enforcement agency:** Self explanatory.

PERSON FROM WHOM FIREARM WAS TAKEN (24 through 35) - Self Explanatory

ORIGINAL FIREARM PURCHASE INFORMATION (36 through 49) - Self Explanatory

CHAIN OF POSSESSION OF FIREARM AFTER INITIAL PURCHASE (50 through 73)

Show the Chain of possession after original sale, listing names, addresses and acquisition dates of all owners of the firearm. List the most recent first.

To trace the original sale of this firearm, contact the ATF National Tracing Center, 3616 75th Avenue, Landover, MD 20785. Telephone Number is (301) 436-8159.

MAIL TO: Department of State Police
Virginia Firearms Clearinghouse
P.O. Box 85141
Richmond, VA 23285-5141

Virginia Register of Regulations

2234

RECEIVED
STATE POLICE
FEB 11 1993

Title of Regulation: VR 545-01-13. Regulations Relating to the Standards and Specifications for regrooved or Regroovable Tires.

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

Effective Date: February 9, 1994.

Summary:

This regulation establishes specifications which define standards for regroovable or regrooved tires.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Major Jerry S. Conner, Department of State Police, 7700 Midlothian Turnpike, Richmond, VA 23225, telephone (804) 674-2060. There may be a charge for copies.

VR 545-01-13. Regulations Relating to the Standards and Specifications for Regrooved or Regroovable Tires.

§ 1. Purpose.

The purpose of this standard is to establish specifications which define standards for regroovable and regrooved tires and identification of regroovable tires.

§ 2. Definitions.

"Regroovable tire" means a tire, either original tread or retread, designed and constructed with sufficient tread material to permit renewal of the tread pattern or the generation of a new tread pattern in a manner which conforms to this standard.

"Regrooved tire" means a tire, either original tread or retread, on which the tread pattern has been renewed or a new tread has been produced by cutting into the tread of a worn tire to a depth equal to or deeper than the molded original groove depth.

§ 3. Identification.

Each tire designed and constructed for regrooving shall be labeled on both side walls with the word "regroovable" molded on or into the tire in raised or recessed letters .025 to .040 inches. The word "regroovable" shall be in letters 0.38 to 0.50 inches in height and not less than four inches and not more than six inches in length. The lettering shall be located in the side wall of the tire between the maximum section width and the bead in an area which will not be obstructed by the rim flange.

No tire shall be regrooved or recut unless it is clearly identified as "regroovable" as specified in this section.

§ 4. Specifications.

A tire shall not be regrooved by removing rubber from the surface of a worn tire to generate a new tread pattern.

The tire being regrooved shall be a regroovable tire.

After regrooving, cord material below the grooves shall have a protective covering of tread material at least 2/32-inch thick.

After regrooving, the new grooves generated into the tread material and any residual original molded tread groove which is at or below the new regrooved groove depth shall have a minimum of 90 linear inches of tread edges per linear foot of the circumference.

After regrooving, the new groove width generated into the tread material shall be a minimum of 3/16-inch and a maximum of 5/16-inch.

After regrooving, all new grooves cut into the tread shall provide unobstructed fluid escape passages.

After regrooving, the tire shall not contain any of the following defects, as determined by visual examination of the tire either mounted on the rim, or dismounted, whichever is applicable:

1. Cracking which extends to the fabric,
2. Groove cracks or wear extending to the fabric, or
3. Evidence of ply, tread, or side wall separation.

If the tire is siped by cutting the tread surface without removing rubber, the tire and material shall not be damaged as a result of the siping process, and no sipe shall be deeper than the original or retread groove depth.

§ 5. Proof of compliance.

Whenever the Superintendent of State Police deems it necessary, he may require the business, firm or person regrooving tires or the distributor of regrooved tires to furnish proof that the tires being regrooved meet or exceed the requirements of the regulation.

VA.R. Doc. No. R94-356; Filed December 10, 1993, 11:02 a.m.

Title of Regulation: VR 545-01-14. Regulations Relating to Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles

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

Effective Date: February 9, 1994.

Final Regulations

Summary:

This regulation establishes standards and specifications for the warning stickers or decals which are required to be affixed to all-terrain vehicles by retailers selling these vehicles in the Commonwealth.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Major Jerry S. Conner, Department of State Police, 7700 Midlothian Turnpike, Richmond, VA 23225, telephone (804) 674-2060. There may be a charge for copies.

VR 545-01-14. Regulations Relating to Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles.

§ 1. Purpose.

The purpose of this standard is to establish specifications which define standards for warning stickers or decals required to be placed on all-terrain vehicles sold by retailers within the Commonwealth.

§ 2. Definitions.

“All-terrain vehicle” means a three-wheeled or four-wheeled motor vehicle, generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering, which is intended for off-road use by an individual rider on various types of nonpaved terrain.

“Sticker” or “decal” means a device containing consumer information affixed to all-terrain vehicles.

§ 3. Description and identification.

The stickers or decals are to be pressure sensitive stickers manufactured to be suitable for exterior application.

Each sticker or decal is to be a minimum of four inches by four inches and will contain the following wording:

WARNING

Virginia law prohibits operation of this vehicle:

- 1. On any public highway, or other public property.*
- 2. By any person under the age of 16 if the vehicle is powered by an engine of more than 90 cubic centimeters, or any person under the age of 12 if the vehicle is powered by an engine of no less than 70 or more than 90 cubic centimeters.*
- 3. By any person not wearing an approved type protective helmet.*

4. On another person's property without written consent of property owner.

5. With a passenger at any time.

Engine size.....cubic centimeters

The engine size in cubic centimeters may be contained on a separate sticker or decal of the same type and color as the warning sticker or decal located immediately below or adjacent to the warning sticker.

§ 4. Color.

The sticker or decal shall be white in color with black lettering.

§ 5. Performance requirements.

A. The sticker or decal shall be pressure sensitive, manufactured to be suitable for exterior application.

B. Adhesive shall be formulated adhesive which requires no wetting agent for activation. The adhesive shall be made for exterior use specifically on surfaces of bare or painted metal or vitreous enamel. The adhesive shall be of a permanent type and not affected by extreme heat or cold. When the sticker is properly applied to a suitable surface, the product shall be constructed to withstand temperatures of -60 to 250°F.

C. The sticker or decal shall have a protective liner placed over the adhesive which will serve as a carrier sheet.

D. Printing on the face of the sticker or decal shall be done using sun-resistant inks that will remain legible after application.

After printing, the entire surface of each sticker or decal shall be covered with high gloss transparent clear coating to add sun and weather resistance.

E. The weathering quality of the sticker or decal shall be such that they show no signs of cracking, fading, excessive chalking or other types of surface failure after completion of exposure tests.

F. The sticker or decal must withstand tests of destructibility after application. Once applied, the sticker must attain a sufficiently tight bond to the surface that it will remain affixed unless it is intentionally removed.

§ 6. Location of sticker or decal.

The sticker or decal is to be placed on a smooth surface in a location where it is visible to and readable by the operator of the all-terrain vehicle. If such a suitable location is not available, then it shall be placed on a smooth and reasonably flat surface on the left side of the all-terrain vehicle in a location visible to a person

standing beside the seat of the vehicle.

§ 7. Proof of compliance.

Whenever the Superintendent of State Police deems it necessary, he may require retailers of all-terrain vehicles to furnish proof that the sticker or decal installed on all-terrain vehicles as required in § 46.2-915.1 of the Code of Virginia meets or exceeds the requirements of the regulation.

VA.R. Doc. No. R94-355; Filed December 10, 1993, 11:00 a.m.

Title of Regulation: VR 545-01-15. Regulations Relating to Standards and Specifications for Back-up Audible Alarm Signals.

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

Effective Date: February 9, 1994.

Summary:

This regulation establishes standards and specifications for audible back-up alarm signals required to be used on garbage and refuse collection and disposal vehicles and certain vehicles used for highway repair and maintenance.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Major Jerry S. Conner, Department of State Police, 7700 Midlothian Turnpike, Richmond, VA 23225, telephone (804) 674-2060. There may be a charge for copies.

VR 545-01-15. Regulations Relating to Standards and Specifications for the Back-up Audible Alarm Signals.

§ 1. Purpose.

The purpose of this standard is to establish specifications which define standards and identification of back-up audible alarm signals required on garbage and refuse collection and disposal vehicles and certain vehicles used primarily for highway repair and maintenance.

§ 2. Definition.

"Back-up audible alarm signal" means an electric powered device consisting of an alarm, alarm control circuitry and an activating switch required for use on vehicles used for garbage and refuse collection and disposal and on vehicles having a manufacturer's gross vehicle weight rating of 10,001 pounds or more and used primarily for highway maintenance and repair.

§ 3. Description and identification.

The alarm will be an electric powered device consisting of an alarm, alarm control circuitry, and an activating switch which meets or exceeds Society of Automotive Engineers (SAE) Standard J994. The alarm shall be activated immediately when the transmission control mechanism is shifted into a reverse position, and shall remain activated until the mechanism is shifted out of the reverse position. The alarm will be identified as meeting SAE Standard J994.

§ 4. Performance requirements.

Devices must meet or exceed standards as set forth in SAE J994 which includes the following tests:

1. Sound level test
2. Vibration test
3. Rain test
4. Corrosion test
5. Steam test
6. Dust test
7. Life cycle test

§ 5. Proof of compliance.

Whenever the Superintendent of State Police deems it necessary, he may require the manufacturer or distributor of back-up audible alarm signal devices to furnish proof that the alarm or any part of the alarm meets or exceeds the requirements of this regulation.

VA.R. Doc. No. R94-354; Filed December 10, 1993, 10:59 a.m.

Title of Regulation: VR 545-01-16. Regulations Relating to Standards and Specifications for Overdimensional Warning Lights.

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

Effective Date: February 9, 1994.

Summary:

This regulation establishes standards and specifications for the flashing, blinking or alternating amber lights required on vehicles escorting or towing overdimensional loads.

Summary of Public Comment: No public comment was received by the promulgating agency.

Final Regulations

Agency Contact: Copies of the regulation may be obtained from Major Jerry S. Conner, Department of State Police, 7700 Midlothian Turnpike, Richmond, VA 23225, telephone (804) 674-2060. There may be a charge for copies.

VR 545-01-16. Regulations Relating to Standards and Specifications for Overdimensional Warning Lights.

§ 1. Purpose.

The purpose of this standard is to establish specifications which define standards and identification for warning lights used in the escorting or towing of overdimensional materials, equipment, boats, or manufactured housing units by authority of a highway hauling permit issued pursuant to § 46.2-1139 of the Code of Virginia.

§ 2. Definitions.

"Overdimensional light" means a flashing or rotating amber warning light required for use on any vehicle which is engaged in either escorting or towing overdimensional materials, equipment, boats or manufactured housing units by authority of a highway hauling permit issued pursuant to § 46.2-1139 of the Code of Virginia.

§ 3. Description and identification.

The light will be flashing or rotating amber warning light which meets or exceeds Society of Automotive Engineers (SAE) Standard J845 or Standard J959, for warning lights. The light will be identified with the Code SAE-W, SAE-W1 or SAE-W3-1,2,3 in accordance with SAEJ759, Lighting and Identification Code.

§ 4. Performance requirements.

Lights must meet or exceed standards as set forth in SAEJ575, which include the following tests:

1. *Vibration test*
2. *Moisture test*
3. *Dust test*
4. *Corrosion test*
5. *Photometry test*

§ 5. Color.

The color will be amber (yellow) and will meet or exceed the requirements of SAEJ578, standard for color specification for electrical signal lighting device.

§ 6. Proof of compliance.

Whenever the Superintendent of State Police deems it

necessary, he may require the manufacturer or distributor of overdimensional warning lights to furnish proof that the light or any part of the light meets or exceeds the requirements of this regulation.

VA.R. Doc. No. R94-357; Filed December 10, 1993, 11:04 a.m.

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Title of Regulation: VR 545-01-17. Regulations Relating to Standards and Specifications for the Safety Lights for Farm Tractors in Excess of 108 Inches in Width.

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

Effective Date: February 9, 1994.

Summary:

This regulation establishes standards and specifications for lights used on farm tractors and agricultural multi-purpose drying units in excess of 108 inches in width which are hauled, propelled, transported or moved on the highway.

Summary of Public Comment: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Major Jerry S. Conner, Department of State Police, 7700 Midlothian Turnpike, Richmond, VA 23225, telephone (804) 674-2060

VR 545-01-17. Regulations Relating to Standards and Specifications for the Safety Lights for Farm Tractors in Excess of 108 Inches in Width.

§ 1. Purpose.

The purpose of this standard is to establish specifications for safety lights used on farm tractors and agricultural multi-purpose drying units in excess of 108 inches in width which are hauled, propelled, transported or moved on the highway.

§ 2. Definitions.

"Lighting device" means a flashing warning light to indicate both forward and rearward the presence of agricultural equipment which normally travels at a rate of speed below that of other traffic.

§ 3. Description and identification.

This lighting device shall flash at least 60 flashes per minute but not more than 120 flashes per minute when operating. The safety light shall meet the provisions of the Society of Automotive Engineers (SAE) Standard J974 (Flashing Warning Light for Agricultural Equipment.)

§ 4. Determine requirements.

The flashing warning light shall be tested in accordance with the following sections of SAE J575:

Section B - Samples for Test

Section C - Lamp Bulbs

Section D - Laboratory Facilities

Section E - Vibration Test

Section F - Moisture Test

Section G - Dust Test

Section H - Corrosion Test

Section J - Photometric Test

Section L - Warpage Test on Devices with Plastic Lenses

§ 5. Color.

The color of this warning lamp shall be amber in accordance with SAE J578.

§ 6. Proof of compliance.

Safety lights for use on farm tractors must be identified as meeting the provisions of SAE J974 or be approved for use by the Superintendent of the Department of State Police as outlined in § 46.2-1005 of the Code of Virginia.

VA.R. Doc. No. R94-358; Filed December 10, 1993, 11:06 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

REGISTRAR'S NOTICE: Amendment 13 of VR 672-10-1, Virginia Hazardous Waste Management Regulations, was properly filed for final publication by the Department of Environmental Quality on July 21, 1993. The final regulation was scheduled for publication August 9, 1993 (9:23 VA.R.), but was inadvertently omitted from the Final Regulation section of The Virginia Register of Regulations by the Registrar's office. Therefore, the text prepared for publication in the August 9, 1993, issue of The Virginia Register is being published in this issue.

Due to the length, the Virginia Hazardous Waste Management Regulations filed by the Department of Environmental Quality are not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, VA 23219, and at the Department of

Environmental Quality, Monroe Building, 11th Floor, 101 North 14th Street, Richmond, VA 23219.

Title of Regulation: VR 672-10-1. Virginia Hazardous Waste Management Regulations.

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

Effective Date: September 8, 1993.

Summary:

Amendment 13 incorporates the changes made by the United States Environmental Protection Agency on December 24, 1992, to those portions applicable to wood preservers. The changes affect the listing of hazardous wastes in contact with process wastes, eliminates the requirement for retrofitting existing drip pads, specifies the permeability rate for sealants or drip pads, and establishes appropriate cleanup measures and plans for wood preservers. The amendment eliminates the requirements promulgated in Amendment 12 for upgrading existing drip pads as long as they comply with the performance standards.

Summary of Public Comment and Agency Response: There were no public comments received during the public hearing or the public comment period.

Agency Contact: Copies of the regulation may be obtained from William F. Gilley, Department of Environmental Quality, 101 N. 14th Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-2966. There may be a charge for copies.

VA.R. Doc. No. R93-730; Filed July 21, 1993, 9:47 a.m.

Virginia Tax Bulletin

Virginia Department of Taxation 6 AM 11:56

DECEMBER 6, 1993

93-11

REGULATIONS
6 AM 11:56

INTEREST RATES FIRST QUARTER 1994

Rates remain unchanged: The federal rates for the first quarter of 1994 remain at 7% for tax underpayments (assessments), 6% for tax overpayments (refunds), and 9% for "large corporate underpayments" as defined in I.R.C. § 6621(c). Va. Code § 58.1-15 provides that the underpayment rate for Virginia taxes will be 2% less than the corresponding federal rates. Accordingly, the Virginia rates for the first quarter of 1994 remain at 9% for tax underpayments, 6% for tax overpayments, and 11% for "large corporate underpayments".

Rate for Addition to Tax for Underpayments of Estimated Tax

Taxpayers whose taxable year ends on December 31, 1993: For the purpose of computing the addition to the tax for underpayment of Virginia estimated income taxes on Form 760C (for individuals, estates and trusts), Form 760F (for farmers and fishermen) or Form 500C (for corporations), the fourth quarter 9% underpayment rate will apply through the due date of the return, April 15, 1994, (for corporations) and May 1, 1994 (individuals and fiduciaries).

Local Tax

Assessments: Localities assessing interest on delinquent taxes pursuant to Va. Code § 58.1-3916 may impose interest at a rate not to exceed 10% for the first year of delinquency, and at a rate not to exceed 10% or the federal underpayment rate in effect for the applicable quarter, whichever is greater, for the second and subsequent years of delinquency. For the first quarter of 1994, the federal underpayment rate is 7%.

Refunds: Localities which have provided for refund of erroneously assessed taxes may provide by ordinance that such refund be repaid with interest at a rate which does not exceed the rate imposed by the locality for delinquent taxes.

Recent Interest Rates

Accrual Period		Overpayment	Underpayment	Large Corporate
<u>Beginning</u>	<u>Through</u>	<u>(Refund)</u>	<u>(Assessment)</u>	<u>Underpayment</u>
1-JAN-87	30-SEP-87	8%	9%	—
1-OCT-87	31-DEC-87	9%	10%	—
1-JAN-88	31-MAR-88	10%	11%	—
1-APR-88	30-SEP-88	9%	10%	—
1-OCT-88	31-MAR-89	10%	11%	—
1-APR-89	30-SEP-89	11%	12%	—
1-OCT-89	31-MAR-91	10%	11%	—
1-APR-91	30-JUN-91	9%	10%	—
1-JUL-91	31-DEC-91	9%	12%	14%
1-JAN-92	31-MAR-92	8%	11%	13%
1-APR-92	30-SEP-92	7%	10%	12%
1-OCT-92	31-MAR-94	6%	9%	11%

For additional information: Contact the Taxpayer Assistance Section, Office of Taxpayer Services, Virginia Department of Taxation, P. O. Box 1880, Richmond, Virginia 23282-1880, or call the following numbers for additional information about interest rates and penalties.

Individual & Fiduciary Income Tax	(804) 367-8031
Corporation Income Tax	(804) 367-8036
Withholding Tax	(804) 367-8038
Soft Drink Excise Tax	(804) 367-8098
Aircraft Sales & Use Tax	(804) 367-8098
Other Sales & Use Taxes	(804) 367-8037

GOVERNOR

EXECUTIVE ORDER NUMBER EIGHTY-ONE (93)

ESTABLISHING THE VIRGINIA-MIDDLE EAST PEACE COMMISSION

The signing of the recent peace treaty between the great nation of Israel and Palestinian leaders demonstrated great courage and great hope for a region torn for centuries by strife. For Virginians of Jewish and Arabic descent, it was an especially important moment and a new beginning.

The establishment of peace in the Middle East is an important sign of progress, demonstrating that people of disparate faiths and creeds can come together with a common interest and a desire to put aside past grievances.

Virginia can assist in preserving and enhancing this important movement toward peace and pluralism in the Middle East by expanding trade, encouraging investment and initiating educational and cultural exchanges with Israel and the Arab states. Given the diversity of our own population, the Commonwealth has the responsibility to draw upon our citizens with ancestral ties to and expertise about the region to assist in such efforts.

Virginia can also play an important role in encouraging humanitarian assistance to deal with critical problems in that region and, over the longer term, in enhancing the mutual regard of our respective cultures for many years to come.

Therefore, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and, including, but not limited to, Section 2.1-51.36 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby create the Virginia-Middle East Peace Commission.

This commission is classified as a gubernatorial advisory commission in accordance with Sections 2.1-51.35 and 9-6.25 of the Code of Virginia and shall have the following specific duties:

1. To examine opportunities for Virginia to increase its level of international trade with the Middle East, including both Arab nations and Israel;
2. To examine opportunities for Virginia to increase and promote investment of mutual benefit to Virginia and the Middle East;
3. To examine opportunities to promote meaningful educational and cultural exchanges between Virginia and the Middle East, which can serve to enhance understanding of our respective cultural, economic, and social heritages;
4. To examine ways in which Virginia can promote humanitarian assistance to areas in the Middle East; and

5. To develop a recommendation for Governor-elect Allen as to whether the Commission's duration should be extended, and if so, the specific benefits that would be gained from the extension.

Members of the Commission, including Co-Chairs Jay Weinberg of Richmond and Najeeb Halaby of Arlington, shall be appointed by the Governor and shall serve at his pleasure. The Commission shall consist of no more than 15 members, some of whom shall be representative of Arabic and Jewish perspectives in the areas of trade, investment, education, culture, and humanitarian assistance. The Secretary of Commerce and Trade and the Secretary of Education shall serve as ex-officio members of the Commission.

Such funding as is necessary for the fulfillment of the Commission's business during the term of its existence will be provided by the Secretary of Commerce and Trade, the Secretary of Education, and any state agencies and institutions that they designate and which have funds appropriated for the same purposes as the Commission. Expenditures of the Commission's work are estimated to be \$3,000.

Such staff support as is necessary for the conduct of the Commission's business during its term of existence will be provided by the Secretary of Commerce and Trade and the Secretary of Education, with assistance from executive branch agencies with closely and definitely related purposes, as the Secretaries may from time to time designate. An estimated 250 hours of staff support will be required to assist the Commission.

Members of the Commission shall serve without compensation, but shall be reimbursed for reasonable and necessary expenses incurred in the discharge of their official duties.

The Commission shall meet at the call of the Co-Chairs and shall complete its work and report to the Governor no later than January 7, 1994, with recommendations for goals and objectives appropriate for the Commonwealth and for specific actions needed for Virginia to fulfill an important role in promoting continued progress in the Middle East.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until January 14, 1994, unless amended or rescinded by virtue of further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 8th day of December, 1993.

/s/ Lawrence Douglas Wilder
Governor

V.A.R. Doc. No. R94-372; Filed December 13, 1993, 2:36 p.m.

EXECUTIVE ORDER NUMBER EIGHTY-TWO (93)

PROSCRIBING THOSE PERSONS WHO HAVE RECEIVED NOTICES FROM GOVERNOR ELECT GEORGE F. ALLEN TO SUBMIT THEIR RESIGNATIONS FROM RESPONDING TO SUCH NOTICES

It has come to my attention that numerous dedicated and loyal public servants of this Commonwealth have received notices from Governor Elect George F. Allen to submit their resignations by December 20, 1993, almost one month prior to his inauguration. Such notices have had a signal impact upon the morale of the employees and the business of this Commonwealth.

This unprecedented approach is not the Virginia way of treating valued employees who have dedicated their careers to the service of the Commonwealth. In fact, it has had a chilling effect upon those who were contemplating a career with the Commonwealth.

The actual evidence of harm to the Commonwealth emanating from these unprecedented actions is a visible reality. In addition to the impact previously mentioned, it has caused hurt and anxiety to the affected employees, their families and friends at a time when the joys of the holiday season are being celebrated; as it relates to those who received notices, the legal efficacy of such requests is suspect; and, it has the potential to affect the credit rating of the Commonwealth because it could be viewed as creating an unstable atmosphere and a disruption in the continued delivery of services.

NOW THEREFORE, by virtue of the powers vested in me under the Constitution of Virginia, Common Law and Code of Virginia, particularly Article V of the Constitution and Chapters 5 and 10 of Title 2.1 of the Code, and subject always to my continuing, ultimate authority to act in such matters, I do hereby order and direct all affected employees of the Commonwealth to disregard the notices heretofore issued by the Governor Elect and, thereby, they are not to tender their resignations in response thereto.

This Executive Order shall become effective immediately upon its signing and remain in full force and effect until July 1, 1994, unless amended or rescinded by virtue of further executive order.

Given under my hand and under the Seal of the Commonwealth this 15th day of December, 1993.

/s/ Lawrence Douglas Wilder
Governor

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

STATE AIR POLLUTION CONTROL BOARD

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

Governor's Comment:

Since the proposal would enhance the public's health and welfare, I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor

Date: December 17, 1993

VA.R. Doc. No. R94-414; Filed December 21, 1993, 4:52 p.m.

Title of Regulation: **VR 120-99-03. Regulation for the Control of Motor Vehicle Emissions.**

Governor's Comment:

Since the proposal would enhance the air quality of Northern Virginia localities by complying with the state and federal legislative mandates, I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor

Date: December 9, 1993

VA.R. Doc. No. R94-377; Filed December 13, 1993, 10:30 a.m.

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulation: **VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and the Hearing Officers and the Adoption or Amendment of 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 comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor

Date: December 17, 1993

VA.R. Doc. No. R94-415; Filed December 21, 1993, 4:52 p.m.

Title of Regulation: **VR 125-01-2. Advertising.**

Governor's Comment:

Governor

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: December 17, 1993

V.A.R. Doc. No. R94-416; Filed December 21, 1993, 4:52 p.m.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

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

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 17, 1993

V.A.R. Doc. No. R94-410; Filed December 21, 1993, 4:51 p.m.

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

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 17, 1993

V.A.R. Doc. No. R94-411; Filed December 21, 1993, 4:52 p.m.

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Title of Regulation: **VR 370-01-002. Regulations to Measure Efficiency and Productivity of Health Care Institutions.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 17, 1993

V.A.R. Doc. No. R94-412; Filed December 21, 1993, 4:52 p.m.

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Title of Regulation: **VR 370-01-003. Virginia Health Services Cost Review Council Patient Level Data Base System.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 17, 1993

V.A.R. Doc. No. R94-409; Filed December 21, 1993, 4:51 p.m.

STATE LOTTERY BOARD

Title of Regulation: **VR 447-01-1. Guidelines for Public Participation in Regulation Development and Promulgation.**

Governor's Comment:

The proposed regulations would conform to changes to Section 9-6.14:7.1 (Public Participation) of the Code of Virginia. Hence, I do not object to the content of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 17, 1993

V.A.R. Doc. No. R94-406; Filed December 21, 1993, 4:51 p.m.

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Title of Regulation: **VR 447-02-1. Instant Game Regulations.**

Governor's Comment:

Since the proposed changes would enhance the agency's instant game operations, I do not object to the content of the draft regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 17, 1993

V.A.R. Doc. No. R94-408; Filed December 21, 1993, 4:51 p.m.

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Title of Regulation: **VR 447-02-2. On-Line Game Regulations.**

Governor's Comment:

The proposal would enhance the agency's management of lottery operations. Hence, I do not object to the content of the proposed regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 17, 1993

V.A.R. Doc. No. R94-407; Filed December 21, 1993, 4:51 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: VR 460-03-2.6109. Transfer of Resources: State Plan for Medical Assistance Relating to Transfer of Assets and Treatment of Certain Assets.

Governor's Comment:

No objections.

/s/ Lawrence Douglas Wilder
Governor
Date: December 16, 1993

V.A.R. Doc. No. R94-374; Filed December 20, 1993, 2:23 p.m.

DEPARTMENT OF STATE POLICE

Title of Regulation: VR 545-01-11. Regulations Governing Purchases of Handguns in Excess of One within 30-Day Period.

