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THE VIRGINIA REGISTER

OF REGULATIONS

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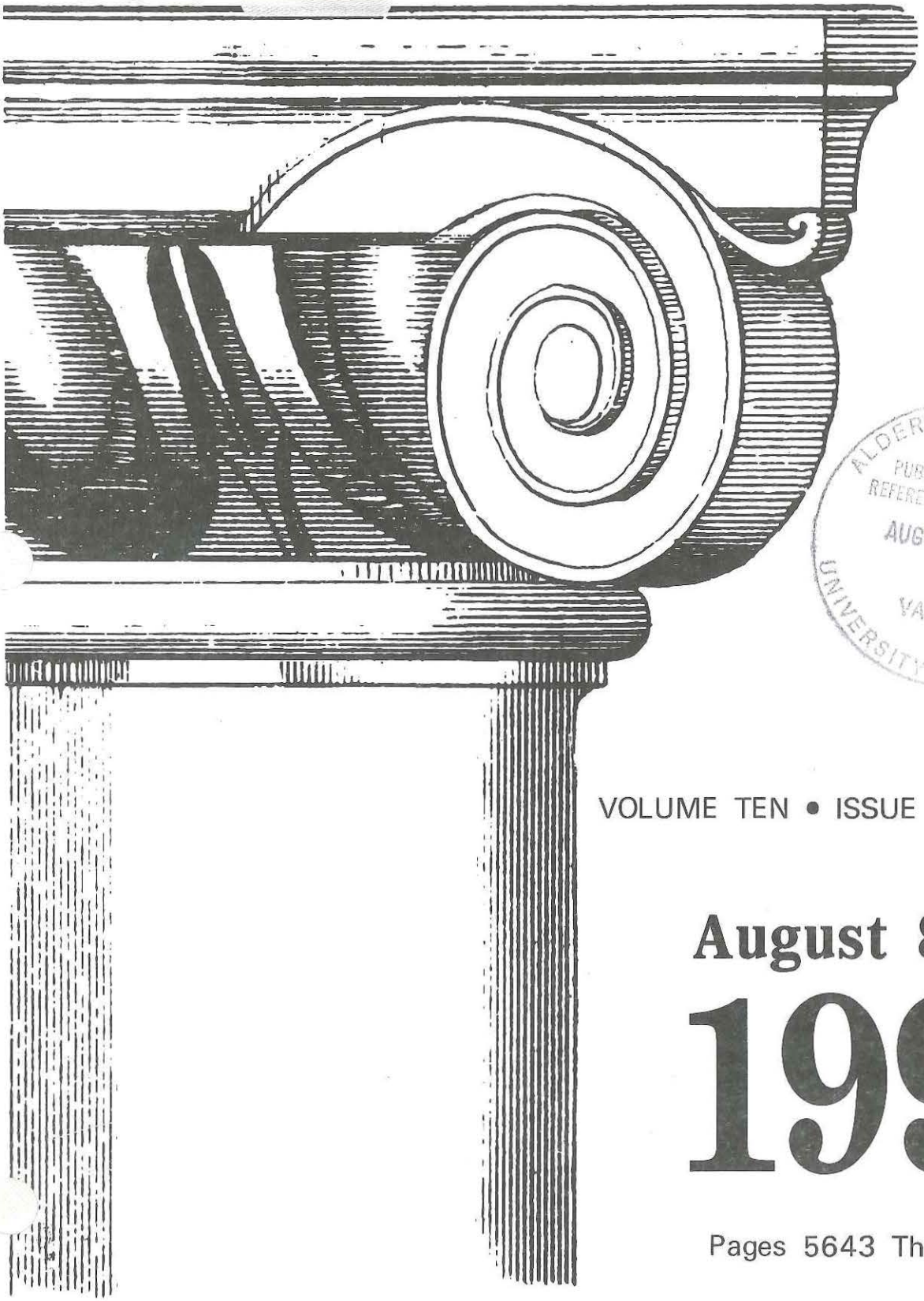

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VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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VIRGINIA REGISTER OF REGULATIONS

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July 1994 through September 1995

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Aug. 17	Sept. 5
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Oct. 12	Oct. 31
Oct. 26	Nov. 14
Nov. 9	Nov. 28
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Dec. 7	Dec. 26
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Feb. 1	Feb. 20
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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.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: ~~VR 270-02-0009~~ *VR 270-01-0009* . **Regulations Governing Literary Loan Applications in Virginia.**

Statutory Authority: Article VIII, § 8 of the Constitution of Virginia; §§ 22.1-140 and 22.1-142 et seq. of the Code of Virginia.

Public Hearing Date: September 29, 1994 - 8:30 a.m.
Written comments may be submitted through October 7, 1994.
(See Calendar of Events section for additional information)

Basis: Article VIII, Section 8 of the Constitution of Virginia gives the Board of Education responsibility and authority over the administration of the Literary Fund. Further, §§ 22.1-142 through 22.1-154 of the Code of Virginia give the board general authority over literary loan applications and management of the fund. Section 22.1-147 specifically permits the board to impose a maximum limit of not more than $5 million on the amount of any loan from the fund.

Purpose: The proposed amendments provide more funds to local school divisions for school construction. Previously, the regulations only provided $2,500,000 for Literary Fund applications. Based on rising cost, it is recommended that $5,000,000 be approved in accordance with § 22.1-147 of the Code of Virginia. In addition, the regulations are being amended in accordance with § 22.1-140 of the Code of Virginia, which requires that plans and specifications be certified by the division superintendent and are accompanied by a statement by an architect or professional engineer. This certification replaces the previous approval process in place by the Department of Education. Also, the regulations are being amended in accordance with § 22.1-146 of the Code of Virginia, which allows literary funds to be used to refinance or redeem long-term debt under certain conditions. Further, the regulations are being formally amended to incorporate changes which were required by the 1989 and 1990 sessions of the General Assembly through appropriation act provisions. The required changes increased the ceiling on indebtedness to the fund, increased consolidation incentives, and provided priority funding for projects resulting from consolidation of school divisions. The Board of Education adopted the required changes on July 26, 1990. However, they were never published in The Virginia Register of Regulations.

These regulations do not address the health, safety, or welfare of affected entities. The regulations, in accordance with the statutes, set forth the procedures to be followed in order to apply for a Literary Loan. The procedures ensure that all localities are treated equally in the administration of the fund.

Substance: The majority of changes are being made to bring the regulations into conformance with statutes and appropriation act provisions. The only change other than those required is increasing the maximum loan amount from $2.5 million to $5 million. Current practices have allowed localities to receive multiple loans for the construction of one school through a phased approach. The amended regulations will disallow the phased approach and address the need for additional funding in a straightforward manner by increasing the loan amount available.

Issues: The revised regulations are not controversial in nature. The changes have been supported by local school division personnel and local government officials. The only issue surrounding the Literary Fund at this time is the limited amount of funding to make loans. That is not an issue which can be addressed by the State Board of Education, but rather is in the purview of the Governor and the General Assembly. Significant steps were taken during the 1994 Session to address this issue.

Allowing localities to borrow additional funds at lower interest rates is an advantage to the tax payers of the locality involved. At lower rates, the annual debt service will be less and funding can be redirected to other priorities.

Impact:

A. Cost to Affected Entities: The proposed regulations would allow localities to borrow additional funds at the lower interest rates provided through the Literary Fund. Therefore, the fiscal impact to affected entities would be positive over the 20 years of debt service required to the Literary Fund. There are no direct costs attributable to the local education agencies for compliance with these regulations. No localities will be particularly affected by this regulation.

B. Cost to Agency: There are no direct costs attributable to the State Board of Education or the Department of Education. Increasing the loan amount has no impact on the procedures used to make loans.

C. Cost of Compliance: There will be no additional cost of compliance attributable to the regulation. The regulation

would be advantageous to the puble due to the lower interest rates provided.

Summary:

The proposed amendments provide more funds to local school divisions for school construction. Previously, the regulations only provided $2,500,000 for Literary Fund applications. Based on rising cost, it is recommended that $5,000,000 be approved in accordance with § 22.1-147 of the Code of Virginia. In addition, the regulations are being amended in accordance with § 22.1-140 of the Code of Virginia, which requires that plans and specifications be certified by the division superintendent and are accompanied by a statement by an architect or professional engineer. This certification replaces the previous approval process in place by the Department of Education. Also, the regulations are being amended in accordance with § 22.1-146 of the Code of Virginia, which allows literary funds to be used to refinance or redeem long-term debt under certain conditions. Further, the regulations are being formally amended to incorporate changes which were required by the 1989 and 1990 sessions of the General Assembly through Appropriation Act provisions. The required changes increased the ceiling on indebtedness to the fund, increased consolidation incentives, and provided priority funding for projects resulting from consolidation of school divisions. The Board of Education adopted the required changes on July 26, 1990. However, they were never published in The Virginia Register of Regulations.

VR 270-01-0009. Regulations Governing Literary Loan Applications in Virginia.

PART I.
POLICY.

§ 1.1. *Policy.*

It is the policy of the Board of Education to assist localities in borrowing from the Literary Fund to the greatest extent feasible, taking into consideration, the size of the Literary Fund, the availability to school divisions of alternative financing, the number and repayment ability of school divisions desiring to borrow from the Literary Fund, and the sense of the General Assembly for the administration and equitable distribution of the Literary Fund.

PART II.
DEFINITIONS.

§ 2.1. *Definitions.*

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

"Approved Application List" means the list maintained by the Department of Education of those Literary Loan applications which initially have been approved as to form by the Board of Education but have not been placed on the "Waiting List."

"Board" means the State Board of Education.

"Department" means the State Department of Education.

"Project" means capital construction for the purpose of erecting, altering, or enlarging a school building in a public school division of Virginia, or a regional center operating under a Board of Control as defined by board regulations.

"Waiting List" means the list maintained by the department of those Literary Loan applications which the board has placed on the Waiting List of loans anticipating the release of loan funds from the Literary Fund.

PART III.
APPLICATION APPROVAL.

§ 3.1. *Application form.*

A school division applying for a Literary Loan shall meet the statutory requirements for such a loan as set forth in §§ 22.1-142 through 22.1-161 of the Code of Virginia and the Appropriations Act. The application shall be submitted to the department on Form V.A. 005, completed, signed and sealed by the appropriate local officials and examining attorney certifying to the information contained in the application.

§ 3.2. *Application review.*

After examination and review of the contents of the application by the staff of the department and review of the application and the certifications by the Office of the Attorney General, the department shall recommend to the board the approval of those applications which are in proper form for further consideration by the board and for placement on the Approved Application List.

§ 3.3. *Application approval.*

Upon approval of a Literary Fund loan application, a Memorandum of Lien form, properly executed, *and recorded in the appropriate circuit court* is to be returned to the department ~~for recordation, after which it will be forwarded to the State Treasurer for record keeping~~ . It is recognized that the lien is not effective until the Board of Education approves the initial release/commitment of funds against the project. Section 22.1-157 of the Code *of Virginia* provides that no recordation tax shall be assessable.

§ 3.4. *Nonapproval of application.*

Applications for Literary Fund loans shall not be approved by the board if the project already has been bid

prior to receipt of the application in the department, except in the case of a documented emergency.

PART IV.
APPROVED APPLICATION LIST.

§ 4.1. *Placement on list.*

The board shall place applications on the Approved Application List upon the recommendation of the department made by the Superintendent of Public Instruction or his designee.

§ 4.2. *Qualification for placement.*

For applications on the Approved Application List to qualify for placement on the Waiting List, school divisions shall submit ~~architectural and engineering plans to the department for review and approval by the department~~ *a copy of the plans and specifications with a letter of approval by the division superintendent, accompanied with a statement by an architect or professional engineer licensed by the Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects that such plans and specifications are, to the best of his knowledge and belief, in compliance with the regulations of the Board of Education and the Uniform Building Code* .

~~§ 4.3. Upon notification that plans submitted under § 4.2 have been approved by the department, school divisions on the Approved Application List must request in writing to be placed on the Waiting List.~~

§ ~~4.4.~~ *4.3. Removal from list.*

~~Except as provided in § 10.2,~~ Applications which remain on the Approved Application List for three years shall be removed from the list. Localities shall be notified at the end of the second year of the three-year cancellation policy.

PART V.
RANGE AND DURATION OF LOANS.

§ 5.1. *Maximum loan amount.*

~~Except as provided in § 5.2,~~ The maximum loan amount available for any single project through the Literary Fund is ~~$2.5 million~~ *$5 million* (effective for all applications approved by the board subsequent to the effective date of these regulations).

~~§ 5.2. In the event the applicant school division(s) certifies and the board determines that the project will result in the closing of two or more school buildings due to (i) inability to meet educational requirements, (ii) structural deficiencies, or (iii) cost inefficiencies, the applicant school division(s) shall be eligible for an amount up to an additional $1 million on a Literary Fund loan for such project.~~

~~§ 5.3. In the event that two or more school divisions are consolidated into a single school division, the consolidated school division shall be eligible for an amount up to an additional $1 million on a Literary Fund loan for any project resulting directly from said consolidation.~~

§ ~~5.4.~~ *5.2. Minimum loan amount.*

The minimum loan amount available for any single project through the Literary Fund is $50,000 ~~(effective for all applications approved by the board subsequent to the effective date of these regulations~~ . The several applications to fund a regional project shall be combined for the purpose of meeting this minimum amount.

§ ~~5.5.~~ *5.3. Duration of loans.*

Literary Fund loans shall be made for a period of not less than five years nor more than 20 years. Literary Fund loans in an amount between $50,000 and $100,000 shall be for a period of five years.

PART VI.
INTEREST RATES.

§ 6.1. *Composite index.*

Except as modified by § 6.3 ~~below~~ , the interest rate for a Literary Loan shall be based on the school division's Composite Index, used for distribution of State Basic Aid, in effect when the board places the project on the Waiting List ; ~~except with respect to the interest rate on those applications on the Approved Application List prior to March 23, 1987, which interest shall not be increased~~ .

§ 6.2. *Determination of interest rate.*

The interest rate for a loan generally shall be determined on the basis of a composite index of the applying school division as follows:

	Per Annum Interest Rate
Step 1. Composite Index between .2 and ~~.299~~ *.2999*	2.0%
Step 2. Composite Index between .3 and ~~.399~~ *.3999*	3.0%
Step 3. Composite Index between .4 and ~~.499~~ *.4999*	4.0%
Step 4. Composite Index between .5 and .5999	*5.0%*
Step 5. Composite Index between .6 and ~~.8~~ *.8000*	6.0%

§ 6.3. *Fixed rate.*

The board reserves its option under § 22.1-150 of the Code of Virginia to fix the actual rate for a Literary Loan, on the date funds for the Literary Loan are approved for release, at one percentage point above or below the rate applicable on the date the application was placed on the Waiting List.

PART VII.
WAITING LIST.

§ 7.1. *Placement on Waiting List.*

After a loan application initially has been approved by the department and the division ~~requests in writing to be placed on the Waiting List for Literary Fund funding~~ *submits a copy of the plans, approval by the division superintendent and architect* , the board shall consider placement of the application on the Waiting List.

§ 7.2. *Priorities.*

Applications shall be placed into priorities on the Waiting List as follows:

Priority 1: Applications placed on the Waiting List by the Board of Education from school divisions having a composite index less than .6000, and an outstanding indebtedness (including the application considered for release of funds by the Board of Education) to the Literary Fund less than ~~$15~~ *$20* million.

Priority 2: Applications placed on the Waiting List by the Board of Education from school divisions having a composite index of .6000 or above, or an outstanding indebtedness (including the application considered for release of funds by the Board of Education) to the Literary Fund greater than ~~$15~~ *$20* million.

§ 7.3. *Eligibility for release of funding.*

Within each priority, applications shall become eligible for release of funding in the same relative order as having been approved by the board as having met all conditions for a Literary Fund loan.

§ 7.4. *Eligibility of Priority 2 applications.*

Applications in Priority 2 shall be eligible for funding only when the board ~~certifies~~ *determines* that all applications, current and anticipated, and the applications to be added from Priority 2 can be funded within one year.

§ 7.5. *Reassignment of application.*

The board may place an individual application ahead of its position assigned by § 7.3, if the board finds that the best interest for the education in the state is served by such placement. Reasons for such placement may include, but are not limited to (i) asbestos containment or removal; (ii) natural disasters; (iii) unique circumstances that may be detrimental to education in the absence of a Literary Fund loan. Such placement shall be acted on by the board on an individual application basis when all requirements for release of a Literary Fund loan have been met by the school division.

§ 7.6. Priority funding.

The board shall provide priority funding for any application resulting directly from the consolidation of two or more divisions into a single school division.

PART VIII.
RELEASE OF LITERARY FUNDS.

§ 8.1. *Unencumbered sum available.*

The release of Literary Funds shall be approved by the board for an application when the Literary Fund has an unencumbered sum available that is at least equal to the amount of the application.

§ 8.2. *Expenditure of other funds.*

All other funds committed to a Literary Fund project shall be expended before the Literary Fund loan shall be available for disbursement to the locality for the approved project.

§ 8.3. *Actual disbursements.*

Actual disbursements charged to the approved Literary Fund loan shall be subject to the submission of actual invoices or other evidence of bills paid or due and payable by the locality.

§ 8.4. *Award of construction contract.*

Upon the award of the construction contract for an application in Priority 1 on the Waiting List, funds shall be released for the reimbursement of the design phase of architectural and engineering services for the project. Applications in Priority 2 shall be eligible for reimbursement of the design phase of architectural and engineering services only when the application has been certified to be eligible for funding by the board under § 7.4.

§ 8.5. *Conditions.*

After the ~~department's approval of final plans and specifications under § 22.1-140,~~ *submission to the Superintendent of Public Instruction of a copy of the plans and specifications with a letter of approval by the division superintendent, accompanied with a statement by an architect or professional engineer licensed by the Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects that such plans and specifications are, to the best of his knowledge and belief, in compliance with the regulations of the Board of Education and the Uniform Building Code, the ~~localities~~ locality* may proceed with a Literary Fund project and still qualify for reimbursement from the Literary Fund ~~provided that~~ *under the following conditions:*

1. A formal declaration is made by the governing body of intent to reimburse itself for prior expenditures paid for out of its general fund or to refinance debt that was used to pay or to reimburse

itself for prior expenditures.

2. Short term financing *, or advances from other fund balances and current operating funds,* is used for that portion of the project to be financed by a Literary Fund loan (§ 22.1-148.B of the Code of Virginia) ~~:~~ ~~A temporary loan~~ *which* shall be subject to the restrictions found in § 22.1-110 of the Code of Virginia ~~: Short term financing also may include advances from other fund balances and current operating funds. If~~ *; or* permanent financing such as bond funds authorized through locally approved referenda, by local charter, ~~or~~ the Virginia Public School Authority *, or other funding mechanisms* are used for the Literary Fund portion of the project, ~~Literary Funds shall not be released for the project when the application moves to the top of the Waiting List~~ *and the literary funds can be used for the refinancing or redemption of such negotiable notes, bonds, or other evidences of indebtedness or obligations .*

§ 8.6. *Returning application to Approved Application List.*

An application which has been approved for release of funds and which has not been bid within two months of the board action to release funds will be returned to the Approved Application List. Upon the written request by the locality for reinstatement, any application so returned shall be reinstated by the board at the bottom of the appropriate priority (§ 7.2) of the Waiting List. The date of the board's reinstatement on the Waiting List by this section shall determine the relative order for eligibility of funding.

PART IX.
PROPERTY TRANSFER.

§ 9.1. *Property transfer.*

When a school board or a local governing body sells or transfers property on which there is an outstanding balance on a Literary Loan, such balance becomes due and must be paid before title to the property is conveyed to the new owner. In no event, however, shall this provision be applicable where a court of competent jurisdiction decrees otherwise in an annexation settlement, or where fee simple title, after sale or transfer, remains in either the school board or its governing body.

~~PART X.~~
~~TRANSITIONAL PROVISIONS.~~

~~§ 10.1. All loan applications which, prior to March 23, 1987, were on the current "inactive list" maintained by the department (i.e., loan applications which were approved by the board) and which were not on the Waiting List, shall be placed automatically on the "Approved Application List." The order in which such applications are placed on the Waiting List shall be governed by the provisions of these emergency regulations.~~

~~§ 10.2. Literary Loan applications on the "inactive list" dated March 1, 1987 shall have one year from March 23, 1987 to submit final plans and specifications to the department or be removed from the Approved Application List (unless the application was approved by the board subsequent to March 1, 1985).~~

~~§ 10.3. Literary Loan application Form V.A. 005 shall remain the proper form for filing a Literary Loan application, and is obtainable from the department.~~

VA.R. Doc. No. R94-1118; Filed July 18, 1994, 11:36 a.m.

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1 A of the Code of Virginia when promulgating wildlife management regulations; however, it is required by § 9-6.14:22 to publish all proposed and final regulations.

Title of Regulations: **VR 325-02. Game.**
VR 325-02-27. Permits.

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

Notice to the Public:

The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amended board regulations. A public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any part thereof, will be held in the Board Room at the Department of Environmental Quality, 4900 Cox Road, Richmond, Virginia, beginning at 9 a.m. on Thursday, August 25, 1994, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulation, or any part thereof, is advisable, in the form in which published or as amended as a result of the public hearing, the board may adopt such proposal at that time, acting upon the proposals separately or in block.

Summary:

Summaries are not provided since, in most instances, the summary would be as long as or longer than the full text.

VR 325-02. GAME.

VR 325-02-27. Permits.

§ 1. Poisoning of wild birds and wild animals destroying crops or property.

Notwithstanding the provisions of VR 325-02-1, § 5, the department may issue permits authorizing the putting out of poison for the purpose of killing wild birds and wild animals where they are destructive to crops or other property. Where such permits are issued, the poisoning shall be under the supervision of employees of the department.

§ 2. Collection of specimens of wild birds for scientific purposes.

Holders of permits issued under § 29.1-418 of the Code of Virginia to collect specimens of wild birds and their nests, with the eggs or young found therein, for scientific or museum purposes, shall report to the department on January 1 of each year the number of each species taken and the purpose for which collected.

§ 3. Breeding game birds and game animals for propagation and stocking; records.

Holders of permits issued under § 29.1-417 of the Code of Virginia to breed and rear wild game birds and wild animals in captivity and to sell and ship them alive for propagation or stocking shall keep a record showing the number of each species on hand, the number acquired and the number sold.

§ 4. Breeding game birds and game animals for propagation and stocking; labeling packages.

Packages containing wild birds and wild animals raised under a permit for propagation purposes shall bear labels showing the name and address of the breeder and the contents of the package.

§ 5. Breeding game birds and game animals for propagation and stocking; confinement; inspection.

Birds and animals raised under a permit for propagation purposes must be confined in a sanitary escape-proof enclosure. Such enclosure shall be open to inspection by representatives of the department at all times.

§ 6. Holding wild birds or wild animals for exhibition or advertising purposes.

Where an exhibit is educational and purposeful in nature, wild game birds and wild game animals may be exhibited under a permit provided for in § 29.1-417 of the Code of Virginia, under such restrictions and conditions as the board may prescribe. Where such a permit is issued for an exhibit which is not educational or purposeful in nature, such permit shall authorize the person to whom issued to hold only nongame wild animals and nongame wild birds as are listed in the application for the permit.

§ 7. Stuffing or mounting birds and animals; possession of game legally taken.

A holder of a permit to stuff and mount birds and animals or parts thereof for compensation or sale, as provided for in § 29.1-415 of the Code of Virginia may have in possession for such purpose only birds and animals which were legally taken.

§ 8. Stuffing or mounting birds and animals - records; inspections.

A. A holder of a permit to stuff or mount birds and animals shall keep a complete record of all transactions. Such records shall include the species to be mounted or tanned; the date of receipt; the name, address and telephone number of the person for whom the work is being performed; the name of the person who killed the specimen (if different from above); the hunting license or Virginia driving license number of such person; the county where the specimen was taken or, if taken out-of-state, the state in which it was taken; and the date the completed work was returned to the customer. Such records shall be retained for three years. These records, and the premises where such business is conducted, shall be open to inspection by representatives of the department during normal business hours.

B. Upon receipt of any specimen of wildlife, a holder of a permit shall immediately affix to such specimen a tag bearing the designation of the species, the name and address of the customer and the date the specimen was killed. Such tag shall remain affixed to the specimen, except when the specimen is actually in the process of being worked on, until it is delivered to the customer. A numbered tag, with numbers corresponding to the number of the line entry of the records required in subsection A of this section, may be used in lieu thereof.

§ 9. Breeding pheasants; records.

The holder of a permit provided for by §§ 29.1-417 and 29.1-514 of the Code of Virginia to breed pheasants in captivity and to sell and ship the same alive for breeding, or to kill, sell and ship the same for use as food shall keep a record of the number raised or acquired, number sold and the number on hand.

§ 10. Breeding pheasants; labeling packages.

Packages containing pheasants raised under a permit from the department shall bear a label giving the name and address of the breeders and the contents of the package.

§ 11. Breeding pheasants; confinement; inspection.

Pheasants raised under a permit from the department shall be confined in sanitary escape-proof enclosures, which shall be open to inspection by representatives of the department at all times.

§§ 12, 13. Repealed.

§ 14. ~~Shooting wild birds and wild animals from stationary~~

~~vehicle by disabled person.~~ *Repealed.*

~~Any person, upon application to a game warden and the presentation of a medical doctor's written statement that such person is permanently unable to walk, may, in the discretion of such game warden, be issued a permit to shoot wild birds and wild animals from a stationary vehicle during established open hunting seasons and in accordance with other existing laws and regulations. Such permit will be issued on a form provided by the department, which may authorize shooting from a stationary vehicle not less than 300 feet from nor across any public road or highway, and only when the bearer is properly licensed to hunt. Such permit shall be nontransferable, and any permit found in the possession of any person not entitled to such permit shall be subject to immediate confiscation by a game warden. Deer of either sex may be taken under the provisions of this permit in those counties where deer hunting is permitted.~~

§ 15. Duty to comply with permit conditions.

A permit holder shall comply with all terms and conditions of any permit issued by the Department of Game and Inland Fisheries pursuant to Title 29.1 of the Code of Virginia and the regulations of the board pertaining to hunting, fishing, trapping, taking, attempting to take, possession, sale, offering for sale, transporting or causing to be transported, importing or exporting of any wild bird, wild animal or fish.

§ 16. Possession and display of a validation card or permit to hunt.

Every person required to obtain a validation card or permit to hunt must carry the validation card and permit on his person when hunting and shall present it immediately upon demand of any officer whose duty it is to enforce the game and inland fish laws. Penalty for violation of this section is prescribed by § 29.1-505 of the Code of Virginia.

VA.R. Doc. No. R94-1135; Filed July 20, 1994, 11:56 a.m.

BOARD FOR HEARING AID SPECIALISTS

Title of Regulation: **VR 375-01-02. Board for Hearing Aid Specialists Regulations.**

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

Public Hearing Date: September 12, 1994 - 9 a.m.
Written comments may be submitted until October 8, 1994.
(See Calendar of Events section for additional information)

Basis: Section § 54.1-201 of the Code of Virginia provides the board with the legal authority to amend these regulations. Specifically, subdivision 5 of § 54.1-201 directs "regulatory boards" to promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 and 3 of this title.

Purpose: Pursuant to § 54.1-201 of the Code of Virginia, the Board for Hearing Aid Specialists is proposing to amend its existing regulations governing the licensure of hearing aid specialists to include new definitions; clarify entry criteria for licensure, renewal, and reinstatement; and to develop examination provisions. In addition, the Hearing Aid Specialists Board is adjusting fees for application, examination, and renewal in order to assure that the variance between the revenue and expenditures does not exceed 10% in any biennium as required by § 54.1-113 of the Code of Virginia. Such amendments are to simplify and maintain minimum standards in order to ensure public health, and apply to approximately 435 hearing aid specialists.

Substance and Issues: The proposed regulation incorporates additional definitions in Part I to include affidavit, board, department, reciprocity, reinstatement, and renewal. Also, the proposed regulation defines the specific term "hearing aid specialist" which is currently not defined in the Code of Virginia or the board's existing regulations.

The current entry requirements for licensure are amended to require an applicant to provide additional information with his application to include: any current or licensing information as a hearing aid specialist, any convictions of a misdemeanor or felony, a physical address, and the completion of an irrevocable consent if a nonresident applying for a hearing aid specialists license.

The provisions regarding temporary permits are substantially the same with the amendment requiring a temporary permit holder to sit for the examination upon the expiration date of the extended temporary permit.

The proposed regulation allows a physician applying for licensure to provide verification of successful completion of a residency or training program or verification of certification by the American Board of Otolaryngology. Initially, the board required only the certification.

Examination provisions are clarified and incorporate board policy. Applicants for licensure shall pass a two part examination, of which Part I is a written examination and Part II is a practical examination. The proposed regulation eliminates the passing score of 75 on each section as stated in the current regulations. Provisions regarding reexamination of failed sections are addressed.

The proposed regulation incorporates staggered renewals in which the license will expire 24 months from the last day

of the month in which it is issued as indicated on the license.

The proposed regulation addresses procedures and requirements for renewal and reinstatement, and the board's discretion to deny such. The late penalty fee in the existing regulations has been eliminated. The proposed regulation requires a licensee to submit the required renewal fee within one calendar month (grace period) of the expiration date on the license. One calendar month after the license expires, the licensee is eligible for reinstatement and shall apply accordingly. After 12 months reinstatement is no longer possible and the former licensee must apply anew meeting all current entry requirements.

Additional provisions regarding the Standards of Practice and Conduct are included in the proposed regulations, specifically regarding maintenance of a license.

The proposed regulation incorporates board policy regarding the use of purchase agreement terminology to comply with the Model Purchase Agreement provided by the board.

The proposed regulations have been amended for clarity, simplicity, and readability. The primary advantage resulting from the adoption of the proposed regulations is that persons will be able to more readily identify and comprehend provisions. The Hearing Aid Specialists Board does not anticipate any disadvantage to the public or agency.

Estimated Impact:

A. Numbers and Types of Regulated Entities/Persons Affected.

These regulations apply to approximately 435 licensed hearing aid specialists. The economic and regulatory impact of the proposed changes on the regulants is estimated to be minimal.

No localities particularly affected by the proposed regulations have been identified.

B. Projected Costs to the State for Implementation and Enforcement.

Costs are shown in the regulations in the form of fees for initial application, examination fees, and renewal of licenses. The fees were established in accordance with § 54.1-113 of the Code of Virginia and were based on the current regulated population with approximately a 95% renewal rate. The fees have been set to ensure the sufficient revenues cover the expenditures of the program including administrative costs.

C. Projected Costs for Printing and Distribution.

Costs for implementation of the amended regulations are estimated to be limited to the costs of printing and mailing of the proposed and final regulations to those currently licensed and those on the board's Public Participation Guidelines list. The board will notify all regulated entities and interested parties regarding the proposed regulations, the public hearing, and comment period by mail and will forward a copy of the proposed regulations upon request. The final regulations will be distributed to affected parties. The estimated cost for printing and mailing is $1,020.

D. Projected Costs to Regulated Entities.

The proposed fee increases are recommended to ensure sufficient revenues are available to cover administrative costs of the program. The proposed fee structure is as follows:

Fee Type	Current Fee	Proposed Fee	Increase
Application Fee for Exam/Temporary Permit	$60	$130	+$70
Examination Fee	$40	$110	+$70
Temporary Permit Fee	$60	$130	+$70
*Fee for Licensure by Reciprocity	$120	$190	+$70
Fee for Licensure for Physician	$120	$130	+$10
**Re-examination Fee (Per Part)	$25	$95	+$70
License Renewal Fee	$110	$175	+$65
Reinstatement	$220	$350	+$130

*Fee includes examination fee if applicant required to sit for exam as a condition of approval for reciprocity.

**Fee is based per examination part (I and/or II) regardless of the number of sections needed to be retaken.

The board has also proposed three new fees: a) bad check fee ($25) for those individuals checks that are dishonored by a financial institution; b) a certificate of licensure fee ($25) for a licensee requesting a letter of good standing; and c) duplicate wall certificate fee ($25) for those licensees requesting an additional certificate. Currently, the board and the department absorb these costs.

E. Projected Expenditures and Revenues for the 1992-94 Biennium.

Projected Expenditures 1992-94 Biennium $101,928

Projected Revenues for 1992-94 Biennium .... $ 64,105

Projected Revenue Balance @ 6/30/94 (Carryforward) ..... ($37,823)

Under New Fee Structure:

Projected Expenditures 1994-96 Biennium .... $ 90,081

Projected Revenues for 1994-96 Biennium $136,061

Biennium Surplus/(Shortfall) ..... $ 45,980

Cumulative Projected Revenue Balance @ 6/30/96 ..... $ 8,157

Projected % Revenue @ 6/30/96 ..... 6.00%

F. Sources of Funds to Address Fiscal Impact.

This program is fully supported by the fees received for licensure and renewal.

Summary:

The proposed regulation is divided into five parts, and establish additional definitions, clarify entry requirements, provide information regarding examinations, implement new provisions for renewal and reinstatement, and clarify standards of practice and conduct.

The proposed regulation defines the following terminology which is not defined in the current regulations governing hearing aid specialists: affidavit, board, department, reciprocity, reinstatement, renewal and hearing aid specialist.

The proposed regulation establishes additional entry requirements for licensure. An applicant shall indicate whether he is a licensed hearing aid specialist in good standing in another jurisdiction, shall disclose any disciplinary action pending or taken in connection with such license, and shall disclose any convictions of a misdemeanor or felony. Also, an applicant shall indicate if he has been previously licensed as a Virginia hearing aid specialist, disclose his physical address and sign an affidavit certifying that he has read and understands the law and regulations of the board. The proposed regulation allows the board to make further inquiries and investigations with respect to the qualifications of an applicant.

Nonresidents applying for a license via reciprocity will be required to file an irrevocable consent for the department to serve as service agent for any actions filed in a Virginia court.

The provisions regarding temporary permits are substantially the same with the amendment requiring a temporary permit holder to sit for the examination upon the expiration date of the extended temporary permit.

The proposed regulation allows a physician applying for licensure to provide verification of successful completion of a residency or training program or verification of certification by the American Board of Otolaryngology.

Examination provisions have been clarified and incorporate existing board policy. Applicants for licensure shall pass a two part examination, of which Part I is a written examination and Part II is a practical examination. The current passing score of 75 on each section as stated in the existing regulations has been eliminated. Candidates failing more than one section of the written examination will be required to retake both sections. Candidates failing one or more sections of the practical examination will be required to retake only those sections failed. Also, the board proposes to allow candidates three successive scheduled examinations to pass the examination. Those candidates who fail upon the third attempt will be required to apply anew and repeat the entire examination. Temporary permit holders permits will expire upon receipt of the examination failure letter resulting from the third attempt. Current regulations allow candidates two attempts to pass the licensing examination.

The proposed regulation addresses the increase in fees for initial application, examination, renewal and reinstatement. Such increases have been established in accordance with § 54.1-113 of the Code of Virginia.

The proposed regulation incorporates staggered renewals in which the license will expire 24 months from the last day of the month in which it was issued. Therefore, not all licenses will expire in December of even-numbered years.

Requirements and procedures for renewal and reinstatement are clarified in Part III and Part IV. The proposed regulation eliminates the late penalty fee and amends the time period in which a licensee may apply for reinstatement. Licensees failing to renew their license within one calendar month after its expiration date shall be required to apply for reinstatement. Twelve months after the expiration date on the license reinstatement is no longer possible and the former licensee shall reapply for licensure meeting all entry requirements in the regulations. Provisions regarding the status of a license during the period before reinstatement are addressed.

The standards of practice and conduct have been amended to include provisions for license maintenance and for promptly producing business records to the board or its agent upon request.

The proposed regulation incorporates board policy regarding the use of purchase agreement terminology to comply with the Model Purchase Agreement provided by the board.

All other proposed amendments are for clarity, simplicity, and readability in order for persons to more readily identify and comprehend provisions.

VR 375-01-02. Board for Hearing Aid Specialists Regulations.

PART I.
GENERAL 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:

"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"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.

"Board" means the Board for Hearing Aid Specialists.

"Department" means the Department of Professional and Occupational Regulation.

"Hearing aid specialist" means a person who engages in the practice of fitting and dealing in hearing aids or who advertises or displays a sign or represents himself as a person who practices the fitting and dealing of hearing aids.

"Licensed sponsor" means a licensed hearing aid specialist who is responsible for training one or more individuals holding a temporary permit.

"Licensee" means any person holding a valid license ~~under this chapter~~ *issued by the Board for Hearing Aid Specialists for the practice of fitting and dealing in hearing aids, as defined in § 54.1-1500 of the Code of Virginia .*

"Otolaryngologist" means a licensed physician specializing in ear, nose and throat disorders.

"Otologist" means a licensed physician specializing in diseases of the ear.

"Reciprocity" means an agreement between two or more states that will recognize and accept one another's regulations and laws for privileges for mutual benefit.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Temporary permit holder" means any person who holds a valid temporary permit under this chapter.

§ 1.2. Explanation of terms.

Each reference in these regulations to a person shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural, and to the natural persons and organizations.

PART II.
ENTRY REQUIREMENTS.

§ 2.1. ~~Entry requirements.~~ *Basic qualifications for licensure.*

~~The applicant must meet the following entry requirements:~~ *A. Every applicant to the board for a license shall provide information on his application establishing that:*

~~1. The applicant shall submit an application fee of $60.~~

~~2.~~ *1.* The applicant ~~must be~~ *is* at least 18 years of age.

~~3.~~ *2.* The applicant ~~shall have~~ *has* a good reputation for honesty, truthfulness, and fair dealing, and ~~be~~ *is* competent to transact the business of a hearing aid specialist in such a manner as to safeguard the interests of the public.

3. The applicant is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if he has had a license as a hearing aid specialist which was suspended, revoked, surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant must also disclose whether he has been previously licensed in Virginia as a hearing aid specialist.

4. The applicant ~~shall have~~ *has* successfully completed high school or a high school equivalency course.

5. *The applicant is fit and suited to engage in the practice of fitting and dealing in hearing aids.* The applicant ~~shall not have~~ *must disclose if he has* been convicted in any jurisdiction of a misdemeanor involving ~~moral turpitude~~ *lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession* or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the

jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

6. The applicant ~~shall have~~ *has* training and experience which covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories and services:

a. Basic physics of sound;

b. Basic maintenance and repair of hearing aids;

c. The anatomy and physiology of the ear;

d. Introduction to psychological aspects of hearing loss;

e. The function of hearing aids and amplification;

f. Visible disorders of the ear requiring medical referrals;

g. Practical tests of proficiency in the required techniques as they pertain to the fitting of hearing aids;

h. Pure tone audiometry, including air conduction, bone conduction, and related tests;

i. Live voice or recorded voice speech audiometry, including speech reception, threshold testing and speech discrimination testing.

j. Masking when indicated;

k. Recording and evaluating audiograms and speech audiology to determine the proper selection and adaptation of hearing aids;

l. Taking earmold impressions;

m. Proper earmold selection;

n. Adequate instruction in proper hearing aid orientation;

o. Necessity of proper procedures in after-fitting checkup; and

p. Availability of social service resources and other special resources for the hearing impaired.

7. The applicant ~~shall provide~~ *has provided* one of the following as verification of completion of ~~the above~~ training and experience *as described in subdivision 6 of this subsection* :

a. An affidavit on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or

b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training.

8. The applicant has disclosed his physical address. A post office box is not acceptable.

9. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in the Commonwealth.

10. The applicant has signed, as part of the application, an affidavit certifying that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.

B. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview with the applicant or both. Failure of an applicant to comply with a written request from the board for additional information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.

§ 2.2. Qualifications for a temporary permit.

An individual seeking a temporary permit shall submit an application and the proper fees as listed in § 2.5. On the application for a temporary permit, the licensed sponsor shall certify that he assumes full responsibility for the competence and proper conduct of the temporary permit holder and will not assign the permit holder to carry out independent field work without on-site direct supervision until he is adequately trained for such independent activity.

1. A temporary permit shall be issued for a period of 12 months and will be extended once for not longer than six months. After a period of 18 months an extension is no longer possible and the former temporary permit holder shall sit for the examination in accordance with this section.

2. The temporary permit holder's licensed sponsor shall return the temporary permit to the board should the training program be discontinued for any reason.

§ 2.3. Qualifications for licensure by reciprocity.

An individual who is currently licensed as a hearing aid specialist in good standing in another jurisdiction may be granted a Virginia license provided the requirements and standards under which the license was issued are substantially equivalent to and not conflicting with the provisions of these regulations. Upon receipt of the

application for reciprocity and fee, and after a review of the application, the board may grant a license upon successful completion of specified sections of the examination.

§ 2.4. License for physicians.