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: December 8, 1993

V.A.R. Doc. No. R94-376; Filed December 10, 1993, 11:03 a.m.

* * * * *

Title of Regulation: VR 545-01-12. Regulations Governing the Creation of a Criminal Firearms Clearinghouse.

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: December 8, 1993

V.A.R. Doc. No. R94-375; Filed December 10, 1993, 11:03 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: VR 672-40-01:1. Regulated Medical Waste Management Regulations.

Governor's Comment:

Since the proposal would enhance the public's health and welfare, I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 17, 1993

V.A.R. Doc. No. R94-413; Filed December 21, 1993, 4:52 p.m.

THE LEGISLATIVE Record

VOLUME 3 NUMBER 7

VIRGINIA DIVISION OF LEGISLATIVE SERVICES

DECEMBER 1993

Commission on Equity in Public Education

October 25, 1993, Richmond

Established through amendments to § 9-310 in 1992, the Commission on Equity in Public Education, the descendant of the Commission to Review Recommendations on Education Opportunity, began its work in 1992 shortly after the refiling of the education finance reform law suit. As the commission commenced its 1993 deliberations, Chairman Walker reminded the members that the Commonwealth still faces a lawsuit and noted that it is time to move forward with educational progress regardless of the obstacles. In his opening remarks, Senator Walker announced that a recommendations task force will be appointed in the near future to evaluate the various proposals and to present the commission with appropriate legislative actions for the 1994 session.

Governor's Commission

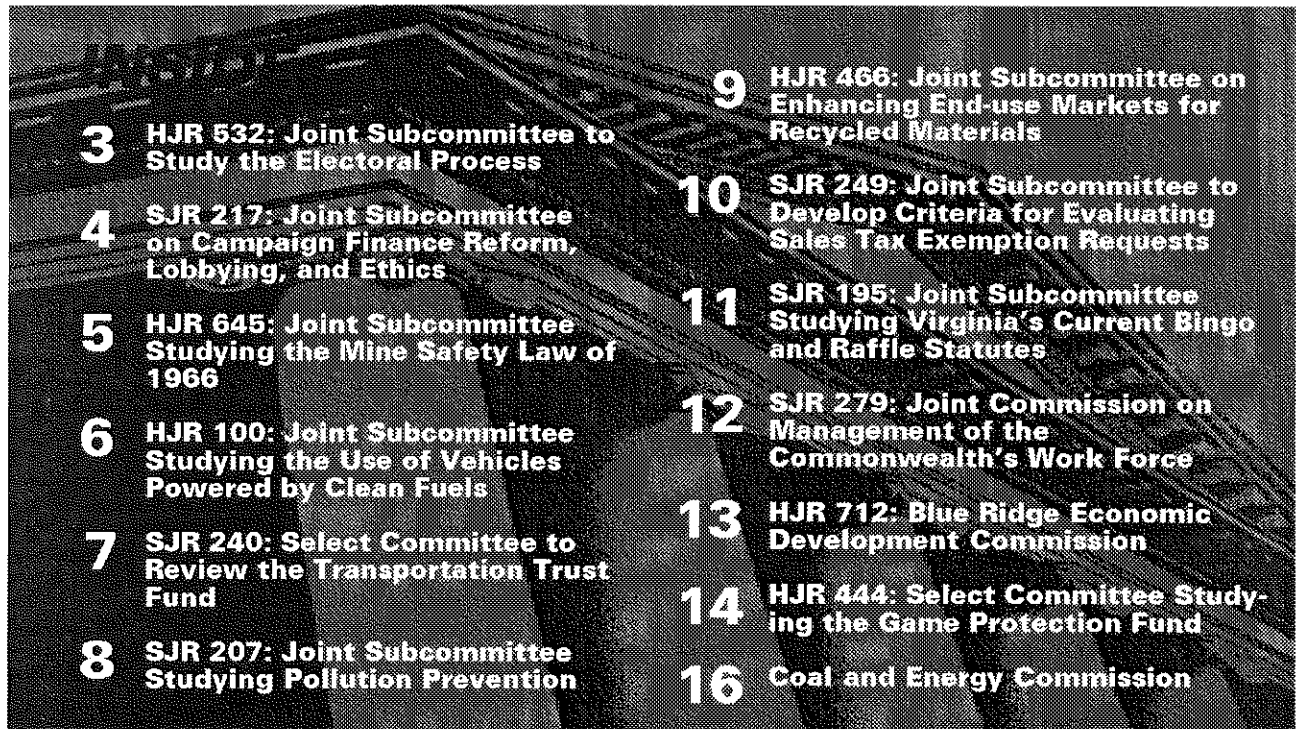
The commission reviewed the status of the recommendations of the Governor's Commission on Educational Opportunity for All Virginians. Among the Governor's commission's

27 recommendations, four have been completely accomplished, 19 are being implemented, two required no action, one has received no action, and one is still being examined by this legislative commission. Examples of the work in progress include emphases on developmentally appropriate practices in grades K-3 and expansion of distance learning, with the Virginia Satellite Educational Network and other distance learning programs receiving approximately \$5 million in 1992-1994; an increase in tuition free dual enrollments, with approximately 237 students participating; and cooperative and regional programs, such as the Southwest Virginia Public Education Consortium. Another response to the Governor's commission's recommendations is the initiation of partnerships between higher education and public schools.

Reduced in 1991, public education funding received approximately \$74 million in 1992 to enhance educational opportunity (e.g., funding for programs for English as a second language students and at-risk students). Although this funding provided important additional public education resources, administrators in poor school divisions call for additional funding increases.

Educational Disparity

Supported primarily by anecdotal evidence, the educational disparity debate is founded on three premises: that there



3	HJR 532: Joint Subcommittee to Study the Electoral Process	9	HJR 466: Joint Subcommittee on Enhancing End-use Markets for Recycled Materials
4	SJR 217: Joint Subcommittee on Campaign Finance Reform, Lobbying, and Ethics	10	SJR 249: Joint Subcommittee to Develop Criteria for Evaluating Sales Tax Exemption Requests
5	HJR 645: Joint Subcommittee Studying the Mine Safety Law of 1966	11	SJR 195: Joint Subcommittee Studying Virginia's Current Bingo and Raffle Statutes
6	HJR 100: Joint Subcommittee Studying the Use of Vehicles Powered by Clean Fuels	12	SJR 279: Joint Commission on Management of the Commonwealth's Work Force
7	SJR 240: Select Committee to Review the Transportation Trust Fund	13	HJR 712: Blue Ridge Economic Development Commission
8	SJR 207: Joint Subcommittee Studying Pollution Prevention	14	HJR 444: Select Committee Studying the Game Protection Fund
		16	Coal and Energy Commission

is widespread disparity in educational opportunities as measured by per-pupil spending; that spending differences deprive students in the lowest spending localities from receiving an adequate education; and that the Commonwealth should appropriate funds to "level-up" per-pupil spending to that of the highest spending school divisions in Virginia. An estimated \$2.2 billion per year (\$1.4 billion in new state money and \$800 million in new local money) would be required to "level-up" Virginia's average per-pupil spending to equal that of the nine highest spending school divisions.

Spending Differences

Staff examined whether there is a fundamental difference in the educational achievement of students in high- and low-spending school divisions and whether the achievement differences were related to per-pupil spending. In 1991-1992, spending for regular day public school ranged from \$3,661 per pupil to \$8,290. This range, however, represents only the relationship between the lowest and highest spending school divisions. When the per-pupil spending of all Virginia school divisions is examined, a significant cluster can be discerned, with 75 percent of school divisions spending within \$1,000 of each other and spending differences of as little as \$2 per pupil. Nine school divisions significantly outspend all other school divisions.

Teacher Salaries

Teacher salaries and benefits, instructional support, and materials and supplies account for 75 to 80 percent of school divisions' total expenditures, with approximately 60 percent of per-pupil spending differences attributable to instructional salaries. Average teacher salary differences are primarily due to variations in wage patterns within regional labor markets; that is, the prevailing wage scales in neighboring school divisions, within or without Virginia, have the most effect on average teacher salaries in the Commonwealth's four corners. Further, teacher salaries appear to be driven by the area labor markets. The prevailing income in the region will be reflected in the average teacher salaries, with high income areas having higher teacher salaries.

Spending-Achievement Correlation

When spending is analyzed vis-à-vis student achievement, there is no clear correlation. Gaps in educational achievement between the 20 highest and 20 lowest scoring school divisions are shown by differences of 27.2 percentiles on 11 grade standardized tests, 31.1 percentiles on the 8th grade scores, and 30.7 percentiles on the 4th grade tests. An analysis of standardized test scores and per-pupil spending, however, reveals no clear correlation between high achievement and high spending or between low achievement and low spending. Many low-spending school divisions report high test scores, and some relatively high-spending divisions report low test scores. Clearly,

other factors are involved in explaining wide gaps in educational achievement among school divisions.

Effects of Poverty

When educational achievement is analyzed, using the poverty measure of free-meals-approval, the correlation between student achievement and poverty is dramatic. Many reports, nationally and in Virginia, have detected "a strong and persistent relationship between student poverty and educational outcomes." Four Department of Education studies examined the relationships between various student, community, and school characteristics and student achievement. All of these studies demonstrated a high correlation between poverty and low student achievement (e.g., school divisions with significantly higher percentages of free lunch students perform poorly on the Virginia State Assessment Program). Therefore, an essential component for educational disparities must be improving the performance of students living in poverty.

Class Size

At the request of the Senate Committee on Education and Health, the Department of Education conducted a study on the "effect on student achievement of student/teacher ratios and class sizes, with particular emphasis on grades Kindergarten through 3." The department was also asked to examine the "fiscal implications of any revision in the current ratios; the appropriate role of teacher aides; and provisions and practices of other states." Among the department's key findings was that although the effect of class size on achievement is weak across all grades K-12, pupils with lower academic achievement and economically disadvantaged and minority students benefit from smaller classes more than average-achieving students. Currently, in the Virginia Standards of Quality ratios, kindergarten classes cannot be larger than 25 students, grades 1 through 3 cannot be larger than 30 students, and grades 4 through 6 cannot be larger than 35 students. The department's study demonstrated that reducing class size to 23/24 per class has little positive impact; however, reducing class size to 22 or fewer does obtain positive benefits. Among the Board of Education's proposed budget initiatives for 1994 are at-risk programs, lower EMR class sizes, and providing additional funds to the most disparate school divisions to phase in class size reductions.

Study Plan

The commission approved a 1993 study plan, including three more meetings. The next meeting will focus on programs and initiatives to improve pupil equity, such as distance learning, parental involvement, free meals, language immersion, and pilot four-year-old programs.

The Honorable Stanley C. Walker, *Chairman*
Legislative Services contact: Norma E. Szakal



HJR 532: Joint Subcommittee to Study the Electoral Process

November 22, 1993, Richmond

At its first work session, the subcommittee focused its attention on the National Voter Registration Act (NVRA). Members received a progress report from the Attorney General's office concerning the proposed constitutional amendment to bring Virginia's state and local registration procedures in compliance with the federal mandate. In addition, staff outlined the progress of the FEC, the State Board of Elections' NVRA task force, and the efforts of other states to interpret and implement the provisions of the act. The subcommittee also heard the findings and conclusions of a recent report by the Division of Legislative Services on the feasibility of conducting Saturday or Sunday elections.

Attorney General's Opinion

At the 1993 Session, the General Assembly passed HJR 395, which calls for a November 1994 referendum to decide whether Virginia's Constitution should be amended to delete the in-person requirement for voter registration and to remove the automatic purge for non-voting. The resolution was adopted in anticipation of the passage of the National Voter Registration Act. However, because the constitutional amendment was adopted prior to the conference committee version, Delegate Scott, with the endorsement of the subcommittee, asked the Attorney General to render an opinion on the sufficiency of the amendment. Specific questions proposed included:

1. Does HJR 395 conform Virginia's constitutional registration procedures for state and local elections to the procedures mandated for federal elections under the National Voter Registration Act, so that Virginia does not have to adopt dual registration?
2. Is another constitutional amendment necessary or prudent to implement the fail-safe voting provisions of the federal act and allow voters who have moved the right to return to their old precinct to vote and correct their registration?
3. If compliance with the fail-safe voting provisions of the federal act is to be accomplished by allowing voters to vote in their new precinct, what legal procedures may be imposed to protect the integrity of the election process on election day? Is maintaining a list of inactive voters at each polling place the only alternative?
4. If Virginia's Constitution needs to be amended, does the effective date for implementation of the National Voter Regis-

tration Act in Virginia become the date when the new constitutional provision can become effective (January 1997)?

Barbara Vann of the Attorney General's office appeared before the subcommittee and reported that her office was presently reviewing the issues raised in Delegate Scott's inquiries and the requirements of the National Voter Registration Act. She said that closer scrutiny of the residency provisions of Article II, Section 1 of Virginia's Constitution was necessary in light of the fail-safe provisions of the NVRA. Virginia's Constitution does not allow a voter to return to his old precinct to vote after the next November general election. An official opinion is expected by December 10.

Progress of the FEC, the NVRA Task Force, and Other States

On September 30, the FEC published an advanced notice of proposed rule-making in regard to the development of the national mail-in voter registration form and the collection of information from states for inclusion in the FEC's biennial report to Congress on the impact of the act. In the advanced notice, the FEC indicated that the content of the federal mail-in form will only include necessary information, and, therefore, not every state requirement will be included. If the federal form excludes information that Virginia's Constitution requires, such as social security number, then Virginia again may face the problem of maintaining dual registration for federal and state elections.

The State Board of Elections' NVRA task force, an interagency task force created to examine the implementation issues of the National Voter Registration Act, scheduled its third meeting for December 7. During its first two meetings, the task force identified and discussed which agencies were considered mandatory registration locations under the act. The task force is also expected to make recommendations concerning which state discretionary agencies should be designated in order to comply with the mandate. The task force estimated that \$4,381,837 would be needed by the affected mandatory agencies for compliance with the act during the 1994-1996 biennium. Major categories of need include systems development, personnel and equipment, forms development and distribution, training, and postage.

Like Virginia, others states are in the early stages of conforming their laws to the federal act. About half of the states have already established either motor-voter or mail registration programs. For these states, compliance legislation will not be as extensive as it will be in Virginia. However, many of these states are at a disadvantage because they lack a centralized computerized voter registration system, capable of handling the expected increase in registration activity once the NVRA becomes effective. Virginia's superiority in computer technology should make it possible for the Commonwealth to be among the first

states to transmit voter registration records electronically from DMV to the general registrars.

Saturday/Sunday Elections

Staff summarized the findings and conclusions of a study of the feasibility and desirability of conducting elections on Saturday, Sunday, or both days as a means to reverse the high rate of nonvoting. The report was prepared pursuant to SJR 232, which requested the Division of Legislative Services to conduct an information-gathering study for presentation to the Joint Rules Committee. The following conclusions were presented.

- Federal law precludes moving federal elections to the weekend.
- Effect on voter turnout of weekend elections cannot be determined, but limited experience in the United States does not suggest any significant impact.
- Weekend voting would require relocation of perhaps 10 percent of polling places if elections were held on Sunday or Saturday and Sunday combined.
- Localities would incur some additional cost for weekend elections, primarily for overtime for staff subject to federal rules and custodial personnel who maintain polling site facilities. A two-day election period would double the amount paid to election officials.
- Voting on Saturday and Sunday could be more convenient for some voters who have work conflicts. On the other hand, religious convictions would create conflicts for others.
- Election administrators seem more interested in "early voting" and other proposals to facilitate voting and ease the crunch of election day peak times.

Continuation of the Study

Recognizing that the subcommittee needed more information regarding the federal regulations and the recommendations of the task force before revisiting the implementation issues, members agreed to request that the study be continued for another year. A further agreement was reached that unless the response of the Attorney General or the task force required immediate attention, the subcommittee would resume its work next spring. In the interim, the subcommittee asked the task force to look at the definition of residency in the context of the requirements of the NRVA and in the context of developing uniform standards applicable to college students and persons who have moved within the Commonwealth.

The Honorable James M. Scott, *Chairman*
Legislative Services contact: Ginny Edwards



SJR 217: Joint Subcommittee on Campaign Finance Reform, Lobbying, and Ethics

November 23, 1993, Richmond

The joint subcommittee reviewed campaign finance issues and the question of whether legislation is needed to regulate lobbying of executive branch officials and employees.

Campaign Finance

Contribution limits. Following considerable discussion, the joint subcommittee agreed to proceed with a draft proposal to cap contributions to candidates using the recommendation of the Governor's commission as its starting point. The commission proposed limits on the amount that an individual, PAC, corporation, union, or other entity could contribute to a candidate for each election. The primary or nomination process and the general election would count as two elections, so the limits below would double for an election cycle.

Governor, Lt. Governor,	
Attorney General	\$5,000 per election
State Senate	\$2,000 per election
House of Delegates	\$1,000 per election

During discussion, joint subcommittee members noted that Virginia has relied on disclosure as the most effective way to inform voters of the source and character of a candidate's support, that contribution limits are subject to evasion through such devices as gifts from multiple family members or individuals linked to the same corporation or union, and that the commission's suggested limits are subject to further review. The view prevailed that limits are desirable as a means to reduce the influence of large donors on particular candidates, to meet the public demand for a reasonable limit on contributions, and to counter the perception that candidates are unduly beholden to contributors who make exceptional contributions.

Reports schedule. The joint subcommittee agreed to require an additional report for the November election schedule on September 15, complete through September 1. This additional report will restore the mid-quarter report, which was eliminated by 1993 legislation that adopted the filing schedule recommended by the Governor's commission. The subcommittee also moved the date for filing the October report from the 15th to the 8th. This change will avoid the situation this year of two reports being filed within 10 days and is feasible, since the report will cover only one month of new activity. The result will be reports due July 15 (complete through July 1), September 15 (September 1), October 8 (October 1), and eight days before the November election (complete through the thirteenth day before the election).

Filings by local political party committees. The joint subcommittee agreed that the county and city political party committees should be required to file reports with the local electoral board as well as the State Board of Elections. The political party committees should also be required to file names of chairmen with the State Board subject to a civil penalty for noncompliance. The statutory \$10,000 threshold for requiring reports by certain political party committees should be indexed for inflation rounded to the nearest \$100, with a statutory definition for indexing.

Electronic filings. A resolution should be proposed to request the State Board of Elections to report on the feasibility and costs of electronic filings of campaign reports and computer access to filed reports.

Tax deductions or credits for campaign contributions. The subcommittee declined to recommend tax credits or deductions for campaign contributions because of the negative revenue impact of such tax relief. It was noted that the 1993 session had increased from \$2 to \$25 the amount of a tax refund that may be designated by the taxpayer as a contribution to a political party.

Executive Branch Lobbying

Peter Easter spoke on behalf of the Virginia Society of Association Executives to comment on proposals tentatively agreed to by the joint subcommittee at its last meeting and to caution against expansion of lobbying regulations to reach executive branch agencies.

The joint subcommittee agreed to adjust the filing date for the annual lobbyist report to allow 60, rather than 30, days for lobbying bills to clear and for circulation of the reports by the lobbyists for employers' signatures.

Following further discussion, the joint subcommittee directed that draft legislation be prepared to amend the Administrative Process Act to codify ex parte contact rules and to expand lobbying regulations to reach contacts with high-level executive branch decision-makers.

Next Meeting

The joint subcommittee will review draft legislation on campaign finance and lobbying and take up the remaining commission proposals in the area of ethics at its December 16 meeting.

The Honorable Joseph V. Gartlan, Jr., *Chairman*
Legislative Services contact: Mary R. Spain



HJR 645: Joint Subcommittee Studying the Mine Safety Law of 1966

November 23, 1993, Richmond

After acting on decision briefs addressing the Virginia Mine Safety Board and miner training, the joint subcommittee adopted a set of technical requirements for underground coal mining.

Virginia Mine Safety Board

The nine-member Virginia Mine Safety Board serves as a regulatory working committee on issues relating to health and safety in coal mines. It has been authorized to decide whether the number of required inspections may be reduced for a mine.

Members elected to keep the current system of having one board addressing coal mining only. The board should continue to serve as the regulatory working group for the development of health and safety regulations not under the jurisdiction of the Board of Examiners and to provide general advice and recommendations on ways to increase health and safety for coal miners. The joint subcommittee also agreed that the board should continue to be comprised of nine members appointed by the Governor, with three members nominated by the Virginia Coal Association and three by the United Mine Workers of America, and three appointed from the Commonwealth at-large.

Miner Training

The joint subcommittee agreed that, with respect to both coal and mineral mining, the Commonwealth should assist with new miner or refresher training required by MSHA and assist in providing classes and training desired by miners to obtain and maintain state certification, by using state employees to develop a voluntary state-approved curriculum or teaching materials and to provide training paid from funds provided to it. The department may charge reasonable fees not to exceed the cost of providing such services. The state curriculum for required new miner or refresher training would be developed by the department to be consistent with MSHA requirements. Operators will not be required to provide mandatory MSHA training through the state's program, as use of any of the state training activities will be voluntary. The department would not be required to charge participants in its voluntary training programs and may elect, for example, to provide training for unemployed miners at no cost.

Several options for enhancing state provision of coal miner safety training were debated. The joint subcommittee endorsed

the existing voluntary on-site safety awareness training provided during the course of inspections. The members adopted an interim recommendation that the Governor be asked to include in his proposed budget an amount sufficient for the department to reestablish the "topic of the month" mining safety program for unsafe mines. State funding of program, which was approximately \$260,000 annually, was eliminated when Virginia suffered a revenue shortfall in 1990-92. Finally, the members approved an option calling for the state to provide intensive voluntary training and job safety analysis at small coal mines. Currently, a job safety analysis program for coal mining is provided through a grant from MSHA.

With respect to enhancing state mineral mining training, the members adopted two proposals. First, as with coal, the department should continue to provide voluntary on-site safety awareness training as part of mine inspections. Second, the existing program of providing general safety talks, in a classroom atmosphere, should be continued for mineral mining.

Technical Standards for Coal Mining

The joint subcommittee received the report of the coal subcommittee on technical standards for coal mining. The coal

subcommittee met on November 11 to review 20 topics with regard to four issues: (i) the adequacy of existing standards and the propriety of proposed changes, (ii) the persons who may be held responsible for compliance, (iii) the types of remedies appropriate for noncompliance, and (iv) whether the requirement should be codified in statutory law or adopted by regulation. The recommendations of the coal subcommittee, with several exceptions, were adopted by the full joint subcommittee.

Of the 20 topics considered, the joint subcommittee adopted significant changes in the areas of transportation, hoisting, escapeways, emergency response plans, and ventilation.

The full joint subcommittee scheduled a meeting for December 16 in Richmond, following the mineral mining technical standards subcommittee meeting in Richmond on December 7 and the coal subcommittee meeting in Big Stone Gap on December 13.

The Honorable Alson H. Smith, Jr., *Chairman*
Legislative Services contact: Franklin D. Munyan



HJR 100: Joint Subcommittee Studying the Use of Vehicles Powered by Clean Transportation Fuels

November 22, 1993, Richmond

Standardized Fueling Nozzles

As the result of questions raised at the subcommittee's previous meeting, the members were briefed on the status of efforts to standardize fueling nozzles and receptacles for compressed natural gas (CNG) filling stations. Following action by the Building Officials and Code Administrators (BOCA) and the National Fire Prevention Association, both the Uniform Statewide Building Code and the Statewide Fire Prevention Code will probably be amended to standardize these fittings for new CNG filling stations. Once new construction is covered, industry will be consulted about the need to apply these standards retroactively to existing facilities.

Alternative Fuels Fund

A VDOT representative brought the subcommittee up to date on operation of the Virginia Alternative Fuels Revolving Fund. Applications for grants from the fund indicate over \$500,000 in unfunded needs that could be supported by the fund, but the fund lacks a stable and reliable source of revenue. The subcommittee requested staff to prepare draft legislation formally to vest the Commonwealth Transportation Commissioner with the responsibility for administering the fund.

LEV Program

Also in response to questions raised at the subcommittee's October meeting, Department of Environmental Quality staff discussed the status of efforts being made, through the Ozone Transport Commission (OTC), to have the EPA, by regulation, require the implementation of low-emission vehicle (LEV) programs throughout the northeast United States (from Maine through Northern Virginia). The OTC will not make its final recommendation on the subject to the EPA until early February 1994. At present, it appears that OTC's recommendation will be to ask EPA to mandate LEV programs throughout the northeast. If EPA acts to require an LEV program in Virginia, failure to comply would make the Com-

monwealth potentially subject to the full range of federal sanctions provided for failure to implement the federal Clean Air Act. The subcommittee will be provided with more detailed information concerning the delay granted by EPA to California in providing for a test-only motor vehicle emissions inspection program.

Legislation Proposed

The subcommittee agreed to recommend seven measures to the 1994 Session of the General Assembly:

- A bill to include electric vehicles in state income tax credits and exemptions for "clean fuel vehicles";
- A bill to include retrofitted and converted vehicles in state motor vehicle sales and use tax reductions for "clean fuel vehicles";
- A bill to eliminate the annual \$10 surcharge on special license plates for clean fuel vehicles;
- A bill to authorize local governments to reduce the personal property tax rate on alternatively fueled vehicles;

- A bill to authorize free issuance of local motor vehicle licenses (decals) for alternatively fueled vehicles;
- A bill to exempt alternatively fueled vehicles from HOV-lane restrictions, regardless of number of occupants; and
- A joint resolution expressing the sense of the General Assembly in opposition to federal imposition of a region-wide LEV program for the northeastern U.S.

Three other measures were returned to staff for redrafting:

- A bill to provide a subsidy to Virginia manufacturers of alternatively fueled vehicles;
- A joint resolution requesting revision of DMV's procedures in collecting registration data on motor vehicles; and
- A joint resolution reauthorizing the present study.

The Honorable Arthur R. Giesen, Jr., *Chairman*
Legislative Services contact: Alan B. Wambold



SJR 240: Select Committee to Review the Transportation Trust Fund

November 16, 1993, Lexington

The committee was briefed on the activities of its advisory subcommittee by Chairman E. Morgan Massey. Mr. Massey reported that his subcommittee had achieved consensus on two points: (i) existing transportation revenues are inadequate to meet needs, and (ii) this shortage of revenue cannot be overcome by cutting the allocation to one mode or program to benefit another mode or program. Mr. Massey promised to present a more specific list of proposals and options to the full committee at a later meeting.

"Transportation Crisis"

A spokesman for Virginians for Better Transportation told the committee that Virginia is facing a transportation crisis: public transportation is generally inadequate and, in many localities, totally unavailable; the demand for passenger air travel and air freight service are out-stripping capacity; port facilities at Norfolk International Terminals are inadequate; additional transportation revenues provided by the 1986 Special Session have proved inadequate; and, by fiscal year 1995, transportation maintenance costs will exceed revenues available to cover those costs.

The committee was urged not to await action by the newly elected Governor, but to recommend remedial legislation directly to the 1994 Session of the General Assembly. The suggested legislation should (i) provide for at least \$600 million in additional transportation revenues, (ii) ensure that both existing and additional transportation revenues remain dedicated to transportation purposes by requiring a two-thirds vote for their appropriation to any other purpose, (iii) address transportation needs of all regions and all modes, (iv) provide use of at least a portion of new revenues to cover the issuance of transportation bonds, and (v) return a portion of any additional revenues derived from an increase in the motor fuel tax to localities to meet local transportation needs.