An individual who is a physician licensed to practice in Virginia and certified by the American Board of Otolaryngology or eligible for such certification may apply for a hearing aid specialist license. The licensed physician shall not be required to pass an examination as a prerequisite to obtaining a license as a hearing aid specialist. The licensee shall submit an application with either verification of certification by the American Board of Otolaryngology or verification of successful completion of residency or training program, and submit the proper fee referenced in § 2.5.

§ 2.5. Fees.

A. All fees are nonrefundable and shall not be prorated. The date of receipt by the board or its agent is the date which will be used to determine whether or not it is on time.

B. Application and examination fees must be submitted with the application for licensure.

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

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Application Fee For Examination Candidates & Temporary Permit Candidates	$130	With application
Examination Fee	$110	With application
Licensure Fee for Reciprocity (includes exam fee)	$190	With application
Licensure Fee for Physicians	$130	With application
Temporary Permit Fee	$130	With application
Reexamination Fee (per part) (Written or Practical)	$ 95	With application
Renewal	$175	Up to the expiration date on the license plus 1 calendar month grace period
Reinstatement	$350	1-12 months after the expiration date on the license
Duplicate Wall Certificate	$ 25	With written request
Certificate of Licensure	$ 25	With written request
Dishonored Check	$ 25	Upon notification from the financial institution

§ ~~2.2. Examination.~~ *2.6. Examinations.*

A. All examinations required for licensure shall be approved by the board and administered by the board, a testing service acting on behalf of the board, or another governmental agency or organization.

B. The candidate for examination shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board and testing service with regard to conduct at the examination shall be grounds for denial of application.

C. Applicants for licensure shall pass a two part examination, of which Part I is a written examination and Part II is a practical examination.

~~A.~~ *1.* The applicant shall pass ~~an~~ *each section of the written and practical* examination administered by the board ~~with a minimum score of 75 on each section of the examination~~ . *Candidates failing one section of the written examination will be required to retake both sections. Candidates failing one or more sections of the practical examination will be required to retake only those sections failed.*

~~B.~~ *2.* Any ~~applicant~~ *candidate* failing to achieve a passing score on all sections in ~~two~~ *three* successive ~~attempts to take the examination~~ *scheduled examinations* must reapply *as a new applicant for licensure and repeat all sections of the written and practical examination* .

~~C.~~ *3.* If the temporary permit holder fails to achieve a passing score on any section of the examination in ~~two~~ *three* successive ~~attempts to take the examination~~ *scheduled examinations* , the temporary permit shall expire upon receipt of the examination failure letter resulting from the ~~second~~ *third* attempt.

~~D. The examination fee shall be $40. The reexamination fee shall be $25 for each of the three sections taken.~~

~~E. Physicians licensed to practice in Virginia and certified by the American Board of Otolaryngology or eligible for such certification shall not be required to pass an examination as a prerequisite to obtaining a license as a hearing aid specialist.~~

§ ~~2.3. Temporary permit.~~

~~A. A temporary permit shall be issued for a period of 12 months and will be extended once for not longer than six months.~~

~~B. The application for a temporary permit shall include an affidavit signed by the licensed sponsor certifying that he assumes full responsibility for the competence and proper conduct of the temporary permit holder and will not assign the permit holder to carry out independent field work until he is adequately trained for such independent activity.~~

~~C. The licensed sponsor shall return the temporary permit to the board should the training program be discontinued for any reason.~~

~~D. The fee for a temporary permit shall be $60.~~

~~§ 2.4. License by endorsement.~~

~~Applicants holding a current license/certificate as a hearing aid specialist in another state or territory of the United States, based on requirements equivalent to and not conflicting with the provisions of these regulations, may be granted a license upon successful completion of specified sections of the examination at the discretion of the board after a review of the application. The fee for endorsement shall be $60.~~

~~§ 2.5. License for physicians.~~

~~A. The fee for a license for physicians shall be $60.~~

~~B. The licensee shall also attach verification of certification by the American Board of Otolaryngology.~~

PART III.
RENEWAL.

§ 3.1. License renewal required.

~~A.~~ Licenses issued under these regulations shall expire ~~on December 31 of each even-numbered year. The Department of Commerce shall mail a renewal notice to the licensee outlining the procedures for renewal. Failure to receive this notice shall not relieve the licensee of the obligation to renew.~~ *24 months from the last day of the month in which they were issued, as indicated on the license.*

~~B. Each licensee applying for renewal shall return the renewal notice and a fee of $110 to the Department of Commerce prior to the expiration date shown on the license. If the licensee fails to receive the renewal notice, a copy of the license may be submitted with the required fee.~~

~~C. If the licensee fails to renew the license within 30 days after the expiration date, an additional fee of $110 shall be required.~~

~~D. If the licensee fails to renew within six months of the expiration date on the license, the licensee must apply to have the license reinstated by submitting a reinstatement form and a renewal fee of $110 plus an additional $110 fee.~~

~~E. Upon receipt of the application for reinstatement and the fee, the board may grant reinstatement of the license if the board is satisfied that the applicant continues to meet the requirements for the license. The board may require requalification, reexamination, or both, before granting the reinstatement.~~

~~F. The board may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a current licensee. Upon such denial, the applicant may request that a hearing be held.~~

~~G. All fees are nonrefundable.~~

§ 3.2. Procedures for renewal.

The board will mail a renewal application form to the licensee at the last known address. Failure to receive this notice shall not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew his license must return to the board all required forms and the appropriate fee as outlined in § 2.5 of these regulations.

§ 3.3. Fees for renewal.

Licensees shall be required to renew their license by submitting the proper fee made payable to the Treasurer of Virginia. Any licensee who fails to renew within one calendar month after the license expires shall be required to apply for reinstatement.

§ 3.4. Board discretion to deny renewal.

The board may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding service provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration.

§ 3.5. Qualifications for renewal.

Applicants for renewal of a license shall continue to meet the standards of entry as set forth in §§ 2.1 A 2, 2.1 A 3, 2.1 A 5, 2.1 A 8 and 2.1 A 9 of these regulations.

PART IV.
REINSTATEMENT.

§ 4.1. Reinstatement required.

If a licensee fails to meet the requirements for renewal and submit the renewal fee within one calendar month after the expiration date on the license, the licensee must apply for reinstatement on a form provided by the board.

1. Applicants for reinstatement shall continue to meet the standards of entry in §§ 2.1 A 2, 2.1 A 3, 2.1 A 5, 2.1 A 8 and 2.1 A 9 of these regulations.

2. Applicants for reinstatement shall submit the required fee referenced in § 2.5 of these regulations.

3. Twelve months after the expiration date on the license, reinstatement is no longer possible. To resume practice as a hearing aid specialist, the former licensee must apply as a new applicant for licensure, meeting all educational, examination, and experience requirements as listed in the regulations current at the time of reapplication.

4. Any hearing aid specialist activity conducted subsequent to the expiration date of the license may constitute unlicensed activity and may be subject to prosecution under § 54.1-111 of the Code of Virginia.

§ 4.2. Board discretion to deny reinstatement.

The board may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration.

§ 4.3. Status of license during the period prior to reinstatement.

A. When a licensee is reinstated, the license shall continue to have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

B. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the board during the entire period and may be held accountable for his activities during this period. Nothing in these regulations shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure.

PART ~~IV.~~ *V.*
STANDARDS OF PRACTICE *AND CONDUCT* .

§ 5.1. Fines; revocation or suspension of license.

The board may fine a licensee, or revoke or suspend a license, or both, when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

§ 5.2. Maintenance of licenses.

A. Notice in writing shall be given to the board in the event of any change of business or individual name or address. Such notice shall be mailed to the board within 30 days of the change of the name or location. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board in writing of any change of name or address.

B. All licensees shall operate under the name in which the license is issued.

C. All licenses issued by the board must be visibly displayed in such a manner that the public can easily read the name of the licensee.

§ ~~4.1.~~ *5.3.* Business records and practice.

~~The following regulations~~ *A. This section* shall apply with reference to the licensee's official records and public access.

~~A.~~ *B.* The licensee shall keep on record with the board the location of the licensee's records, which shall be accessible to the board, with or without notice, during reasonable business hours. ~~The licensee shall notify the board in writing of any change of physical address within 30 days of such change. A post office box is not considered a physical address.~~ *The licensee must promptly produce to the board or any of its agents, upon request or demand, any document, book, record or copy thereof in the licensee's possession or control concerning a transaction covered by these regulations or for which the licensee is required to maintain records.*

~~B.~~ *C.* The licensee shall be accessible to the public for expedient, reliable and dependable services, repairs, and accessories.

§ ~~4.2.~~ *5.4. Documentation provided to each purchaser.*

The licensee shall deliver to each purchaser at the time of a sale, repair or service:

1. A receipt signed by the licensee and showing licensee's business address, license number and business telephone number, and

a. The make and model of the hearing aid to be furnished, repaired or serviced and, in addition, serial numbers on models to be repaired and

serviced; and

b. The full terms of the sale clearly stated.

2. If an aid which is not new is sold or rented, the purchase agreement and the hearing aid container shall be clearly marked "used" or "reconditioned," whichever is applicable, with terms of warranty, if any.

§ ~~4.3.~~ *5.5. Measures to take when first contact is established with any purchaser or potential purchaser.*

A. When first contact is established with any purchaser or prospective purchaser *outside the hearing aid specialist's office* , the licensee shall ~~:~~ ~~1.~~ provide a disclosure form prescribed by the board containing information that the person will need to obtain service/maintenance ~~when the order is taken outside the specialist's office~~ . The disclosure form shall include:

~~a.~~ *1.* Address and telephone number where the *hearing aid* specialist can be reached.

~~b.~~ *2.* Days and hours contact can be made;

~~c.~~ *3.* Whether service/maintenance will be provided in the office or in the person's home;

~~d.~~ *4.* If the *hearing aid* specialist has an office, *name and* address of the office as listed with the board; and

~~e.~~ *5.* If the *hearing aid* specialist has no office in Virginia, a clear statement that there is no office in Virginia ~~;~~ .

B. When first contact is established with any purchaser or prospective purchaser inside the hearing aid specialist's office, the licensee shall:

~~2.~~ *1.* Advise that person that hearing aid specialists are not licensed to practice medicine; and

~~3.~~ *2.* Advise that person that no examination or representation made by the specialist should be regarded as a medical examination, opinion, or advice.

a. A statement that this initial advice was given to the purchaser shall be entered on the purchase agreement in print as large as the other printed matter on the receipt.

b. Exemption: *Hearing aid* specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of ~~subdivisions 2 and 3 of~~ § ~~4.3~~ *this subsection* .

§ ~~4.4.~~ *5.6. Purchase agreement terminology.*

The following terminology shall be used on all purchase agreements *in accordance with the Model Purchase Agreement provided by the board* :

1. The undersigned seller agrees to sell and the undersigned purchaser agrees to purchase hearing aid(s) and accessories, according to terms set forth below:

a. The purchaser was advised that the seller is not a physician licensed to practice medicine; and

b. No examination or representation made by the seller should be regarded as a medical examination, opinion, or advice.

2. Exemption: *Hearing aid* specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of subdivisions 1 a and b of § ~~4.4~~ *this section* .

§ ~~4.5.~~ *5.7. Fitting and sale of hearing aids for children.*

Any person engaging in the fitting and sale of hearing aids for a child under 18 years of age shall:

1. Ascertain whether such child has been examined by a otolaryngologist for recommendation within six months prior to fitting; and

2. No child shall be fitted without such recommendation.

§ ~~4.6.~~ *5.8. Physician statement regarding adult client's medical evaluation of hearing loss.*

A. Each licensee or holder of a temporary permit, in counseling and instructing adult clients and prospective adult clients related to the testing, fitting, and sale of hearing aids, shall be required to recommend that the client obtain a written statement signed by a licensed physician stating that the patient's hearing loss has been medically evaluated within the preceding six months and that the patient may be a candidate for a hearing aid. Should the client decline the recommendation:

1. A statement of such declination shall be obtained from the client over his signature.

2. Fully informed adult patients (18 years of age or older) may waive the medical evaluation because of personal or religious beliefs.

3. The hearing aid specialist is prohibited from actively encouraging a prospective user to waive a medical examination.

§ ~~4.7.~~ *B.* The information provided in subdivisions 1 and 2 of § ~~4.6~~ *subsection A of this section* must be made a part of the client's record kept by the hearing aid specialist.

§ ~~4.8.~~ *5.9.* Testing procedures.

It shall be the duty of each licensee and holder of a temporary permit engaged in the fitting and sale of hearing aids to use appropriate testing procedures for each hearing aid fitting. All tests and case history information must be retained in the records of the specialist. The established requirements shall be:

1. Air Conduction Tests A.N.S.I. standard frequencies of 500-1000-2000-4000 Hertz. Appropriate masking must be used if the difference between the two ears is 40 dB or more at any one frequency.

2. Bone Conduction Tests are to be made on every client–A.N.S.I. standards at 500-1000-2000-4000 Hertz. Proper masking is to be applied if the air conduction and bone conduction readings for the test ear at any one frequency differ by 15 dB or if lateralization occurs.

3. Speech testings shall be made before and after fittings, and the type of test(s), method of presentation, and results noted.

4. The specialist shall check for the following conditions and, if they are found to exist, shall refer the patient to a physician unless the patient can show that his present condition is under treatment or has been treated:

a. Visible congenital or traumatic deformity of the ear.

b. History of active drainage from the ear within the previous 90 days.

c. History of sudden or rapidly progressive hearing loss within the previous 90 days.

d. Acute or chronic dizziness.

e. Unilateral hearing loss of sudden or recent onset within the previous 90 days.

f. Audiometric air bone gap equal to or greater than 15 dB at 500 Hertz, 1000 Hertz, and 2000 Hertz.

g. Visible evidence or significant cerumen accumulation or a foreign body in the ear canal.

h. Tinnitus as a primary symptom.

i. Pain or discomfort in the ear.

5. All tests shall have been conducted no more than six months prior to the fitting.

§ ~~4.9.~~ *5.10.* Calibration statement required.

A. Audiometers used in testing the hearing impaired must be in calibration.

B. Calibration must be done once a year or more often, if needed.

C. A certified copy of an electronic audiometer calibration made within the past 12 months must be submitted to the board annually no later than November 1 of each year.

§ ~~4.10.~~ *5.11.* Grounds for discipline.

The board may fine any licensee , or suspend or revoke any license issued under the provisions of Chapter 15 of Title 54.1 of the Code of Virginia and the regulations of the board ~~at any time after a hearing conducted~~ , *or both,* pursuant to the provisions of the Administrative Process Act, Chapter 1.1:1 of Title 9 of the Code of Virginia when the licensee has been found in violation of:

1. Improper conduct, including but not limited to:

a. Obtaining or renewing a license by false or fraudulent representation;

b. Obtaining any fee or making any sale by fraud or misrepresentation;

c. Employing *any person* to fit and sell hearing aids ~~any person~~ who does not hold a valid license or a temporary permit, or whose license or temporary permit is suspended;

d. Using, causing, or promoting the use of any misleading, deceptive, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, whether disseminated orally or published;

e. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type;

f. Representing that the service or advice of a person licensed to practice medicine or audiology will be used in the selection, fitting, adjustment, maintenance, or repair or hearing aids when that is not true; or using the words "physician," "audiologist," "clinic," "hearing service," "hearing center," or similar description of the services and products provided when such use is not accurate; *or*

~~g. Directly or indirectly giving, or offering to give, favors or anything of value to any person who in their professional capacity uses their position to influence third parties to purchase products offered for sale by a hearing aid specialist; or~~

~~h.~~ *g.* Failing to provide expedient, reliable and dependable services when requested by a client or client's guardian.

2. Failure to include on the sales contract a statement regarding home solicitation, as required by federal and state law.

3. Incompetence or negligence in fitting or selling hearing aids.

4. Failure to provide required or appropriate training resulting in incompetence or negligence by a temporary permit holder under the licensee's sponsorship.

5. Violation of any other requirement or prohibition of Part IV of these rules.

6. Violating or cooperating with others in violating any provisions of Chapter 15 of Title 54.1 of the Code of Virginia or any regulation of the board.

7. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or of a misdemeanor involving moral turpitude there being no appeal pending therefrom or the time for appeal having elapsed. Any pleas of nolo contendere shall be considered a conviction for the purpose of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the law of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

~~All previous rules of the Board for Hearing Aid Specialists are repealed.~~

§ 5.12. Accountability of licensee.

A licensee shall be responsible for the acts or omissions of his staff in the performance of the fitting and dispensing of hearing aid services.

VA.R. Doc. No. R94-1132; Filed July 20, 1994, 11:57 a.m.

1994 Commonwealth of Virginia

Board for Hearing Aid Specialists

Department of Professional and Occupational Regulation
P.O. Box 11066
Richmond, VA 23230-1066
(804) 367-2039

PROPOSED

APPLICATION FOR A HEARING AID SPECIALISTS LICENSE

Applicants applying for licensure via reciprocity/physicians check appropriate category and submit the required fee:	Applicants applying for licensure by examination and/or for a temporary permit shall submit the required fees:
___ Licensure by Reciprocity - $190 (includes exam fee)	___ Application Fee - $130
___ Licensure for Physicians - $130	___ Examination Fee - $110
	___ Temporary Permit Fee - $130

Make all checks or money orders payable to the *Treasurer of Virginia*. All fees are nonrefundable.

PART I GENERAL INFORMATION (To be completed by all applicants)

1. Full Name _____

2. Date of Birth _____ S.S.N. _____

3. Street Address _____

   City _____ State _____ Zip Code _____

   Phone No. (___) _____

4. Business Address _____

   Phone No. (___) _____

5. Have you ever pleaded guilty, entered a plea of nolo contendere or been convicted of a misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury, or any felony? ___ Yes ___ No
   If yes, please explain _____
   (Attach appropriate documentation)

6. Have you ever had a license/registration as a hearing aid specialist revoked, suspended, or subject to disciplinary action (including probation, fine, reprimand, or surrender) in Virginia or any other jurisdiction? ___ Yes ___ No
   If yes, please explain _____

7. Have you ever had a license as a hearing aid specialist in the Commonwealth of Virginia or in any other jurisdiction? ___ Yes ___ No If *"yes"*, give License No. _____ and the years held _____. *(Attach copy of license if current)*

PART II EDUCATION/EXPERIENCE

A. Attach certification of high school graduation or equivalency.

B. PROFESSIONAL HEARING AID RELATED EXPERIENCE

Dates	Employer's Name and Address	Description of Duties	Name of Dept. Head/Supervisor
To: From:			
To: From:			
To: From:			

C. Are you certified by the National Institute of Hearing Instruments Specialists (NIHIS)? ____ Yes ____ No *If yes, attach copy of your current NIHIS certificate.*

D. PHYSICIANS ONLY - Are you certified by the American Board of Otolaryngology?
____ Yes ____ No *(If yes, attach copy of current certificate; If no, attach letter verifying completion of residency/training program)*

E. What is your primary purpose in applying for this license and where will you practice upon being licensed? _____

PART III IRREVOCABLE DESIGNATION OF AGENT FOR THE SERVICE OF PROCESS (Complete if non-resident applicant applying for reciprocity)

KNOW ALL MEN BY THESE PRESENTS:

The undersigned, _____, being an applicant for licensure as a non-resident hearing aid specialist of the Commonwealth of Virginia, does hereby irrevocably designate and appoint the Director of the Department of Professional and Occupational Regulation as his/her agent for the purpose of accepting service of any and all processes as issued by any court in the Commonwealth of Virginia, as well as service of all pleadings and other papers, relating in any way to any action, suit or legal proceeding arising out of or pertaining to his/her duties or responsibilities as a hearing aid specialist in Virginia. The undersigned further consents, stipulates and agrees that any lawful process served upon the aforesaid agent shall have the same legal force and validity as if served upon the undersigned personally within the _____ *(State of Legal Residence)* and that the authority contained herein shall continue in force and effect so long as any liability against the undersigned remains outstanding in the Commonwealth of Virginia.

This _____ day of _____, 19 _____.

_____
Signature of Hearing Aid Specialist

PART IV TO BE COMPLETED BY SPONSOR OF TEMPORARY PERMIT HOLDER *(If applicable)*

Statement of Licensed Sponsor/Certification of Field Services:

I hereby certify that I am a licensed, practicing Hearing Aid Specialist in the Commonwealth of Virginia and on this date _____, 19 ____, assume full responsibility for the competence and proper conduct of _____ *(Name of Temporary Permit Holder)* and will not assign him/her *(circle one)* to carry out independent field work without on-site direct supervision until he/she *(circle one)* is adequately trained for such independent activity.

Should _____, at any time, leave my employ or supervision, I will within forty-eight (48) hours notify the Secretary of the Virginia Board for Hearing Aid Specialists in writing and return the temporary permit to the Board by certified mail.

_____
Signature of Licensed Sponsor and License Number

PART V AFFIDAVIT *(To be completed by all applicants)*

STATE OF _____

CITY/COUNTY OF _____

The undersigned being dully sworn says that he/she is the person who executed this application, that the statements herein contained are true, that he/she has not suppressed any information that might affect this application, and that he/she has read and understands this affidavit.

The undersigned says that he/she has read and understands Chapter 15 of the Code of Virginia, and the regulations of the Board which govern hearing aid specialists.

Signature of Applicant: _____

Subscribed and sworn to before me this _____ day of _____, 19 ____.

Signature of Notary Public: _____

My commission expires: _____

1994 Commonwealth of Virginia
Board for Hearing Aid Specialists

Department of Professional and Occupational Regulation
P.O. Box 11066
Richmond, VA 23230-1066
(804) 367-2039

APPLICATION FOR REINSTATEMENT OF LICENSE

Submit Reinstatement Fee of $350. Make all checks or money orders payable to the *Treasurer of Virginia*. All fees are nonrefundable.

PART I GENERAL INFORMATION

1. Full Name _____ SSN _____
   Street Address _____
   License No. _____ Expiration Date _____
2. Business Name _____ Phone No. ( ) _____
   Business Address _____
3. Have you ever pleaded guilty, entered a plea of nolo contendere or been convicted of a misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury, or any felony? ___ Yes ___ No If yes, attach explanation and court papers.
4. Have you ever had a license/registration as a hearing aid specialist revoked, suspended, or subject to disciplinary action (including probation, fine, reprimand, or surrender) in Virginia or any other jurisdiction? ___ Yes ___ No If yes, attach explanation.
5. **Provide an update of experience since the last renewal. Written verification of such experience must be submitted with this form.**

PART II AFFIDAVIT

STATE OF _____

CITY/COUNTY OF _____

The undersigned being dully sworn says that he/she is the person who executed this application, that the statements herein contained are true, that he/she has not suppressed any information that might affect this application, and that he/she has read and understands this affidavit.

The undersigned says that he/she has read and understands Chapter 15 of the Code of Virginia, and the regulations of the Board which govern hearing aid specialists.

Signature of Applicant: _____

Subscribed and sworn to before me this _____ day of _____, 19 ____.

Signature of Notary Public: _____
My commission expires: _____

Commonwealth of Virginia
Board for Hearing Aid Specialists

Department of Professional & Occupational Regulation
P. O. Box 11066
Richmond, Virginia 23230-1106
(804) 367-8593

1994

FOR OFFICE USE ONLY
Pend.# _____
Fee _____
Class _____
Lic.# _____
Date _____
Code _____

APPLICATION FOR REEXAMINATION

Please check appropriate examination(s) and submit the appropriate fees. Make check or money order payable to the *Treasurer of Virginia*. All fees are nonrefundable.

Part I: Board Written Examination - $95

___ Section I - NIHIS Exam
___ Section II - VA Rules and Regs

Part II: Board Practical Examination - $95

___ Section I - Administration of Audiometric Tests
___ Section II - Taking of Earmold Impression
___ Section III - Trouble Shooting of Hearing Aid Problems

PART I: CANDIDATE INFORMATION

A. NAME _____

STREET ADDRESS _____

CITY _____ STATE _____ ZIP _____

PHONE _____ DATE OF BIRTH _____

SOCIAL SECURITY NUMBER _____

B. DATE OF LAST EXAMINATION TAKEN: _____

DATE OF EXAMINATION APPLYING FOR: _____

C. SIGNATURE OF APPLICANT: _____

DATE: _____

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **State Plan for Medical Assistance Relating to Balloon Loan Financing.**
VR 460-03-4.1940:1. Nursing Home Payment System.

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

Public Hearing Date: N/A – Written comments may be submitted through October 7, 1994.
(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:7.1, for this agency's promulgation of proposed regulations subject to the Governor's reviews. The agency's Notice of Intended Regulatory Action was published in the September 6, 1993, Virginia Register. There were no respondents.

Title 42 of the Code of Federal Regulations, Part 447, regulates the reimbursement for Medicaid covered services.

Purpose: The purpose of this action is to amend the State Plan for Medical Assistance to specifically address existing reimbursement policies relating to balloon loan financing in light of regulations addressing refinancing for nursing facilities. Nursing home providers render care to the benefit of the health, safety and welfare of their Medicaid patients. This amendment is the result of policies adopted by the Board of Medical Assistance Services on December 14, 1992, regarding refinancing of balloon loans in response to requests by providers that DMAS establish a policy for balloon loan financing based on current State Plan language. This action incorporates the specific language of the balloon loan financing policy into the State Plan.

Summary and Analysis: The section of the State Plan affected by this action is Attachment 4.19D to the State Plan (VR 460-03-4.1940:1).

The Nursing Home Payment System (NHPS) provides that costs incurred due to a refinancing cannot exceed the total costs that would have been allowable had the refinancing not occurred. This could be interpreted to prohibit reimbursement for the refinancing of a balloon loan at the expiration of the term of the original note since payment of the balloon principal would eliminate the debt on the nursing facility and the associated interest cost to the Medicaid program.

Providers were asking for a specific policy to address balloon loan financing due to the reluctance of financial institutions to make long-term loans to the health care industry.

The department developed this policy in 1992 to accommodate the needs of the provider community at a minimum cost to the Medicaid program. Under this policy as promulgated, § 2.4 of the NHPS would permit the refinancing of a balloon loan as limited by the procedures outlined below.

The application of the policy provides that a balloon loan will be considered a variable interest rate loan with an amortization schedule computed on 27 years for financing of construction or purchase of a nursing facility or 15 years for financing of furniture, fixtures, and movable equipment. For each cost reporting period, the provider will be paid the lesser of the actual interest incurred or interest computed on the amortization schedule and the lesser of actual loan costs or loan costs computed on the amortization schedule. To the extent that there is a credit created by the actual interest and loan costs being less than the interest and loan costs computed on the amortization schedule in some periods, the provider may recover interest and loan costs (otherwise allowable except for having exceeded the amounts computed on the schedule) in subsequent cost reporting periods up to the amount of the cumulative interest credit.

Issues: The principle advantages of this action are that treatment of this financing mechanism will now be defined and that all NF providers' balloon loans will receive consistent treatment. Additionally, this will allow providers to obtain financing through balloon loans and refinance balloon loans knowing the reimbursement effects in advance. The agency projects no negative issues involved in implementing this proposed change.

The disadvantage of this policy is that there could be a timing difference between the incurring of costs and the reimbursement to the provider of those incurred costs.

Impact: Providers have indicated to DMAS that they are unable to obtain long-term conventional financing, including variable rate loans, due to the reluctance of financial institutions to make long-term loans to the health care industry. The Virginia Health Care Association and several affected providers with balloon note financing objected to DMAS' policy of limiting refinancing amortization periods to that contained in the original balloon loan document. Their objections were based upon the fact that the balloon notes and amortization periods were subject to change and the allegation that balloon notes sometimes have unreasonably short amortization schedules, especially on the original loan. The industry representatives proposed to DMAS a standard 30-year allowable amortization period for all balloon note refinancings.

DMAS analyzed providers' filed cost reports from 1987 to May 1992 and determined they had the following types of financings:

Loan Type	Number Loans by Type	Avg of Loan Years	Avg Amort. Years	Avg Loan Amount	Avg Fixed % if shown

Balloon	9	6	28	2,497,777.78	11
Conven.	16	35	35	3,269,685.52	10
IDA	14	32	32	7,752,764.29	8
Private	2	30	30	300,000.00	11

Two additional balloon loans were excluded since one had a balloon payment of $8.8 million which distorted the average loan amount and one had a projected amortization period of 142 years which distorted the average amortization period.

As indicated, of 41 new facility financings during this approximately 4.5 year period, only 11 facilities (27%) were financed with balloon loans.

To attempt to accommodate the needs of the provider community at minimum cost to the Commonwealth without encouraging the use of balloon note financing, DMAS considered, and consequently accepted, the use of a standard 27-year amortization schedule versus the industry's proposed 30-year schedule. The 27-year schedule is believed to be equitable for the entire provider community while granting those few providers with this type of financing sufficient time, at least 23 more years for the earliest known balloon notes, to make any required business decisions regarding refinancing or sale.

Because this action more clearly delineates policies which have been in effect since December, 1992, its funding is provided for in the agency's current base appropriation. This action represents no new expenditures or savings.

There are no recipients affected by this regulation. There are no additional projected costs or differences in program administration due to the proposed regulation. There are no localities which are uniquely affected by these regulations as they apply statewide. There are no additional costs of compliance to the public associated with this proposed regulation.

Forms: No new forms will be required for implementation of this regulation. The existing forms required to administer the regulation are included in the cost report.

Summary:

The purpose of this action is to amend the State Plan for Medical Assistance to specifically address existing reimbursement policies relating to balloon loan financing in light of regulations addressing refinancing for nursing facilities. This amendment is the result of policies adopted by the Board of Medical Assistance Services on December 14, 1992, regarding refinancing of balloon loans in response to requests by providers that DMAS establish a policy for balloon loan financing based on current State Plan language. This action incorporates the specific language of the balloon loan financing policy into the State Plan.

The section of the State Plan affected by this action is Attachment 4.19D to the State Plan (VR 460-03-4.1940:1).

The Nursing Home Payment System (NHPS) provides that costs incurred due to a refinancing cannot exceed the total costs that would have been allowable had the refinancing not occurred. This could be interpreted to prohibit reimbursement for the refinancing of a balloon loan at the expiration of the term of the original note since payment of the balloon principal would eliminate the debt on the nursing facility and the associated interest cost to the Medicaid program.

Providers were asking for a specific policy to address balloon loan financing due to the reluctance of financial institutions to make long-term loans to the health care industry.

The department developed this policy in 1992 to accommodate the needs of the provider community at a minimum cost to the Medicaid program. Under this policy as promulgated, § 2.4 of the NHPS would permit the refinancing of a balloon loan as limited by the procedures outlined below.

The application of the policy provides that a balloon loan will be considered a variable interest rate loan with an amortization schedule computed on 27 years for financing of construction or purchase of a nursing facility or 15 years for financing of furniture, fixtures, and movable equipment. For each cost reporting period, the provider will be paid the lesser of the actual interest incurred or interest computed on the amortization schedule and the lesser of actual loan costs or loan costs computed on the amortization schedule. To the extent that there is a credit created by the actual interest and loan costs being less than the interest and loan costs computed on the amortization schedule in some periods, the provider may recover interest and loan costs (otherwise allowable except for having exceeded the amounts computed on the schedule) in subsequent cost reporting periods up to the amount of the cumulative interest credit.

The principle advantages of this action are that treatment of this financing mechanism will now be defined and that all NF providers' balloon loans will receive consistent treatment. Additionally, this will allow providers to obtain financing through balloon loans and refinance balloon loans knowing the reimbursement effects in advance. The agency projects no negative issues involved in implementing this proposed change.

The disadvantage of this policy is that there could be a timing difference between the incurring of costs and the reimbursement to the provider of those incurred costs.

Providers have indicated to DMAS that they are unable to obtain long-term conventional financing, including variable rate loans, due to the reluctance of financial institutions to make long-term loans to the health care industry. The Virginia Health Care Association and several affected providers with balloon note financing objected to DMAS' policy of limiting refinancing amortization periods to that contained in the original balloon loan document. Their objections were based upon the fact that the balloon notes and amortization periods were subject to change and the allegation that balloon notes sometimes have unreasonably short amortization schedules, especially on the original loan. The industry representatives proposed to DMAS a standard 30-year allowable amortization period for all balloon note refinancings.

DMAS analyzed providers' filed cost reports from 1987 to May 1992 and determined they had the following types of financings:

Loan Type	Number Loans by Type	Avg of Loan Years	Avg Amort. Years	Avg Loan Amount	Avg Fixed % if shown
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IDA	14	32	32	7,752,764.29	8
Private	2	30	30	300,000.00	11

Two additional balloon loans were excluded since one had a balloon payment of $8.8 million which distorted the average loan amount and one had a projected amortization period of 142 years which distorted the average amortization period. As indicated, of 41 new facility financings during this approximately 4.5 year period, only 11 facilities (27%) were financed with balloon loans. To attempt to accommodate the needs of the provider community at minimum cost to the Commonwealth without encouraging the use of balloon note financing, DMAS considered, and consequently accepted, the use of a standard 27-year amortization schedule versus the industry's proposed 30-year schedule. The 27-year schedule is believed to be equitable for the entire provider community while granting those few providers with this type of financing sufficient time, at least 23 more years for the earliest known balloon notes, to make any required business decisions regarding refinancing or sale. Because this action more clearly delineates policies which have been in effect since December, 1992, its funding is provided for in the agency's current base appropriation. This action represents no new expenditures or savings. There are no recipients affected by this regulation. There are no additional projected costs or differences in program administration due to the proposed regulation. There are no localities which are uniquely affected by these regulations as they apply statewide.

VR 460-03-4.1940:1. Nursing Home Payment System.

PART I.
INTRODUCTION.

§ 1.1. Effective October 1, 1990, the payment methodology for Nursing Facility (NF) reimbursement by the Virginia Department of Medical Assistance Services (DMAS) is set forth in the following document. The formula provides for incentive payments to efficiently operated NFs and contains payment limitations for those NFs operating less efficiently. A cost efficiency incentive encourages cost containment by allowing the provider to retain a percentage of the difference between the prospectively determined operating cost rate and the ceiling.

§ 1.2. Three separate cost components are used: plant cost, operating cost and nurse aide training and competency evaluation program and competency evaluation program (NATCEPs) costs. The rates, which are determined on a facility-by-facility basis, shall be based on annual cost reports filed by each provider.

§ 1.3. In determining the ceiling limitations, there shall be direct patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA Metropolitan Statistical Area (MSA), the Richmond-Petersburg Metropolitan Statistical Area (MSA), and in the rest of the state. There shall be indirect patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA MSA, and in the rest of the state. The Washington DC-MD-VA MSA and the Richmond-Petersburg MSA shall include those cities and counties as listed and changed from time to time by the Health Care Financing Administration (HCFA). A NF located in a jurisdiction which HCFA adds to or removes from the Washington DC-MD-VA MSA or the Richmond-Petersburg MSA shall be placed in its new peer group, for purposes of reimbursement, at the beginning of its next fiscal year following the effective date of HCFA's final rule.

§ 1.4. Institutions for mental diseases providing nursing services for individuals age 65 and older shall be exempt from the prospective payment system as defined in §§ 2.6, 2.7, 2.8, 2.19, and 2.25, as are mental retardation facilities. All other sections of this payment system relating to reimbursable cost limitations shall apply. These facilities shall continue to be reimbursed retrospectively on the basis of reasonable costs in accordance with Medicare and Medicaid principles of reimbursement. Reimbursement to Intermediate Care Facilities for the Mentally Retarded (ICF/MR) shall be limited to the highest rate paid to a state ICF/MR institution, approved each July 1 by DMAS.

§ 1.5. Except as specifically modified herein, Medicare principles of reimbursement, as amended from time to time, shall be used to establish the allowable costs in the rate calculations. Allowable costs must be classified in accordance with the DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification) and

must be identifiable and verified by contemporaneous documentation.

All matters of reimbursement which are part of the DMAS reimbursement system shall supercede Medicare principles of reimbursement. Wherever the DMAS reimbursement system conflicts with Medicare principles of reimbursement, the DMAS reimbursement system shall take precedence. Appendices are a part of the DMAS reimbursement system.

PART II.
RATE DETERMINATION PROCEDURES.

Article 1.
Plant Cost Component.

§ 2.1. Plant cost.

A. Plant cost shall include actual allowable depreciation, interest, rent or lease payments for buildings and equipment as well as property insurance, property taxes and debt financing costs allowable under Medicare principles of reimbursement or as defined herein.

B. To calculate the reimbursement rate, plant cost shall be converted to a per diem amount by dividing it by the greater of actual patient days or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

C. For NFs of 30 beds or less, to calculate the reimbursement rate, the number of patient days will be computed as not less than 85% of the daily licensed bed complement.

D. Costs related to equipment and portions of a building/facility not available for patient care related activities are nonreimbursable plant costs.

§ 2.2. New nursing facilities and bed additions.

A. 1. Providers shall be required to obtain three competitive bids when (i) constructing a new physical plant or renovating a section of the plant when changing the licensed bed capacity, and (ii) purchasing fixed equipment or major movable equipment related to such projects.

2. All bids must be obtained in an open competitive market manner, and subject to disclosure to DMAS prior to initial rate setting. (Related parties see § 2.10.)

B. Reimbursable costs for building and fixed equipment shall be based upon the 3/4 (25% of the surveyed projects with costs above the median, 75% with costs below the median) square foot costs for NFs published annually in the R.S. Means Building Construction Cost Data as adjusted by the appropriate R.S. Means Square Foot Costs "Location Factor" for Virginia for the locality in which the NF is located. Where the specific location is not listed in the R.S. Means Square Foot Costs "Location Factor" for Virginia, the facility's zip code shall be used to determine the appropriate locality factor from the U.S. Postal Services National Five Digit Zip Code for Virginia and the R.S. Means Square Foot Costs "Location Factors." The provider shall have the option of selecting the construction cost limit which is effective on the date the Certificate of Public Need (COPN) is issued or the date the NF is licensed. Total cost shall be calculated by multiplying the above 3/4 square foot cost by 385 square feet (the average per bed square footage). Total costs for building additions shall be calculated by multiplying the square footage of the project by the applicable components of the construction cost in the R.S. Means Square Foot Costs, not to exceed the total per bed cost for a new NF. Reasonable limits for renovations shall be determined by the appropriate costs in the R.S. Means Repair and Remodeling Cost Data, not to exceed the total R.S. Means Building Construction Cost Data 3/4 square foot costs for nursing homes.

C. New NFs and bed additions to existing NFs must have prior approval under the state's Certificate of Public Need Law and Licensure regulations in order to receive Medicaid reimbursement.

D. However in no case shall allowable reimbursed costs exceed 110% of the amounts approved in the original COPN, or 100% of the amounts approved in the original COPN as modified by any "significant change" COPN, where a provider has satisfied the requirements of the State Department of Health with respect to obtaining prior written approval for a "significant change" to a COPN which has previously been issued.

§ 2.3. Major capital expenditures.

A. Major capital expenditures include, but are not limited to, major renovations (without bed increase), additions, modernization, other renovations, upgrading to new standards, and equipment purchases. Major capital expenditures shall be any capital expenditures costing $100,000 or more each, in aggregate for like items, or in aggregate for a particular project. These include purchases of similar type equipment or like items within a one calendar year period (not necessarily the provider's reporting period).

B. Providers (including related organizations as defined in § 2.10) shall be required to obtain three competitive bids and if applicable, a Certificate of Public Need before initiating any major capital expenditures. All bids must be obtained in an open competitive manner, and subject to disclosure to the DMAS prior to initial rate setting. (Related parties see § 2.10.)

C. Useful life shall be determined by the American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets (AHA). If the item is not included in the AHA guidelines, reasonableness shall be

applied to determine useful life.

D. Major capital additions, modernization, renovations, and costs associated with upgrading the NF to new standards shall be subject to cost limitations based upon the applicable components of the construction cost limits determined in accordance with § 2.2 B.

§ 2.4. Financing.

A. The DMAS shall continue its policy to disallow cost increases due to the refinancing of a mortgage debt, except when required by the mortgage holder to finance expansions or renovations. Refinancing shall also be permitted in cases where refinancing would produce a lower interest rate and result in a cost savings. The total net aggregate allowable costs incurred for all cost reporting periods related to the refinancing cannot exceed the total net aggregate costs that would have been allowable had the refinancing not occurred.

1. Refinancing incentive. Effective July 1, 1991, for mortgages refinanced on or after that date, the DMAS will pay a refinancing incentive to encourage nursing facilities to refinance fixed-rate, fixed-term mortgage debt when such arrangements would benefit both the Commonwealth and the providers. The refinancing incentive payments will be made for the 10-year period following an allowable refinancing action, or through the end of the refinancing period should the loan be less than 10 years, subject to a savings being realized by application of the refinancing calculation for each of these years. The refinancing incentive payment shall be computed on the net savings from such refinancing applicable to each provider cost reporting period. Interest expense and amortization of loan costs on mortgage debt applicable to the cost report period for mortgage debt which is refinanced shall be compared to the interest expense and amortization of loan costs on the new mortgage debt for the cost reporting period.