Staff Reports

The committee heard four presentations by staff, which reviewed the findings and recommendations resulting from the vehicle cost responsibility study provided for in SJR 238 of 1991; briefed the members on the combined revenue impacts that would result from implementation of the cost responsibility study's recommendations and additional hypothetical transportation revenue enhancements; provided specific examples of the impact of these revenue changes on transportation program allocation formulas; and detailed the proposals of the Virginia Association of Public Transit Officials for changes in transportation revenues and their distribution.

The Honorable Hunter B. Andrews, *Chairman*
Legislative Services contact: Alan B. Wambold



SJR 207: Joint Subcommittee Studying Pollution Prevention

November 8, 1993, Richmond

The focus of the Pollution Prevention Subcommittee's third meeting was on the application of new technologies to source reduction efforts in the Commonwealth. The subcommittee heard that the objective of pollution prevention—to reduce the amount and toxicity of pollution generated—can be advanced through technologies that are currently available.

Center for Innovative Technology

The critical factor in any business decision to invest in pollution prevention efforts will be economic. CIT, whose programs are market-driven, is therefore in a position to address industries' concerns.

Of the 12 technology development centers developed by CIT at universities in the Commonwealth, five have applications related to pollution prevention. These include projects studying (i) ceramic-based engines generating reduced emissions of NO_x, (ii) the use of magnetic bearings in engines that would not require lubricants, (iii) microcell technology that allows coal companies to convert waste into a useful product, (iv) reducing the consumption of electricity by computers, and (v) mining landfills. CIT is also working with VMI Research Laboratories and the Department of Environmental Quality on their video and manual project, with the City of Chesapeake on the development of a waste exchange, and with Old Dominion University faculty on less-polluting paints and strippers for use in shipbuilding and repair.

CIT recognizes that increasing the availability of these technologies to small businesses is critical. Under the Environmentally Conscious Manufacturing (ECM) Program, developed to advance this goal, companies contract with CIT to have experts review an operation and look for opportunities for the economically sound implementation of pollution prevention opportunities. The cost to the companies is low, and the program is designed to minimize risks associated with the review of operations by outsiders. An ECM assessment would typically include a review of cleaning processes, process control, materials substitution, and waste stream flow analysis. Over 100 projects have participated in the ECM Program.

A CIT representative suggested several steps the General Assembly could take to encourage the use of new technologies to prevent pollution. First, a 10 percent investment tax credit for capital improvements for pollution prevention should be studied. This would be of particular benefit for technologies mandated by the 1990 Amendments to the Clean Air Act. Second, the legislature should encourage capital investment opportunities for technology. Third, the Commonwealth should

work to attract a federal facility dealing with pollution prevention technologies. Such facilities, located now in Cincinnati and in North Carolina, are a magnet for technological development. Finally, greater resources should be allocated to CIT and state institutions of higher education in order to take advantage of the opportunities for pollution prevention.

New Technologies

Three Virginia entrepreneurs told the subcommittee of new products and procedures that, if embraced by the Commonwealth, would eliminate specific types of pollution at the source. The first addressed the removal of lead-based paints from bridges. The traditional approach called for old paint to be removed by blasting, which can release dangerous amounts of lead into the atmosphere, and alternative abatement methods can be prohibitively expensive. Polymer coatings can be sprayed on structures at the site to encapsulate the old lead-based paint. Advantages of this technology include avoidance of solvent-based products, extended life of the infrastructure, greater worker safety, and elimination of liability for environmental clean-up costs.

A destruction-distillation process designed to eliminate waste tires, while not pollution prevention in that it addresses a waste product after its generation, does offer opportunities for cleaning up a potentially dangerous waste product. The process can reduce a ton of scrap tire feed stock into 500 pounds of carbon black, 65 gallons of light crude oil, 10,000 cubic feet of gas, and 200 pounds of steel. As the tires are not burned, there are no harmful emissions. Approximately 40 percent of the gas produced is used to run the process, and the balance of the products can be refined and resold.

Advocates of new, environmentally friendly technologies often face resistance. People are concerned about embracing new technologies due to the costs of equipment and retraining personnel. These new technologies may be less expensive than those currently used, but there is no readily available source of information. Government could take a greater role in providing such information and in using less toxic products.

DEQ

As requested by the subcommittee at its previous meeting, the Department of Environmental Quality outlined the extent of its commitment to the concept of pollution prevention and reviewed recent outreach activities aimed at heightening awareness of pollution prevention. These include (i) arranging assessments of source reduction opportunities for three companies in the Bristol area; (ii) establishing a program for training professors at Virginia universities at the University of Tennessee's Knoxville campus; (iii) contributing \$7,780 to the production of a pollution prevention videotape to be prepared in conjunction with VMI Research Laboratories; (iv) preparing a manual for wood finishing industries in Virginia focusing on the use of less toxic solvents as a method of reducing the generation of hazardous wastes; and (v) sending a videotape for the printing

industry, which was completed in September, to over 150 printers. In addition, DEQ is working with CIT, the Virginia Manufacturers Association, the State Chamber of Commerce and other groups in pushing source reduction strategies. The department is in the process of designating technical advisory councils for pollution prevention and hopes to have them established by December.

The growing emphasis on pollution prevention efforts within DEQ is reflected in the growth of its budget from \$160,000 a year ago to approximately \$800,000 today. Last year's financial commitment consisted of \$120,000 for a three-person staff and \$40,000 for outreach. The DEQ has now pledged to add three more employees to the program, which will double its staffing expenses to \$240,000. The funds allocated to match money from the federal Environmental Protection Agency jumped from \$30,000 to \$155,000, which will produce a total of \$310,000 available for outreach in the current period.

Finally, approximately \$400,000 of the DEQ's resources will be committed to pollution prevention through the implementation of source reduction efforts in all enforcement, inspection, and permitting activities. Personnel carrying out these activities will be trained by the pollution prevention experts to identify and advocate pollution prevention opportunities where feasible. For example, the Waste Program is now requiring that enforcement settlement agreements address pollution prevention by, for example, requiring waste audits. A similar initiative is going forward in the Water Program.

Recently the department has created the Office of Pollution Prevention, which will be on the same hierarchical level as the Office of Science and Innovative Programs. Prior to this, the Waste Reduction Assistance Program had been within the Office of Science and Innovative Programs. The department could not give the members of the subcommittee any assurances regarding future levels of spending on pollution prevention and noted that the Governor has asked agencies to prepare a series of budget cut proposals as a means of avoiding projected deficits.

Outreach Project Endorsed

The subcommittee was briefed by staff on the status of the videotape and manual project being developed by VMI Research Laboratories, with the goal of producing materials for small and medium-sized businesses that otherwise may lack access to this information. As noted earlier, DEQ has contributed half of the total estimated project cost, which money is earmarked for production of the videotape. The subcommittee agreed to lend its support to the project as an "endorser," and members will be briefed on the status of the project at the subcommittee's December 13th meeting. Also on the agenda is a discussion of methods to increase the implementation of pollution prevention concepts in agencies of state government.

The Honorable R. Edward Houck, *Chairman*
Legislative Services contact: Franklin D. Munyan



HJR 466: Joint Subcommittee on Enhancing End-use Markets for Recycled Materials

October 4, 1993, Richmond

The joint subcommittee, in its second year of deliberations, was requested by the 1993 Session of the General Assembly to continue to (i) examine ways to enhance recycling markets, (ii) review the progress made by Virginia localities and private industry in developing recyclable material collection, processing, and marketing infrastructure in response to state legislative mandates, and (iii) evaluate the need for standards pertaining to environmental marketing claims. The subcommittee was also asked to monitor the activities of the Virginia Recycling Markets Development Council.

Overview

At its first meeting, the subcommittee reviewed the efforts made by local governments to develop a collection, processing, and marketing infrastructure. Officials with the Department of Environmental Quality (DEQ) provided an overview of market development efforts in the Commonwealth. Under a 1989 solid-waste management law, localities were required to submit solid waste plans that documented their recycling rates. For 1991, 39 localities submitted individual recycling reports, with the remaining 289 jurisdictions submitting data on their rates as part of 56 regional plans. Based on these reports, DEQ estimated that the average recycling rate in Virginia in 1991 was 19 percent.

Of the eight localities that did not meet the mandatory 10 percent recycling rate, four were located in southwestern Virginia. In fact, the recycling rates in the southwest portion of the state were noticeably lower than the rates for other regions, due in large measure to the absence of markets within the region.

Statewide, most of the recyclables collected (68 percent) were either metals or paper materials. Ferrous scrap metal represented the single largest individual material collected. The high percentage of ferrous metal reflects the fact that 54 of the 95 plans included scrap metal auto bodies as material that was being recycled. DEQ determined that more than 50 percent of the almost 2 million tons of recyclable materials was generated by commercial and industrial sources.

Although localities were not required to report their recycling rates in 1992, a DEQ annual survey of local governments documented an increase in all areas of program development. Localities established more collection centers, more homes had access to curbside collection, and a wider variety of materials was collected. Between 1991 and the summer of 1993, the number of homes receiving curbside collection service more

than doubled and the number of drop-off collection centers increased by 10 percent.

Localities were also asked to provide information on program funding. The survey indicated that, on the average, localities spent 12.2 percent of their solid waste budgets on the collection and marketing of their recyclables. Only 20 county, city, or town recycling programs are financed solely with general funds. Conversely, 22 localities do not use any general funds to operate their programs.

DEQ maintains a markets data base which was updated in July to include such new categories as anti-freeze, yard waste, motor oil and filters, wood pallets, and tires. The data base identifies 189 Virginia markets. The regions with the largest number of markets are northern Virginia, central Virginia, and southeastern Virginia. The data base also includes 290 markets located outside of Virginia that are either accessible to Virginia recycling programs or have expressed an interest in finding additional suppliers within the state.

To assist in developing regional markets, EPA Region III, together with the states in the region, have formed a market development work group called the Mid-Atlantic Consortium of Recycling and Economic Development Officials. Their goal is to identify market needs and to develop feasible and appropriate solutions for recycling a variety of materials. The group has undertaken two projects. The first is a directory of broker/intermediate processors that will incorporate existing documents from the states within the region. The second project will track the movement of recyclables throughout the region from generators through collectors, brokers, processors, and end uses. It will also involve an examination of transportation routes. While the initial projects will focus on data collection, the ultimate objective is to develop programs that stimulate the creation of regional markets.

Local Government Efforts

The subcommittee received testimony from a number of local government officials, who described their localities' efforts to collect and market recyclable materials. The localities ranged in size from the small town of Farmville (population 6,547) to the large urban county of Fairfax (population 826,000) and also included the City of South Boston, Appomattox County, the Rivanna Solid Waste Authority (Charlottesville/Albemarle), and Prince William County.

The local officials described their experiences with recycling programs in some depth, including a variety of strategies designed to increase local recycling to meet state mandates. A variety of problems also surfaced, most relating to finding and maintaining reliable markets for recycled materials. A summary of local officials' comments and suggestions:

- Several localities mentioned the need for more markets for recycled materials, especially plastics and mixed paper.

- Transportation of recycled materials to distant markets is a problem for many localities, not all of them rural. In some cases, the fees earned for recycled materials do not cover the costs of hauling them to markets.

- Identifying markets and keeping abreast of market changes is a particularly acute problem for smaller localities, which frequently lack the resources and the market clout enjoyed by larger urban localities.

- The lack of end-use markets (where the recycled material is remanufactured into new material) was mentioned by a representative from Fairfax County.

Some local officials also suggested areas when state assistance could prove useful, including (i) providing current information on markets; (ii) assisting in creating markets, especially for smaller communities; (iii) improving the system for transporting materials to markets; (iv) increasing the availability of end-use markets; and (v) providing leadership and financial incentives needed to encourage regionalism.

The Honorable A. Victor Thomas, *Chairman*
Legislative Services contact: Marty Farber



SJR 249: Joint Subcommittee to Develop Criteria for Evaluating Sales Tax Exemption Requests

November 29, 1993, Richmond

Department of Taxation

The Department of Taxation explained the revenue estimates for the cost of implementing the administrative exemption process for nonprofit organizations. These estimates were initially introduced during the September meeting of the joint subcommittee. For fiscal years 1995 and 1996, the estimated sales tax loss exceeds \$105 million and \$109 million, respectively.

The department presentation also included an update on the sales tax expenditures for services. According to the report, Virginia levies the sales and use tax on fewer services than most of the other 50 states do. Included among the exempt services that are taxed by other states are barber/beauty shops, laundry and dry cleaning, janitorial and building maintenance, landscaping and lawn care, automotive repair, cable television, amusement parks, and custom computer programs.

Proposed Standards

Staff reviewed the proposed standards for nonprofit organizations to qualify for tax exempt status, which were first presented during the September meeting:

1. Exemption from federal income taxation under either § 501 (c)(3) or § 501 (c)(4) of the Internal Revenue Code, as evidenced by a ruling or other such documentation.
2. The charitable purpose or purposes for which the entity is organized and operated, and the charitable functions and services it exists to deliver, must be provided to Virginia citizens, along with an explanation of such services.
3. No more than 25 percent of the organization's gross annual revenue may be spent on general administration and fundraising.
4. The organization's financial records must be available for public inspection and must be certified annually as true, accurate, and complete. Salaries, including all benefits, of the five most highly compensated employees must be specifically disclosed. Organizations with gross annual revenue of \$250,000 or greater must be subject to an annual financial audit performed by an independent certified public accountant.
5. Organizations subject to Chapter 5 of Title 57 (Solicitation of Contributions) of the *Code of Virginia* must be in compliance with such law.
6. Exempt status must be periodically reviewed to ensure that actual operations continue to serve a charitable purpose or purposes.
7. Names and addresses of the volunteer board of directors must be provided.

The third standard caused some concern among the nonprofit organizations because of recent accounting changes adopted by the Financial Accounting Standards Board that could affect the percentage of an organization's gross annual revenue spent on general administration and fundraising. The joint subcommittee agreed to change the standard to give the Department of Taxation the authority to set a percentage that is no more restrictive than the standard set by the Combined Virginia Campaign or the Combined Federal Campaign, whichever is lower.

The joint subcommittee adopted the proposed standards and agreed to consider submitting legislation that will incorporate them into the *Code* during the 1994 General Assembly Session.

The Honorable Charles J. Colgan, *Chairman*
Legislative Services contact: Joan E. Putney



SJR 195: Joint Subcommittee Studying Virginia's Current Bingo and Raffle Statutes


November 16, 1993, Richmond

The fourth meeting of the joint subcommittee was a work session at which over 20 proposed legislative recommendations were discussed. After lengthy discussion, including testimony from interested persons, the joint subcommittee by consensus approved the following proposals for inclusion in a legislative draft:

1. Repeal the statutory exemption that permits localities to allow certain out-of-state organizations to operate bingo games and raffles in Virginia in favor of a requirement for a certain percentage (currently 50 percent) of organization's membership to be Virginia residents.
2. Amend § 18.2-340.3 (3) to require nonprofit organizations to be in existence for at least five years prior to applying for a permit.
3. Increase minimum age requirement (from 16 to 18 years) for the playing of instant bingo.
4. Prohibit landlords or owners of bingo halls (including sublessees) from (i) participating in the conduct, management, or operation of bingo games, (ii) being a supplier, or (iii) requiring by contract or otherwise that a particular supplier be used by the organization.
5. Authorize localities to determine fair market rental values.
6. Amend the section allowing employees of corporate sponsors to operate bingo games.
7. Prohibit the acceptance of post-dated checks from bingo players.
8. Prohibit organizations from extending or accepting lines of credit as payment for playing bingo.
9. Clarify the local government official responsible for the enforcement of bingo laws (e.g., Commonwealth's attorney for criminal violations, city/county attorney for injunctive relief).
10. Adopt the North American Gaming Regulators Association's (NAGRA) standards on bingo and instant bingo.
11. Align effective dates for statutory change to the reporting requirements for charities.

The draft will be the subject of a public hearing scheduled for December 17, 1993, in Richmond.

Other legislative recommendations of the joint subcommittee include continuing the study in order to determine the feasibility of transferring control of bingo and raffles from local governments to state government. Additionally, the joint subcommittee recommended that U.S. military bases located in the Commonwealth be requested, via resolution, to adhere to Virginia's laws concerning the conduct of bingo games. The latter recommendation came as a result of testimony that military bases unfairly compete with charities because they do not follow prize limits as required by Virginia law.

The Honorable Charles J. Colgan, *Chairman*
Legislative Services contact: Maria J.K. Everett 

SJR 279: Joint Commission on Management of the Commonwealth's Work Force

November 23, 1993, Richmond

The joint commission heard an overview of the Joint Legislative Audit and Review Commission's (JLARC) study of the Department of Personnel and Training and progress reports from the five task forces. The commission accepted the reports of the task forces and will meet again prior to the 1994 Session of the General Assembly to adopt the final consolidated report and any proposed legislation. Citing the challenges of changing resources, technology, and expectations of both the employees and the citizens, the Chairman endorsed the need for further study and public hearings next year to enhance the work of the commission.

JLARC

SJR 279 requested JLARC to review human resources management in the Commonwealth, including activities at the Department of Personnel and Training (DPT). JLARC staff presented an overview of their findings:

- Virginia's personnel function is more decentralized than in other states.
- A majority of agencies are satisfied with the current division of responsibility between themselves and DPT.
- Larger agencies are not as satisfied and would like more decentralization. The 11 largest agencies represent two-thirds of the state's work force.

- Except for large agencies, most agencies are also satisfied with overall operation of the personnel function.

- DPT has adequate staff to perform its functions, and its organizational structure is sound.

- Employee morale in DPT is low, largely as a result of leadership turnover, agency communication, and management priorities.

- DPT has been too reactive in recent years and has failed to make the best use of internal data.

- Training needs to be expanded, especially for medium-sized agencies.

- New employee orientation and training for new agency heads is needed.

JLARC also recommended several areas for further study by the joint commission, including the consolidation of related functions in other agencies and evaluating the need for statewide human resource planning.

Strategic Planning Task Force

The Strategic Planning Task Force recommended a state level strategic planning process for human resources and an elevation in organizational status to the executive offices of the Governor. The task force also recommended the creation of a human resources advisory board to assist with the strategic planning process and development of professional qualifications for the director of a new department of human resources management.

Task Force on Continuous Quality Improvement

The Task Force on Continuous Quality Improvement proposed a vision for management of the Commonwealth's work force for introduction to the 1994 Session of the General Assembly. In addition, the task force outlined a quality process that starts at the top of state government but can be replicated throughout all the agencies. It also identified the elements that are critical to successful implementation. The next steps for the task force will be to develop a structure and specific recommendations for implementation, including new support and information systems, measurements, and management and employee skills.

Compensation Task Force

The Compensation Task Force proposed four major goals for the Commonwealth's compensation system: attract qualified employees, retain qualified employees, motivate employees by rewarding sustained high performance, and support line management in the realization of organizational objectives. Key recommendations include the need to redesign the

Commonwealth's compensation system, including the method for establishing job worth, updating pay practices, the development of policies and procedures, and the use of cash and non-cash compensation factors.

Work-Family Task Force

Citing the number of work-family policies that are already in effect, the task force concentrated on implementation. It recommended benefits for part-time employees, a flexible benefits program to provide more options to employees for customizing their benefits package, benefits statements at least semi-annually, and a uniform orientation program for new employees. The task force also identified several areas for additional study: enhancing the role of human resource officers in communicating benefits information, informing managers about the value of work-family policies, and identifying system-wide issues that affect and sometimes inhibit implementation of these policies.

Career Development

The task force focused on the two dimensions of career development: career mobility and training. Key recommendations were to explore the feasibility of establishing a talent bank for professional and managerial employees, to review alternatives to increase the mobility of executives and senior managers among state agencies, to study the concept of "dual career tracks" for technical and managerial employees, to identify career development models and impediments to career advancement, and to develop a training program for supervisors and managers.

The Honorable Richard J. Holland, *Chairman*
Legislative Services Contact: Nancy L. Roberts



HJR 712: Blue Ridge Economic Development Commission

November 8, 1993, Hot Springs

Legislative Agenda

The Blue Ridge Economic Development Commission met in conjunction with the 59th Annual Meeting of the Virginia Association of Counties. Following presentations by the World Trade Alliance of the Blue Ridge, the Blue Ridge Economic Development Advisory Council, the Blue Ridge Regional Educational and Training Council, and the Blue Ridge Regional Tourism Council, the commission considered its legislative agenda for the 1994 Session of the General

Assembly. Among the legislative proposals endorsed by the commission:

- A request to maintain the current funding level for the Roanoke office of the Virginia Department of Economic Development (VDED).

- Requests from the Blue Ridge Economic Development Advisory Council for appropriations to fund a cooperative economic development advertising program between the Blue Ridge region and the VDED, to establish a directory of industrial services and suppliers in the Blue Ridge region, and to assist the council and Virginia Tech in sponsoring export seminars for businesses and industries in the Blue Ridge region.

- A request for an increase in funding -- from \$75,000 to \$100,000 annually -- for the Blue Ridge Regional Educational and Training Council.

- A request to support the continued funding of a statewide regional grants program administered by the Virginia Department of Tourism. The grants are awarded to regional programs on the basis of a 50 percent match by any group of at least three political jurisdictions.

- A recommendation by Chairman Munford that the 1994-96 biennial appropriation to the Governor's Opportunity Fund be increased to \$20 million, an increase endorsed by the Blue Ridge Economic Development Advisory Council.

- A recommendation that the General Assembly appropriate \$2.4 million during the next biennium for the State Export Loan Guaranty program, administered by the Virginia Small Business Financing Authority.

- A recommendation that the Blue Ridge Economic Development Commission be continued for two more years.

Other Issues

The commission acted on several non-legislative recommendations and discussed other issues related to its work. Among the recommendations and issues were:

1. An endorsement of the North American Free Trade Agreement (NAFTA).

2. A request that the SJR 240 Transportation Committee hold the Blue Ridge region and other rural areas harmless for any decreases in funding that may result from changes that the committee proposes to Virginia's formula in allocating highway funds in order to conform to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The commission also requested that the committee maintain the current threshold of 50 or more vehicles per day in allocating funds for unpaved secondary roads, as opposed to increasing the funding threshold to 100 or more vehicles per day.

3. An endorsement of the Blue Ridge Safety Network Pilot Project, an effort by the Department of Labor and Industry to reduce work-related injuries and deaths in the Blue Ridge region.

4. An expression of thanks and appreciation to the Virginia Central Railroad and CSX Corporation for their operation of the Autumn Glory Steam Train on weekends during the month of October. The venture proved to be a great boon to local tourism and associated retail enterprises. The commission hopes that the success of the October daytrippers will result in a full season of excursions in the future, possibly as soon as 1994.

5. Discussion of a request that the commission support an additional \$75,000 appropriation to the VDED for its Roanoke office. These funds would be used primarily for the VDED's attendance at trade shows and exhibits throughout the world. Since the commission had identified a number of higher priorities among the requests for appropriations' support, the legislative members of the commission did not support the request at this time.

6. Discussion of a request that the commission support the proposed north/south route of the Interstate 73 corridor through Roanoke to Winston-Salem, North Carolina. Although the citizen members of the commission endorsed the request, the legislative members abstained from the vote due to the need for additional information on the project and its impact on their areas. The Commonwealth Transportation Board has not yet taken a position on the project.

The Honorable Joan H. Munford, *Chairman*
Legislative Services contact: Diane E. Horvath



HJR 444: Select Committee Studying the Game Protection Fund

November 8, 1993, Richmond

The Select Committee Studying the Game Protection Fund met to discuss the results of the Auditor of Public Accounts' report on the Department of Game and Inland Fisheries (DGIF) and DGIF's funding options.

Financial Audit

The Auditor of Public Accounts presented his findings regarding the staffing and administrative functions of DGIF. The audit found that accounting and administrative functions needed to be strengthened. According to the auditor, the board and department administrators must receive sound, basic, and

accurate information from the accounting staff, who in turn must have the knowledge and ability to provide accurate and reliable information. Currently, the agency's divisions do not understand the necessity of submitting timely information and communicating problems and various activities to management. The audit report recommends that management (i) develop accounting policies and procedures; (ii) determine accounting's role (i.e., data collection and error correction vs. processing of transactions); (iii) provide training in purchasing, receiving, invoice processing, grant accounting, and fixed-asset accounting; (iv) evaluate staff performance after training and take appropriate action; and (v) review and reduce manual processes.

A second area of concern was grants management. The audit found that DGIF did not have an adequate system either to monitor and report federal grant financial activity or to prepare complete and accurate federal billings. The agency's grant accountant was not only responsible for supervision of all staff dealing with license and permit sales but also collected federal expense information from agency personnel for billing federal agencies. There were no standards for collecting federal expense information and individuals who handled grant accounting and reporting duties had no training in federal grant regulations. These problems are not new, having been documented by previous audits.

Each division within the agency has responsibility for its own procurement, receiving, invoice processing, and fixed-asset accounting, resulting in state and federal regulations not being consistently followed. The audit report suggested that these functions be standardized and centralized.

The auditor also performed an in-depth analysis of DGIF's information systems and found them to be obsolete, inadequate, and underfunded. The primary computer is near full capacity and the hardware is old. Many systems are outdated and require extensive maintenance. Because the installation of a new system will be expensive, the auditor recommends that DGIF do the following:

- Develop a long-range information plan;
- Merge the system activities of the data processing and planning divisions;
- Determine if the resources exist to develop and maintain a new system;
- Establish a steering committee to set system development priorities;
- Link the existing personal computers into a network; and
- Adopt system development standards.

The auditor briefly discussed several additional issues. He noted that if volunteer services had been properly accounted for, the agency could claim a greater federal match, thereby reduc-

ing the state's cash match for several programs. In a general sense, tighter control and accountability measures should be introduced in order to strengthen purchasing, procurement, and invoice processing.

Agency's Response

The chairman of the Board of Game and Inland Fisheries expressed the board's concern with the auditor's findings. He noted that after a period of improved audits, the agency appears to have taken a step back. The board recognizes the need to hire additional administrative personnel if fiscal and administrative problems are to be resolved. In response to the auditor's concern with the federal grants management function, the agency has hired a full-time federal grants accountant. A subcommittee of the board has been formed to review the agency's progress in addressing the various audit points and will be receiving monthly reports. The department has also asked the Department of Information Technology (DIT) to study the agency's data processing and information system. DIT's recommendations, along with cost estimates for improving the present outdated system, are expected in December.

The acting director of DGIF responded to specific points raised by the audit, including the need to strengthen accounting and administrative functions and improve grants accounting. The accounting and administrative functions consist of two primary activities, purchasing and payment for purchases. There was no evidence that items purchased were improper, however, the audit did reveal that the agency did not always follow proper procedures in making purchases. Because the agency is organized into regional field units, purchasing is decentralized, with most field personnel having purchased items. Problems have occurred because individuals have not been fully informed of all the purchasing procedures. To remedy this situation, field personnel received training in October in such areas as purchasing, receiving, invoicing, fixed-asset accounting, travel reimbursements, and the use of gasoline credits. Each employee also received a copy of the audit and the agency's response. Several new purchasing procedures have already been instituted (e.g., the purchase of any item costing \$1,000 or more will require the approval of the purchasing officer and one of the deputy directors, and purchases over \$5,000 are now made through the Department of General Services' Division of Purchases and Supply).

The agency was cited by the auditor for eight points under the category of "grant accounting." The committee was assured that the eight points are being addressed by the recently hired grants accountant.