2. Calculation of refinancing incentive. The incentive shall be computed by calculating two index numbers, the old debt financing index and the new debt financing index. The old debt financing index shall be computed by multiplying the term (months) which would have been remaining on the old debt at the end of the provider's cost report period by the interest rate for the old debt. The new debt index shall be computed by multiplying the remaining term (months) of the new debt at the end of the cost reporting period by the new interest rate. The new debt index shall be divided by the old debt index to achieve a savings ratio for the period. The savings ratio shall be subtracted from a factor of 1 to determine the refinancing incentive factor.

3. Calculation of net savings. The gross savings for the period shall be computed by subtracting the allowable new debt interest for the period from the allowable old debt interest for the period. The net savings for the period shall be computed by subtracting allowable new loan costs for the period from allowable gross savings applicable to the period. Any remaining unamortized old loan costs may be recovered in full to the extent of net savings produced for the period.

4. Calculation of incentive amount. The net savings for the period, after deduction of any unamortized old loan and debt cancellation costs, shall be multiplied by the refinancing incentive factor to determine the refinancing incentive amount. The result shall be the incentive payment for the cost reporting period, which shall be included in the cost report settlement, subject to per diem computations under § 2.1 B, 2.1 C, and 2.14 A.

5. Where a savings is produced by a provider refinancing his old mortgage for a longer time period, the DMAS shall calculate the refinancing incentive and payment in accordance with §§ 2.4 A 1 through 2.4 A 4 for the incentive period. Should the calculation produce both positive and negative incentives, the provider's total incentive payments shall not exceed any net positive amount for the entire incentive period. Where a savings is produced by refinancing with either a principal balloon payment at the end of the refinancing period, or a variable interest rate, no incentive payment will be made, since the true savings to the Commonwealth cannot be accurately computed.

6. All refinancings must be supported by adequate and verifiable documentation and allowable under DMAS regulations to receive the refinancing savings incentive.

B. Interest rate upper limit.

Financing for all NFs and expansions which require a COPN and all renovations and purchases shall be subject to the following limitations:

1. Interest expenses for debt financing which is exempt from federal income taxes shall be limited to:

The average weekly rates for Baa municipal rated bonds as published in Cragie Incorporated Municipal Finance Newsletter as published weekly (Representative reoffering from general obligation bonds), plus one percentage point (100 basis points), during the week in which commitment for construction financing or closing for permanent financing takes place.

2. a. Effective on and after July 1, 1990, the interest rate upper limit for debt financing by NFs that are subject to prospective reimbursement shall be the average of the rate for 10-year and 30-year U.S. Treasury Constant Maturities, as published in the weekly Federal Reserve Statistical Release (H.15), plus two percentage points (200 basis points).

This limit (i) shall apply only to debt financing which is not exempt from federal income tax, and (ii) shall not be available to NF's which are eligible for such tax exempt financing unless and until a NF has demonstrated to the DMAS that the NF failed, in a good faith effort, to obtain any available debt financing which is exempt from federal income tax. For construction financing, the limit shall be determined as of the date on which commitment takes place. For permanent financing, the limit shall be determined as of the date of closing. The limit shall apply to allowable interest expenses during the term of the financing.

b. The new interest rate upper limit shall also apply, effective July 1, 1990, to construction financing committed to or permanent financing closed after December 31, 1986, but before July 1, 1990, which is not exempt from federal income tax. The limit shall be determined as of July 1, 1990, and shall apply to allowable interest expenses for the term of the financing remaining on or after July 1, 1990.

3. Variable interest rate upper limit.

a. The limitation set forth in §§ 2.4 B 1 and 2.4 B 2 shall be applied to debt financing which bears a variable interest rate as follows. The interest rate upper limit shall be determined on the date on which commitment for construction financing or closing for permanent financing takes place, and shall apply to allowable interest expenses during the term of such financing as if a fixed interest rate for the financing period had been obtained. A "fixed rate loan amortization schedule" shall be created for the loan period, using the interest rate cap in effect on the date of commitment for construction financing or *the* date of closing for permanent financing.

b. If the interest rate for any cost reporting period is below the limit determined in subdivision 3 a above, no adjustment will be made to the ~~providers~~ *provider's* interest expense for that period, and a "carryover credit" to the extent of the amount allowable under the "fixed rate loan amortization schedule" will be created, but not paid. If the interest rate in a future cost reporting period is above the limit determined in subdivision 3 a above, the provider will be paid this "carryover credit" from prior period(s), not to exceed the cumulative carryover credit or his actual cost, whichever is less.

c. The provider shall be responsible for preparing a verifiable and auditable schedule to support cumulative computations of interest claimed under the "carryover credit," and shall submit such a schedule with each cost report.

4. The limitation set forth in § 2.4 B 1, 2, and 3 shall be applicable to financing for land, buildings, fixed equipment, major movable equipment, working capital for construction and permanent financing.

5. Where bond issues are used as a source of financing, the date of sale shall be considered as the date of closing.

6. The aggregate of the following costs shall be limited to 5.0% of the total allowable project costs:

a. Examination Fees

b. Guarantee Fees

c. Financing Expenses (service fees, placement fees, feasibility studies, etc.)

d. Underwriters Discounts

e. Loan Points

7. The aggregate of the following financing costs shall be limited to 2.0% of the total allowable project costs:

a. Legal Fees

b. Cost Certification Fees

c. Title and Recording Costs

d. Printing and Engraving Costs

e. Rating Agency Fees

C. DMAS shall allow costs associated with mortgage life insurance premiums in accordance with § 2130 of the HCFA-Pub. 15, Provider Reimbursement Manual (PRM-15).

D. Interest expense on a debt service reserve fund is an allowable expense if required by the terms of the financing agreement. However, interest income resulting from such fund shall be used by DMAS to offset interest expense.

E. Balloon loan reimbursement.

This subsection applies to the construction and acquisition of nursing facilities (as defined in §§ 2.2 and 2.5) and major capital expenditures (as defined in § 2.3) that are financed with balloon loans. A balloon loan requires periodic payments to be made that do not fully amortize the principal balance over the term of the loan; the remaining balance must be repaid at the end of a specified time period. Demand notes and loans with call provisions shall not be deemed to be balloon loans.

1. Incurred interest. Reimbursement for interest of a balloon loan and subsequent refinancings shall be considered a variable interest rate loan under § 2.4 B.

a. A standard amortization period of 27 years, from the inception date of the original balloon loan, must be computed by the provider and submitted to DMAS and used as the amortization period for loans for renovation, construction, or purchase of a nursing facility.

b. A standard amortization period of 15 years, from the inception of the original balloon loan, must be used as the amortization period for loans on furniture, fixtures, and equipment.

c. A loan which is used partially for the acquisition of buildings, land, and land improvements and partially for the purchase of furniture, fixtures, and equipment must be prorated for the purpose of determining the amortization period.

2. The allowable interest rate shall be limited to the interest rate upper limit in effect on the date of the original balloon loan, unless another rate is allowable under § 2.4 B.

3. The limitations on financing costs set forth in § 2.4 B shall apply to balloon loans. Financing costs exceeding the limitations set forth in these sections shall be allowed to the extent that such excess financing costs may be offset by any available interest savings.

a. A 27-year amortization period must be used for deferred financing costs associated with the construction or purchase of a nursing facility.

b. A 15-year amortization period must be used for deferred financing costs associated with financing of furniture, fixtures, and movable equipment.

c. Financing costs associated with a loan used partially for the acquisition of buildings, land, and land improvements and partially for the purchase of furniture, fixtures, and equipment must be prorated for determination of the amortization period.

4. The computation of allowable interest and financing costs for balloon loans shall be calculated using the following procedures:

a. A standard amortization schedule of allowable costs based upon the upper limits for interest and financing costs shall be computed by the provider and submitted to DMAS for the applicable 27-year or 15-year periods on the original balloon loan.

b. For each cost reporting period, the provider shall be allowed the lesser of loan costs (interest and financing costs) computed in accordance with subdivision 4 a of this subsection, or the actual loan costs incurred during the period.

c. To the extent that there is a "credit" created by the actual loan costs being less than the loan costs computed on the amortization schedule in some periods, the provider may recover any otherwise allowable costs which result from the refinancing, extension, or renewal of the balloon loan, and any loan costs which have been disallowed because the loan costs are over the limitation for some periods. However, the cumulative actual loan cost reimbursement may not exceed the cumulative allowable loan cost as computed on the amortization schedule to that date.

d. In refinancing or refinancings of the original balloon loan which involve additional borrowings in excess of the balance due on the original balloon loan, the excess over the balance due on the balloon loan shall be treated as new debt subject to the DMAS financing policies and regulations. Any interest and financing costs incurred on the refinancing shall be allocated pro rata between the refinancing of the balloon loan and the new debt.

e. In the event of a sale of the facility, any unused balance of cumulative credit or cumulative provider excess costs would follow the balloon loan or the refinancing of the balloon loan if the balloon loan or its refinancing is paid by the buyer under the same terms as previously paid by the seller. Examples of this are: the buyer assumes the existing instrument containing the same rates and terms by the purchaser; or the balance of the balloon loan or its refinancings is financed by the seller to the buyer under the same rates and terms of the existing loan as part of the sale of the facility. If the loan is otherwise paid in full at any time and the facility is sold before the full 27-year or 15-year amortization period has expired, the balance of unused cumulative credit or cumulative provider excess costs shall expire and not be considered an allowable cost.

5. In accordance with § 2.4 A, no refinancing incentive shall be available for refinancings, extensions, or renewals of balloon loans.

6. The balloon loan and refinancing of the balloon loan shall be subject to all requirements for allowable borrowing, except as otherwise provided by this subsection.

§ 2.5. Purchases of nursing facilities (NF).

A. In the event of a sale of a NF, the purchaser must have a current license and certification to receive DMAS reimbursement as a provider.

B. The following reimbursement principles shall apply to the purchase of a NF:

1. The allowable cost of a bona fide sale of a facility (whether or not the parties to the sale were, are, or

will be providers of Medicaid services) shall be the lowest of the sales price, the replacement cost value determined by independent appraisal, or the limitations of Part XVI - Revaluation of Assets. Revaluation of assets shall be permitted only when a bona fide sale of assets occurs.

2. Notwithstanding the provisions of § 2.10, where there is a sale between related parties (whether or not they were, are or will be providers of Medicaid services), the buyer's allowable cost basis for the nursing facility shall be the seller's allowable depreciated historical cost (net book value), as determined for Medicaid reimbursement.

3. For purposes of Medicaid reimbursement, a "bona fide" sale shall mean a transfer of title and possession for consideration between parties which are not related. Parties shall be deemed to be "related" if they are related by reasons of common ownership or control. If the parties are members of an immediate family, the sale shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control." See § 2.10 C for definitions of "common ownership," "control," "immediate family," and "significant ownership or control."

4. The useful life of the fixed assets of the facility shall be determined by AHA guidelines.

5. The buyer's basis in the purchased assets shall be reduced by the value of the depreciation recapture due the state by the provider-seller, until arrangements for repayment have been agreed upon by DMAS.

6. In the event the NF is owned by the seller for less than five years, the reimbursable cost basis of the purchased NF to the buyer, shall be the seller's allowable historical cost as determined by DMAS.

C. An appraisal expert shall be defined as an individual or a firm that is experienced and specializes in multi-purpose appraisals of plant assets involving the establishing or reconstructing of the historical cost of such assets. Such an appraisal expert employs a specially trained and supervised staff with a complete range of appraisal and cost construction techniques; is experienced in appraisals of plant assets used by providers, and demonstrates a knowledge and understanding of the regulations involving applicable reimbursement principles, particularly those pertinent to depreciation; and is unrelated to either the buyer or seller.

D. At a minimum, appraisals must include a breakdown by cost category as follows:

1. Building; fixed equipment; movable equipment; land; land improvements.

2. The estimated useful life computed in accordance with AHA guidelines of the three categories, building, fixed equipment, and movable equipment must be included in the appraisal. This information shall be utilized to compute depreciation schedules.

E. Depreciation recapture.

1. The provider-seller of the facility shall make a retrospective settlement with DMAS in instances where a gain was made on disposition. The department shall recapture the depreciation paid to the provider by Medicaid for the period of participation in the Program to the extent there is gain realized on the sale of the depreciable assets. A final cost report and refund of depreciation expense, where applicable, shall be due within 30 days from the transfer of title (as defined below).

2. No depreciation adjustment shall be made in the event of a loss or abandonment.

F. Reimbursable depreciation.

1. For the purpose of this section, "sale or transfer" shall mean any agreement between the transferor and the transferee by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and possession of the property.

2. Upon the sale or transfer of the real and tangible personal property comprising a licensed nursing facility certified to provide services to DMAS, the transferor or other person liable therein shall reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing such services and subject to recapture under the provisions of the State Plan for Medical Assistance. The amount of reimbursable depreciation shall be paid to the Commonwealth within 30 days of the sale or transfer of the real property unless an alternative form of repayment, the term of which shall not exceed one year, is approved by the director.

3. Prior to the transfer, the transferor shall file a written request by certified or registered mail to the director for a letter of verification that he either does not owe the Commonwealth any amount for reimbursable depreciation or that he has repaid any amount owed the Commonwealth for reimbursable depreciation or that an alternative form of repayment has been approved by the director. The request for a letter of verification shall state:

a. That a sale or transfer is about to be made;

b. The location and general description of the property to be sold or transferred;

c. The names and addresses of the transferee and transferor and all such business names and addresses of the transferor for the last three years; and

d. Whether or not there is a debt owing to the Commonwealth for the amount of depreciation charges previously allowed and reimbursed as a reasonable cost to the transferor under the Virginia Medical Assistance Program.

4. Within 90 days after receipt of the request, the director shall determine whether or not there is an amount due to the Commonwealth by the nursing facility by reason of depreciation charges previously allowed and reimbursed as a reasonable cost under DMAS and shall notify the transferor of such sum, if any.

5. The transferor shall provide a copy of this section and a copy of his request for a letter of verification to the prospective transferee via certified mail at least 30 days prior to the transfer. However, whether or not the transferor provides a copy of this section and his request for verification to the prospective transferee as required herein, the transferee shall be deemed to be notified of the requirements of this law.

6. After the transferor has made arrangements satisfactory to the director to repay the amount due or if there is no amount due, the director shall issue a letter of verification to the transferor in recordable form stating that the transferor has complied with the provisions of this section and setting forth the term of any alternative repayment agreement. The failure of the transferor to reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing service to DMAS in a timely manner renders the transfer of the nursing facility ineffective as to the Commonwealth.

7. Upon a finding by the director that such sale or transfer is ineffective as to the Commonwealth, DMAS may collect any sum owing by any means available by law, including devising a schedule for reducing the Medicaid reimbursement to the transferee up to the amount owed the Commonwealth for reimbursable depreciation by the transferor or other person liable therein. Medicaid reimbursement to the transferee shall continue to be so reduced until repayment is made in full or the terms of the repayment are agreed to by the transferor or person liable therein.

8. In the event the transferor or other person liable therein defaults on any such repayment agreement the reductions of Medicaid reimbursement to the transferee may resume.

An action brought or initiated to reduce the transferee's Medicaid reimbursement or an action for attachment or levy shall not be brought or initiated more than six months after the date on which the sale or transfer has taken place unless the sale or transfer has been concealed or a letter of verification has not been obtained by the transferor or the transferor defaults on a repayment agreement approved by the director.

Article 2.
Operating Cost Component.

§ 2.6. Operating cost.

A. Operating cost shall be the total allowable inpatient cost less plant cost and NATCEPs costs. See Part VII for rate determination procedures for NATCEPs costs. To calculate the reimbursement rate, operating cost shall be converted to a per diem amount by dividing it by the greater of actual patient days, or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

B. For NFs of 30 beds or less, to calculate the reimbursement rate the number of patient days will continue to be computed as not less than 85% of the daily licensed bed complement.

§ 2.7. Nursing facility reimbursement formula.

A. Effective on and after October 1, 1990, all NFs subject to the prospective payment system shall be reimbursed under a revised formula entitled "The Patient Intensity Rating System (PIRS)." PIRS is a patient based methodology which links NF's per diem rates to the intensity of services required by a NF's patient mix. Three classes were developed which group patients together based on similar functional characteristics and service needs.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of § 1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. In accordance with § 1.3, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in VR 460-03-1491. Indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA and for the rest of the state. Indirect patient care operating costs shall include all other operating costs, not defined in VR 460-03-4.1941 as direct patient care operating costs and NATCEPs costs.

3. Each NF's Service Intensity Index (SII) shall be calculated for each semiannual period of a NF's fiscal year based upon data reported by that NF and entered into DMAS' Long Term Care Information

System (LTCIS). Data will be reported on the multidimensional assessment form prescribed by DMAS (now DMAS-95) at the time of admission and then twice a year for every Medicaid recipient in a NF. The NF's SII, derived from the assessment data, will be normalized by dividing it by the average for all NF's in the state.

See VR 460-03-4.1944 for the PIRS class structure, the relative resource cost assigned to each class, the method of computing each NF's facility score and the methodology of computing the NF's semiannual SIIs.

4. The normalized SII shall be used to calculate the initial direct patient care operating cost peer group medians. It shall also be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NF's subsequent fiscal years.

a. The normalized SII, as determined during the quarter ended September 30, 1990, shall be used to calculate the initial direct patient care operating cost peer group medians.

b. A NF's direct patient care operating cost prospective ceiling shall be the product of the NF's peer group direct patient care ceiling and the NF's normalized SII for the previous semiannual period. A NF's direct patient care operating cost prospective ceiling will be calculated semiannually.

c. An SSI rate adjustment, if any, shall be applied to a NF's prospective direct patient care operating cost base rate for each semiannual period of a NF's fiscal year. The SII determined in the second semiannual period of the previous fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the first semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate. The SII determined in the first semiannual period of the subsequent fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the second semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate.

d. See VR 460-03-4.1944 for an illustration of how the SII is used to adjust direct patient care operating ceilings and the semiannual rate adjustments to the prospective direct patient care operating cost base rate.

5. An adjustment factor shall be applied to both the direct patient care and indirect patient care peer group medians to determine the appropriate initial peer group ceilings.

a. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during fiscal year 1991 under the prospective payment system in effect through September 30, 1990, as modified to incorporate the estimated additional NF reimbursement mandated by the provisions of § 1902(a)(13)(A) of the Social Security Act as amended by § 4211(b)(1) of the Omnibus Budget Reconciliation Act of 1987.

b. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during FY 1991 under the PIRS prospective payment system.

c. The DMAS shall determine the differential between a and b above and shall adjust the peer group medians within the PIRS as appropriate to reduce the differential to zero.

d. The adjusted PIRS peer group medians shall become the initial peer group ceilings.

B. The allowance for inflation shall be based on the percentage of change in the moving average of the Skilled Nursing Facility Market basket of Routine Service Costs, as developed by Data Resources, Incorporated, adjusted for Virginia, determined in the quarter in which the NF's most recent fiscal year ended. NFs shall have their prospective operating cost ceilings and prospective operating cost rates established in accordance with the following methodology:

1. The initial peer group ceilings established under § 2.7 A shall be the final peer group ceilings for a NF's first full or partial fiscal year under PIRS and shall be considered as the initial "interim ceilings" for calculating the subsequent fiscal year's peer group ceilings. Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the initial "interim" ceilings by a "percentage factor" which shall eliminate any allowances for inflation after September 30, 1990, calculated in both §§ 2.7 A 5 a and 2.7 A 5 c. The adjusted initial "interim" ceilings shall be considered as the final "interim ceiling." Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the final "interim" ceiling, as determined above, by 100% of historical inflation from October 1, 1990, to the beginning of the NFs next fiscal year to obtain new "interim" ceilings, and 50% of the forecasted inflation to the end of the NFs next fiscal year.

2. A NF's average allowable operating cost rates, as determined from its most recent fiscal year's cost report, shall be adjusted by 50% of historical inflation and 50% of the forecasted inflation to calculate its prospective operating cost base rates.

C. The PIRS method shall still require comparison of the prospective operating cost rates to the prospective

operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rates or prospective operating ceilings.

D. Nonoperating costs.

1. Allowable plant costs shall be reimbursed in accordance with Part II, Article 1. Plant costs shall not include the component of cost related to making or producing a supply or service.

2. NATCEPs cost shall be reimbursed in accordance with Part VII.

E. The prospective rate for each NF shall be based upon operating cost and plant cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. For those NFs whose operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable operating cost rates and the peer group ceilings under the PIRS.