In response to the auditor's finding that the agency's computer systems are inadequate, and after having an opportunity to review DIT's recommendations, DGIF will prepare specifications for a new computer system and order the appropriate equipment. DGIF has requested a \$450,000 appropriation, through the capital outlay process, to fund any recommended improvements. If such an appropriation is not allowed, funds will be allocated from the agency's operating budgets.

The issues of volunteer services and the time keeping system were also addressed. A new hunter safety coordinator has been trained in how to account for the volunteer hours and is responsible for accurately reporting volunteers' time. In addition, the agency will institute a system to report how much time and effort is being committed to each program, which will enable management to estimate more precisely program costs.

Funding Initiatives

The agency attributes its budget problems, in large measure, to two interrelated factors: (i) it is "living on a fixed income" during an inflationary period, and (ii) participation rates by persons who purchase licenses and permits are decreasing. This situation has not only affected the department's traditional programs but such recent initiatives as the nongame and endangered species programs. DGIF is proposing to increase biennial funding for such activities as anadromous fish passage and restoration programs, nongame and endangered species, environmental services field staff in each region, law enforcement task force of three officers trained in environmental law and identification of endangered species, hydrilla control, and zebra mussel management. The total general fund request would increase the current annual appropriation of \$380,000 by \$1.1 million annually, for a total biennium appropriation of approximately \$3 million. This request has been submitted to the Governor for his review.

Other funding options were reviewed for the select committee:

- The allocation to the department of the \$2.6 million generated by the watercraft sales and use tax.
- Dedication of that portion of the sales tax collected on the sales of recreation equipment to DGIF, which would generate approximately \$10 million.
- An increase in license fees would generate an estimated \$2.7 million of additional annual revenue over 1991-1992 fee totals.
- The development of a \$6 to \$7 facilities use permit, which would be required to enter all wildlife management areas and other facilities operated by the department, would generate about \$620,000 annually.

Next Meeting

The select committee will not take any action on specific funding options until it has an opportunity to review the Governor's budget submission. It is anticipated that the select committee will hold a final meeting soon after the release of the Governor's budget, at which time it will discuss possible funding proposals.

The Honorable A. Victor Thomas, Chairman
Legislative Services contact: Marty Farber



Coal and Energy Commission

November 29, 1993, Richmond

The second meeting of the Virginia Coal and Energy Commission featured reports on issues relating to the Commonwealth's energy programs, coal exports, and recent developments in conservation and load management programs. Delegate A. Victor Thomas, chairman of the commission for the past two years, also announced that he would be relinquishing the chairmanship and scheduled the election of a new chairman for the commission's next meeting.

DMME Budget Issues

The Department of Mines, Minerals and Energy warned the commission that it may not be able to continue to perform all of its present statutory duties if its budget is reduced. Since the 1989-90 fiscal year, general fund appropriations have been flat or have declined, while the percentage of general fund dollars spent on personnel costs has risen.

Despite the lack of new resources, the agency has witnessed an increasing demand for its services. Programs absorbing additional shares of these resources include (i) responding to subsidence complaints, which have risen 51 percent; (ii) responding to water loss complaints (up 170 percent); (iii) administration of the Applicant Violator System, which handles over 5,000 entries and 1,200 inquiries; (iv) handling a 2,700 percent increase in the number of coalbed methane wells; and (v) implementing the Virginia Energy Plan.

The department told the commission that it has maintained a "quality culture" during this three-year period of expanding duties and shrinking resources. It has done so by continuing the "core services" that are mandated or are critical to its mission, while shedding lower priority work, restructuring the remaining work, and fully supporting all remaining staff.

The total savings realized by these measures exceeds \$2.3 million. However, the department is now out of options. At the Governor's request, the agency has submitted additional budget cuts of 4 percent, 10 percent, and 18 percent, which translate into revenue reductions of between \$400,000 and \$1.8 million, on top of the 23 percent in cuts already absorbed. Because operating expenses are a comparatively minor portion of the cost of its various programs, additional funding reductions will be borne by personnel reductions. Furthermore, the DMME's mandated duties may change next year as a result of a rewriting of the Commonwealth's mine safety laws underway by the HJR 645 joint subcommittee.

Renewable Energy Industries

At its meeting of June 28, 1993, the commission received a report regarding a consultant's study of barriers to the

use, availability, and acceptance of renewable energy sources in the Commonwealth. A follow-up report summarized the consultant's preliminary findings on the resource and economic development potential for meeting Virginia's energy needs with cost-effective indigenous renewable resources in the 21st century.

The Commonwealth will accrue four benefits by taking the lead in this area: first, an increase in flexibility and competitiveness; second, potential for the formation of a new sustainable energy industry, such as the manufacture of solar photovoltaic materials, which can offset any job declines in the traditional fossil fuel industries; third, potential renewable energy projects to stimulate the state's agricultural industry; and fourth, beneficial effects on the environment. Renewable energy sources offer opportunities to meet the requirements of the Clean Air Act Amendments, maintain energy self-sufficiency, and optimize pollution prevention opportunities.

The consultant's preliminary findings focused on three sectors of the economy—utilities, building, and transportation—where barriers may be removed, or incentives may be created, for the expansion of renewable energy resources industries. Several opportunities for further investigation were cited for each area of opportunity.

Powell River Project

The programs and capabilities of the Powell River Project are a valuable resource for the coal-producing counties of southwestern Virginia. The project, founded in 1980 as a program of Virginia Tech, sponsors research and distributes information for the benefit of people, governments, and industries in Lee, Scott, Wise, Dickinson, Buchanan, Russell, and Tazewell Counties and the City of Norton.

The commission was advised of four technologies developed through the project for use by the coal industry to decrease regulatory compliance costs, protect the environment, and increase the use potential of reclaimed mine sites. Examples include the development of reforestation guidelines for mined land, of a passive, biological technology for treating water contaminated by mine drainage, and of guidelines for revegetating coal refuse using techniques that require less soil than the costly standard four-foot cover. A related initiative is developing alternatives to septic drainfields in reclaimed mines, which has the potential to allow residential use of the land where public sewers are unavailable.

The programs of the Powell River Project are not limited to mining. Studies are now underway that focus on household water quality and the likely effects of future coal production trends on local tax revenues. The project also conducts education programs for over 1,500 students from the region annually at its 1,700 acre education center in Wise County and is involved in two initiatives seeking to extend its scope to a regional basis.

Less than 10 percent of the project's budget comes from the general fund, but the state money is essential. Much of the project's resources are in the form of matching and parallel funds and in-kind contributions. Contributions from the coal industry, notably Penn Virginia Resources Corp. and Norfolk Southern, have been the project's major source of direct support. In 1992-93, every dollar of state funding was matched by nearly \$6 of non-university funding.

Coal Export Study

Virginia's Department of Economic Development (DED) has been developing a coal export plan for the Commonwealth. Assisted by the Virginia Center for Coal & Energy Research (VCCER) and the Department of Mines, Minerals and Energy (DMME), DED was directed by SJR 208 to develop a long-term coal export marketing plan. The General Assembly called for this plan because, to date, the bulk of Virginia's coal exports have been for the overseas steel industry. As that demand declines due to increased competition from other international coal exporters (e.g., Poland, Colombia, and South Africa), increased uncertainty suggested the need for a comprehensive export strategy.

DED is using its International Market Planning (IMP) program to produce the draft plan. A written report detailing the export plan study's findings will be made later in December to the commission, the General Assembly and the Governor. A preliminary draft report included the following findings:

- 60 percent of all Central Appalachian coal exports leaving Hampton Roads go to Europe.
- Central Appalachian coal export activity is currently flat due to international competition. Export tonnage is not expected to increase any more than two percent by the year 2000.
- The export market for steam coal is up. However, Central Appalachian coal, due to extraction costs, will have to compete on the basis of quality rather than price.
- The majority of factors influencing the price and demand for Central Appalachian coal are beyond the control of Virginia statutes and regulations.
- However, some suggestions in the report will include state-generated tax and regulatory relief for coal producers.

Coalfield Employment

Earlier this year, commission members asked VCCER's director, John Randolph, whether mine operators with coal mines in both Virginia and adjacent states were moving mining jobs out of Virginia to their other mines — perhaps because operating costs might be lower. Dr. Randolph agreed to conduct research on this issue and report back to the commission.

There appears to be some anecdotal information on movement on the part of some operators with mines in Virginia and other states, but aggregate data do not show any clear trends — particularly when focusing on Virginia, West Virginia, and Kentucky mining employment statistics. In terms of mine production, all three states gained in 1990, led by southern West Virginia's 15 percent increase. Virginia's production rose 10 percent and eastern Kentucky, four percent.

Between 1990 and 1992, Virginia's production declined by 10 percent, while production in southern West Virginia dropped four percent and eastern Kentucky eight percent. For the first ten months of 1993, Virginia production level is flat, while southern West Virginia is down 12 percent and eastern Kentucky is down four percent.

In terms of employment, all three states' mining employment levels were stable in 1990's peak production year (Virginia was down 0.3 percent; West Virginia was up 0.3 percent and eastern Kentucky was up 1 percent). All three states have lost miners since then. From 1990 to 1992, Virginia's mine employment dropped 12 percent, West Virginia's, 12 percent, and eastern Kentucky's, 22 percent.

Job Losses and Social Services Costs

Dr. Randolph was also asked by commission members to determine whether any correlation exists between mining employment loss and increased social services utilization in communities where such losses occur. Dr. Randolph reported that while these costs have not been quantified, there are indicators suggesting that social services costs have gone up in communities sustaining mining job losses.

Energy Developments: CLM Programs

Earlier this year the State Corporation Commission released an order establishing cost/benefit rules for proposed public utility conservation and load management programs. The June 1993 order culminated the SCC's three-year effort to address broad policy questions about conservation and load management (CLM) programs of electric and natural gas utilities.

The June 1993 order establishes mandatory cost/benefit analyses of proposed CLM programs. It complements a 1992 SCC order requiring public utilities proposing new conservation and load management programs to file formal applications with the SCC. The cost/benefit tests were subsequently developed by the SCC's staff, with the assistance of a task force consisting of Virginia's Secretary of Natural Resources and representatives from Virginia's electric and gas utilities, the Office of the Attorney General, and other parties with interests in gas and utility rates.

The SCC's June 1993 order established a multi-perspective approach to evaluating CLM, or demand-side manage-

ment (DSM) programs. Utility applicants seeking SCC approval for proposed DSM programs must provide cost/benefit analyses using the following four tests: (1) participant test, (2) utility cost test, (3) ratepayer impact measure (RIM) test, and (4) total resource cost test. Cumulatively these tests look at the costs and benefits to customers who participate in a utility's DSM program, as well as to those who do not; potential changes in utility revenue resulting from the program; and the change in the average cost of energy services across the utility's entire customer base as result of the program.

Virginia's electric utilities have received approval for a number of DSM programs since the issuance of the commission's DSM orders. Several recently approved programs proposed by

Virginia Power (VP) and Appalachian Power (APCO) include: financing programs for energy efficient heating and cooling equipment (VP); offering discounts to customers purchasing compact fluorescent light bulbs (APCO); heat pump purchasing incentives (APCO); and field study pilot programs providing a total of \$1 million in direct payments to qualifying residential customers for installation of advanced energy savings systems (VP).

The commission has scheduled its next meeting for January 11, 1994, in Richmond.

The Honorable A. Victor Thomas, *Chairman*
Legislative Services contact: Arlen K. Bolstad



GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

DEPARTMENT OF MOTOR VEHICLES

† General Notice

The Virginia Department of Motor Vehicles does not discriminate on the basis of disability in the admission to, access to, or employment in its programs, services, or activities. John M. Gazzola has been designated to coordinate compliance with the nondiscrimination requirements as set forth in the regulations governing the Americans with Disabilities Act of 1990. Information concerning the provisions of the Americans with Disabilities Act and the rights thereunder is available from the ADA Coordinator at:

The Department of Motor Vehicles
P. O. Box 27412
Richmond, Virginia 23269-0001
Telephone (804) 367-9727
TDD/(804) 367-1752.

VIRGINIA CODE COMMISSION

NOTICE OF INTENT TO AWARD CONTRACT FOR THE PUBLICATION OF THE VIRGINIA ADMINISTRATIVE CODE

Notice is hereby given to the public that the Virginia Code Commission, on behalf of the Commonwealth of Virginia, intends to enter into a contract with Lawyers Cooperative Publishing Company, a division of Thomson Professional Publishing, Inc., a New York corporation, for the preparation, publication and distribution of the Virginia Administrative Code (VAC). The VAC will contain the regulations of agencies of the Commonwealth which are subject to the Virginia Register Act.

Additional information is available through the Office of the Registrar of Regulations, 2nd Floor, General Assembly Building, Richmond, Virginia 23219.

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a

mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in The Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-01-43. Aid to Families with Dependent Children (AFDC) Program—Fifth Degree Specified Relative.

Publication: 10:2 VA.R. 386-387 October 18, 1993.

Correction to Final Regulation:

Page 387, § 2.1, subdivision 1, line 6 after "uncle;" insert "aunt;"

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.

† **January 20, 1994 - 10 a.m.** – Open Meeting

† **January 21, 1994 - 8 a.m.** – Open Meeting

Department of Professional and Occupational Regulation, 3600 W. Broad Street, 4th Floor, Richmond, Virginia. ♠

A meeting to (i) review applications; (ii) review correspondence; (iii) review and conduct disposition of enforcement files; (iv) conduct regulatory review; and

(v) conduct routine board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8590. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy T. Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8590.

GOVERNOR'S ADVISORY BOARD ON AGING

† **January 24, 1994 - Noon** – Open Meeting

The Radisson Hotel, 555 East Canal Street, Richmond, Virginia. ♠ (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Topics for discussion will include legislative issues of interest to older Virginians and discussion of the board's committee structure and bylaws.

Contact: Bill Peterson, Department for the Aging, 700 E. Franklin Street, Richmond, VA 23219, telephone (804) 225-2803, toll-free 1-800-552-4464, or (804) 225-2271/TDD ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (STATE BOARD OF)

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

Calendar of Events

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 13, 1994 - 10 a.m. – Open Meeting
Department of Agriculture and Consumer Services, Board Room 204, 1100 Bank Street, Richmond, Virginia. ☐

Pesticide Control Board Committee meetings, specifically, Fees and Licenses Committee will discuss proposed fee regulation at 10:15 a.m. in Room 401.

January 14, 1994 - 9 a.m. – Open Meeting
Department of Agriculture and Consumer Services, Board Room 204, 1100 Bank Street, Richmond, Virginia. ☐

A public hearing will be followed by a general business meeting to discuss proposed fee regulation and possible legislative proposals to the Code of Virginia. Portions of the meeting may be held in closed session, pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the Pesticide Control Board's agenda following the public hearing. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P. O. Box 1163, Room 401, 1100 Bank Street, Richmond, VA 23209, telephone (804) 371-6558.

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CORRECTION TO PUBLIC HEARING DATE:

January 14, 1994 - 9 a.m. – Public Hearing
Department of Agriculture and Consumer Services, 1100 Bank Street, Room 204, Richmond, Virginia.

EXTENSION OF PUBLIC COMMENT PERIOD:

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 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 Winegrowers Advisory Board

January 12, 1994 - 10 a.m. – Open Meeting
Department of Agriculture and Consumer Services, Washington Building, 2nd Floor Conference Room, 1100 Bank Street, Richmond, Virginia. ☐

A regular meeting. Any person who needs any accommodation in order to participate at the meeting should contact Wendy Rizzo, identified in this notice, at least 14 days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Wendy Rizzo, Secretary, Virginia Winegrowers Advisory Board, 1100 Bank Street, Room 1010, Richmond, VA 23219, telephone (804) 371-7685.

STATE AIR POLLUTION CONTROL BOARD

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 Program

Calendar of Events

Section, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240. The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

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

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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 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.

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February 1, 1994 - 7 p.m. - Information Session
February 1, 1994 - 8 p.m. - Public Hearing
City Council Chamber, Stryker Building, 412 N. Boundary Street Williamsburg, Virginia.

February 3, 1994 - 7 p.m. - Information Session
February 3, 1994 - 8 p.m. - Public Hearing
City Council Chamber, City Hall Building, 9027 Center

Street, Manassas, Virginia.

February 8, 1994 - 7 p.m. - Information Session
February 8, 1994 - 8 p.m. - Public Hearing
Virginia Department of Transportation, District Office Assembly Room, 4219 Campbell Avenue, Lynchburg, Virginia.

February 9, 1994 - 7 p.m. - Information Session
February 9, 1994 - 8 p.m. - Public Hearing
Virginia Western Community College Learning Center, 3095 Colonial Avenue, S.W. Roanoke, Virginia.

February 10, 1994 - 7 p.m. - Information Session
February 10, 1994 - 8 p.m. - Public Hearing
Virginia Highlands Community College, Room 220, State Route 372 and Route 140 at Exit 14 off I-81, Abingdon, Virginia.

February 25, 1994 - Written comments may be submitted until close of business on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to adopt regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision JJ - Federal Operating Permits for Stationary Sources)**. The proposed regulation establishes an operating permit program that has as its goal the issuance of comprehensive permits which will specify for the permit holder, the department and the public all applicable state and federal requirements for pertinent emissions units in the facility covered. The result should be a permit that clearly states the air program requirements for the permit holder and provides a mechanism for the department to use in enforcing the regulations.

Comparison with federal requirements: With respect to the duration of a permit, Title V of the Act provides for several time periods. The basic provisions of the Act provide that permits for most sources are to be issued for a term not less than three years nor more than five years. Exceptions to the basic provisions are made for incinerators subject to federal regulations and sources of acid rain producing pollutants (mostly large electrical utilities). For the acid rain permits, the term must be for five years. For the incinerators, the permit term must not exceed 12 years; however, the permits must be reviewed every five years. The proposed regulation sets the permit term at five years for all sources. This was done to provide consistency and simplicity to the program, as well as equity of requirements for all source types.

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

Calendar of Events

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, telephone (703) 676-5482; Department of Environmental Quality, Roanoke Air Regional Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia 24019, telephone (703) 561-7000; Department of Environmental Quality, Lynchburg Air Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia 24502, telephone (804) 582-5120; Department of Environmental Quality, Fredericksburg Air Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia 22401, telephone (703) 899-4600; Department of Environmental Quality, Richmond Air Regional Office, Arboretum V, Suite 250, 9210 Arboretum Parkway, Richmond, Virginia 23236, telephone (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, telephone (804) 424-6707; Department of Environmental Quality, Northern Virginia Air Regional Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Springfield, Virginia 22150, telephone (703) 644-0311.

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

Written comments may be submitted until close of business February 25, 1994, to 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 benefits of the proposal.

Contact: Nancy Saylor, Policy Analyst, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240, telephone (804) 762-4421.

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February 1, 1994 - 7 p.m. – Information Session
February 1, 1994 - 8 p.m. – Public Hearing
City Council Chamber, Stryker Building, 412 N. Boundary Street, Williamsburg, Virginia.

February 3, 1994 - 7 p.m. – Information Session
February 3, 1994 - 8 p.m. – Public Hearing
City Council Chamber, City Hall Building, 9027 Center Street, Manassas, Virginia.

February 8, 1994 - 7 p.m. – Information Session
February 8, 1994 - 8 p.m. – Public Hearing
Virginia Department of Transportation, District Office

Assembly Room, 4219 Campbell Avenue, Lynchburg, Virginia.

February 9, 1994 - 7 p.m. – Information Session
February 9, 1994 - 8 p.m. – Public Hearing
Virginia Western Community College Learning Center, 3095 Colonial Avenue, S.W., Roanoke, Virginia.

February 10, 1994 - 7 p.m. – Information Session
February 10, 1994 - 8 p.m. – Public Hearing
Virginia Highlands Community College, Room 220, State Route 372 and Route 140 at Exit 14 off I-81, Abingdon, Virginia.

Written comments may be submitted until close of business February 24, 1994.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia and § 110(a)(1) of the Federal Clean Air Act 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 KK – Permit Program Fees for Stationary Sources)**. The regulation requires owners of stationary sources of air pollution (with some exceptions) to pay annual emission fees in order to generate revenue sufficient to cover all reasonable direct and indirect costs of the permit program and prescribes the timetable and method for assessment and collection.

Comparison with federal requirements: The regulation exceeds the federal mandates for stringency in two provisions. The first provision is in the inclusion of small sources in the list of sources subject to fees. By issuing state operating permits to small sources, the department can help them escape the burden of the Title V permit requirements by limiting their potential to emit. The fees paid by the small sources will defray the cost of issuing these permits. The second provision is in the collection of fees prior to EPA's approval of the program. The operating permit regulation provides for applications to be submitted to the department between September 15 and November 15, 1994. In order to begin processing these applications upon EPA's approval, the department must hire and train additional staff to be in place by that time. The early collection of fees will allow for the timely hiring of the additional staff.

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 Virginia Air Regional Office, 121 Russell Road, Abingdon, Virginia 24210, telephone (703) 676-5482; Department of Environmental Quality, Roanoke Air Regional Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia 24019, telephone (703) 561-7000; Department of Environmental Quality, Lynchburg Air Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia 24502, telephone (804) 582-5120; Department of Environmental Quality, Fredericksburg Air Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia 22401, telephone (703) 899-4600; Department of Environmental Quality, Richmond Air Regional Office, Arboretum V, Suite 250, 9210 Arboretum Parkway, Richmond, Virginia 23236, telephone (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, telephone (804) 424-6707; Department of Environmental Quality, Northern Virginia Air Regional Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Springfield, Virginia 22150, telephone (703) 644-0311.

Statutory Authority: §§ 10.1-1308 and 10.1-1322 of the Code of Virginia.

Written comments may be submitted until close of business February 25, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 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: Dr. Kathleen Sands, Policy Analyst, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 762-4413.

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

February 23, 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 repeal regulations entitled: VR 130-01-01. Public Participation Guidelines and adopt regulations entitled: VR 130-01-01:1. Public Participation Guidelines. The purpose of the proposed action is to repeal existing public participation guidelines and 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, certification and registration of architects, professional engineers, land surveyors, landscape architects and interior designers in Virginia. The proposed regulation will replace the emergency regulations governing the public process.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201, and 54.1-404 of the Code of Virginia.

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

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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.

ASAP POLICY BOARD - VALLEY

January 10, 1994 - 8:30 a.m. – Open Meeting
Augusta County School Board Office, Fishersville, Virginia.

☐

A meeting of the local policy board which conducts business pertaining to (i) court referrals; (ii) financial report; (iii) director's report; (iv) statistical reports.

Contact: Rhoda G. York, Executive Director, Valley ASAP Board, Holiday Court, Suite B, Staunton, VA 24401, telephone (703) 886-5616 or (703) 943-4405.

VIRGINIA ASBESTOS LICENSING BOARD

January 14, 1994 - 10 a.m. – Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia.

Calendar of Events

February 18, 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 Asbestos Licensing Board intends to **repeal** regulations entitled: **VR 190-05-01. Asbestos Licensing Regulations** and **adopt** regulations entitled: **VR 137-01-02. Asbestos Licensing Regulations**. The asbestos regulations have been revised to implement the acts of the 1993 General Assembly.

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

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

AUCTIONEERS BOARD

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 OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

February 25, 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 Audiology and Speech-Language Pathology intends to **adopt** regulations entitled: **VR 115-01-3. Regulations Governing Public Participation Guidelines**. The proposed regulations are intended to replace the emergency regulations governing Public Participation Guidelines currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400, and 54.1-2602 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9111.

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† **March 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 Board of Audiology and Speech-Language Pathology intends to amend regulations entitled: **VR 155-01-2:1. Regulations of the Board of Audiology and Speech-Language Pathology**. The purpose of the proposed amendments is to delete expired requirements and incorporate legislation effective July 1, 1992.

Statutory Authority: §§ 54.1-2400 and 54.1-2600 et seq. of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9111.

BOARD FOR BARBERS

January 15, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Barbers intends to **repeal** regulations entitled: **VR 170-01-00. Public Participation Guidelines** and **adopt** regulations entitled: **VR 170-01-00:1. Public Participation Guidelines**. The purpose of the proposed guidelines is to set procedures for the Board for Barbers to follow to inform and incorporate public participation when promulgating regulations.

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

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

BOARD FOR BRANCH PILOTS

February 23, 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 Branch Pilots intends to repeal regulations entitled: VR 535-01-00. Public Participation Guidelines and adopt regulations entitled: VR 535-01-00:1. Public Participation Guidelines. The purpose of the proposed action is to repeal existing public participation guidelines and 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 branch pilots in Virginia. The proposed regulation will replace the emergency regulations governing the public process.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201 and 54.1-902 of the Code of Virginia.

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

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† March 24, 1994 - 9:30 a.m. - Public Hearing
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia.

† March 24, 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 Branch Pilots intends to amend regulations entitled: VR 535-01-01. Board for Branch Pilots Rules and Regulations. The purpose of the proposed amendments is to adjust application and renewal fees and establish Assisted Radar Plotting Aids (ARPA) training for full and limited licensed branch pilots in Virginia.

Statutory Authority: §§ 54.1-902 and 54.1-113 of the Code of Virginia.

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

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

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

† January 20, 1994 - 10 a.m. - Open Meeting
Chesapeake Bay Local Assistance Department, 805 E. 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 Street, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Northern Area Review Committee

† February 10, 1994 - 10 a.m. - Open Meeting
Chesapeake Bay Local Assistance Department, 805 E. 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 Street, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

† February 9, 1994 - 10 a.m. - Open Meeting
Chesapeake Bay Local Assistance Department, 805 E. 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

Calendar of Events

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 Street, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

January 13, 1994 - 10:30 a.m. – Open Meeting
Culpeper Building, 1606 Santa Rosa Road, Suite 135, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

January 13, 1994 - 2 p.m. – Open Meeting
Roslyn Conference Center, Gibson Hall, 8727 River Road, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

January 14, 1994 - 9 a.m. – Open Meeting
Roslyn Conference Center, Gibson Hall, 8727 River Road, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The council will meet 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 2 p.m. Please call ahead of time for possible changes in meeting time. Contingent snow date is January 21, 1994. On January 13, 1994, from 10:30 a.m. - 2 p.m. is new member orientation session.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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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 Child Day-Care Council intends to repeal regulations entitled: **VR 175-01-01. Public Participation Guidelines.** The existing Public Participation Guidelines are being repealed so new guidelines can be promulgated. Oral comments will be accepted at 10 a.m. at the council's regular meeting.

Statutory Authority: §§ 9-6.14:7.1, 63.1-202 and 63.1-202.1 of the Code of Virginia.

Written comments may be submitted until February 13, 1994, to Peg Spangenthal, Child Day-Care Council, 730 East Broad Street, 7th Floor, Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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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 Child Day-Care Council intends to adopt regulations entitled: **VR 175-01-01:1. Public Participation Guidelines.** This regulation explains how the council will obtain public input when developing regulations. This regulation will replace the emergency public participation guidelines effective 7/1/93 to 7/1/94. Oral comments will be accepted at 10 a.m. at the council's regular meeting.

Statutory Authority: §§ 9-6.14:7.1, 63.1-202 and 63.1-202.1 of the Code of Virginia.

Written comments may be submitted until February 13, 1994, to Peg Spangenthal, Child Day-Care Council, 730 East Broad Street, 7th Floor, Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

Coordinating Committee

† **January 21, 1994 - 8:30 a.m. – Open Meeting**
Interdepartmental Regulation, Office of the Coordinator, 730 E. Broad Street, 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.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental Regulation, 730 E. Broad Street, Richmond, VA 23219-1849, telephone (804) 692-1960.