1. The table below presents four incentive examples under the PIRS:

Peer Group Ceilings	Allowable Cost Per Day	Difference	% of Ceiling	Sliding Scale	Scale % Difference
$30.00	$27.00	$3.00	10%	$ .30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0		0	

2. Separate efficiency incentives shall be calculated for both the direct and indirect patient care operating ceilings and costs.

G. Quality of care requirement.

A cost efficiency incentive shall not be paid to a NF for the prorated period of time that it is not in conformance with substantive, nonwaived life, safety, or quality of care standards.

H. Sale of facility.

In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice.

To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

§ 2.8. Phase-in period.

A. To assist NFs in converting to the PIRS methodology, a phase-in period shall be provided until June 30, 1992.

B. From October 1, 1990, through June 30, 1991, a NF's prospective operating cost rate shall be a blended rate calculated at 33% of the PIRS operating cost rates determined by § 2.7 above and 67% of the "current" operating rate determined by subsection D below.

C. From July 1, 1991, through June 30, 1992, a NF's prospective operating cost rate shall be a blended rate calculated at 67% of the PIRS operating cost rates determined by § 2.7 above and 33% of the "current" operating rate determined by subsection D below.

D. The following methodology shall be applied to calculate a NF's "current" operating rate:

1. Each NF shall receive as its base "current" operating rate, the weighted average prospective operating cost per diems and efficiency incentive per diems if applicable, calculated by DMAS to be effective September 30, 1990.

2. The base "current" operating rate established above shall be the "current" operating rate for the NF's first partial fiscal year under PIRS. The base "current" operating rate shall be adjusted by appropriate allowance for historical inflation and 50% of the forecasted inflation based on the methodology contained in § 2.7 B at the beginning of each of the NF's fiscal years which starts during the phase-in period, October 1, 1990, through June 30, 1992, to determine the NF's prospective "current" operating rate. See VR 460-03-4.1944 for example calculations.

§ 2.8. Nursing facility rate change.

For the period beginning July 1, 1991, and ending June 30, 1992, the per diem operating rate for each NF shall be adjusted. This shall be accomplished by applying a uniform adjustment factor to the rate of each NF.

Article 3.
Allowable Cost Identification.

§ 2.9. Allowable costs.

Costs which are included in rate determination procedures and final settlement shall be only those allowable, reasonable costs which are acceptable under the Medicare principles of reimbursement, except as specifically modified in the Plan and as may be subject to individual or ceiling cost limitations and which are

classified in accordance with the DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification).

A. Certification.

The cost of meeting all certification standards for NF requirements as required by the appropriate state agencies, by state laws, or by federal legislation or regulations.

B. Operating costs.

1. Direct patient care operating costs shall be defined in VR 460-03-4.1941.

2. Allowable direct patient care operating costs shall exclude (i) personal physician fees, and (ii) pharmacy services and prescribed legend and nonlegend drugs provided by nursing facilities which operate licensed in-house pharmacies. These services shall be billed directly to DMAS through separate provider agreements and DMAS shall pay directly in accordance with subsections e and f of Attachment 4.19 B of the State Plan for Medical Assistance (VR 460-02-4.1920).

3. Indirect patient care operating costs include all other operating costs, not identified as direct patient care operating costs and NATCEPs costs in VR 460-03-4.1941, which are allowable under the Medicare principles of reimbursement, except as specifically modified herein and as may be subject to individual cost or ceiling limitations.

C. Allowances/goodwill.

Bad debts, goodwill, charity, courtesy, and all other contractual allowances shall not be recognized as an allowable cost.

D. Cost of protecting employees from blood borne pathogens.

Effective July 1, 1994, reimbursement of allowable costs shall be adjusted in the following way to recognize the costs of complying with requirements of the Occupational Safety and Health Administration (OSHA) for protecting employees against exposure to blood borne pathogens.

1. Hepatitis B immunization. The statewide median of the reasonable acquisition cost per unit of immunization times the number of immunizations provided to eligible employees during facility fiscal years ending during SFY 1994, divided by Medicaid days in the same fiscal period, shall be added to the indirect peer group ceiling effective July 1, 1994. This increase to the ceilings shall not exceed $.09 per day for SFY 1995.

2. Other OSHA compliance costs. The indirect peer group ceilings shall be increased by $.07, effective July 1, 1994, to recognize continuing OSHA compliance costs other than immunization.

3. Data submission by nursing facilities. Nursing facilities shall provide for fiscal years ending during SFY 1994, on forms provided by DMAS, (i) the names, job titles and social security numbers of individuals immunized, the number of immunizations provided to each and the dates of immunization; and (ii) the acquisition cost of immunization.

§ 2.10. Purchases/related organizations.

A. Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control shall be included in the allowable cost of the provider at the cost to the related organization, provided that such costs do not exceed the price of comparable services, facilities or supplies. Purchases of existing NFs by related parties shall be governed by the provisions of § 2.5 B 2.

Allowable cost applicable to management services furnished to the provider by organizations related to the provider by common ownership or control shall be lesser of the cost to the related organization or the per patient day ceiling limitation established for management services cost. (See VR 460-03-4.1943, Cost Reimbursement Limitations.)

B. Related to the provider shall mean that the provider is related by reasons of common ownership or control by the organization furnishing the services, facilities, or supplies.

C. Common ownership exists when an individual or individuals or entity or entities possess significant ownership or equity in the parties to the transaction. Control exists where an individual or individuals or entity or entities have the power, directly or indirectly, significantly to influence or direct the actions or policies of the parties to the transaction. Significant ownership or control shall be deemed to exist where an individual is a "person with an ownership or control interest" within the meaning of 42 CFR 455.101. If the parties to the transaction are members of an immediate family, as defined below, the transaction shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control," as set forth above. Immediate family shall be defined to include, but not be limited to, the following: (i) husband and wife, (ii) natural parent, child and sibling, (iii) adopted child and adoptive parent, (iv) step-parent, step-child, step-sister, and step-brother, (v) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law and daughter-in-law, and (vi) grandparent and grandchild.

D. Exception to the related organization principle.

1. Effective with cost reports having fiscal years beginning on or after July 1, 1986, an exception to the related organization principle shall be allowed. Under this exception, charges by a related organization to a provider for goods or services shall be allowable cost to the provider if all four of the conditions set out below are met.

2. The exception applies if the provider demonstrates by convincing evidence to the satisfaction of DMAS that the following criteria have been met:

a. The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the provider organization.

b. A substantial part of the supplying organization's business activity of the type carried on with the provider is transacted with other organizations not related to the provider and the supplier by common ownership or control and there is an open, competitive market for the type of goods or services furnished by the organization. In determining whether the activities are of similar type, it is important to also consider the scope of the activity.

For example, a full service management contract would not be considered the same type of business activity as a minor data processing contract. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well informed buyers and sellers.

c. The goods or services shall be those which commonly are obtained by institutions such as the provider from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by such institutions. This requirement means that institutions such as the provider typically obtain the good or services from outside sources rather than producing the item internally.

d. The charge to the provider is in line with the charge for such services, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such goods or services. The phrase "open market" takes the same meaning as "open, competitive market" in subdivision b above.

3. Where all of the conditions of this exception are met, the charges by the supplier to the provider for such goods or services shall be allowable as costs.

4. This exception does not apply to the purchase, lease or construction of assets such as property, buildings, fixed equipment or major movable equipment. The terms "goods and services" may not be interpreted or construed to mean capital costs associated with such purchases, leases, or construction.

E. Three competitive bids shall not be required for the building and fixed equipment components of a construction project outlined in § 2.2. Reimbursement shall be in accordance with § 2.10 A with the limitations stated in § 2.2 B.

§ 2.11. Administrator/owner compensation.

A. Administrators' compensation, whether administrators are owners or non-owners, shall be based on a schedule adopted by DMAS and varied according to facility bed size. The compensation schedule shall be adjusted annually to reflect cost-of-living increases and shall be published and distributed to providers annually. The administrator's compensation schedule covers only the position of administrator and assistants and does not include the compensation of owners employed in capacities other than the NF administrator (see VR 460-03-4.1943, Cost Reimbursement Limitations).

B. Administrator compensation shall mean remuneration paid regardless of the form in which it is paid. This includes, but shall not be limited to, salaries, professional fees, insurance premiums (if the benefits accrue to the employer/owner or his beneficiary) director fees, personal use of automobiles, consultant fees, management fees, travel allowances, relocation expenses in excess of IRS guidelines, meal allowances, bonuses, pension plan costs, and deferred compensation plans. Management fees, consulting fees, and other services performed by owners shall be included in the total compensation if they are performing administrative duties regardless of how such services may be classified by the provider.

C. Compensation for all administrators (owner and nonowner) shall be based upon a 40 hour week to determine reasonableness of compensation.

D. Owner/administrator employment documentation.

1. Owners who perform services for a NF as an administrator and also perform additional duties must maintain adequate documentation to show that the additional duties were performed beyond the normal 40 hour week as an administrator. The additional duties must be necessary for the operation of the NF and related to patient care.

2. Services provided by owners, whether in employee capacity, through management contracts, or through home office relationships shall be compared to the cost and services provided in arms-length transactions.

3. Compensation for such services shall be adjusted where such compensation exceeds that paid in such arms-length transactions or where there is a

duplication of duties normally rendered by an administrator. No reimbursement shall be allowed for compensation where owner services cannot be documented and audited.

§ 2.12. Depreciation.

The allowance for depreciation shall be restricted to the straight line method with a useful life in compliance with AHA guidelines. If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

§ 2.13. Rent/Leases.

Rent or lease expenses shall be limited by the provisions of VR 460-03-4.1942, Leasing of Facilities.

§ 2.14. Provider payments.

A. Limitations.

1. Payments to providers, shall not exceed charges for covered services except for (i) public providers furnishing services free of charge or at a nominal charge (ii) nonpublic provider whose charges are 60% or less of the allowable reimbursement represented by the charges and that demonstrates its charges are less than allowable reimbursement because its customary practice is to charge patients based on their ability to pay. Nominal charge shall be defined as total charges that are 60% or less of the allowable reimbursement of services represented by these charges. Providers qualifying in this section shall receive allowable reimbursement as determined in this Plan.

2. Allowable reimbursement in excess of charges may be carried forward for payment in the two succeeding cost reporting periods. A new provider may carry forward unreimbursed allowable reimbursement in the five succeeding cost reporting periods.

3. Providers may be reimbursed the carry forward to a succeeding cost reporting period (i) if total charges for the services provided in that subsequent period exceed the total allowable reimbursement in that period (ii) to the extent that the accumulation of the carry forward and the allowable reimbursement in that subsequent period do not exceed the providers' direct and indirect care operating ceilings plus allowable plant cost.

B. Payment for service shall be based upon the rate in effect when the service was rendered.

C. For cost reports filed on or after August 1, 1992, an interim settlement shall be made by DMAS within 180 days after receipt and review of the cost report. The 180-day time frame shall similarly apply to cost reports filed but not interim settled as of August 1, 1992. The word "review," for purposes of interim settlement, shall include verification that all financial and other data specifically requested by DMAS is submitted with the cost report. Review shall also mean examination of the cost report and other required submission for obvious errors, inconsistency, inclusion of past disallowed costs, unresolved prior year cost adjustments and a complete signed cost report that conforms to the current DMAS requirements herein.

However, an interim settlement shall not be made when one of the following conditions exists.

1. Cost report filed by a terminated provider;

2. Insolvency of the provider at the time the cost report is submitted;

3. Lack of a valid provider agreement and decertification;

4. Moneys owed to DMAS;

5. Errors or inconsistencies in the cost report; or

6. Incomplete/nonacceptable cost report.

§ 2.15. Legal fees/accounting.

A. Costs claimed for legal/accounting fees shall be limited to reasonable and customary fees for specific services rendered. Such costs must be related to patient care as defined by Medicare principles of reimbursement and subject to applicable regulations herein. Documentation for legal costs must be available at the time of audit.

B. Retainer fees shall be considered an allowable cost up to the limits established in VR 460-03-4.1943, Cost Reimbursement Limitations.

C. As mandated by the Omnibus Budget Reconciliation Act of 1990, effective November 5, 1990, reimbursement of legal expenses for frivolous litigation shall be denied if the action is initiated on or after November 5, 1990. Frivolous litigation is any action initiated by the nursing facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action.

§ 2.16. Documentation.

Adequate documentation supporting cost claims must be provided at the time of interim settlement, cost settlement, audit, and final settlement.

§ 2.17. Fraud and abuse.

Previously disallowed costs which are under appeal and affect more than one cost reporting period shall be disclosed in subsequent cost reports if the provider wishes to reserve appeal rights for such subsequent cost reports. The reimbursement effect of such appealed costs shall be

computed by the provider and submitted to DMAS with the cost report. Where such disclosure is not made to DMAS, the inclusion of previously disallowed costs may be referred to the Medicaid Fraud Control Unit of the Office of the Attorney General.

Article 4.
New Nursing Facilities.

§ 2.18. Interim rate.

A. For all new or expanded NFs the 95% occupancy requirement shall be waived for establishing the first cost reporting period interim rate. This first cost reporting period shall not exceed 12 months from the date of the NF's certification.

B. Upon a showing of good cause, and approval of the DMAS, an existing NF that expands its bed capacity by 50% or more shall have the option of retaining its prospective rate, or being treated as a new NF.

C. The 95% occupancy requirement shall be applied to the first and subsequent cost reporting periods' actual costs for establishing such NF's second and future cost reporting periods' prospective reimbursement rates. The 95% occupancy requirement shall be considered as having been satisfied if the new NF achieved a 95% occupancy at any point in time during the first cost reporting period.

D. A new NF's interim rate for the first cost reporting period shall be determined based upon the lower of its anticipated allowable cost determined from a detailed budget (or pro forma cost report) prepared by the provider and accepted by the DMAS, or the appropriate operating ceilings or charges.

E. On the first day of its second cost reporting period, a new nursing facility's interim plant rate shall be converted to a per diem amount by dividing it by the number of patient days computed as 95% of the daily licensed bed complement during the first cost reporting period.

F. Any NF receiving reimbursement under new NF status shall not be eligible to receive the blended phase-in period rate under § 2.8.

G. During its first semiannual period of operation, a newly constructed or newly enrolled NF shall have an assigned SII based upon its peer group's average SII for direct patient care. An expanded NF receiving new NF treatment shall receive the SII calculated for its last semiannual period prior to obtaining new NF status.

§ 2.19. Final rate.

The DMAS shall reimburse the lower of the appropriate operating ceilings, charges or actual allowable cost for a new NF's first cost reporting period of operation, subject to the procedures outlined above in § 2.18 A, C, E, and F.

Upon determination of the actual allowable operating cost for direct patient care and indirect patient care the per diem amounts shall be used to determine if the provider is below the peer group ceiling used to set its interim rate. If costs are below those ceilings, an efficiency incentive shall be paid at settlement of the first year cost report.

This incentive will allow a NF to be paid up to 25% of the difference between its actual allowable operating cost and the peer group ceiling used to set the interim rate. (Refer to § 2.7 F.)

Article 5.
Cost Reports.

§ 2.20. Cost report submission.

A. Cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, it is considered delinquent. The cost report shall be deemed complete for the purpose of cost settlement when DMAS has received all of the following, with the exception that the audited financial statements required by subdivisions 3 a and 6 b of this subsection shall be considered timely filed if received not later than 120 days after the provider's fiscal year end:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. a. The provider's audited financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of cash flows, the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, footnotes to the financial statements, and the management report. Multi-facility providers shall be governed by § 2.20 A 6;

b. Schedule of restricted cash funds that identify the purpose of each fund and the amount;

c. Schedule of investments by type (stock, bond, etc.), amount, and current market value;

4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule;

6. NFs which are part of a chain organization must also file:

a. Home office cost report;

b. Audited consolidated financial statements of the chain organization including the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, the management report and footnotes to the financial statements;

c. The NFs financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows;

d. Schedule of restricted cash funds that identify the purpose of each fund and the amount;

e. Schedule of investments by type (stock, bond, etc.), amount, and current market value; and

7. Such other analytical information or supporting documentation that may be required by DMAS.

B. When cost reports are delinquent, the provider's interim rate shall be reduced by 20% the first month and an additional 20% of the original interim rate for each subsequent month the report has not been submitted. DMAS shall notify the provider of the schedule of reductions which shall start on the first day of the following month. For example, for a September 30 fiscal year end, notification will be mailed in early January stating that payments will be reduced starting with the first payment in February.

C. After the overdue cost report is received, desk reviewed, and a new prospective rate established, the amounts withheld shall be computed and paid. If the provider fails to submit a complete cost report within 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to DMAS.

§ 2.21. Reporting form.

All cost reports shall be submitted on uniform reporting forms provided by the DMAS, or by Medicare if applicable. Such cost reports, subsequent to the initial cost report period, shall cover a 12-month period. Any exceptions must be approved by the DMAS.

§ 2.22. Accounting method.

The accrual method of accounting and cost reporting is mandated for all providers.

§ 2.23. Cost report extensions.

A. Extension for submission of a cost report may be granted if the provider can document extraordinary circumstances beyond its control.

B. Extraordinary circumstances do not include:

1. Absence or changes of chief finance officer, controller or bookkeeper;

2. Financial statements not completed;

3. Office or building renovations;

4. Home office cost report not completed;

5. Change of stock ownership;

6. Change of intermediary;

7. Conversion to computer; or

8. Use of reimbursement specialist.

§ 2.24. Fiscal year changes.

All fiscal year end changes must be approved 90 days prior to the beginning of a new fiscal year.

Article 6.
Prospective Rates.

§ 2.25. Time frames.

A. For cost reports filed on or after August 1, 1992, a prospective rate shall be determined by DMAS within 90 days of the receipt of a complete cost report. (See § 2.20 A.) The 180-day time frame shall similarly apply to cost reports filed but for which a prospective rate has not been set as of August 1, 1992. Rate adjustments shall be made retroactive to the first day of the provider's new cost reporting year. Where a field audit is necessary to set a prospective rate, the DMAS shall have an additional 90 days to determine any appropriate adjustments to the prospective rate as a result of such field audit. This time period shall be extended if delays are attributed to the provider.

B. Subsequent to establishing the prospective rate DMAS shall conclude the desk audit of a providers' cost report and determine if further field audit activity is necessary. The DMAS will seek repayment or make retroactive settlements when audit adjustments are made to costs claimed for reimbursement.

Article 7.
Retrospective rates.

§ 2.26. The retrospective method of reimbursement shall be used for Mental Health/Mental Retardation facilities.

§ 2.27. (reserved)

Article 8.
Record Retention.

§ 2.28. Time frames.

A. All of the NF's accounting and related records,

including the general ledger, books of original entry, and statistical data must be maintained for a minimum of five years, or until all affected cost reports are final settled.

B. Certain information must be maintained for the duration of the provider's participation in the DMAS and until such time as all cost reports are settled. Examples of such information are set forth in § 2.29.

§ 2.29. Types of records to be maintained.

Information which must be maintained for the duration of the provider's participation in the DMAS includes, but is not limited to:

1. Real and tangible property records, including leases and the underlying cost of ownership;

2. Itemized depreciation schedules;

3. Mortgage documents, loan agreements, and amortization schedules;

4. Copies of all cost reports filed with the DMAS together with supporting financial statements.

§ 2.30. Record availability.

The records must be available for audits by DMAS staff. Where such records are not available, costs shall be disallowed.

Article 9.
Audits.

§ 2.31. Audit overview.

Desk audits shall be performed to verify the completeness and accuracy of the cost report, and reasonableness of costs claimed for reimbursement. Field audits, as determined necessary by the DMAS, shall be performed on the records of each participating provider to determine that costs included for reimbursement were accurately determined and reasonable, and do not exceed the ceilings or other reimbursement limitations established by the DMAS.

§ 2.32. Scope of audit.

The scope of the audit includes, but shall not be limited to: trial balance verification, analysis of fixed assets, indebtedness, selected revenues, leases and the underlying cost of ownership, rentals and other contractual obligations, and costs to related organizations. The audit scope may also include various other analyses and studies relating to issues and questions unique to the NF and identified by the DMAS. Census and related statistics, patient trust funds, and billing procedures are also subject to audit.

§ 2.33. Field audit requirements.

Field audits shall be required as follows:

1. For the first cost report on all new NF's.

2. For the first cost report in which costs for bed additions or other expansions are included.

3. When a NF is sold, purchased, or leased.

4. As determined by DMAS desk audit.

§ 2.34. Provider notification.