STATE BOARD FOR COMMUNITY COLLEGES

† **January 20, 1994 - 9 a.m. – Open Meeting**
James Monroe Building, 101 N. 14th Street, 15th Floor, Richmond, Virginia.

A regularly scheduled meeting.

Contact: Joy Graham, Assistant Chancellor, Public Affairs,

Virginia Community College System, 101 N. 14th Street, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

COMPREHENSIVE SERVICES PREVENTION AND EARLY INTERVENTION STEERING COMMITTEE

January 21, 1994 - 10 a.m. - Open Meeting
Virginia Housing Development Authority Conference Room, 601 S. Belvidere Street, Richmond, Virginia. FT3001 5

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., Comprehensive Services Prevention and Early Intervention Project Coordinator, Department of Health, Main Street Station, Suite 135, Richmond, VA 23218, telephone (804) 371-8838.

DEPARTMENT OF CONSERVATION AND RECREATION

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 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 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

Calendar of Events

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 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

† January 12, 1994 - 9 a.m. - Open Meeting
Department of Professional and Occupational Regulation,
3600 W. Broad Street, Richmond, Virginia. ☐

A regular quarterly meeting of the board will 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: Florence R. Brassier, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4317, telephone (804) 367-8557.

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† March 14, 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 Contractors intends to repeal regulations entitled: VR 220-01-00. **Public Participation Guidelines** and adopt regulations entitled: VR 220-01-00:01. **Public Participation Guidelines**. The proposed guidelines will set procedures for the Board for Contractors to follow to inform the public and incorporate public participation when promulgating regulations.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201, and 54.1-1102 of

the Code of Virginia.

Contact: Florence R. Brassier, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-2785.

Recovery Fund Committee

† March 23, 1994 - 9 a.m. - Open Meeting
Department of Professional and Occupational Regulation,
3600 W. Broad Street, Richmond, Virginia. ☐

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in Executive Session.

Contact: Holly Erickson, Assistant Administrator, Recovery Fund, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23219, telephone (804) 367-8561.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

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;

Calendar of Events

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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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.

NOTE: CHANGES IN MEETING DATE

† **January 19, 1994 - 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: Vivian Toler, Secretary to the Board, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

Liaison Committee

January 13, 1994 - 9:30 a.m. – Open Meeting
Board of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☒

A meeting to discuss criminal justice matters.

Contact: Vivian Toler, Secretary to the Board, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

January 10, 1994 - 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, Board for Cosmetology, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8509.

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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 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.

Calendar of Events

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

CRIMINAL JUSTICE SERVICES BOARD

† **January 12, 1994 - 11 a.m.** – Open Meeting
Academy for Staff Development, Department of Corrections, 1900 River Road West, Crozier, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to consider matters relating to the board's responsibilities for criminal justice training and improvement of the criminal justice system. Public comments will be heard before adjournment of the meeting.

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

* * * * *

April 6, 1994 - 9 a.m. – Public Hearing
General Assembly Building, 910 Capitol Street, Richmond, Virginia.

March 1, 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 Criminal Justice Services Board intends to adopt regulations entitled: **VR 240-03-2. Regulations Relating to Private Security Services.** This regulation sets forth and establishes the private security services regulatory program for the Commonwealth of Virginia.

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

Written comments may be submitted until March 1, 1994, to L.T. Eckenrode, Department of Criminal Justice Services, P. O. Box 10110, Richmond, VA 23240-9998.

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

Committee on Training

† **January 12, 1994 - 9 a.m.** – Open Meeting
Academy for Staff Development, Department of Corrections, 1900 River Road West, Crozier, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to discuss matters related to training for criminal justice personnel.

Contact: Paula Scott Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad

Street, Richmond, VA 23219, telephone (804) 786-4000.

BOARD OF DENTISTRY

† **February 17, 1994 - 9 a.m.** – Public Hearing
Department of Health Professions, 6606 W. Broad Street, Richmond, Virginia.

† **March 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 Board of Dentistry intends to adopt regulations entitled: **VR 255-01-2. Public Participation Guidelines.** The proposed regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

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

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9906.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

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 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

Calendar of Events

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.

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January 27, 1994 - 8 a.m. - Public Hearing
James Monroe Building, 101 N. 14th Street, 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 State Board of Education intends to amend regulations entitled: **VR 270-01-0006. Regulations Governing Pupil Transportation Including Minimum Standards for School Buses In Virginia.** The purpose of the proposed amendments is to address revisions to federal and state statutes and federal regulations. These regulations are divided into seven major parts: Definitions, General Regulations, Distribution of Pupil

Transportation Funds, Requirements for School Bus Drivers, Minimum Standards for School Buses in Virginia (the bus chassis and the bus body), Standards for Lift Gate Buses, and Activity Buses. The proposed revisions provide amendments to reflect automation of accident reporting; changes in distribution of pupil transportation funds; changes in driver requirements to address the Americans with Disabilities Act, testing for alcohol and controlled substances, and driver training; technological advances in design of school bus chassis and school bus body and to conform to federal motor vehicle safety standards; new standards regarding transporting children with special needs to include infants and toddlers; and changes in regulations regarding use of school activity vehicles.

Statutory Authority: Article VIII, § 4 of the Constitution of Virginia; §§ 22.1-16, 22.1-176, 22.1-177, and 22.1-178 of the Code of Virginia.

Contact: Kathryn S. Kitchen, Division Chief, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2025.

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January 27, 1994 - 9 a.m. - Public Hearing
James Monroe Building, Conference Room B, 101 N. 14th Street, 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 State Board of Education intends to adopt regulations entitled: **VR 270-01-0059. Regulations for the School Breakfast Program.** Section 22.1-207.3 of the Code of Virginia requires that any public school that has 25% or more of its students eligible for free and reduced price meals provide the federally funded School Breakfast Program or like program. The law also requires the Department of Education to promulgate regulations governing the implementation of a breakfast program and to establish reporting requirements. The Child Nutrition Act of 1966 and succeeding amendments provide for a school breakfast program in any school agreeing to participate and to meet federal requirements. This is a federally funded entitlement program; reimbursement will be paid for all breakfasts served that meet federal requirements.

All schools are eligible to participate in the federally funded School Breakfast Program provided under the Child Nutrition Act of 1966 and succeeding amendments. The purpose is to provide students, who otherwise may not eat, the opportunity to eat breakfast before the school day begins. Consumption of breakfast enhances the health, well-being, educational experiences and performance of students. Federal funds will reimburse school divisions, according to students' meal benefit categories, for al

breakfasts served that meet federal requirements. The State Board of Education reserves the right to waive the requirement of a breakfast program after a school has met specified procedures. With the implementation of the federally funded School Breakfast Program increased federal funds will be received by localities and more children will have access to a breakfast meal.

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

Contact: Jane R. Logan, Principal Specialist, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120.

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.

STATE EDUCATION ASSISTANCE AUTHORITY

February 25, 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 Education Assistance Authority intends to amend regulations entitled: **VR 275-00-1. Public Participation Guidelines.** The amendments address methods for the identification and notification of interested parties.

Statutory Authority: §§ 9-6.14:7.1 and 23-38.33:1(C)(7) of the Code of Virginia.

Written comments may be submitted through February 25, 1994, to Marvin Ragland, Virginia Student Assistance Authorities, 411 E. Franklin Street, Richmond, VA 23219.

Contact: Sherry A. Scott, Policy Analyst, State Education Assistance Authority, 411 E. Franklin Street, Richmond, VA 23219, telephone (804) 775-4071 or toll-free 1-800-792-5626.

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

† **January 27, 1994 - 6:30 p.m. – Open Meeting**
County Administration Building, Conference Room, Gloucester, Virginia. ☒

The winter quarterly meeting of the LEPC will address an update by the public information committee on the community awareness program, the annual hazmat exercise and election of officers.

Contact: Georgette N. Hurley, Assistant County Administrator, P. O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042.

DEPARTMENT OF ENVIRONMENTAL QUALITY

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 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 31, 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.

Waste Tire End User Reimbursement Advisory Committee

January 12, 1994 - 10 a.m. – Open Meeting
Monroe Office Building, Conference Room C, 101 N. 14th Street, Richmond, Virginia. ☒

The meeting is the second meeting of the committee which is assisting DEQ in developing regulations for reimbursing users of waste tire material pursuant to

Calendar of Events

§§ 10.1-1422 and 10.1-1422.3 of the Code of Virginia.

Contact: Allan Lassiter, Director, Waste Tire Program, Department of Environmental Quality, 629 E. Main Street, Richmond, VA 23219, telephone (804) 672-4215.

Work Group on Detection/Quantitation Levels

January 12, 1994 - 1:30 p.m. – Open Meeting
Department of Environmental Quality, 4949 Cox Road, Lab Training Room, Glen Allen, Virginia. ☒

The department has established a work group on detection/quantitation levels for pollutants in the regulatory and enforcement programs. The work group will advise the Director of the Department of Environmental Quality. Other meetings of the work group have been scheduled at the same time and location for January 26, February 9, February 23, March 9, March 23, April 6, and April 20, 1994. However, these dates are not firm. Persons interested in the meetings of this work group should confirm the date with the contact person below.

Contact: Alan J. Anthony, Chairman, Department of Environmental Quality, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5070.

BOARD OF FORESTRY

January 13, 1994 - 9:30 a.m. – Open Meeting
Marriott Hotel, 500 East 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 ☎

DEPARTMENT OF FORESTRY

† **February 8, 1994 - 2 p.m. – Public Hearing**
Department of Forestry, 2229 E. Nine Mile Road, Sandston, Virginia.

March 14, 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 Forestry intends to repeal regulations entitled: VR 312-01-1. **Public Participation Guidelines** and adopt regulations entitled: VR 312-01-1:1. **Public Participation Guidelines**. Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize Public Participation Guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such regulations not only shall be utilized prior to formation and drafting

of the proposed regulation, but also shall be utilized during the formation, promulgation and final adoption of all regulations. The purpose of the proposed action is to adopt Public Participation Guidelines which ensure that interested persons are able to comment on regulatory actions in a meaningful fashion during all phases of the regulatory process.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1101 of the Code of Virginia.

Contact: Ron Jenkins, Department of Forestry, P. O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

February 25, 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 Funeral Directors and Embalmers intends to adopt regulations entitled: VR 320-01-5. **Public Participation Guidelines**. The proposed regulations are intended to replace the emergency regulations governing Public Participation Guidelines currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400, and 54.1-2803 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-3307.

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† **March 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 Board of Funeral Directors and Embalmers intends to amend regulations entitled: VR 320-01-04. **Regulations of the Resident Trainee Program for Funeral Service**. The purpose of the proposed amendments is to add a definition, place a maximum time limit for registration, and to establish reporting and supervision requirements.

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

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9907.

BOARD OF GAME AND INLAND FISHERIES

† **January 20, 1994 - 9 a.m.** – Open Meeting
Department of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

Committees of the board will meet to discuss topics appropriate to their authority, beginning at 9 a.m. with the Finance Committee, followed by Planning, Wildlife and Boat, Law and Education, and Liaison Committees. The Finance Committee will receive an update on the board's funding initiative and discuss opening a public comment period to receive input on a proposal that will establish a permit fee structure as authorized by HB 1777 during the 1993 General Assembly session. The Planning Committee will discuss possible changes to the board's committee procedures. The Wildlife and Boat Committee will discuss possible changes to boat registration procedures, and if deemed appropriate, a notice of comment period will be opened. An information report will be presented on deer farming in Virginia, and the Liaison Committee will discuss legislative actions that might impact the agency.

Contact: Belle Harding, Secretary to the Director, Board of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, VA 23230, telephone (804) 367-1000.

† **January 21, 1994 - 9 a.m.** – Open Meeting
Department of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The board will discuss the agency's Public Participation Guidelines, consider proposed regulatory action to adopt changes to current boat registration requirements and state boating safety regulations to conform with U. S. Coast Guard regulations pertaining to safety equipment requirements for commercial fishing vessels, and establish a comment period for a proposed regulation that will establish a permit fee structure as authorized by HB 1777 during the 1993 General Assembly session. Other general and administrative matters, as necessary, may be discussed and appropriate actions will be taken.

Contact: Belle Harding, Secretary to the Director, Board of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, VA 23230, telephone (804) 367-9231.

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February 11, 1994 – Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 that the Board of Game and Inland Fisheries intends to adopt regulations entitled: **VR 325-05-1. Public Participation Guidelines.** This proposed regulation sets forth the procedures to be followed by the

Department of Game and Inland Fisheries for soliciting input from the public during all phases of the formation, development, promulgation, and final adoption of regulations not related to wildlife management, which have been exempted by the General Assembly from the public participation provisions of the Administrative Process Act. 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. It also requires the agency to respond to citizen's comments.

Statutory Authority: §§ 9-6.14:7.1 and 29.1-103 of the Code of Virginia.

Contact: Mark D. Monson, Chief, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000.

GEORGE MASON UNIVERSITY

Board of Visitors

† **January 26, 1994 - 4 p.m.** – Open Meeting
George Mason University, Mason Hall, Room D23, Fairfax, Virginia. ☒

A regular meeting to hear reports of the standing committees of the board and to act on those recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals or organizations who request it. The Student Affairs Committee will meet at 6:30 p.m. on January 25, 1994; standing committees will meet during the day on January 26 beginning at 9 a.m.

Contact: Ann Wingblade, Administrative Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8704.

HAZARDOUS MATERIALS TRAINING COMMITTEE

January 18, 1994 - 10 a.m. – Open Meeting
Department of Emergency Services, Training Center, 308 Turner Road, Richmond, Virginia.

A meeting to discuss curriculum course development and review existing hazardous materials courses. Individuals with a disability, as defined in the Americans with Disabilities Act of 1990 (ADA), desiring to attend this meeting should contact VDES 10 days prior to the event so as to ensure appropriate accommodations are provided.

Contact: George B. Gotschalk, Jr., Department of Criminal Justice Services, 805 E. Broad Street, Richmond, VA 23219,

Calendar of Events

telephone (804) 786-8001.

DEPARTMENT OF HEALTH (STATE BOARD OF)

January 11, 1994 - 10 a.m. - Public Hearing
James Monroe Building, Room C, 101 N. 14th Street,
Richmond, Virginia.

February 11, 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 amend regulations entitled: **VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** Sections 32.1-12 and 32.1-102.2 of the Code of Virginia provide the statutory basis for Virginia Medical Care Facilities Certificate of Public Need (COPN) regulations. The proposed regulations incorporate all of the amendments to the COPN law which were enacted by the 1993 Session of the Virginia General Assembly and became effective on July 1, 1993. In order to assure compliance with the amended COPN law, the Board of Health promulgated emergency COPN regulations on July 1, 1993, which are effective through June 30, 1994. The proposed COPN regulations will permanently incorporate all 1993 changes to the law which were implemented on an emergency basis. These regulations also propose modifications to the administrative review procedures and to the definition of a reviewable project which should improve the effectiveness of COPN regulation.

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

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

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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 State Board of Health intends to repeal regulations entitled: **Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program.** These regulations are no longer necessary since the program was discontinued in FY 1988 when appropriations for the program ended. The program reimbursed eligible hospitals for services provided to certain high-risk pregnant women and newborns whose family incomes were below 100% of the federal poverty level. Services that were provided through the program are now available through Medicaid-reimbursed services as

well as the Indigent Health Care Trust Fund which reimburses hospitals for uncompensated care.

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

Contact: Rosanne Kolesar, Health Programs Analyst, Department of Health, 1500 E. Main St., Room 213, Richmond, VA 23219, telephone (804) 786-4891.

† **January 19, 1994 - 10 a.m. - Public Hearing**
Department of Health, 1500 E. Main Street, Richmond, Virginia. ☐

A public hearing to discuss plans to spend 1994 Ryan White Title II Care Act moneys. The department plans to continue the funding of five regional consortia and the drug assistance program in the coming year. The department welcomes comments on this process from the public.

Contact: Kathryn Hafford, Assistant Director for STD/AIDS Health Care Services, Department of Health, P. O. Box 2448, Richmond, VA 23218, telephone (804) 225-4844.

Commissioner's Waterworks Advisory Committee

† **January 20, 1994 - 9:30 a.m. - Open Meeting**
King's Korner Enterprises, Inc., 7511 Airfield Drive,
Richmond, Virginia.

A general business meeting.

Contact: Thomas B. Gray, P.E., Special Projects Manager, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-5566.

BOARD OF HEALTH PROFESSIONS

† **March 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 Health Professions intends to adopt regulations entitled: **VR 365-01-1:1. Public Participation Guidelines.** These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

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

Contact: Richard D. Morrison, Ph.D., Deputy Director for Research, Department of Health Professions, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9904.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

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 interest*** ERROR *** INVALID COMMAND uses 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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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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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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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.

CHANGE IN MEETING TIME

January 25, 1994 - 9:30 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 10, 1994 - 8:30 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 W. Broad Street, Richmond, Virginia. ☐

Calendar of Events

A meeting to (i) conduct examinations to eligible candidates; (ii) review enforcement files; (iii) conduct regulatory review; and (iv) consider other matters which may require board action.

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

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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: Geralde 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

CHANGE IN LOCATION AND MEETING TIME

January 11, 1994 - 9:30 a.m. – Open Meeting
Norfolk State University, Norfolk, 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.

VIRGINIA HISTORIC PRESERVATION FOUNDATION

† **January 12, 1994 - 10:30 a.m. – Open Meeting**
Virginia War Memorial, 621 S. Belvidere Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A general business meeting.

Contact: Margaret Peters, Information Director, 221 Governor Street, Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☒

DEPARTMENT OF HISTORIC RESOURCES

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

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.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

February 1, 1994 - 9 a.m. - Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. FT3001 5

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **January 18, 1994 - 11 a.m.** - Open Meeting
601 South Belvidere Street, Richmond, Virginia. ☐

A regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as they may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week

Calendar of Events

prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

VIRGINIA INTERAGENCY COORDINATING COUNCIL EARLY INTERVENTION

January 18, 1994 - 9:30 a.m. - Open Meeting
Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Virginia Interagency Coordinating Council according to Part H early intervention program for disabled infants, toddlers and their families is meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency and the other state agencies involved in Part H in the implementation of the statewide early intervention program.

Contact: Michael Fehl, Director, Mentally Retarded Children and Youth Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

DEPARTMENT OF LABOR AND INDUSTRY

January 10, 1994 - 7 p.m. - Open Meeting
Roanoke County Old Administration Center, Community Room, 3738 Brambleton Avenue, Roanoke, Virginia. ☒ (Interpreter for the deaf provided upon request)

January 12, 1994 - 7 p.m. - Open Meeting
Manassas Campus, Northern Virginia Community College, 6901 Sudley Road, Manassas, Virginia. ☒ (Interpreter for the deaf provided upon request)

January 13, 1994 - 7 p.m. - Open Meeting
Norfolk Technical Center, 1330 North Military Highway, Norfolk, Virginia. ☒ (Interpreter for the deaf provided upon request)

The Administrative Process Act requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested persons when developing, revising, or repealing regulations. Legislation enacted by the 1993 General Assembly amended the APA by adding additional provisions to be included in agency Public Participation Guidelines. The current Public Participation Guidelines which were adopted in September, 1984, were amended by emergency action in June, 1993. New Public Participation Guidelines are proposed to replace the emergency guidelines which will expire June, 1994. This open meeting will provide

an opportunity to answer questions and provide information on VR 425-01-100, Public Participation Guidelines for the department; VR 425-02-101, Public Participation Guidelines for the Safety and Health Codes Board; and VR 425-01-102, Public Participation Guidelines for the Virginia Apprenticeship Council.

Contact: Bonnie H. Robinson, Agency Regulatory Coordinator, Department of Labor and Industry, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631.

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February 2, 1994 - 10 a.m. - Public Hearing
Housing Development Authority, 601 S. Belvidere Street, Richmond, Virginia.

February 25, 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 Labor and Industry intends to adopt regulations entitled: **VR 425-01-100. Public Participation Guidelines.** Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Department of Labor and Industry's Commissioner on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the commissioner June 24, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Department of Labor and Industry to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Department of Labor and Industry (department) set out procedures to be followed by the department which ensure that the public and all parties interested in regulations adopted by the commissioner have a full and fair opportunity to participate at every stage in the development or revision of the regulations. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify

interested groups, to involve the public in the formulation of regulations, and to solicit and use public comments and suggestions. For regulations adopted by the commissioner which are subject to the Administrative Process Act, the regulation sets forth procedures to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch.

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

Contact: Bonnie H. Robinson, Agency Regulatory Coordinator, Department of Labor and Industry, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631.

Virginia Apprenticeship Council

January 27, 1994 - 7 p.m. - Public Hearing
Richmond Technical Center, 2020 Westwood Avenue, Richmond, Virginia.

February 25, 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 Apprenticeship Council intends to adopt regulations entitled: **VR 425-01-102. Public Participation Guidelines.** Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Apprenticeship Council on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the council June 28, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Apprenticeship Council to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Virginia Apprenticeship Council (council) set out procedures to be followed by the council and the Department of Labor and Industry which ensure that the public and all parties interested in regulations adopted by the

council have a full and fair opportunity to participate at every stage. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, to solicit and use public comments and suggestions, to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch.

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

Contact: Thomas E. Butler, Assistant Commissioner, Department of Labor and Industry, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2327.

Virginia Safety and Health Codes Board

† **January 10, 1994 - 7 p.m. - Open Meeting**
Roanoke County Old Administration Center, Community Room, 3738 Brambleton Avenue, Roanoke, Virginia. ☒ (Interpreter for the deaf provided upon request)

† **January 12, 1994 - 7 p.m. - Open Meeting**
Northern Virginia Community College, Manassas Campus, 6901 Sudley Road, Manassas, Virginia. ☒ (Interpreter for the deaf provided upon request)

† **January 13, 1994 - 7 p.m. - Open Meeting**
Norfolk Technical Center, 1330 North Military Highway, Norfolk, Virginia. ☒ (Interpreter for the deaf provided upon request)

An open meeting to provide information and answer questions concerning the proposed regulation, Administrative Regulation for the Virginia Occupational Safety and Health Program, VR 425-02-95. This regulation will provide an operational framework of rules and procedures for the administration of the VOSH Program. The VOSH Program is responsible for assuring, as far as possible, every working person a safe and healthful workplace. This proposed regulation is the first complete revision of the Administrative Regulation Manual which was adopted in 1986.

Contact: John J. Crisanti, Director, Enforcement Policy, Department of Labor and Industry, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 786-2384 or (804) 786-2376/TDD ☎

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† **February 2, 1994 - 2:30 p.m. - Public Hearing**
Virginia Housing Development Authority, Conference Room 1, 601 S. Belvidere Street, Richmond, Virginia.

Calendar of Events

† **March 11, 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 Safety and Health Codes Board intends to adopt regulations entitled: **VR 425-02-95. Administrative Regulation for the Virginia Occupational Safety and Health Codes Program.** This proposed regulation is the first complete revision of the Administrative Regulation Manual adopted in 1986. It contains substantive changes primarily in the areas of additional definition of terms, clarification of the 48-hour accident reporting requirements of employers, the agency's response to requests for information by subpoena, and the VOSH program response to federal judicial action, such as vacation of § 1910.1000 permissible exposure limits (PEL).

This revision will also simplify the regulation by omitting requirements already stipulated in Title 40.1 of the Code of Virginia in those cases where no further regulatory language is necessary to carry out that mandate.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

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

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February 2, 1994 - 1 p.m. – Public Hearing
Housing Development Authority, Conference Room 1, 601 S. Belvidere Street, Richmond, Virginia.

February 25, 1994 – Written 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 Safety Health Codes Board intends to adopt regulations entitled: **VR 425-02-101. Public Participation Guidelines.** Section 9-0.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Safety and Health Codes Board on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the board June 21, 1993, and were effective June 30, 1993.

The purpose of this action is to propose new Public Participation Guidelines for the Safety and Health Codes Board to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Virginia Safety and Health Codes Board (board) set out procedures to be followed by the board and the Department of Industry and Labor which ensure that the public and all parties interested in regulations adopted by the board have a full and fair opportunity to participate at every stage in the development or revision of the regulations. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, and to solicit and use public comments and suggestions. For regulations adopted by the board which are subject to the Administrative Process Act, the regulation sets forth procedures to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch. The regulation also provides a procedure to notify the public of proposed Federal Occupational Safety and Health regulatory action and encourages the public's participation in the formulation of these regulations at the federal level.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-22(5) of the Code of Virginia.

Contact: Bonnie H. Robinson, Agency Regulatory Coordinator, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631.

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.

Archives and Records Management Committee

January 24, 1994 - 9 a.m. – Open Meeting
The Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, Virginia. ☐

A meeting to discuss matters pertaining to archives and records management.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Public Library Development Committee

January 24, 1994 - 9 a.m. - Open Meeting
11th Street at Capitol Square, Room 4-24, Richmond, Virginia. ☒

A meeting to discuss the issues on the agenda for the Library Board to be held later that morning.

Contact: Tony Yankus, Director, Library Development, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219-3491, toll-free 1-800-336-5266, or (804) 786-3618/TDD ☎

COMMISSION ON LOCAL GOVERNMENT

January 10, 1993 - 10 a.m. - Open Meeting
Department of Agriculture and Consumer Affairs, Washington Building, Board Room, 2nd Floor, Richmond, Virginia.

A regular meeting to consider such matters as may be presented. Persons desiring to participate in the commission's meeting and requiring special accommodations or interpreter services should contact the commission's offices.

Contact: Barbara Bingham, Administrative Assistant, 702 Eighth Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

LONGWOOD COLLEGE

Academic Affairs Committee

January 17, 1994 - 4 p.m. - Open Meeting
Longwood College, Board Room, South Ruffner, 201 High Street, Farmville, Virginia. ☒

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High Street, Farmville, VA 23909-1899, telephone (804) 395-2001 or toll free 1-800-828-1120.

Student Affairs Committee

January 17, 1994 - 6:30 p.m. - Open Meeting
Longwood College, Board Room, South Ruffner, 201 High Street, Farmville, Virginia. ☒

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High Street, Farmville, VA 23909-1899, telephone (804) 395-2001 or toll free 1-800-828-1120.

STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

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.

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.

January 24, 1994 - 10 a.m. - Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

Calendar of Events

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.

MARINE RESOURCES COMMISSION

† **January 25, 1994 - 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 wetland, 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, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646, or (804) 247-2292/TDD ☒

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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.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

February 25, 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 and adopt regulations entitled: **VR 460-01-46:1, 460-01-76, 460-01-79.19, 460-02-4.3900, 460-02-4.3910, 460-02-3.1300, 460-03-3.1301, 460-02-4.1410, and 460-04-4.3910. PASARR; Education Component in NF's; NF Residents' Appeal Rights.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations, providing for preadmission screening and annual resident reviews, education component requirements for children in nursing facilities, and nursing facilities' residents appeal rights.

The federal requirements regarding preadmission screening and annual resident review (PASARR) are that placement determinations be completed on all applicants to a nursing facility. If the Level I

assessment indicates the presence of a condition of mental illness or mental retardation, as defined by HCFA, the applicant must be referred for a Level II evaluation prior to admission to the nursing facility. Residents with conditions of mental illness or mental retardation are to be reviewed at least annually.

On November 30, 1992, the Health Care Financing Administration (HCFA) published final regulations concerning PASARR. The final regulations published by HCFA are similar to the original requirements but with several significant changes. First, the definition of mental illness has been revised. Because the new definition stresses severity of the mental illness, the change should result in a decrease in the number of individuals referred for a Level II evaluation for mental illness. Second, HCFA is allowing states to determine personnel qualifications for specific parts of the Level II evaluation process. Third, states are allowed discretion in defining specialized services to be offered and in establishing categorical determinations.

When DMAS first promulgated its regulations for specialized care services in nursing facilities, requirements for the provision of an education component were included. Initially, the regulation required that "the nursing facility ... provide for (emphasis added) the educational and habilitative needs of the child." At the time of promulgation, it was DMAS' intent that the nursing facility coordinate (emphasis added) such services with the state or local educational authority. The correct interpretation of this intent has recently come under question, so this language is being clarified. Residents of nursing facilities who wish to appeal a nursing facility notice of intent to transfer or discharge will file their appeal with the DMAS' Division of Client Appeals and not with the Department of Health. DMAS will hear appeals filed by any nursing facility resident regardless of the payment source. Prior to the DMAS emergency regulation, DMAS' Division of Client Appeals only heard appeals when Medicaid was the payment source.

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

Written comments may be submitted through February 25, 1994, to Mary Chiles, Manager, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219

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

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February 25, 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 460-02-2.6100:1. Eligibility Conditions and Requirements: Guardianship Fees in Post-Eligibility Treatment of Income. Medicaid eligibility policy has long allowed deduction of guardianship fees in determining countable income for the purposes of calculating patient pay for institutional and home- and community-based waiver services. Since a guardian has control of an individual's income, he deducts his fee before any of the income is applied to the bills of an incompetent individual. Thus, this income is not available to be applied to the cost of institutional and home- and community-based waiver services.

If Medicaid does not add guardianship fees to the personal needs allowance, then Medicaid calculations of the patient's income available for patient pay will exceed that amount actually available and Medicaid will not pay the full balance of the institutional and home- and community-based waiver services bill. The result will be an outstanding balance for the institutional and home- and community-based waiver services that the provider can collect neither from the patient nor from Medicaid.

The Medicaid eligibility policy has recognized that the income available for patient pay is the net income after deduction of guardianship fees. The long-standing policy was based upon interpretation of the way in which the Social Security Administration calculates income for eligibility for Supplemental Security Income. The Health Care Financing Administration issued an instruction that confirmed that guardianship fees are allowable deductions, but directed states to specify that deduction in the State Plan for Medical Assistance. This regulatory change is designed to specify the deduction of guardianship fees as required by the Health Care Financing Administration and will ensure that the deductions are applied uniformly to all recipients of institutional and home- and community-based waiver services who pay guardianship fees.

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

Written comments may be submitted through February 25, 1994, to Ann Cook, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

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February 25, 1994 – 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 Board of Medical Assistance Services intends to amend regulations entitled: VR 460-03-3.1100, 460-02-3.1300, 460-03-3.1301, 460-04-8.10, 460-04-3.1300. **Criteria for Preadmission Screening and Continued Stay.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations containing the same policies. These regulations concern the criteria by which applicants for and recipients of long-term care services and community-based care services are evaluated for appropriate placement.

The Department of Medical Assistance Services (DMAS) promulgated an emergency regulation for these criteria effective September 1, 1992. The agency's proposed regulations were filed March 30, 1993, with the Registrar of Regulations for publication to begin its comment period from April 20 - June 18, 1993. DMAS held 4 public hearings in different statewide locations and received numerous comments from individuals and organization. These initial proposed regulations were substantially similar to the preceding emergency regulations. Commenters on those emergency regulations expressed a belief that they have resulted in the discharge of numerous nursing facility residents and the denial of various long-term care services to numerous others. Although the department's research demonstrated that there had not been discharges from nursing facilities based on those emergency regulations, it was clear that the department's intent to clarify medical/nursing management had not been clearly communicated. Since the regulations proposed by the agency for public comment period mirrored the emergency regulations, they were opposed by the various interests groups concerned with care for the elderly and disabled. Due to the 1993 General Assembly's modifications to § 9-6.14:1 et seq. of the Code of Virginia, DMAS was required to promulgate a second set of emergency regulations. DMAS is now reinitiating the Article 2 process (§ 9-6.14:7.1) to conform to the new APA promulgation requirements.

Due to the significant comments DMAS received on the prior proposed regulations, the second set of emergency regulations contained revisions to the definition of medical/nursing need and revisions to the evaluation of persons seeking community-based care to avoid future nursing facility placement. HCFA allows the Commonwealth to offer home- and community-based care to persons who meet nursing facility criteria and to those whom it determines will meet nursing facility criteria in the near future except for the provision of community-based services. In the currently effective emergency regulations, DMAS established the criteria which define when an individual can be determined to be at risk of nursing facility placement in the near future as "prenursing facility criteria." These proposed regulations mirror

the current emergency regulations on which the agency has received no comments.

Nursing Home Preadmission Screening Committees will still use a separate assessment instrument for preadmission screening, the purpose of which is to determine appropriate medical care between community services and institutionalization.

In addition, this regulation package makes amendments to clarify and improve the consistency of the regulations as they relate to outpatient rehabilitation. DMAS is making certain nonsubstantive changes as follows. The authorization form for extended outpatient rehabilitation services no longer requires a physician's signature. Although the physician does not sign the form, there is no change in the requirement that attached medical justification must include physician orders or a plan of care signed by the physician. Services that are non-covered home health services are described. These services are identified for provider clarification and represent current policy. Also, technical corrections have been made to bring the Plan into compliance with the 1992 Appropriations Act and previously modified policies (i.e., deleting references to the repealed Second Surgical Opinion program under § 2. Outpatient hospital services and § 5. Physicians services).

The program's policy of covering services provided by a licensed clinical social worker under the direct supervision of a physician is extended to include such services provided under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical. This change merely makes policy consistent across different provider types.

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

Written comments may be submitted through February 25, 1994, to Betty Cochran, Director, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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† **March 11, 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, 460-02-3.1300. **Case Management Services; Utilization Review of Case Management for Recipients of Auxiliary Grants.** During the 1993 session, the General Assembly passed significant legislation governing the Auxiliary Grant Program and licensure of homes for adults. This new legislation required that all recipients of auxiliary grants must be evaluated using the state designated

uniform assessment instrument to determine their need for residential care as a condition of eligibility for an auxiliary grant. The law provides that no public agency shall incur a financial obligation if the individual is determined ineligible for an auxiliary grant. This requirement is to become effective on June 1, 1994.

During the same session, the General Assembly also revised the law governing licensing of homes for adults. These residential facilities will be called adult care residences and will be licensed to provide either residential living or assisted living.

In preparation for implementation of these new requirements, a new system of reimbursement for adult care residences was developed. This new reimbursement method will provide for payments for residential and assisted living for individuals who are in financial need. Residents of licensed adult care residences who meet the financial eligibility requirements for the Auxiliary Grant Program and who require at least a residential level of care based on an assessment by a case manager shall be eligible to receive an auxiliary grant. Individuals who are eligible for auxiliary grants may also receive a payment for assisted living from the DMAS if their needs are determined, according to an assessment, to meet the level of care criteria for assisted living which are being promulgated by the DMAS in separate regulations.

Assessments and case management for auxiliary grant and assisted living will be provided by case managers employed by human service agencies in accordance with the Code of Virginia. The case managers will be responsible for assessing the applicant's or recipient's need for care using a uniform assessment instrument as required by regulations of the Department of Social Services. In addition to assessment, the case manager will be responsible for locating, coordinating and monitoring the services needed by auxiliary grant recipients residing in licensed adult care residences. The case manager will notify the eligibility worker in the local department of social services of the results of the assessment and will notify the DMAS if the applicant or recipient meets the criteria for assisted living. In addition, the case manager will notify the DMAS if changes occur in the condition of the client that affect his continued level of care.

These regulations describe the qualifications of case managers and case management agencies. Adopting these regulations will permit the Commonwealth to carry out the requirement of the law that recipients of auxiliary grants receive an assessment to determine their need and appropriate placement assuring that each individual will be placed in an adult care residence able to meet his needs and will monitor any changes in his condition which may indicate a need for a more appropriate placement as his condition

changes. In addition, Medicaid coverage of case management for this group will permit federal financial participation in the cost of administering the case management requirement.

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

Written comments may be submitted through March 11, 1994, to Ann Cook, Department of Medical Assistance Services, Policy Division, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

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February 25, 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 460-03-4.1922. Item j. Payment of Title XVIII Part A and Part B Deductible/Coinsurance. This action affects Attachment 4.19 B, Supplement 2, Methods and Standards for Establishing Payment Rates. Other Types of Care, item j, Payment Title XVIII Part A and Part B Deductible/Coinsurance.

DMAS pays Medicare premiums for individuals who are eligible for both Medicare and Medicaid. This policy results in Medicare's coverage of their medical care, allowing for the use of 100% federal Medicare dollars, thereby reducing the demand for general fund dollars.

Medicare pays inpatient skilled nursing under Medicare Part A (hospital insurance). Part A pays for all covered services in a skilled nursing facility for the first 20 days. For the next 80 days, it pays for all covered services except for a specific amount determined at the beginning of each calendar year, i.e., Medicare pays for all covered services except for \$84.50 per day which is the responsibility of the patient; in the case of the Medicaid recipient it is the responsibility of DMAS.

Federal statute and regulations allow DMAS to limit its coinsurance payments to the Medicaid maximum instead of the Medicare maximum allowable payment. Therefore, this proposed permanent regulation limits the payment of the Medicare Part A coinsurance amount paid by the department so that the combined payments of Medicare and Medicaid do not exceed the Medicaid per diem rate for the specific nursing facility of the Medicare/Medicaid recipient's residence.

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

Calendar of Events

Written comments may be submitted through February 25, 1994, to C. Mack Brankley, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

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February 25, 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 Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1923. Establishment of Rate Per Visit: State Plan for Medical Assistance Relating to Home Health Reimbursement.** This proposal will promulgate permanent regulations to supersede existing emergency regulations which were adopted pursuant to a 1993 General Assembly mandate. The regulations provide for the fee-for-service reimbursement of home health agencies.

The 1993 General Assembly, in the Appropriations Act, directed the Board of Medical Assistance Services to adopt revised regulations governing home health agency reimbursement methodologies, effective July 1, 1993, that would (i) eliminate the distinction between urban and rural peer groups; (ii) utilize the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; and (iii) reimburse hospital-based home health agencies at the rate set for freestanding home health agencies. The General Assembly also required that the adopted regulations comply with federal regulations regarding access to care. In addition, the Joint Legislative Audit and Review Commission recommended that a revision be made to the existing statistical methodology.

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

Written comments may be submitted through February 25, 1994, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

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February 25, 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 460-03-4.1940:1, 460-03-4.1941. Nursing Home Payment System: 95% Rule, Criminal Record Checks, Blood Borne Pathogens.** The purpose of this proposal is to promulgate permanent regulations, to supersede the existing emergency regulations, regarding nursing facility 95% occupancy rule and criminal record checks. This proposal also provides for permanent regulations for the reimbursement for nursing facilities' costs of complying with OSHA requirements for protecting employees against exposure to blood.

95% Occupancy Rule: Prior to the emergency regulation, DMAS set a nursing facility's (NF) interim plant rate for the year in approximately the ninth month of the NF's fiscal year. This could have resulted in a new provider receiving substantial overpayment during the first nine months of the second fiscal year. This proposed amendment provides that the 95% occupancy rule will be applied on the first day of a new provider's second fiscal year. The effect of this amendment will be to eliminate any potential overpayments in the first nine months of the provider's second fiscal year.

Criminal Record Checks: The 1993 General Assembly, in Chapter 994 of the Acts of Assembly of 1993 (Item 313. T), directed DMAS to adopt revised regulations and forms governing nursing facilities that would reimburse providers for the costs of complying with the requirement of obtaining criminal record background checks on nursing facility employees, as implemented by § 32.1-126.01 of the Code of Virginia. This proposed regulation intends to make permanent those policies currently in effect under an emergency regulation.

Blood Borne Pathogens: The Occupational Safety and Health Administration (OSHA) promulgated a standard, effective March 6, 1992, to eliminate or minimize occupational exposure to blood borne pathogens (final rule published in the December 6, 1991 Federal Register, adopting 29 CFR 1910.1030). The Virginia Safety and Health Codes Board of the Department of Labor and Industry adopted these regulations as VR 415-02-83, effective June 1, 1992 (published in the Virginia Register of Regulations, pp. 2145-2158, March 23, 1992).

The General Assembly, in Item 312.1 of the 1993 Budget Bill, directed DMAS to study the cost of reimbursing nursing facilities for complying with these new requirements. DMAS has completed its study and, with input from the nursing facility community, is proposing revisions to the State Plan to permit reimbursement for these required costs. If DMAS takes no action with respect to the cost of the OSHA requirements, some of the cost would still be

reimbursed under existing rate setting rules. However, some facilities would be reimbursed less than all the costs of implementation, and some would receive little or no additional reimbursement.

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

Written comments may be submitted through February 25, 1994, to N. Stanley Fields, Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

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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 Medical Assistance Services intends to amend regulations entitled: **VR 460-05-1000.0000. State/Local Hospitalization Programs**. 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

The SLH program is not an entitlement program. The amount of general fund available for this program is determined by the General Assembly each year. Payment for services provided to eligible individuals is made only to the extent that funds are available in the account of the locality in which the eligible individual resides. All counties and cities in the Commonwealth are required to participate in the SLH program.

Available funds are allocated annually by the department to localities on the basis of the estimated total cost of required services for the locality, less the required local matching funds. Since the appropriation is insufficient to fully fund estimated cost, local allocations are actually a percentage of total need. Funds allocated to localities are maintained in locality-specific accounts and can be spent only for services provided to residents of that locality.

The actual local matching rate is computed on the

basis of a formula that considers revenue capacity adjusted for local per capita income. No locality's contribution will exceed 25% of the cost of estimated SLH services for the locality.

The statute requires that general funds remaining at the end of the state fiscal year are used to offset the calculated local share for the following year. These funds are allocated among the localities first to offset increases in the local shares, then to offset calculated local shares for all localities.

The allocations for most localities are exhausted by the end of March of each year and payments for claims submitted after that date are rejected for lack of funds. A few localities have sufficient funds for all claims submitted during the year and some have a surplus at the end of the year. In order to process claims before the end of state fiscal year the department has adopted, with the concurrence of the Secretary of Health and Human Services and the Department of Planning and Budget, a policy under which state/local hospitalization claims with service dates of May 1 and later of any year are processed for payment in the following state fiscal year. This cutoff for claims is necessary to allow adequate time to resolve any outstanding SLH claims and to perform the necessary accounting reconciliations for the state fiscal year ending June 30. The fund will be reallocated for payment of the following fiscal year claims.

This regulation is necessary to clarify the policy adopted by the department and is being promulgated as the result of an appeal filed by a recipient who questioned the policy because it had not been promulgated as a regulation. The proposed regulation defines the claims that are payable from the general fund appropriation of any fiscal year as those that are for services rendered between May 1 and April 30 to the extent that funds exist in the locality allocation at the time the claim is processed. It will allow the necessary lead time to perform claims resolution and state year-end reconciliation procedures.

This regulation also clarifies that funds remaining at year end are used only for the purpose of offsetting the calculated share for the following fiscal year as required by statute. This clarification is needed to prohibit possible claims against SLH funds for other purposes. Specifically, SLH funds allocated to pay for provider claims in one fiscal year would be prohibited from being used to pay claims in another fiscal year. This change is advantageous to the public because the agency will be better able to forecast the funds necessary to cover anticipated medical needs for those eligible to the SLH program.

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

Written comments may be submitted through January 14,

Calendar of Events

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 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.

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February 11, 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 460-02-4.1940. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care: Nonenrolled Provider Reimbursement.** The purpose of this proposal is to reimburse out-of-state nonenrolled providers at amounts which are more consistent with the reimbursement amounts for instate enrolled providers.

The section of the State Plan for Medical assistance affected by this action is the Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care (Attachment 4.19-A).

Medicaid providers have the option of enrolling with the program to serve Virginia Medicaid recipients. Without exception, high volume providers enroll in the program. The Code of Federal Regulations at 42 CFR 421.52 provides that the state must furnish Medicaid to recipients utilizing nonenrolled hospitals in several specific circumstances.

Currently, reimbursement for nonenrolled hospitals is limited to a percentage of their covered charges. The

Calendar of Events

percentage is derived from the ratio of reimbursable inpatient costs to inpatient charges of enrolled providers less 5%, which represents the cost of manually processing the claims. This can result in excessive reimbursement for nonenrolled providers that have very high charges.

For purposes of maintaining equitable reimbursement levels between enrolled and nonenrolled providers, the Department of Medical Assistance Services has determined that the excessive reimbursement could be eliminated through the imposition of a maximum reimbursement amount or cap. This proposed amendment caps the reimbursement to nonenrolled providers. The cap is the Department of Medical Assistance Services' average per diem of enrolled providers, excluding state-owned teaching hospitals' per diems and disproportionate share adjustment payments. The cap will eliminate excessive reimbursement to nonenrolled providers.

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

Written comments may be submitted through February 11, 1994, to Scott Crawford, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

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

BOARD OF MEDICINE

February 11, 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 Medicine intends to repeal regulations entitled: **VR 465-01-1. Public Participation Guidelines and adopt regulations entitled: VR 465-01-01:1. Public Participation Guidelines.** The purpose of the proposed regulations is to establish requirements governing Public Participation Guidelines. The proposed regulations will replace emergency regulations VR 465-01-01 in effect on June 28, 1993, due to new statutes. No public hearing will be held unless requested; the regulations respond to statutory changes. The subject, substance, issues, basis, purpose and estimated impact may be requested in addition to the proposed regulations.

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

Written comments may be submitted until February 11, 1994, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Russell Porter, Assistant Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎

Ad Hoc Committee on HIV

January 14, 1994 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Board Room 4, 5th Floor, Richmond, Virginia. ☒

A meeting to review the board's position on HIV and make recommendations to the full board. The chairman will entertain public comments for 10 minutes following the adoption of the agenda.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Informal Conference Committee

January 12, 1994 - 9 a.m. – Open Meeting

January 25, 1994 - 9:30 a.m. – Open Meeting
Department of Health Professions, 6606 W. Broad Street, Richmond, Virginia. ☒

January 13, 1994 - 9:30 a.m. – Open Meeting
Sheraton-Fredericksburg, I-95 and Route 3, Fredericksburg, Virginia. ☒

January 19, 1994 - 9:30 a.m. – Open Meeting
Holiday Inn - South, US 1 and I-95, Fredericksburg, Virginia. ☒

January 28, 1994 - 9:30 a.m. – Open Meeting
Fort Magruder Inn, 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, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

Advisory Board on Physical Therapy

January 13, 1994 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, VA 23230-1717 ☒

A meeting to conduct a regulatory review of its current regulations, VR 465-03-01, to ensure consistency with national and state requirements for the protection of the public. The chair will receive public comments

for the first 15 minutes following the adoption of the agenda.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

16TH ANNUAL SYMPOSIUM ON MENTAL HEALTH AND THE LAW

† **March 31, 1994 - 9 a.m.** – Open Meeting
† **April 1, 1994 - 9 a.m.** – Open Meeting
Richmond Hyatt Hotel, Richmond, Virginia. ☒

Symposium on mental health law issues.

Contact: Bettie T. Amiss, Administrator, Institute of Law, Psychiatry and Public Policy, Blue Ridge Hospital, Box 100, Charlottesville, VA 22908, telephone (804) 924-5435.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

January 19, 1994 - 10 a.m. – Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, James Madison Building, 13th Floor Conference Room, Richmond, Virginia. ☒

A regular monthly meeting. Agenda to be published on January 12. 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.

† **February 23, 1994 - 10 a.m.** – Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, James Madison Building, 13th Floor Conference Room, Richmond, Virginia. ☒

A regular monthly meeting. Agenda to be published on February 16, 1994. 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, State Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

† **February 3, 1994 - 7 p.m.** – Open Meeting
1845 Orange Road, Camp 11, Culpeper, Virginia. ☒

From 7 p.m. until 7:30 p.m. the Board of Directors will hold a business meeting to discuss DOC contract, budget, and other related business. Then the CCRB will meet to review cases before it for eligibility to participate with the program. It will review the previous month's operation (budget and program related business).

Contact: Lisa Ann Peacock, Program Director, 1845 Orange Road, Culpeper, VA 22701, telephone (703) 825-4562.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

February 12, 1994 - 8:30 a.m. – Open Meeting
Smith Hall, Virginia Military Institute, Lexington, Virginia. ☒

A regular meeting to (i) receive committee reports; (ii) consider 1994-1995 budget; and (iii) receive reports on visits to academic divisions and departments.

Contact: Colonel Edwin L. Dooley, Jr., Secretary, Board of Visitors, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206

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 the 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.

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February 2, 1994 - 1 p.m. – Public Hearing
Department of Mines, Minerals and Energy, 202 N. Ninth Street, Room 829, Richmond, Virginia.

February 11, 1994 – 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 Mines, Minerals and Energy intends to amend regulations entitled: **VR 480-01-1. Public Participation Guidelines.** The purpose of the proposed amendments is to reflect the order of the regulatory process under the Administrative Process Act and clarify that the guidelines apply to the Virginia Gas and Oil Board and Board of Examiners.

Statutory Authority: §§ 9-6.14:7.1, 45.1-1.3, 45.1-12 and 45.1-361.15 of the Code of Virginia.

Contact: Stephen A. Walz, Policy and Planning Manager, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3200.

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

January 12, 1994 - 1 p.m. - Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia ☐

A regular business meeting open to the public.

Contact: Karen Ruby, Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-0481.

Motor Vehicle Dealers' Advisory Board

January 20, 1994 - 9:30 a.m. - Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ☐

A meeting to review dealer related activities and any possible legislation that could have an impact on the consumers/dealers.

Contact: L. Stephen Stupasky, Manager, Dealer Services Division, Department of Motor Vehicles, 2300 W. Broad Street, Richmond, VA 23269-0001, telephone (804) 367-2921.

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

† **January 25, 1994 - 9 a.m. - Open Meeting**
Linden Row Inn, 100 E. Franklin Street, Richmond, Virginia. ☐

The meeting will include reports from the executive, finance, marketing, outreach, personnel, planning/facilities, and research and collections committees. Public comment will be received following approval of the minutes of the October meeting.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, VA 24112, telephone (703) 666-8616 or (703) 666-8638/TDD ☎

BOARD OF NURSING

January 25, 1994 - 8:30 a.m. - Open Meeting
January 26, 1994 - 8:30 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, Richmond, Virginia. ☐ (Interpreter for the deaf provided upon request)

A regular meeting to consider matters relating to nursing education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. Public comment will be received during an open fourm session beginning at 11 a.m. on Tuesday, January 27, 1994. At 3 p.m. on January 25, 1994, the board will consider and adopt proposed Public Participation Guidelines to replace those adopted as emergency regulations in June 1993. The board may also discuss plans to develop future changes in its regulations.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9909.

January 24, 1994 - 9 a.m. - Open Meeting
January 27, 1994 - 8:30 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, Richmond, Virginia. ☐

A panel of the board will conduct formal hearings. Two Special Conference Committees may conduct informal conferences in the afternoon if panel agenda is completed in the morning. Public comment will not be received.

Contact: Corrine F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

† **January 26, 1994 - 9:30 a.m. - Open Meeting**
6606 West Broad Street, Conference Room 1, 5th Floor, Richmond, Virginia. ☐

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

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† February 8, 1994 - 9 a.m. - Public Hearing
Department of Health Professions, 6606 W. Broad Street,
5th Floor, Richmond, Virginia.

March 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 Board of Nursing
Home Administrators intends to amend regulations
entitled: VR 500-01-2:1. Regulations of the Board of
Nursing Home Administrators. The purpose of the
proposed amendments is to revise continuing education
requirements of the board, to establish as permanent
fee increases in emergency regulations, and to delete
public participation guidelines.

Statutory Authority: §§ 54.1-2400 and 54.1-3100 of the Code
of Virginia.

Contact: Meredyth P. Partridge, Executive Director, 6606
W. Broad Street, 4th Floor, Richmond, VA 23230-1717,
telephone (804) 662-9111.

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February 25, 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 Nursing
Home Administrators intends to adopt regulations
entitled: VR 500-01-3. Public Participation Guidelines.
The proposed regulations are intended to replace
emergency regulations governing Public Participation
Guidelines currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3101 of
the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board
of Nursing Home Administrators, 6606 W. Broad Street, 4th
Floor, Richmond, VA 23230, telephone (804) 662-9911.

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.

February 4, 1994 - 9 a.m. - Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. FT3001 5

A meeting to conduct regular board business and any
other matters which may require board action.

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

BOARD OF OPTOMETRY

January 12, 1994 - 8 a.m. - Open Meeting
Courtyard Marriott, 6400 W. Broad Street, Richmond,
Virginia. ☒ (Interpreter for the deaf provided upon
request)

An Informal Conference Committee meeting. Brief
public comment will be received at the beginning of
the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of
Optometry, 6606 W. Broad Street, 4th Floor, Richmond, VA
23230-1717, telephone (804) 662-9910 or (804)
662-7197/TDD ☎

January 12, 1994 - 9 a.m. - Open Meeting
Courtyard Marriott, 6400 W. Broad Street, Richmond,
Virginia. ☒ (Interpreter for the deaf provided upon
request)

A general board meeting. Brief public comment will
be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of
Optometry, 6606 W. Broad Street, 4th Floor, Richmond, VA
23230-1717, telephone (804) 662-9910 or (804)
662-7197/TDD ☎

BOARD OF PHARMACY

January 13, 1994 - 9 a.m. - Open Meeting
Department of Health Professions, 6606 W. Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia.

January 18, 1994 - 9 a.m. - Open Meeting
Department of Health Professions, 6606 W. Broad Street,

Calendar of Events

5th Floor, Conference Room 4, Richmond, Virginia.

Informal conferences.

Contact: Scotti Milley, Executive Director, Board of Pharmacy, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

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February 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 Board of Pharmacy intends to adopt regulations entitled: **VR 530-01-3. Public Participation Guidelines.** The proposed regulations are intended to replace emergency regulations governing Public Participation Guidelines which are currently in effect. No public hearing is planned unless requested.

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

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

BOARD OF PROFESSIONAL COUNSELORS

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.

BOARD OF PSYCHOLOGY

Credentials Committee

January 18, 1994 - 9 a.m. - Open Meeting
Department of Health Professions, 6606 W. Broad Street,
4th Floor, Room 1, Richmond, Virginia. ☐

An informal fact finding will be conducted in accordance with §§ 54.1-2400 and 9-6.14:7.1 of the Code of Virginia to determine the eligibility of an applicant for graduate coursework acceptance. No public comment will be received.

Contact: Evelyn Brown, Executive Director or Jane Ballard, Administrative Assistant, Board of Psychology, 6606 W. Broad St., Richmond, Va 23230-1717, telephone (804) 662-9913.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

† January 20, 1994 - 7:30 p.m. - Public Hearing

Department of Transportation, 1221 E. Broad Street, Main Hall Auditorium, Richmond, Virginia. ☐

A public hearing on State Rail Plan Updates 1990 and 1991 and the High Speed Rail Corridor Study.