The provider shall be notified in writing of all adjustments to be made to a cost report resulting from desk or field audit with stated reasons and references to the appropriate principles of reimbursement or other appropriate regulatory cites.

§ 2.35. Field audit exit conference.

A. The provider shall be offered an exit conference to be executed within 15 days following completion of the on-site audit activities, unless other time frames are mutually agreed to by the DMAS and provider. Where two or more providers are part of a chain organization or under common ownership, DMAS shall have up to 90 days after completion of all related on-site audit activities to offer an exit conference for all such NFs. The exit conference shall be conducted at the site of the audit or at a location mutually agreeable to the DMAS and the provider.

B. The purpose of the exit conference shall be to enable the DMAS auditor to discuss such matters as the auditor deems necessary, to review the proposed field audit adjustments, and to present supportive references. The provider will be given an opportunity during the exit conference to present additional documentation and agreement or disagreement with the audit adjustments.

C. All remaining adjustments, including those for which additional documentation is insufficient or not accepted by the DMAS, shall be applied to the applicable cost report(s) regardless of the provider's approval or disapproval.

D. The provider shall sign an exit conference form that acknowledges the review of proposed adjustments.

E. After the exit conference the DMAS shall perform a review of all remaining field audit adjustments. Within a reasonable time and after all documents have been submitted by the provider, the DMAS shall transmit in writing to the provider a final field audit adjustment report (FAAR), which will include all remaining adjustments not resolved during the exit conference. The provider shall have 15 days from the date of the letter which transmits the FAAR, to submit any additional documentation which may affect adjustments in the FAAR.

§ 2.36. Audit delay.

In the event the provider delays or refuses to permit an audit to occur or to continue or otherwise interferes with the audit process, payments to the provider shall be reduced as stated in § 2.20 B.

§ 2.37. Field audit time frames.

A. If a field audit is necessary after receipt of a complete cost report, such audit shall be initiated within three years following the date of the last notification of program reimbursement and the on site activities, including exit conferences, shall be concluded within 180 days from the date the field audit begins. Where audits are performed on cost reports for multiple years or providers, the time frames shall be reasonably extended for the benefit of the DMAS and subject to the provisions of § 2.35.

B. Documented delays on the part of the provider will automatically extend the above time frames to the extent of the time delayed.

C. Extensions of the time frames shall be granted to the department for good cause shown.

D. Disputes relating to the timeliness established in §§ 2.35 and 2.37, or to the grant of extensions to the DMAS, shall be resolved by application to the Director of the DMAS or his designee.

PART III.
APPEALS.

§ 3.1. Dispute resolution for nonstate operated nursing facilities.

A. NF's have the right to appeal the DMAS's interpretation and application of state and federal Medicaid and applicable Medicare principles of reimbursement in accordance with the Administrative Process Act, § 9-6.14.1 et seq. and § 32.1-325.1 of the Code of Virginia.

B. Nonappealable issues.

1. The use of state and federal Medicaid and applicable Medicare principles of reimbursement.

2. The organization of participating NF's into peer groups according to location as a proxy for cost variation across facilities with similar operating characteristics. The use of individual ceilings as a proxy for determining efficient operation within each peer group.

3. Calculation of the initial peer group ceilings using the most recent cost settled data available to DMAS that reflects NF operating costs inflated to September 30, 1990.

4. The use of the moving average of the Skilled Nursing Facility market basket of routine service costs, as developed by Data Resources, Incorporated, adjusted for Virginia, as the prospective escalator.

5. The establishment of separate ceilings for direct operating costs and indirect operating costs.

6. The use of Service Intensity Indexes to identify the resource needs of given NFs patient mix relative to the needs present in other NFs.

7. The development of Service Intensity Indexes based on:

a. Determination of resource indexes for each patient class that measures relative resource cost.

b. Determination of each NF's average relative resource cost index across all patients.

c. Standardizing the average relative resource cost indexes of each NF across all NF's.

8. The use of the DMAS Long Term Care Information System (LTCIS), assessment form (currently DMAS-95), Virginia Center on Aging Study, the State of Maryland Time and Motion Study of the Provision of Nursing Service in Long Term Care Facilities, and the KPMG Peat Marwick Survey of Virginia long-term care NF's nursing wages to determine the patient class system and resource indexes for each patient class.

9. The establishment of payment rates based on service intensity indexes.

§ 3.2. Conditions for appeal.

An appeal shall not be heard until the following conditions are met:

1. Where appeals result from desk or field audit adjustments, the provider shall have received a notification of program reimbursement (NPR) in writing from the DMAS.

2. Any and all moneys due to DMAS shall be paid in full, unless a repayment plan has been agreed to by the Director of the Division of Cost Settlement and Audit.

3. All first level appeal requests shall be filed in writing with the DMAS within 90 business days following the date of a DMAS notice of program reimbursement that adjustments have been made to a specific cost report.

§ 3.3. Appeal procedure.

A. There shall be two levels of administrative appeal.

B. Informal appeals shall be decided by the Director of

the Division of Cost Settlement and Audit after an informal fact finding conference is held. The decision of the Director of Cost Settlement and Audit shall be sent in writing to the provider within 90 business days following conclusion of the informal fact finding conference.

C. If the provider disagrees with such initial decision the provider may, at its discretion, file a notice of appeal to the Director of the DMAS. Such notice shall be in writing and filed within 30 business days of the date of the initial decision.

D. Within 30 business days of the date of such notice of appeal, the director shall appoint a hearing officer to conduct the proceedings, to review the issues and the evidence presented, and to make a written recommendation.

E. The director shall notify the provider of his final decision within 30 business days of the date of the appointed hearing officer's written recommendation, or after the parties have filed exceptions to the recommendations, whichever is later.

F. The director's final written decision shall conclude the provider's administrative appeal.

§ 3.4. Formal hearing procedures.

Formal hearing procedures, as developed by DMAS, shall control the conduct of the formal administrative proceedings.

§ 3.5. Appeals time frames.

Appeal time frames noted throughout this section may be extended for the following reasons;

A. The provider submits a written request prior to the due date requesting an extension for good cause and the DMAS approves the extension.

B. Delays on the part of the NF documented by the DMAS shall automatically extend DMAS's time frame to the extent of the time delayed.

C. Extensions of time frames shall be granted to the DMAS for good cause shown.

D. When appeals for multiple years are submitted by a NF or a chain organization or common owners are coordinating appeals for more than one NF, the time frames shall be reasonably extended for the benefit of the DMAS.

E. Disputes relating to the time lines established in § 3.3 B or to the grant of extensions to the DMAS shall be resolved by application to the Director of the DMAS or his designee.

§ 3.6. Dispute resolution for state-operated NFs.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

"Division director" means the director of a division of DMAS.

"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

B. Right to request reconsideration.

1. A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.

2. The appropriate DMAS division must receive the reconsideration request within 30 business days after the date of a DMAS Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

C. Informal review.

The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought; the amount of the adjustment sought; and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

D. Division director action.

The division director shall consider any recommendation of his designee and shall render a decision.

E. DMAS director review.

A state-operated provider may, within 30 business days after the date of the informal review decision of the division director, request that the DMAS Director or his designee review the decision of the division director. The DMAS Director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

F. Secretarial review.

If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30

business days after the date of the decision of the DMAS Director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other cabinet secretary as appropriate. Any determination by such secretary or secretaries shall be final.

PART IV.
INDIVIDUAL EXPENSE LIMITATION.

In addition to operating costs being subject to peer group ceilings, costs are further subject to maximum limitations as defined in VR 460-03-4.1943, Cost Reimbursement Limitations.

PART V.
COST REPORT PREPARATION INSTRUCTIONS.

Instructions for preparing NF cost reports will be provided by the DMAS.

PART VI.
STOCK TRANSACTIONS.

§ 6.1. Stock acquisition.

The acquisition of the capital stock of a provider does not constitute a basis for revaluation of the provider's assets. Any cost associated with such an acquisition shall not be an allowable cost. The provider selling its stock continues as a provider after the sale, and the purchaser is only a stockholder of the provider.

§ 6.2. Merger of unrelated parties.

A. In the case of a merger which combines two or more unrelated corporations under the regulations of the Code of Virginia, there will be only one surviving corporation. If the surviving corporation, which will own the assets and liabilities of the merged corporation, is not a provider, a Certificate of Public Need, if applicable, must be issued to the surviving corporation.

B. The nonsurviving corporation shall be subject to the policies applicable to terminated providers, including those relating to gain or loss on sales of NFs.

§ 6.3. Merger of related parties.

The statutory merger of two or more related parties or the consolidation of two or more related providers resulting in a new corporate entity shall be treated as a transaction between related parties. No revaluation shall be permitted for the surviving corporation.

PART VII.
NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAM AND COMPETENCY EVALUATION PROGRAMS (NATCEPs).

§ 7.1. The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) amended § 1903(a)(2)(B) of the Social Security Act to fund actual NATCEPs costs incurred by NFs separately from the NF's medical assistance services reimbursement rates.

§ 7.2. NATCEPs costs.

A. NATCEPs costs shall be as defined in VR 460-03-4.1941.

B. To calculate the reimbursement rate, NATCEPs costs contained in the most recently filed cost report shall be converted to a per diem amount by dividing allowable NATCEPs costs by the actual number of NF's patient days.

C. The NATCEPs interim reimbursement rate determined in § 7.2 B shall be added to the prospective operating cost and plant cost components or charges, whichever is lower, to determine the NF's prospective rate. The NATCEPs interim reimbursement rate shall not be adjusted for inflation.

D. Reimbursement of NF costs for training and competency evaluation of nurse aides must take into account the NF's use of trained nurse aides in caring for Medicaid, Medicare and private pay patients. Medicaid shall not be charged for that portion of NATCEPs costs which are properly charged to Medicare or private pay services. The final retrospective reimbursement for NATCEPs costs shall be the reimbursement rate as calculated from the most recently filed cost report by the methodology in § 7.2 B times the Medicaid patient days from the DMAS MMR-240.

E. Disallowance of nonreimbursable NATCEPs costs shall be reflected in the year in which the nonreimbursable costs were claimed.

F. Payments to providers for allowable NATCEPs costs shall not be considered in the comparison of the lower allowable reimbursement or charges for covered services, as outlined in § 2.14 A.

PART VIII.
CRIMINAL RECORDS CHECKS FOR NURSING FACILITY EMPLOYEES.

§ 8.1. Criminal records checks.

A. This section implements the requirements of § 32.1-126.01 of the Code of Virginia and Chapter 994 of the Acts of Assembly of 1993 (Item 313 T).

B. A licensed nursing facility shall not hire for compensated employment persons who have been convicted of:

1. Murder;

2. Abduction for immoral purposes as set out in § 18.2-48 of the Code of Virginia;

3. Assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia;

4. Arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2 of the Code of Virginia;

5. Pandering as set out in § 18.2-355 of the Code of Virginia;

6. Crimes against nature involving children as set out in § 18.2-361 of the Code of Virginia;

7. Taking indecent liberties with children as set out in §§ 18.2-370 or 18.2-370.1 of the Code of Virginia;

8. Abuse and neglect of children as set out in § 18.2-371.1 of the Code of Virginia;

9. Failure to secure medical attention for an injured child as set out in § 18.2-314 of the Code of Virginia;

10. Obscenity offenses as set out in § 18.2-374.1 of the Code of Virginia; or

11. Abuse or neglect of an incapacitated adult as set out in § 18.2-369 of the Code of Virginia.

C. The provider shall obtain a sworn statement or affirmation from every applicant disclosing any criminal convictions or pending criminal charges for any of the offenses specified in subsection B regardless of whether the conviction or charges occurred in the Commonwealth.

D. The provider shall obtain an original criminal record clearance or an original criminal record history from the Central Criminal Records Exchange for every person hired. This information shall be obtained within 30 days from the date of employment and maintained in the employees' files during the term of employment and for a minimum of five years after employment terminates for whatever reason.

E. The provider may hire an applicant whose misdemeanor conviction is more than five years old and whose conviction did not involve abuse or neglect or moral turpitude.

F. Reimbursement to the provider will be handled through the cost reporting form provided by the DMAS and will be limited to the actual charges made by the Central Criminal Records Exchange for the records requested. Such actual charges will be a pass-through cost which is not a part of the operating or plant cost components.

PART IX.
USE OF MMR-240.

All providers must use the data from computer printout MMR-240 based upon a 60-day accrual period.

PART X.
COMMINGLED INVESTMENT INCOME.

DMAS shall treat funds commingled for investment purposes in accordance with PRM-15, § 202.6.

PART XI.
PROVIDER NOTIFICATION.

DMAS shall notify providers of State Plan changes affecting reimbursement 30 days prior to the enactment of such changes.

PART XII.
START-UP COSTS AND ORGANIZATIONAL COSTS.

§ 12.1. Start-up costs.

A. In the period of developing a provider's ability to furnish patient care services, certain costs are incurred. The costs incurred during this time of preparation are referred to as start-up costs. Since these costs are related to patient care services rendered after the time of preparation, they shall be capitalized as deferred charges and amortized over a 60-month time frame.

B. Start-up costs may include, but are not limited to, administrative and nursing salaries; heat, gas, and electricity; taxes, insurance; employee training costs; repairs and maintenance; housekeeping; and any other allowable costs incident to the start-up period. However, any costs that are properly identifiable as operating costs must be appropriately classified as such and excluded from start-up costs.

C. Start-up costs that are incurred immediately before a provider enters the Program and that are determined by the provider, subject to the DMAS approval, to be immaterial need not be capitalized but rather may be charged to operations in the first cost reporting period.

D. Where a provider incurs start-up costs while in the Program and these costs are determined by the provider, subject to the DMAS approval, to be immaterial, these costs shall not be capitalized but shall be charged to operations in the periods incurred.

§ 12.2. Applicability.

A. Start-up cost time frames.

1. Start-up costs are incurred from the time preparation begins on a newly constructed or purchased building, wing, floor, unit, or expansion thereof to the time the first patient (whether Medicaid or non-Medicaid) is admitted for treatment, or where the start-up costs apply only to nonrevenue producing patient care functions or nonallowable functions, to the time the areas are used for their intended purposes.

2. If a provider intends to prepare all portions of its

entire facility at the same time, start-up costs for all portions of the facility shall be accumulated in a single deferred charge account and shall be amortized when the first patient is admitted for treatment.

3. If a provider intends to prepare portions of its facility on a piecemeal basis (i.e., preparation of a floor or wing of a provider's facility is delayed), start-up costs shall be capitalized and amortized separately for the portion or portions of the provider's facility prepared during different time periods.

4. Moreover, if a provider expands its NF by constructing or purchasing additional buildings or wings, start-up costs shall be capitalized and amortized separately for these areas.

B. Depreciation time frames.

1. Costs of the provider's facility and building equipment shall be depreciated using the straight line method over the lives of these assets starting with the month the first patient is admitted for treatment.

2. Where portions of the provider's NF are prepared for patient care services after the initial start-up period, those asset costs applicable to each portion shall be depreciated over the remaining lives of the applicable assets. If the portion of the NF is a nonrevenue-producing patient care area or nonallowable area, depreciation shall begin when the area is opened for its intended purpose. Costs of major movable equipment, however, shall be depreciated over the useful life of each item starting with the month the item is placed into operation.

§ 12.3. Organizational costs.

A. Organizational costs are those costs directly incident to the creation of a corporation or other form of business. These costs are an intangible asset in that they represent expenditures for rights and privileges which have a value to the enterprise. The services inherent in organizational costs extend over more than one accounting period and thus affect the costs of future periods of operations.

B. Allowable organizational costs shall include, but not be limited to, legal fees incurred in establishing the corporation or other organization (such as drafting the corporate charter and by-laws, legal agreements, minutes of organizational meeting, terms of original stock certificates), necessary accounting fees, expenses of temporary directors and organizational meetings of directors and stockholders and fees paid to states for incorporation.

C. The following types of costs shall not be considered allowable organizational costs: costs relating to the issuance and sale of shares of capital stock or other securities, such as underwriters fees and commissions, accountant's or lawyer's fees, cost of qualifying the issues with the appropriate state or federal authorities, stamp taxes, etc.

D. Allowable organization costs shall generally be capitalized by the organization. However, if DMAS concludes that these costs are not material when compared to total allowable costs, they may be included in allowable indirect operating costs for the initial cost reporting period. In all other circumstances, allowable organization costs shall be amortized ratably over a period of 60 months starting with the month the first patient is admitted for treatment.

PART XIII.
DMAS AUTHORIZATION.

§ 13.1. Access to records.

A. DMAS shall be authorized to request and review, either through a desk or field audit, all information related to the provider's cost report that is necessary to ascertain the propriety and allocation of costs (in accordance with Medicare and Medicaid rules, regulations, and limitations) to patient care and nonpatient care activities.

B. Examples of such information shall include, but not be limited to, all accounting records, mortgages, deeds, contracts, meeting minutes, salary schedules, home office services, cost reports, and financial statements.

C. This access also applies to related organizations as defined in § 2.10 who provide assets and other goods and services to the provider.

PART XIV.
HOME OFFICE COSTS.

§ 14.1. General.

Home office costs shall be allowable to the extent they are reasonable, relate to patient care, and provide cost savings to the provider.

§ 14.2. Purchases.

Provider purchases from related organizations, whether for services, or supplies, shall be limited to the lower of the related organizations actual cost or the price of comparable purchases made elsewhere.

§ 14.3. Allocation of home office costs.

Home office costs shall be allocated in accordance with § 2150.3, PRM-15.

§ 14.4. Nonrelated management services.

Home office costs associated with providing management services to nonrelated entities shall not be recognized as allowable reimbursable cost.

§ 14.5. Allowable and nonallowable home office costs.

Allowable and nonallowable home office costs shall be recognized in accordance with § 2150.2, PRM-15.

§ 14.6. Equity capital.

Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers for periods or portions thereof on or after July 1, 1987.

PART XV.
REFUND OF OVERPAYMENTS.

§ 15.1. Lump sum payment.

When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk audit, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS' determination of the overpayment.

§ 15.2. Offset.

If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall be used to reduce the balance of the overpayment.

§ 15.3. Payment schedule.

A. If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request in writing an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request in writing an extended repayment schedule.

B. DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of DMAS may approve a repayment schedule of up to 36 months.

C. A provider shall have no more than one extended repayment schedule in place at one time. If subsequent audits identify additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amounts.

D. If, during the time an extended repayment schedule is in effect, the provider ceases to be a participating provider or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

E. When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered from interim payments to the provider or by lump sum payments.

§ 15.4. Extension request documentation.

In the written request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

§ 15.5. Interest charge on extended repayment.

A. Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

B. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

C. The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal fact finding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

PART XVI.
REVALUATION OF ASSETS.

§ 16.1. Change of ownership.

A. Under the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272,

reimbursement for capital upon the change of ownership of a NF is restricted to the lesser of:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year, or

2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U) applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year.

B. To comply with the provisions of COBRA 1985, effective October 1, 1986, the DMAS shall separately apply the following computations to the capital assets of each facility which has undergone a change of ownership:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index, or

2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U).

C. Change of ownership is deemed to have occurred only when there has been a bona fide sale of assets of a NF (See § 2.5 B 3 for the definition of "bona fide" sale).

D. Reimbursement for capital assets which have been revalued when a facility has undergone a change of ownership shall be limited to the lesser of:

1. The amounts computed in subsection B above;

2. Appraised replacement cost value; or

3. Purchase price.

E. Date of acquisition is deemed to have occurred on the date legal title passed to the seller. If a legal titling date is not determinable, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.