Contact: Monica Moton Williams, Rail Transportation Engineer Senior or Alan C. Tobias, Rail Transportation Engineer Senior, Department of Rail and Public Transportation, 1401 E. Broad Street, 14th Floor, Richmond, VA 23219, telephone (804) 786-3963 or (804) 786-1063.

REAL ESTATE APPRAISER BOARD

January 18, 1994 - 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, Department of Professional and Occupational Regulation, 3600 West Broad Street, 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

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.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

January 26, 1994 - 10 a.m. - Open Meeting

City Council Chambers, City of Danville, City Hall, Municipal Building, Patton St., Danville, Virginia FT3001 5

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia; and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, 1500 E. Main Street, Richmond, VA 23218, telephone (804) 786-1750.

Calendar of Events

VIRGINIA RESOURCES AUTHORITY

January 11, 1994 - 9:30 a.m. - Open Meeting

February 9, 1994 - 9:30 a.m. - Open Meeting

The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to approve minutes of the prior meeting, to review the authority's operations for the prior months, and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., 909 East Main Street, Suite 707, Richmond, VA 23219, telephone (804) 644-3100, FAX number (804) 644-3109.

VIRGINIA SMALL BUSINESS ADVISORY BOARD

† January 26, 1994 - 8:30 a.m. - Open Meeting

Department of Economic Development, 1201 E. Cary Street, 14th Floor Board Room, Richmond, Virginia. ☐

A regular meeting.

Contact: David V. O'Donnell, Director of Small Business and Financial Services, 1021 E. Cary Street, 11th Floor, Richmond, VA 23219, telephone (804) 371-8260.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† March 14, 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 Social Services intends to adopt regulations entitled: **VR 615-43-4. Adoptee Application for Disclosure of Identifying Information on Birth Family in a Closed Adoption Record.** This regulation establishes policy relative to the search and disclosure process when an adult adopted in Virginia applies to the Virginia Department of Social Services to obtain identifying information on his birth family pursuant to § 63.1-236 of the Code of Virginia. The State Board of Social Services will consider public comments at its regularly scheduled meeting.

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

Written comments may be submitted until March 14, 1994, to Sandra Sanroma, Department of Social Services, 2nd Floor, 730 E. Broad Street, Richmond, VA 23219-1849.

Contact: Margaret J. Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad Street, 8th Floor, Richmond, VA 23219-1849, telephone (804) 692-1821.

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January 12, 1994 - 10 a.m. - Public Hearing
Department of Social Services, Training Room #3, Lower Level, 730 East Broad Street, Richmond, Virginia

February 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 Board of Social Services intends to adopt regulations entitled: **VR 615-53-01.2. Child Day Care Services Policy.** The proposed regulation establishes child day care policy that the department must have to implement its child day care programs.

Statutory Authority: §§ 63.1-25 and 63.1-55 of the Code of Virginia.

Written comments may be submitted until February 28, 1994, to Paula S. Mercer, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849.

Contact: Margaret Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1820, telephone (804) 692-1820.

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January 11, 1994 - 1 p.m. - Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

January 12, 1994 - 1 p.m. - Public Hearing
Fairfax County Office for Children, 3701 Pender Drive, Fairfax, Virginia.

January 13, 1994 - 1 p.m. - Public Hearing
Council Chambers, City Hall, Norfolk, Virginia.

January 14, 1994 - 1 p.m. - Public Hearing
City Chambers, Fourth Floor, Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

January 18, 1994 - 1 p.m. - Public Hearing
Virginia Highlands Community College, Room 605, Route 372 off of Route 140, Abingdon, Virginia.

February 11, 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 Social Services intends to adopt regulations entitled: **VR 615-01-51. Auxiliary Grants Program: Levels of Care and Rate Setting.** The proposed regulation

requires that auxiliary grant recipients be evaluated by case managers to determine level of care needed in adult care residences. Services provided to the auxiliary grant recipient are defined as well as process to be used in establishing auxiliary grant rates for adult care residences.

Statutory Authority: §§ 63.1-25 and 63.1-25.1 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Jeanine LaBrenz, Program Manager, Medical Assistance Unit, Department of Social Services, 730 East Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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February 11, 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 Social Services intends to repeal regulations entitled: VR 615-22-02. Standards and Regulations for Licensed Homes for Adults. This regulation is proposed for repeal, and will be replaced with the proposed regulation entitled: VR 615-22-02:1, Standards and Regulations for Licensed Adult Care Residences. No public hearing is scheduled for the repeal of this regulation; however, written comments will be received.

Statutory Authority: §§ 63.1-25 and 63.1-174 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Cheryl Worrell, Program Development Supervisor, Department of Social Services, 730 East Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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January 11, 1994 - 1 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

January 12, 1994 - 1 p.m. -- Public Hearing
Fairfax County Office for Children, 3701 Pender Drive, Fairfax, Virginia.

January 13, 1994 - 1 p.m. -- Public Hearing
Council Chambers, 810 Union Street, 11th Floor, City Hall, Norfolk, Virginia

January 14, 1994 - 1 p.m. -- Public Hearing
City Chambers, Fourth Floor, Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

January 18, 1994 - 1 p.m. -- Public Hearing
Virginia Highlands Community College, Room 605, Route 372 off of Route 140, Abingdon, Virginia.

February 11, 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 Social Services intends to adopt regulations entitled: VR 615-22-02:1. Standards and Regulations for Licensed Adult Care Residences. The 1993 General Assembly enacted legislation which creates levels of care in licensed homes for adults. This legislation also changes the term "homes for adults" to "adult care residences." The proposed regulation replaces the regulations entitled: Standards and Regulations for Licensed Homes for Adults and has a proposed effective date of June 1, 1994.

Statutory Authority: §§ 63.1-25 and 63.1-174 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Cheryl Worrell, Program Development Supervisor, Department of Social Services, 730 East Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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January 11, 1994 - 1 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

January 12, 1994 - 1 p.m. -- Public Hearing
Fairfax County Office for Children, 3701 Pender Drive, Fairfax, Virginia.

January 13, 1994 - 1 p.m. -- Public Hearing
Council Chambers, City Hall, Norfolk, Virginia.

January 14, 1994 - 1 p.m. -- Public Hearing
City Chambers, Fourth Floor, Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

January 18, 1994 - 1 p.m. -- Public Hearing
Virginia Highlands Community College, Room 605, Route 372 off Route 140, Abingdon, Virginia.

February 11, 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 State Board of Social Services intends to adopt regulations entitled: **VR 615-46-02. Assessment and Case Management in Adult Care Residences.** The proposed regulation sets forth assessment and case management procedures and general information for residents and operators of adult care residences.

Statutory Authority: §§ 63.1-25.1 and 63.1-173.3 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Helen B. Leonard, Adult Services Program Manager, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

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 ☐ .

VIRGINIA STUDENT ASSISTANCE AUTHORITIES

Board of Directors

† January 20, 1994 - 10 a.m. - Open Meeting
411 E. Franklin Street, 2nd Floor Board Room, Richmond,
Virginia. ☐

A general business meeting.

Contact: Catherine E. Fields, Administrative Assistant, 411 E. Franklin Street, Suite 300, Richmond, VA 23219, telephone (804) 775-4648 or toll-free 1-800-792-5626.

DEPARTMENT OF TAXATION

† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol
Street, Richmond, Virginia.

† March 14, 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

Taxation intends to amend regulations entitled: **VR 630-0-1. Guidelines for Public Participation in Regulation Development and Promulgation.** This regulation has been revised as follows:

1. The regulation governs the development of regulations which are not exempt from the public participation provisions of the Administrative Processes Act.

2. The amendments to the regulation provide:

a. The general policy for regulation revision, and conditions for petitioning the Department of Taxation (the "department") for revision of a particular regulation.

b. Procedures by which the department develops a list of interested parties for participation in the regulation development process.

c. Procedures by which the department will notify interested parties.

d. Procedures by which the department will involve interested parties, including ad hoc working groups, preparation of working drafts, submission of the proposed regulation, public hearings, response to comments on proposed regulations, and procedures for publication and adoption of final regulations.

3. The regulation was initially adopted on September 18, 1984, and became effective on October 25, 1984. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

4. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: §§ 9-6.14:7.1 and 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol
Street, Richmond, Virginia.

† March 14, 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

Taxation intends to amend regulations entitled: VR 630-3-302. Corporate Income Tax: Definitions. This regulation has been revised as follows:

- 1. The definitions of "compensation" and "sales" have been moved to VR 630-3-413 and VR 630-3-414, respectively. Amendments to these definitions have been made in the respective regulations.
- 2. The definitions of "income from Virginia sources" and "foreign source income" have been moved to regulations VR 630-3-302.1 and VR 630-3-302.2, respectively. These are new regulations, and have significantly amended the definitions previously contained in this regulation.
- 3. The definition of "corporation" has been amended to include any publicly traded partnership that is taxed as a corporation for federal purposes.
- 4. Duplicate language was removed from the definition of "affiliated." The language was more appropriate in the regulations issued under § 58.1-442 of the Code of Virginia.
- 5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to adopt regulations entitled: VR 630-3-302.2. Foreign Source Income. This regulation has been revised as follows:

- 1. The definition of foreign source income, which was previously defined in VR 630-3-302, has been replaced by this new (and separate) regulation. The original definition has been expanded, and comprehensive examples added for clarity.
- 2. The regulation contains guidance for determining the source of income. In situations where the federal sourcing rules are not incorporated by reference, detailed sourcing rules are provided.

3. The regulation provides that the apportionment factors must exclude items of income which qualify for the subtraction.

4. The regulation incorporates previously published policy that:

- a. Provides guidance as to the types of income that qualify for the subtraction. Income of a type not specifically provided does qualify regardless of its source.
- b. Provides a definition of the term "technical fees" for purposes of the subtraction. Numerous examples have been provided to assist taxpayers in determining what constitutes a "technical fee" which qualifies for the subtraction.
- c. Provides examples of how expenses are apportioned to, and netted against, the income which qualifies for the subtraction. The subtraction must be determined net of related expenses determined in accordance with federal sourcing rules.
- d. Reinforces the utilization of federal Form 1118 as a starting point for the computation.

5. The regulation provides guidance with respect to income arising from the sale of software. The regulation breaks this type of income into license fees, programming services, and wholesale and retail activity. The eligibility of each type of income is separately addressed.

6. The regulation provides detailed rules for sourcing income from the sale of an intangible property. The sale of software is distinguished from the sale of intangibles.

7. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to amend regulations entitled: VR

Calendar of Events

630-3-311. Corporate Income Tax: Report of Change of Federal Taxable Income. This regulation has been revised to clarify existing department policy with respect to (i) amended tax returns filed due to a change in federal taxable income, and (ii) when extensions are available for amended income tax returns which are filed due to a change in federal taxable income.

In particular, this regulation clarifies the department's position with respect to amended returns. In filing an amended return due to a change in federal taxable income, a corporation is required to either concede the accuracy of an I.R.S. final determination, or explain why the determination is erroneous. If a corporation pays any additional tax resulting from a final determination without filing an amended return, and the department has sufficient information available with which to verify the tax computation, the department may waive the amended return requirement.

Corporations in general are required to file an amended return within 90 days from a final determination date. Under this regulation, corporations are permitted to apply for a six-month extension of the required filing, after meeting the applicable requirements.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

* * * * *

† **March 14, 1994 - 10 a.m.** - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† **March 14, 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 Taxation intends to amend regulations entitled: **VR 630-3-312. Corporate Income Tax: Limitations on Assessments.** The existing regulation provides a three-year limitation on the department for assessing taxes from the date such taxes were due. The three-year limitation is not applicable in situations where (i) no return was filed, (ii) a false or fraudulent return was filed, or (iii) a change in federal taxable income was not reported.

The existing regulation also permits the department to assess additional tax within one year of the date a report of change in federal taxable income was filed.

The term "erroneous refund" is defined under the

existing regulation, and recovery times are provided for the department. The department is permitted (i) two years to recover an erroneous refund if it was originally made due to an error on the part of the department, and (ii) five years to recover if the refund was made because of fraud or misrepresentation on the part of a taxpayer.

The changes made to the existing regulation are made in order to clarify the regulation. There are no substantive changes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

* * * * *

† **March 14, 1994 - 10 a.m.** - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† **March 14, 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 Taxation intends to amend regulations entitled: **VR 630-3-323. Corporate Income Tax: Excess Cost Recovery - Taxable Years Beginning before January 1, 1988.** This regulation has been revised as follows:

1. The regulation applies to the ACRS additions and subtractions required in taxable years beginning before January 1, 1988.

2. The provisions of this section were repealed for taxable years beginning on or after January 1, 1988. ACRS additions which had not been previously recovered are allowed as subtractions in determining Virginia taxable income pursuant to § 58.1-323.1 of the Code of Virginia and VR 630-3-323.1. This regulation provides guidance in determining the balance of ACRS subtractions that are allowed to be recovered pursuant to § 58.1-323.1 in post 1987 taxable years.

3. The regulation incorporates previously published policy that:

a. Makes it clear that Modified Accelerated Cost Recovery (MACRS) deductions were subject to the ACRS addition.

b. Makes it clear that deductions under the Alternative Depreciation System did not require an ACRS addition.

c. Makes it clear that the ACRS additions did not create a separate Virginia basis, that ACRS

subtractions do not follow assets in the event of a sale, and that no lump sum recovery of ACRS subtractions is permitted in the event of a sale of the assets.

d. Makes it clear that REIT's are subject to the ACRS addition, but that no subtraction may be passed through to REIT shareholders.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1880, telephone (804) 367-0167.

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† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to amend regulations entitled: **VR 630-3-323.1. Corporate Income Tax: Excess Cost Recovery.** This regulation has been revised as follows:

1. Section 58.1-323.1 of the Code of Virginia has been amended subsequent to its enactment to defer the timing of subtractions allowed to corporate taxpayers; the amendments to this regulation incorporate such legislative changes.

2. The amendments to the regulation also provide:

a. Where a net operating loss is carried back to a taxable year beginning after December 31, 1987, the post-1987 ACRS subtraction for such year shall be redetermined. Where, after such net operating loss carryback, a post-1987 ACRS carryback is created or increased, the revised amount may be carried to subsequent years.

b. Where a net operating loss carryback creates or increases the amount of a post-1987 ACRS carryover, the year(s) to which the revised ACRS carryover

can be carried may be amended within the statute of limitations prescribed for filing the carryback claim arising from the net operating loss. Where the statute of limitations is otherwise closed for such carryover year, the amended return is limited solely to the changes arising from the changes to the post-1987 ACRS carryover.

c. Carryovers of unused subtractions are not determined at the entity level by conduit entities.

d. Unused post-1987 ACRS subtractions may be carried over until fully utilized.

e. Where a net operating loss incurred in a taxable year beginning before January 1, 1988, is deducted in a taxable year beginning on or after January 1, 1988, the net ACRS addition carried with the loss (as provided in VR 630-3-402.3 and VR 630-2-311.1) shall be eliminated. Also, post-1987 ACRS subtractions are not considered to be Virginia additions or subtractions that must be carried forward or back with a net operating loss for purposes of VR 630-3-402.3 or VR 630-2-311.1.

3. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

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† March 14, 1994 - 10 a.m. - Public Hearing
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† March 14, 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 Taxation intends to amend regulations entitled: **VR 630-3-400.1. Corporate Income Tax: Telecommunication Companies.** This regulation has been revised as follows:

1. New definitions have been added to the regulation, and duplicate language deleted.

2. Guidance on the taxation of telephone companies which are organized as mutual associations or cooperatives has been added to the regulation. Examples are provided.

3. Guidance is provided with respect to credits received from pass through entities.

Calendar of Events

4. Guidance in determining the minimum tax and minimum tax credit where an affiliated group of corporations files a consolidated or combined return which contains one or more telecommunications company is provided. A telecommunications company contained in a combined or consolidated return must use procedures contained in the regulation to determine the amount of the group's corporate income tax that such company is deemed to have paid for purposes of determining the minimum tax or credit allowed.

5. Detailed examples are provided for guidance in situations where more than one telecommunications company is included in a combined or consolidated return.

6. A telecommunications company may petition the State Corporation Commission for a review and recertification of the company's status or amount of gross receipts certified. Upon receipt of such redetermination, the telecommunications company must file an amended return in accordance with the procedures contained therein. Any application for refund must be filed in accordance with the procedures contained in § 58.1-1823 of the Code of Virginia.

7. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

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† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to amend regulations entitled: VR 630-3-402. Corporate Income Tax: Determination of Virginia Taxable Income. This regulation has been revised as follows:

1. The regulation originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.1 defines additions required in determining Virginia taxable income, VR 630-3-402.2 defines

subtractions and adjustments allowed in determining Virginia taxable income, and VR 630-3-402.3 defines adjustments necessary to Virginia taxable income when net operating losses are present.

2. The amendments to the regulation provide:

a. A definition of federal taxable income.

b. References to the new regulations, and delete duplicate language.

c. That a homeowner's association is subject to Virginia corporate income tax on its homeowner's association taxable income.

d. That a political organization is subject to Virginia corporate income tax on its political organization taxable income.

e. That a foreign corporation is subject to Virginia corporate income tax on its branch profits dividend equivalent, gross transportation income, and income for which an election has been made under § 897(i) of the Internal Revenue Code.

f. That net operating loss adjustments are required by VR 630-3-442.1 and VR 630-3-442.2 for consolidated and combined returns, respectively.

g. That the adjustments required in determining the federal alternative minimum tax do not apply in determining Virginia taxable income.

h. That adjustments are required by VR 630-3-442.1 and VR 630-3-442.2 for consolidated and combined returns, respectively.

i. That federal taxable income as reported on the federal return generally will be relied upon for Virginia purposes. The department will usually not accept a difference from the federal return if such difference has an impact on federal tax liabilities.

j. That certain adjustments may be necessary to reconcile federal taxable income for Virginia purposes to federal taxable income as actually reported.

k. That affiliated corporations may be required to make special adjustments where federal and Virginia returns are filed on a different basis, or where a federal consolidated return contains corporations which are not subject to the Virginia corporate income tax.

l. That if a federal consolidated return is filed, but separate Virginia returns are filed, federal taxable income must be determined as if separate federal returns had been filed.

m. In determining federal taxable income as if separate federal returns had been filed, no effect is given for any deferral of gain, loss, income, or deduction which may have been permitted as a result of filing a federal consolidated return.

n. Unless otherwise provided, elections made on a federal consolidated return shall be considered to have been made by each separate company in determining its separate federal taxable income.

o. If an election was made under § 338(h) 10 of the Internal Revenue Code, the Virginia returns of any members of the selling group shall reflect the amount and character of income recognized in the federal consolidated return.

3. The regulation was initially adopted on September 14, 1984, but revised on February 1, 1987, with a retroactive effective date of January 1, 1985. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. 1880, Richmond, VA 23282-1180, telephone (804) 367-0167.

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† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to adopt regulations entitled: VR 630-3-402.1. Corporate Income Tax: Additions in Determining Virginia Taxable Income. This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402 now governs the determination of Virginia taxable income.

2. This new regulation provides:

a. That the additions to Virginia taxable income are only added to federal taxable income to the extent such items are excluded or deducted from federal taxable income.

b. Additions to Virginia taxable income are made net of any related expenses that were disallowed in determining federal taxable income.

c. If an item excluded or deducted from federal taxable income has been included in Virginia taxable income by operation of another section of the Code of Virginia, the item will not be added again pursuant to this regulation.

d. That interest on the obligations of any state other than Virginia, or on the obligations of a political subdivision of any other state, must be added to federal taxable income in determining Virginia taxable income. The addition to Virginia taxable income is net of expenses which were disallowed under § 265 of the Internal Revenue Code. The regulation provides that zero coupon bonds, or equivalent types of obligations, may produce interest income that must be added back to federal taxable income.

e. That interest or dividends on United States obligations that are exempt from federal income tax but not from state income tax must be added to federal taxable income in determining Virginia taxable income. Such addition shall be net of any expenses which were disallowed under § 265 of the Internal Revenue Code.

f. That any Virginia corporate income tax imposed by § 58.1-400 of the Code of Virginia deducted in determining federal taxable income must be added back in determining Virginia taxable income.

g. Any net income taxes or other taxes, including franchise and excise taxes which are based on, measured by, or computed with reference to net income imposed by any other taxing jurisdiction deducted in determining federal taxable income must be added back in determining Virginia taxable income.

h. A tax satisfies the net income requirement if its base is computed by reducing gross receipts to permit the recovery of significant costs and attributable to such gross receipts. For this purpose, the environmental tax imposed pursuant to § 59A of the Internal Revenue Code is a tax based on net income that must be added back in determining Virginia taxable income.

i. A tax measured by capital stock, net worth, property or other measure unrelated to net income is not deemed to be a tax based on, measured by, or computed with reference to net income. In the

Calendar of Events

event that a taxing authority imposes a tax on a basis other than net income, but such tax only applies to the extent it exceeds a tax based on net income, such tax shall be added back in determining Virginia taxable income to the extent the total tax is (or would have been) determined by net income.

j. The minimum tax on telecommunications companies imposed pursuant to § 58.1-400.1 of the Code of Virginia applies in any year that such tax exceeds the corporate income tax. If a corporation deducts the minimum tax in determining federal taxable income, such tax shall be added back in determining Virginia taxable income to the extent the corporate income tax would have been imposed for such year.

k. That unrelated business taxable income of a tax exempt organization must be added to federal taxable income in determining Virginia taxable income.

l. That any ESOP credit carryover that is deducted in computing federal taxable income under § 404(i) of the Internal Revenue Code shall be added to federal taxable income in determining Virginia taxable income.

m. That, to the extent not already included in federal taxable income, Virginia taxable income shall include the amount required to be included in income for purposes of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

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† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to adopt regulations entitled: **VR 630-3-402.2. Corporate Income Tax: Subtractions and Adjustments in Determining Virginia Taxable Income.** This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to

increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402 now governs the determination of Virginia taxable income.

2. This new regulation provides:

a. That the subtractions from Virginia taxable income are only allowed to the extent such items are included in federal taxable income.

b. If an item has been excluded from Virginia taxable income by operation of another section of the Code of Virginia, the item will not be subtracted again pursuant to this regulation.

c. If an item of income qualifies for a subtraction or exclusion from Virginia taxable income pursuant to more than one section of the Code of Virginia, the taxpayer is limited to one subtraction for such item, but may utilize whichever subtraction is most beneficial to the taxpayer.

d. If an item does not qualify for a subtraction under this regulation, or under the Code of Virginia, no subtraction is allowed.

e. That interest on the obligations of the United States, to the extent exempted from state taxation under federal laws, shall be subtracted from federal taxable income.

f. Guarantees by the United States of obligations of private individuals or corporations do not qualify for the subtraction.

g. Repurchase obligations usually will not qualify for the subtraction.

h. Interest paid on federal tax refunds, equipment purchase contracts, or other normal business transactions does not qualify for the subtraction.

i. The subtraction for U. S. interest must be determined net of any related expenses.

j. That interest on obligations of the Commonwealth of Virginia shall be subtracted to the extent included in federal taxable income. Such addition shall be net of any expenses which were disallowed under § 265 of the Internal Revenue Code.

k. That income realized by a pass-through entity will generally have the same character in the hands of the recipient as in the hands of the pass-through

entity.

l. A subtraction is allowed for certain DISC dividends. Distributions which are excluded from the shareholder's income as made out of previously taxed income are eligible for the Virginia subtraction if 50% or more of the income of a DISC was assessable in Virginia for the preceding year, or the last year in which the DISC had income. The subtraction for DISC dividends must be reduced to the extent of any related expenses.

m. That if federal taxable income includes a refund or credit for overpayment of income taxes to Virginia or any other state, the amount of such refund or credit shall be subtracted from federal taxable income in determining Virginia taxable income. Generally, there are no offsetting expenses which reduce the subtraction.

n. That income included in federal taxable income pursuant to § 78 of the Internal Revenue Code shall be subtracted in determining Virginia taxable income. Because § 78 income is deemed to have been received, there are generally no expenses which reduce the subtraction. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income.

o. That to the extent a deduction for wages was disallowed by § 280C (a) of the Internal Revenue Code in determining federal taxable income, a subtraction shall be allowed in determining Virginia taxable income. Because this subtraction relates to a deduction which is disallowed in computing federal taxable income, it does not have to be reduced by related expenses.

p. That the amount of Subpart F income required to be included in federal taxable income shall be subtracted in determining Virginia taxable income. Because such income is deemed to have been received, there are generally no expenses which reduce the Virginia subtraction. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income.

q. That to the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income equal to the amount of foreign source income as defined by § 58.1-302 of the Code of Virginia and VR 630-3-302.2. The subtraction allowed by this section shall not include any amount which is allowed as a subtraction as § 78 income, Subpart F income, or dividends received.

r. That for taxable years beginning on or after

January 1, 1988, taxpayers may claim a subtraction in determining Virginia taxable income for the outstanding excess cost recovery as provided by § 58.1-323.1 of the Code of Virginia and VR 630-3-323.1.

s. That to the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income for the amount of dividends received from a corporation when the corporation receiving the dividend owns 50% or more of the voting power of all classes of stock of the payer. Foreign source dividends from corporations in which the taxpayer owns 50% or more of the voting power of all classes of the stock of the payer may be claimed as a subtraction pursuant to this section in lieu of the subtraction for foreign source income.

t. That the amount of any qualified agricultural contribution shall be subtracted from federal taxable income in determining Virginia taxable income. Contributions that qualify for the subtraction in determining Virginia taxable income are contributions of agricultural products made by a corporation engaged in the trade or business of growing or raising such products.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

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† **March 14, 1994 - 10 a.m.** - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† **March 14, 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 Taxation intends to adopt regulations entitled: **VR 630-3-402.3, Corporate Income Tax: Net Operating Losses**. This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402 now governs the determination of Virginia

Calendar of Events

taxable income.

2. This new regulation provides:

a. There is no express authority in the Code of Virginia for a Virginia net operating loss, a net operating loss carryback or carryover. However, because the computation of Virginia taxable income begins with federal taxable income the starting point for determining Virginia taxable income is affected by the federal net operating loss deduction.

b. For Virginia purposes, the ability to utilize a net operating loss carryback or carryover is dependent on the taxpayer's ability to utilize the net operating loss carryback or carryover to reduce federal taxable income.

c. In determining Virginia taxable income, certain modifications are made to federal taxable income as provided by the Code of Virginia. Modifications from a loss year follow the loss for Virginia purposes and affect Virginia taxable income as the net operating loss is absorbed.

d. To prevent double deduction or taxation for Virginia purposes, the definition of federal taxable income is modified accordingly in any year in which a net operating loss is absorbed. Federal limitations, rules and elections regarding the utilization of net operating losses control the ability to utilize losses for Virginia purposes.

e. In any loss year, a corporation is required to determine all of the modifications to federal taxable income required by the Code of Virginia. A corporation incurring a net operating loss may have Virginia taxable income and owe Virginia income tax after making the required modifications. A similar result may occur in any year in which a net operating loss is carried back or over.

f. Virginia modifications attributable to a loss year follow the carryback or carryover of the net operating loss suffered in the loss year. In any year in which a loss is utilized to reduce federal taxable income, Virginia modifications attributable to such loss will be applied proportionately to the amount of the loss utilized.

g. Because there is no provision for a separate Virginia net operating loss, income allocated out of Virginia taxable income cannot create or increase a Virginia net operating loss. Neither the allocable income nor the apportionment factor of the loss year is a modification which follows the net operating loss.

h. The recovery of the outstanding balance of excess cost recovery in post 1987 taxable years pursuant to § 58.1-323.1 of the Code of Virginia has its own

carryover and recovery provisions, and is not a modification that follows a net operating loss.

i. No Virginia modifications follow a capital loss or charitable contribution.

j. The net sum of loss year modifications follows the net operating loss to the year utilized. The net modifications, which may be positive or negative, will be added or subtracted accordingly in determining Virginia taxable income in the year in which the net operating loss is absorbed. If the net operating loss is utilized to reduce federal taxable income in more than one taxable year, the net modifications will be applied proportionately to the utilization of the loss. If Virginia taxable income in a loss year equals or exceeds zero, then all of the net operating loss and Virginia subtractions have been offset by Virginia additions, and a net positive Virginia modification equal to 100% of the loss shall follow the carryback or carryover of such loss.

k. Generally, federal taxable income means federal taxable income as defined by § 63 of the Internal Revenue Code and any other income taxable under federal law. In order to prevent Virginia modifications associated with a net operating loss from being subject to double deduction or double taxation, the definition of federal taxable income is modified in any year in which a corporation incurs a net operating loss, or claims a net operating loss deduction. In determining the amount of a net operating loss, no deduction is allowed for a net operating loss deduction from any other year. For Virginia purposes, federal taxable income in a loss year shall be determined without net operating loss deductions attributable to any other taxable year.

l. If a net operating loss is carried back, and the federal taxable income in the carryback year is sufficient to fully absorb the loss, no adjustment is necessary for Virginia purposes. If a net operating loss is carried back, and federal taxable income in the carryback year is insufficient to fully absorb the carryback, then for Virginia purposes federal taxable income is defined as zero.

m. If a net operating loss is carried over, and the federal taxable income in the carryover year is sufficient to fully absorb the loss, no adjustment is necessary to federal taxable income for Virginia purposes. If a net operating loss is carried over, and federal taxable income in the carryover year is insufficient to fully absorb the carryover, then for Virginia purposes federal taxable income is defined as zero.

n. Federal law permits a corporation to carry a net operating loss back to each of the three taxable years preceding the loss year, and then over to each of the 15 taxable years following the taxable

year of the loss. Because Virginia law does not provide for a separate Virginia net operating loss, federal law and regulations control the ability to utilize a net operating loss for Virginia purposes. The fact that a corporation has no Virginia source income or is not otherwise subject to tax in a carryover or carryback year does not affect the Virginia treatment.

o. If a corporation elects to relinquish the entire carryback period for federal purposes such election is binding for Virginia purposes. Any federal provision which acts to limit the availability of a net operating loss shall apply for Virginia purposes.

p. Corporations filing consolidated or combined Virginia returns may be subject to special rules where federal and Virginia returns are filed on a different basis or with different members. See VR 630-3-442.1 and VR 630-3-442.2.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to amend regulations entitled: **VR 630-3-403. Corporate Income Tax: Additional Modifications for Savings and Loan Associations, Railway Companies and Telecommunications Companies.** This regulation has been revised as follows:

1. Chapter 614 of the 1987 Acts of the General Assembly restored the special bad debt deduction for savings and loan associations to the percentage of income (40%) that existed before the Tax Reform Act of 1986 reduced the federal deduction to 8.0%. An example of the calculation has been provided.

2. The amendments clarify that railway companies must increase federal taxable income by any net operating loss deduction attributable to a taxable year beginning before January 1, 1979, and may modify their federal taxable income for Virginia purposes if a net operating loss incurred in a taxable year beginning on or after January 1, 1979, is carried back to a taxable year beginning before January 1, 1979.

3. The amendments refer telecommunication companies to VR 630-3-400.1 for guidance in making the adjustments required for net operating losses.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

† March 14, 1994 - 10 a.m. - Public Hearing
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† March 14, 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 Taxation intends to amend regulations entitled: **VR 630-3-400. Corporate Income Tax: Property Factor.** The existing regulation provided guidance with respect to computing the property apportionment factor for corporations. Specifically, it provides that the property factor is a fraction, the numerator of which is average property used in Virginia, and the denominator of which is the average amount of property utilized everywhere. Property is defined to include all real and tangible personal property in which a corporation has any right of use or possession.

One revision to this regulation clarifies that property in transit between locations shall be considered to be at the destination for purposes of determining its location for inclusion in the property factor.

An additional revision deletes the reference to computing the property factor for corporations that are general partners in a partnership. A new regulation will be promulgated to clarify and provide guidance with respect to the determination of a corporate partner's apportionment factor, with respect to the partnership property, payroll, and sales.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department

Calendar of Events

of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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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 630-3-411. Corporate Income Tax: Average Value of Property.** The existing regulation provides guidance with respect to how the "average" value of property for purposes of determining the property apportionment factor is determined: either (i) by averaging the amounts owned at the beginning and ending of the year, or (ii) by using property amounts averaged on a monthly basis.

The regulation has been revised to include a requirement that under an election pursuant to § 338(h)(10) of the Internal Revenue Code, a target corporation will be required to use monthly averaging in determining its Virginia property numerator in the year of the sale deemed to occur when ownership of a target corporation is transferred from a seller to a buyer.

The regulation has also been revised to clarify when a consolidated group may be required to use monthly averaging, when the group has as a member a target corporation acquired pursuant to an election under § 338(h)(10) of the Internal Revenue Code.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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† **March 14, 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 Taxation intends to amend regulations entitled: **VR 630-3-420. Corporate Income Tax: Railway Companies; Apportionment.** This regulation has had only minor changes made to it, so that it will conform to the requirements of the Virginia Administrative Process

Act.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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† **March 14, 1994 - 10 a.m.** – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† **March 14, 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 Taxation intends to amend regulations entitled: **VR 630-3-431. Corporate Income Tax: Energy Income Tax Credit - Taxable Years Beginning Before January 1, 1988.** This regulation has been revised as follows:

1. Definitions were consolidated in the first section of the regulation.
2. The regulation makes it clear that the provisions of § 58.1-431 of the Code of Virginia only applied to property placed in service before January 1, 1988.
3. The references to § 44C of the Internal Revenue Code were changed to § 23 in accordance with the federal recodification of this section.
4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.
5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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† **March 14, 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 Taxation intends to amend regulations entitled: VR 630-3-440. Corporate Income Tax: Accounting. This regulation has been revised as follows:

1. The amendments to the regulation provide:

a. Where a corporation has a taxable year of less than 12 months, the taxable income does not need to be prorated because the corporate tax does not contain graduated rates. However, if short taxable years would affect the limitation of a credit or other modification, proration shall be required.

b. Information used for apportionment purposes shall be consistent with and, if possible, reconciled to information contained in the federal income tax return.

c. Adjustments under § 481 of the Internal Revenue Code apply in determining Virginia taxable income. Adjustments required by § 481 of the Internal Revenue Code apply for Virginia purposes regardless of whether the taxpayer was subject to tax in Virginia during the year the accounting method was changed.

d. A member of a federal consolidated return may be required to make certain adjustments to its federal taxable income if it files a Virginia return on a different basis than its federal return. If, after having made such adjustments, a federal change in accounting method would result in double taxation or deduction for Virginia purposes, than an adjustment shall be allowed to the extent of such duplication.

2. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

3. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to amend regulations entitled: VR 630-3-443. Corporate Income Tax: Prohibition of Worldwide Consolidation or Combination. The amendments to this regulation provide:

1. Even though a controlled foreign corporation may be excluded from a consolidated or combined return, such corporation may be subject to tax on some or all of its income, and may be required to file a return with the department. The fact that a controlled foreign corporation is subject to tax or required to file a return does not mean that such corporation may be included in a Virginia consolidated return.

2. A foreign corporation is defined by reference to U. S. Treasury Regulation § 301.7701-5.

3. The income of a controlled foreign corporation is derived from sources without the United States if such corporation is not subject to income tax on its world-wide income under § 11 of the Internal Revenue Code, or less than 80% of the gross income of such controlled foreign corporation is considered to be effectively connected with the conduct of a U. S. trade or business.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to amend regulations entitled: VR

Calendar of Events

630-3-445. Corporate Income Tax: Consolidation of Accounts. This regulation has been revised as follows:

1. The accounts of two or more related trades or businesses may be consolidated if the department determines such consolidation is necessary to accurately distribute or apportion gains, profits, income, deductions, or capital between or among such trades or businesses.

2. This regulation applies to situations where the federal taxable income is correctly stated, but income subject to Virginia taxation is inaccurate.

3. A taxpayer may apply to the department for consolidation in accordance with the instructions therein.

4. Permission for consolidation under this regulation may be granted if adequate separate accounting records are maintained, the entities are related, the entities are subject to Virginia taxation, and the entities are owned by the same interests as described therein.

5. The department will generally not permit the consolidation of two or more corporations that are not otherwise eligible for consolidation pursuant to VR 630-3-442.1 except where the department finds consolidation necessary to accurately determine Virginia taxable income.

6. Other duplicate language has been deleted.

7. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

8. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to repeal regulations entitled: VR 630-3-446.1. **Corporate Income Tax: Foreign Sales Corporations.** The regulation provides guidance with respect to adjusting the income of affiliated groups under § 58.1-446 of the Code of Virginia, if such groups had a Domestic International Sales Corporation (DISC) as a member. This regulation is being repealed because (i) DISC's no longer exist under federal income tax law, and (ii) the existing regulations under § 58.1-446 provide adequate guidance with respect to Interest-Charge DISC's.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

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† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to amend regulations entitled: VR 630-3-449. **Corporate Income Tax: Supplemental Accounts.** This regulation has had only minor revisions made to it, which were made so that it would conform to the provisions of the Virginia Administrative Process Act.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

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† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to amend regulations entitled: VR 630-3-453. **Corporate Income Tax: Extension of Time for Filing Returns.** The amendments to the regulation provide:

1. Where a corporation has been granted a federal

extension of time to file, a Virginia extension will be granted to a date six months after the original Virginia due date or 30 days after the extended federal due date, whichever is later.

2. The penalty imposed by § 58.1-453 of the Code of Virginia will be imposed in addition to interest, and in addition to the penalty imposed under § 58.1-455 of the Code of Virginia.

3. If the taxpayer has received a federal extension, the department will accept a timely filed Virginia extension signed by the same person authorized to sign the taxpayer's federal extension.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to amend regulations entitled: VR 630-3-500. Corporate Income Tax: Declarations of Estimated Income Tax. The amendments to the regulation provide:

1. A tax liability of less than \$1,000 in a preceding year does not automatically exempt a corporation from filing estimated taxes in the subsequent year.
2. The declaration of estimated tax may only be amended once in each interval between installment dates.
3. A telecommunications company subject to tax pursuant to § 58.1-400.1 of the Code of Virginia must make estimated tax payments pursuant to this regulation if the total estimated tax due, less credits

allowed, can be reasonably expected to exceed \$1,000. For this purpose, "estimated tax" includes the corporate income tax and the minimum tax on telecommunications companies.

4. Declarations are to be made on forms prescribed by the department, which will be provided in preprinted format wherever possible. However, the failure of the department to provide a form will not excuse a taxpayer from making a declaration.

5. Filing a registration application or declaration of estimated tax is not an election of a method of reporting.

6. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

7. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to amend regulations entitled: VR 630-3-503. Corporate Income Tax: Instructions for Filing Estimated Taxes. This regulation has been revised as follows:

1. Declarations shall be filed using prescribed forms, and signed as provided therein.
2. The regulation provides the manner in which payment shall be made, and the types of checks which are acceptable.
3. The regulation provides guidance for filing estimated tax payments by affiliated groups filing consolidated or combined returns.
4. The regulation was adopted on September 14, 1984,

Calendar of Events

effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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† March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† March 14, 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 Taxation intends to amend regulations entitled: VR 630-3-504. **Corporate Income Tax: Failure to Pay Estimated Income Tax.** This regulation has been revised as follows:

1. The definitions have been moved to the beginning of the regulation, new definitions have been added, and existing definitions were amended.

2. The amendments clarify the exceptions to the underpayment penalty.

Exception 1 - Prior Years Tax. For this exception, the prior year's tax is equal to the sum of the corporate income tax and the minimum tax on telecommunications companies imposed under § 58.1-400.1 of the Code of Virginia, but without reduction for any credits allowed against the tax. For this purpose, the prior years return is deemed to show a liability for tax regardless of whether some or all of such tax was offset by credits. For purposes of exception 1, the amount of prior year's tax must be paid in timely installments in the current year even though the preceding year's tax did not exceed the estimated tax filing threshold of § 58.1-500 of the Code of Virginia.

Exception 2 - Tax on prior year's income using current year rates. For this exception, the prior year's return does not have to show a tax liability, and any credits allowed on the prior year's return may be offset against the tax calculated using the tax calculated using the current year's rates. For purposes

of exception 2, the amount of prior year's tax must be paid in timely installments in the current year even though the preceding year's tax did not exceed the estimated tax filing threshold of § 58.1-500 of the Code of Virginia.

3. The amendments provide that the rate of interest used to determine the underpayment penalty shall be the rate of interest established pursuant to § 6621 of the Internal Revenue Code plus 2.0% as provided in § 58.1-15 of the Code of Virginia.

4. The amendments provide guidance to affiliated corporations filing consolidated and combined returns in determining the penalty provided by this regulation or the exceptions thereto.

5. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

6. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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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 630-10-2.2. **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

Calendar of Events

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.**

Calendar of Events

The provisions of this regulation are being incorporated into VR 630-10-45, which deals with purchases and sales by governments generally, and thus this regulation is being repealed.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to repeal regulations entitled: **VR 630-10-39.2. Retail Sales and Use Tax: Flags.** The provisions of this regulation are being incorporated into VR 630-10-45, which deals with purchases and sales by governments generally, and thus this regulation is being repealed.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-45. Retail Sales and Use Tax: Governments.** This regulation clarifies existing department policy with respect to purchases and sales by the Commonwealth, its political subdivisions and the federal government.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-45.1. Retail Sales and Use Tax: Harvesting of Forest Products.** This regulation clarifies the application of the sales and use tax to harvesting of forest products.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: John Vollino, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-47. Retail Sales and Use Tax: Hospitals, Nursing Homes and Other Medical Related Facilities.** This regulation clarifies the application of the retail sales and use tax to purchases and sales by hospitals, nursing homes and other medical-related facilities.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-10-64.1. Retail Sales and Use Tax: Medical Equipment and Supplies.** This regulation clarifies the application of the retail sales and use tax to medical equipment and supplies.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

Calendar of Events

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January 10, 1994 - 10 a.m. - Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-65. Retail Sales and Use Tax: Medicines and Drugs.** This regulation clarifies the application of the retail sales and use tax to purchases and sales of prescription drugs, nonprescription drugs and proprietary medicines and controlled drugs.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. - Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-83. Retail Sales and Use Tax: Physicians, Surgeons, and Other Practitioners of the Healing Arts.** This regulation clarifies the application of the retail sales and use tax purchases and sales by licensed physicians, surgeons, and other practitioners of the healing arts.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. - Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-10-85.1. Retail Sales and Use Tax: Prescription Medical Appliances—Visual and Audio.** This regulation

clarifies the application of the retail sales and use tax to sales of eyeglasses, contact lenses and other ophthalmic aids and hearing aids and supplies. The provisions of this regulation previously were part of another regulation.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. - Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-92. Retail Sales and Use Tax: Research.** This regulation clarifies the sales and use tax treatment of sales and purchase transactions made in performing basic research and research and development.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Lonnie T. Lewis, Jr., Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. - Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-97.1. Retail Sales and Use Tax: Services.** This regulation clarifies the application of the retail sales and use tax to sales of services.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. - Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 - Written comments may be submitted

Calendar of Events

through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-98. Retail Sales and Use Tax: Ships or Vessels Used or to be Used Exclusively or Principally in Interstate or Foreign Commerce.** This regulation clarifies the application of the retail sales and use tax to purchases by persons engaged in waterborne commerce and shipbuilding, conversion and repair.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. - Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-108.1. Retail Sales and Use Tax: Typesetting.** This regulation clarifies the sales and use tax treatment of sales and purchase transactions for typesetting.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Lonnie T. Lewis, Jr., Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

January 13, 1994 - 10 a.m. - Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A quarterly board meeting: agenda to include 94-96 budget review, legislative update, FY 94 work plan status report and related itmes of interest.

Contact: Florence M. Strother, Acting Executive Secretary, 110 S. 7th Street, Richmond, VA 23219, telephone (804) 344-5552.

COMMONWEALTH TRANSPORTATION BOARD

† **January 19, 1994 - 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, Department of Transportation, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-8032.

† **January 20, 1994 - 10 a.m. - Open Meeting**
Department of Transportation, 1401 E. Broad Street, Richmond, Virginia 23219. ☒ (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 Street, Richmond, VA 23219, telephone (804) 786-8032.

VIRGINIA TRANSPORTATION SAFETY BOARD

January 18, 1994 - 10:30 a.m. - Open Meeting
Marriott Hotel, 500 E. Broad Street, Richmond, Virginia. 5

A meeting of the board members to discuss 1994 legislative matters and receive a report on youth programs from the National Transportation Safety Board.

Contact: Bill Dennis, Executive Assistant, Department of Motor Vehicles, P. O. Box 27412, Richmond, VA 23269, telephone (804) 367-6614.

DEPARTMENT OF THE TREASURY (TREASURY BOARD)

February 11, 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 the Treasury and Treasury Board intend to amend regulations entitled: **VR 640-01-1. Public Participation Guidelines for the Department of the Treasury and Treasury Board.** The proposed amendments provide for public petition to develop or amend a regulation and clarify under what condition the use of public hearings and advisory committees are appropriate.

Statutory Authority: §§ 2.1-179 and 9-6.14:7.1 of the Code of

Virginia.

Contact: Robert S. Young, Director of Financial Policy, Department of the Treasury, P. O. Box 1879, Richmond, VA 23215-1879, telephone (804) 225-3131.

BOARD OF VETERINARY MEDICINE

† **January 11, 1994 - 9 a.m. - Open Meeting**
Department of Health Professions, 6606 W. Broad St., 5th Floor, Conference Room 4, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The board will conduct a formal hearing, approve emergency PPGs, and conduct brief board business.

Contact: Terri H. Behr, Administrative Assistant, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9915.

VIRGINIA RACING COMMISSION

January 12, 1994 - 10 a.m. - Open Meeting
Tyler Building, 1300 E. Main Street, Richmond, Virginia. ☒

Discussion of procedures relating to site visits, public meetings and informal fact-finding conferences in addition to consideration of proposed regulations relating to public participation guidelines and satellite facilities.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P. O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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February 9, 1994 - 10 a.m. - Public Hearing
Tyler Building, 1300 E. Main Street, Richmond, Virginia.

February 25, 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 Racing Commission intends to amend regulations entitled: **VR 662-91-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering (§ 2.24. Appeals of denial, fine, suspension or revocation of license).** The purpose of the proposed amendment is to repeal an unnecessary section of the regulation.

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 (BOARD FOR)

† **February 1, 1994 - 9:30 a.m. - Open Meeting**
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A regular meeting of the board to receive reports from the department staff and other information that may be presented to the board.

Contact: Joseph A. Bowman, Assistant Commissioner, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or (804) 622-2155.

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

† **February 16, 1994 - 10 a.m. - Public Hearing**
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drugs and drug products to the formulary that became effective on February 17, 1993, and the most recent supplement to that formulary. Copies of the proposed revisions to the formulary are available for inspection at the Virginia Department of Health, 109 Governor Street, Richmond, VA 23219. Written comments sent to the above address and received prior to 5 p.m. on February 16, 1994, will be made a part of the hearing record.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor Street, Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

† **March 31, 1994 - 10:30 a.m. - Open Meeting**
1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and

Calendar of Events

review new product data for products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor Street, Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WAR MEMORIAL FOUNDATION

† January 18, 1994 - 2 p.m. - Public Hearing
621 Belvidere Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A public hearing on the use of the War Memorial.

Contact: Peggy R. Robertson, Assistant Director for Administration, Division of Engineering and Buildings, 805 E. Broad Street, Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ☎

VIRGINIA WASTE MANAGEMENT BOARD

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 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.

Calendar of Events

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

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 20, 1994 - 7 p.m. – Open Meeting
University of Virginia Southwest Center, Highway 19N.,
Abingdon, Virginia.

The purpose of the meeting is to receive comments and views from interested persons on the proposed repeal of the existing Tennessee-Big Sandy River Basin Water Quality Management Plan and the adoption of a new, updated plan for the basin.

Contact: Ronald D. Sexton, Department of Environmental Quality, Water Division, P. O. Box 888, Abingdon, VA 24210, telephone (703) 676-5507

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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 10, 1994 - 2 p.m. – Public Hearing
Prince William County Administration Center, One County Complex, 4850 Davis Ford Road, McCoart Building, Board Chambers, Prince William, Virginia.

January 11, 1994 - 2 p.m. – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

January 26, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-17. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity from Light Manufacturing Facilities.** The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from light manufacturing facilities through the development and issuance of a VPDES general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with

disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

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 880-14-18. 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.

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 880-14-19. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges from Construction Sites.** The purpose of the proposed regulation is to authorize storm water discharges from construction sites. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on

Calendar of Events

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 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 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 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 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.

February 9, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☐

A meeting to conduct regular board business and any other matters which may require board action.

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

BOARD OF YOUTH AND FAMILY SERVICES

January 13, 1994 - 8:30 a.m. – Open Meeting
700 Centre Building, 7th and Franklin Streets, 4th Floor,
Richmond, Virginia. ☐

Calendar of Events

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.

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January 13, 1994 - 3 p.m. - Public Hearing
Department of Youth and Family Services, Board Room, 700 Centre Building, 7th and Franklin Streets, Richmond, Virginia.

February 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 Board of Youth and Family Services intends to adopt regulations entitled: **VR 690-05-001. Standards Governing Research on Clients and Records of the Department.** These regulations set forth the process for receiving, reviewing, approving and monitoring proposals for research on clients and records of the Department of Youth and Family Services, including provision for a Human Research Committee.

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

Contact: Donald R. Carignan, Policy Coordinator, P. O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

CHRONOLOGICAL LIST

OPEN MEETINGS

January 10, 1994

ASAP Policy Board - Valley
Cosmetology, Board for
Hearing Aid Specialists, Board for
† Labor and Industry, Department of
- Apprenticeship Council
- Safety Health Codes Board
Local Government, Commission on

January 11

Higher Education for Virginia, State Council of
Resources Authority, Virginia
† Veterinary Medicine, Board of

January 12

† Contractors, Board for

† Criminal Justice Services Board
- Committee on Training
Environmental Quality, Department of
- Work Group on Detection/Quantitation Levels
† Historic Preservation Foundation, Virginia
† Labor and Industry, Department of
- Apprenticeship Council
- Safety and Health Codes Board
Medicine, Board of
Motor Vehicles, Department of
- Medical Advisory Board
Optometry, Board of
Professional Soil Scientists, Board for
Winegrowers Advisory Board, Virginia
Virginia Racing Commission

January 13

Agriculture and Consumer Services, Department of
- Pesticide Control Board
Child Day-Care Council
† Corrections, Board of
- Liaison Committee
Forestry, Board of
† Labor and Industry, Department of
- Apprenticeship Council
- Safety and Health Codes Board
Medicine, Board of
- Physical Therapy, Advisory Board on
Pharmacy, Board of
Youth and Family Services, Board of
Telecommunications Board, Virginia Public

January 14

Agriculture and Consumer Services, Department of
- Pesticide Control Board
Child Day-Care Council
Medicine, Board of
- Ad Hoc Committee on HIV

January 17

Longwood College
- Academic Affairs Committee
- Student Affairs Committee

January 18

Interagency Coordinating Council on Early
Intervention, Virginia
Hazardous Materials Training Committee
† Housing Development Authority, Virginia
Pharmacy, Board of
Psychology, Board of
- Credentials Committee
Real Estate Appraiser Board
Transportation Safety Board, Virginia

January 19

† Community Colleges, State Board for
† Corrections, Board of
Medicine, Board of
Mental Health, Mental Retardation and Substance
Abuse Services Board, State

Calendar of Events

† Transportation Board, Commonwealth

January 20

† Accountancy, Board for
† Chesapeake Bay Local Assistance Board
- Central Area Review Committee
† Game and Inland Fisheries, Board of
Health, Department of
- Waterworks Advisory Committee
Motor Vehicles, Department of
- Motor Vehicle Dealers Advisory Board
† Student Assistance Authorities, Virginia
- Board of Directors
† Transportation Board, Commonwealth
Water Control Board, State

January 21

† Accountancy, Board for
† Game and Inland Fisheries, Board of
† Interdepartmental Regulation of Children's
Residential Facilities, Coordinating Committee for
Prevention and Early Intervention Steering Committee,
Comprehensive Services

January 22

Visually Handicapped, Department for
- Advisory Committee on Services

January 24

† Aging, Governor's Advisory Board on
Library Board
- Archives and Record Management Committee
- Public Library Development Committee
Nursing, Board of

January 25

Health Services Cost Review Council, Virginia
† Marine Resources Commission
Medicine, Board of
† Natural History, Virginia Museum of
- Board of Trustees
Nursing, Board of

January 26

† George Mason University
- Board of Visitors
Nursing, Board of
† Nursing Home Administrators, Board of
Sewage Handling and Disposal Appeals Review Board
† Small Business Advisory Board, Virginia

January 27

Education, Board of
† Emergency Planning Committee, Local - Gloucester
Nursing, Board of
Waste Management Facility Operators, Board for

January 28

Medicine, Board of
- Informal Conference Committee
Waste Management Facility Operators, Board for

February 1

Hopewell Industrial Safety Council
† Visually Handicapped, Board for the

February 2

Mines, Minerals and Energy, Department of

February 3

† Middle Virginia Board of Directors and the Middle
Virginia Community Corrections Resources Board

February 4

Opticians, Board for

February 9

† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
Resources Authority, Virginia
Waterworks and Wastewater Works Operators, Board
for

February 10

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee

February 12

Virginia Military Institute
Visitors, Board of

February 23

† Mental Health, Mental Retardation and Substance
Abuse Services, State

February 24

Education, Board of

March 23

† Contractors, Board for

March 31

† Voluntary Formulary Board, Virginia
† Mental Health and the Law, 16th Annual Symposium
on

April 1

† Mental Health and the Law, 16th Annual Symposium
on

PUBLIC HEARINGS

January 10, 1994

Taxation, Department of
Water Control Board, State

January 12

Social Services, Department of

January 13

Calendar of Events

Youth and Family Services, Department of

January 18

† War Memorial Foundation, Virginia

January 19

† Health, Department of

January 20

† Rail and Public Transportation, Department of

January 27

Labor and Industry, Department of
- Apprenticeship Council

February 1

Air Pollution Control Board, State

February 2

† Labor and Industry, Department of
- Safety and Health Codes Board

February 3

Air Pollution Control Board, State

February 8

Air Pollution Control Board, State
† Forestry, Department of
† Nursing Home Administrator, Board of

February 9

Air Pollution Control Board, State
Virginia Racing Commission

February 10

Air Pollution Control Board, State

February 16

† Voluntary Formulary, Virginia

February 17

† Dentistry, Board of

March 14

† Taxation, Department of

March 24

† Branch Pilots, Board for

April 6

Criminal Justice Services, Department of