NOTICE: The forms used in administering the Nursing Home Payment System are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

(PIRS 1090 Series)

Schedule A - Facility Description and Statistical Data

Schedule A-1 - Certification by Officer or Administrator of Provider

Schedule A-2 - Certification by Officer or Administrator of Provider

Schedule A-3 - Computation of Patient Intensity Reimbursement System Base Operating Costs

Schedule A-4 - Computation of Direct Patient Care Nursing Service Costs

Schedule B - Reclassification and Adjustment of Trial Balance of Expenses

Schedule B-1 - Reclassifications

Schedule B-2 - Analysis of Administrative and General - Other

Schedule B-4 - Adjustment to Expenses

Schedule B-5, Part I - Cost Allocation - Employee Benefits

Schedule B-5, Part II - Cost Allocation - Employee Benefits - Statistical Basis

Schedule C - Computation of Title XIX Direct Patient Care Ancillary Service Costs

Schedule D - Statement of Cost of Services From Related Organizations

Schedule E - Statement of Compensation of Owners

Schedule F - Statement of Compensation of Administrators and/or Assistant Administrators

Schedule G - Balance Sheet

Schedule G-1 - Statement of Patient Revenues

Schedule G-2 - Statement of Operations

Schedule H, Part I - Computation of Title XIX Base Costs and Prospective Reimbursement Rate

Schedule H, Part II - Discontinued

Schedule H, Part III - Discontinued

Schedule H-1 - Computation of Prospective Direct and Indirect Patient Care Profit Incentive Rates

Schedule J - Calculation of Medical Service

Reimbursement Settlement

Schedule J, Part I - Discontinued

Schedule J, Part II - Computation of Nursing Facility Medical Service Potential Prospective Reimbursement

Schedule J, Part III - Settlement Computations

Schedule J, Part IV - Analysis of Nursing Facility Interim Payments for Title XIX Services

Schedule J, Part V - Analysis of Quarterly Title XIX Patient Days

Schedule J, Part VI - Accumulation of Title XIX Charges

Schedule J-1 - Calculation of NATCEPs Reimbursement Account

Schedule J-2 - Calculation of Criminal Record Check Costs Reimbursement

Schedule K - Debt and Interest Expense

Schedule L - Limitation on Federal Participation for Capital Expenditures Questionnaire

Schedule N - Nurse Aide Training and Competency Evaluation Program Costs and Competency Evaluation Programs (NATCEPs)

(HCFA-2540 Worksheets)

Worksheet S-3 - Nursing facility statistical data

Worksheet A - Reclassification and adjustment of trial balances of expenses

Worksheet A-6 - Reclassifications

Worksheet A-8 - Adjustments to Expenses

Supplemental Worksheet A-8-1 - Statement of Costs of Services from related organizations

Worksheet B, Part I - Cost Allocation - General Service Costs

Worksheet B-1 - Cost Allocation - Statistical Basis

Worksheet B, Part II - Allocation of Capital Related Costs

Worksheet C - Departmental Cost Distribution

Worksheet G - Balance Sheet

VA.R. Doc. No. R94-1131; Filed July 20, 1994, 11:17 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: **VR 615-01-29. Aid to Families with Dependent Children (AFDC) Program - Disregarded Income and Resources.**

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

Public Hearing Date: N/A – Written comments may be submitted through October 7, 1994.
(See Calendar of Events section for additional information)

Basis: The proposed regulation has been developed pursuant to § 63.1-25 of the Code of Virginia. This section gives the State Board of Social Services authority to make rules and regulations deemed necessary or desirable to carry out the true purpose and intent of Title 63.1 of the Code of Virginia. Sections 45 CFR 233.20(a)(3)(iv)(B) and 45 CFR 233.20(a)(3)(xxi) also provide a basis for the proposed regulation.

This regulation identifies additional types of income and resources which must be disregarded in determining eligibility and the benefit amount in the Aid to Families with Dependent Children (AFDC) Program.

Purpose: Final federal regulations published February 2, 1994, amend the existing regulations concerning treatment of loans in relation to the financial eligibility of families applying for or receiving AFDC benefits. The purpose of this regulation is to bring Virginia's Aid to Families with Dependent Children (AFDC) Program requirements into compliance with amended federal regulations in the area of income and resources and to establish what constitutes a bona fide loan.

Substance: The amended regulations require that, in evaluating income and resources to be counted in the AFDC Program, states must disregard bona fide loans regardless of their source or intended use. The disregard is limited to the principal of the loan. If the loan is placed in a financial instrument which accrues interest, the interest is not covered by the disregard provision and must be treated as income to the AFDC family. If the money borrowed is used to make a purchase, the item purchased is then evaluated as a resource. The regulations also require each state to establish criteria for identifying a bona fide loan.

Under existing regulations, loans obtained for current living costs may be counted as income in the eligibility and benefit determinations. The effect of other loans on a family's eligibility depends upon the source of the loan and the purpose for which the loan was received and used. Generally, educational loans are totally disregarded for both income and resource purposes or, at a minimum, the portion used to meet educational expenses is disregarded.

Issues: Money received as a loan must be repaid. The duty to repay distinguishes it from all other forms of income. Since the borrower must repay the loan principal in its entirety, the loan must not be treated as income for AFDC purposes. If a loan is used to purchase a resource, that loan is considered totally encumbered and, therefore, is not a resource. The disregard does not extend to interest earned on a loan while held by the borrower, or purchases made with the proceeds of a loan.

The proposed regulation has no advantages or disadvantages for the general public. For AFDC applicants and recipients, however, the change is advantageous since money received as a loan will no longer be counted in the evaluation of eligibility or calculation of monthly benefits. Local departments of social services will also find the regulation advantageous since it makes policies in the Food Stamp Program and AFDC Program more alike. This contributes to ease in administration. Since the proposed regulation is, in part, federally mandated, it will also assure that the program remains in compliance with federal law and regulations. This change will not impact local governments. There are no disadvantages to this change.

Impact: The regulation's fiscal impact cannot be determined as data specific to loans is not available from which to make an accurate projection of the cost. The following factors suggest, however, that the cost may be small: (i) educational loans are already disregarded in most instances, if not totally then at least the portion used for school or school-related expenses; (ii) not all loans are now being reported; and (iii) the irregular receipt of loans to help with current living expenses often precludes anticipating their receipt, thus limiting the number of loans counted under current policy.

Based on a snapshot of the AFDC caseload in January 1994, cash and other contributions were counted in .84% of the cases. We believe the number that were actually loans constituted only a very small percentage of those cases. If, however, all are treated as loans, the state's share of the increased cost in AFDC benefits for FY 1995, which is 50% of the total cost, would be $32,382.50 monthly, or $194,295, if implemented in January 1995. Using the same monthly amount for FY 1996, the state's AFDC benefit costs would be increased by $388,590. No increase in administrative costs is anticipated.

Similarly, the agency believes that the increase in Medicaid costs will be negligible; however, data is also unavailable for an accurate estimate in this program.

Summary:

According to amended federal regulations in the Aid to Families with Dependent Children (AFDC) Program, states are mandated to count income and resources of an AFDC family unless specifically identified as disregarded. The proposed regulation adds bona fide loans to the types of income and resources which shall be disregarded. The proposed disregard applies to the principal of the loan only. If a loan is placed in a bank account or other financial instrument, any interest earned is not exempt under this disregard and shall be treated according to existing rules in the AFDC Program applicable to treatment of interest. In addition to mandating this disregard, amended federal regulations require states to establish criteria to determine whether a loan is bona fide. In response to this requirement, the proposed regulations indicate, for purposes of Virginia's AFDC Program, what constitutes a bona fide loan.

VR 615-01-29. Aid to Families with Dependent Children (AFDC) Program - Disregarded Income and Resources.

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:

"Agent Orange payments" means any payment from the Agent Orange Settlement Fund or any other fund established pursuant to the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

"Aid to Families with Dependent Children (AFDC) Program" means the program administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"Allowable reserve" means the type and amount of real and personal property, including cash and liquid assets, which may be retained by the assistance unit without affecting eligibility for financial assistance.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive an assistance payment.

"Attendance costs" means tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

"Emergency" means any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship or suffering caused thereby.

"Native Corporation" means regional, village, urban or group corporations organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage, or distribute lands, funds, and other rights and assets for or on behalf of members of a native group in accordance with the Alaska Native Claims Settlement Act.

PART II.
DISREGARDED INCOME AND RESOURCES.

§ 2.1. Disregarded income.

A. The following income of members of the assistance unit, a parent not included in the assistance unit or anyone whose income is used in determining eligibility or the amount of assistance in the Aid to Families with Dependent Children (AFDC) program, shall be disregarded.

B. Income which is disregarded under the following provisions shall not be counted in determining the need for assistance of any individual under any other federal assistance program:

1. Home produce of the assistance unit utilized for their own consumption;

2. The value of food coupons under the Food Stamps program;

3. The value of foods donated under the U.S.D.A. Commodity Distribution Program, including those furnished through school meal programs;

4. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

5. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

6. Grants or loans to any undergraduate students for educational purposes made or insured under any program administered by the U.S. ~~Commissioner~~ *Secretary* of Education.

Programs that are administered by the U.S. ~~Commissioner~~ *Secretary* of Education include: Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan, Guaranteed Student Loan (including the Virginia Education Loan), PLUS Loan, Congressional Teacher Scholarship Program, College Scholarship Assistance Program, and the Virginia Transfer Grant Program;

7. Funds derived from the College Work Study Program;

8. A scholarship ; ~~loan,~~ or grant obtained and used under conditions which preclude its use for current living costs;

9. Training allowance (transportation, books, required training expenses, and motivational allowance) provided by the Department of Rehabilitative Services (DRS) for persons participating in Rehabilitative Services Programs. This disregard is not applicable to the allowance provided by DRS to the family of the participating individual;

10. Any portion of an SSI payment or Auxiliary Grant;

11. Payments to VISTA Volunteers under Title I, when the monetary value of such payments is less ~~the~~ *than* minimum wage as determined by the Director of the Action Office, and payments for services of reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and other programs pursuant to Titles II and III, of Public Law 93-13, the Domestic Volunteer Service Act of 1973;

12. The Veterans Administration educational amount for the caretaker 18 or older is to be disregarded when it is used specifically for educational purposes.

Any additional money included in the benefit amount for dependents is to be counted as income to the assistance unit;

13. Foster care payments received by anyone in the assistance unit;

14. Unearned income received from Title IV, Part B (Job Corps) of the Job Training Partnership Act (JTPA) by an eligible child is to be disregarded as an incentive payment. However, any payment received by any other Job Corps participant or any payment made on behalf of the participant's eligible child(ren) is to be counted as income to the assistance unit;

15. Income tax refunds including earned income tax credit advance payments and refunds;

16. Payments made under the Fuel Assistance

program;

17. The value of supplemental food assistance received under the Child Nutrition Act of 1966. This includes all school meal programs; the Women, Infants, and Children (WIC) program; and the Child Care Food program;

18. HUD Section 8 and Section 23 payments;

19. Unearned income received by an eligible child under Title II, Parts A and B, and Title IV, Part A, of the Job Training Partnership Act (JTPA) is to be disregarded;

20. Funds distributed to, or held in trust for, members of any Indian tribe under Public Laws 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, or 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income, are disregarded;

21. The following types of distributions received from a Native Corporation under the Alaska Native Claims Settlement Act (Public Law 100-241):

a. Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per year;

b. Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

c. A partnership interest;

d. Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

e. An interest in a settlement trust.

22. Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Public Law 92-114);

23. The first $50 of total child or spousal support payments received each month by an assistance unit prior to the issuance of the first ongoing check;

24. Payments sent to the recipient by the Commonwealth which are identified as disregarded support;

25. Federal major disaster and emergency assistance provided under the Disaster Relief and Emergency Assistance Amendments of 1988, and disaster assistance provided by state and local governments and disaster assistance organizations (Public Law 100-707);

26. Payments received by individuals of Japanese ancestry under the Civil Liberties Act of 1988, and by Aleuts under the Aleutian and Pribilof Islands Restitution Act (Public Law 100-383);

27. Agent Orange payments;

28. Payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426);

29. Funds received pursuant to the Maine Indians Claims Settlement Act of 1980 (Public Law (96-420) and the Aroostook Band of Micmacs Settlement Act (Public Law 102-171);

30. Student financial assistance received under Title IV of the Higher Education Amendments of 1992 (Public Law 102-325);

31. Student financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act made available for attendance costs (Public Law 101-392); ~~and~~

32. Student financial assistance received under the Bureau of Indian Affairs student assistance programs ~~.~~ *; and*

33. All bona fide loans. The loan may be for any purpose and may be from a private individual as well as from a commercial institution. The disregard is limited to the principal of a loan. A simple statement signed by both parties indicating that the payment is a loan and must be repaid is sufficient to verify that a loan is bona fide. Interest earned on the proceeds of a loan while held in a savings or checking account or other financial instrument shall be counted as income in the month received and as a resource thereafter. Purchases made with a loan are counted as resources.

§ 2.2. Disregarded resources.

In determining eligibility for financial assistance for the Aid to Families with Dependent Children (AFDC) program, all resources shall be considered in relation to the $1,000 allowable reserve, except as specifically disregarded below. These resources shall be disregarded as long as they are kept separate from the allowable reserve. In the event any funds derived from subdivisions 3 through ~~16~~ *21* of this section are combined with other resources, they shall be considered in determining eligibility.

1. The value of the food coupons under the Food Stamp Program;

2. The value of foods donated under the U.S.D.A. Commodity Distribution Program;

3. Payments received under Title II of the Uniform

Relocation Assistance and Real Property Acquisition Policies Act of 1970;

4. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

5. Grants or loans to undergraduate students for educational purposes, made or insured under any program administered by the U.S. ~~Commissioner~~ *Secretary* of Education.

Programs that are administered by the U.S. ~~Commissioner~~ *Secretary* of Education include: Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan, Congressional Teacher Scholarship Program, College Scholarship Assistance Program, and the Virginia Transfer Grant Program;

6. The value of supplemental food assistance received under the Child Nutrition Act of 1966. This includes all school meal programs, the Women, Infants, and Children (WIC) program, and the Child Care Food program;

7. Payments to VISTA volunteers under Title I, when the monetary value of such payments is less than minimum wage as determined by the director of the Action Office, and payments for services of reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and other programs pursuant to Titles II and III, of Public Law 93-113, the Domestic Volunteer Service Act of 1973;

8. Funds distributed to, or held in trust for, members of any Indian tribe under Public Law 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, or 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income, are disregarded;

9. The following types of distributions received from a Native Corporation under the Alaska Native Claims Settlement Act (Public Law 100-241):

a. Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per year;

b. Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

c. A partnership interest;

d. Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

e. An interest in a settlement trust.

10. Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Public Law 94-114);

11. Disregarded support payments which were sent to the recipient by the Virginia Department of Social Services or determined to be a disregard by the eligibility worker;

12. Tools and equipment belonging to a temporarily disabled member of the assistance unit during the period of disability, when such tools and equipment have been and will continue to be used for employment;

13. Federal major disaster and emergency assistance provided under the Disaster Relief and Emergency Assistance Amendments of 1988, and disaster assistance provided by state and local governments and disaster assistance organizations (Public Law 100-707);

14. Payments received by individuals of Japanese ancestry under the Civil Liberties Act of 1988, and by Aleuts under the Aleutian and Pribilof Island Restitution Act (Public Law 100-383);

15. Agent Orange payments;

16. Payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426);

17. Funds received pursuant to the Maine Indians Claims Settlement Act of 1980 (Public Law (96-420) and the Aroostook Band of Micmacs Settlement Act (Public Law 102-171);

18. Student financial assistance received under Title IV of the Higher Education Amendments of 1992 (Public Law 102-325);

19. Student financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act made available for attendance costs (Public Law 101-392); ~~and~~

20. Student financial assistance received under the Bureau of Indian Affairs student assistance programs ~~.~~ *; and*

21. All bona fide loans. The loan may be for any purpose and may be from a private individual as well as from a commercial institution. The disregard is limited to the principal of a loan. A simple statement signed by both parties indicating that the payment is

a loan and must be repaid is sufficient to verify that a loan is bona fide. Interest earned on the proceeds of a loan while held in a savings or checking account or other financial instrument shall be counted as income in the month received and as a resource thereafter. Purchases made with a loan are counted as resources.

VA.R. Doc. No. R94-1116; Filed July 15, 1994, 4:00 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: **VR 672-20-20. Regulation Governing Management of Coal Combustion By-Products.**

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Public Hearing Dates:
September 7, 1994 - 7 p.m.
September 8, 1994 - 7 p.m.
Written comments may be submitted through October 7, 1994.
(See Calendar of Events section for additional information)

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Act. Section 10.1-1408.1 of the Code of Virginia specifically authorizes the state to properly manage the disposal, treatment or storage of nonhazardous solid wastes in the Commonwealth in order to protect the public health, safety, and welfare, and the natural resources of the state. Section 10.1-1402(5) of the Virginia Waste Management Act authorizes the Virginia Waste Management Board to promote the development of resource conservation and recovery systems.

The proposed regulation will provide for the proper disposal of coal combustion by-products, or coal ash, which is one of the numerous solid wastes covered in the Virginia Solid Waste Management Regulation, VR 672-20-10.

Purpose: The purpose of the proposed regulation is to provide for alternatives to the traditional disposal of coal ash in landfill facilities. The proposed regulation is not required to protect the health, safety or welfare as that is provided for by the Solid Waste Management Regulation. However, the proposal will provide an alternative disposal method for coal ash which is environmentally sound. It will also provide for the efficient and economical performance of an ongoing governmental function by streamlining compliance and administrative procedures associated with coal ash disposal.

Substance and Issues: Coal ash is produced in the Commonwealth in large volumes as a result of energy generation. It forms a category of solid wastes that exhibits low environmental impact when it is handled properly, especially when the residuals are not codisposed with municipal solid wastes. The proposed regulation establishes certain uses for coal ash and appropriate standards for siting, design, construction, operation, and administrative procedures pertaining to the use, reuse or reclamation of coal ash. It will apply to all persons who use, reuse, or reclaim coal ash by applying it to or placing it on land and to owners or operators of coal mining facilities that accept coal ash for mine land reclamation on sites permitted by the Department of Mines, Minerals and Energy.

The proposed regulation also eliminates the permit application review and approval process, eliminates the requirements for lining a project site with soil and synthetic liners and the requirements to perform groundwater monitoring and post-closure care activities.

There are no perceived disadvantages to the public or agency should the proposed regulation be adopted. The proposed regulation should result in advantages to the public in that it will streamline procedures and provide for cost savings for the public which must comply with solid waste disposal regulations and will provide a more environmentally beneficial alternative to landfill disposal of coal ash. Furthermore, the proposed regulation will aid in extending the life of landfills statewide. Additionally, the proposed regulation will provide an advantage to the agency and state by providing for the efficient and economical performance of an ongoing governmental function by streamlining compliance and administrative procedures associated with coal ash disposal.

Impact: The development of regulations setting up appropriate standards for the use of the residuals in structural fills and in mine reclamation would enable their placement in specifically designed structures and would substantially conserve the scarce and expensive landfill space. Because the proposed regulation is designed to encourage new uses rather than codisposal, the number and type of the facilities availing themselves of the regulatory and administrative relief is unknown. However, based on the applications pending before the department, it is expected that the volume of residuals that may be managed under this regulation may exceed 100,000 cubic yards annually.

In addition to impact on the conservation of natural resources, substantial economic benefits are expected from the reduction of the disposal and land reclamation costs. The promulgation of the proposed regulation would also reduce the compliance and the administrative costs to the department by streamlining the administrative procedures.

Because the proposed regulation provides regulatory relief rather than placing additional burden on the industry, it is expected that substantial savings will result when compared to the present management requirements.

The costs of disposal of solid wastes vary considerably from facility to facility and depend significantly on the type of the wastes managed and the age of the facility. A

listing of the tipping fees charged by the municipal and commercial disposal sites is attached. Absent from that list are the disposal costs at the sites operated by the industrial waste generators for their own use. Such costs are treated as confidential and are not available to the department. However, it may be surmised that the disposal costs of such proprietary sites are comparable in their magnitude: while savings might be achieved through lack of transportation costs, the economy of scale might not be favorable. For the purpose of the impact estimation, it would be safe to assume that the disposal cost for industrial waste may amount to about $17 per ton delivered at the site.

The costs associated with the sites allowed by the proposed regulation can only be estimated on the basis of lessened construction and operating requirements because no such sites currently exist. Because the regulation deals with reuse and reclamation, the estimates should also take into account the avoided costs for such materials as fill dirt and the costs of site acquisition. For this reason, one may use the differential cost between the use of conventional construction materials and techniques and the use of those for coal combustion by-products. The by-products will require additional care in construction of runoff and runon control systems and the construction of the infiltration and erosion layers during the site closure step. These differential costs should not exceed $5.00 per ton of material.

Based on the pending requests before the department, it is conservatively expected that during the initial years close to 200,000 cubic yards of by-products will be reused in structural fills. Additional materials will be used in mine land reclamation; however, the amount will be heavily dependent on long-distance hauling of the by-products and will, therefore, be difficult to predict. If substantial contractual pressure will be exerted on Virginia coal mines to receive the by-products generated by their customers, the use of by-products will be an order of magnitude higher.

Taking into account only structural fills, it is expected that the proposed saving to the energy producers will amount to approximately $4.8 million. Additional small savings would accrue from elimination of the need to pay permitting fees amounting to $17,000 per project.

The proposed regulation does not impose requirements on the public to dispose of coal ash in any particular manner. It encourages new or alternative uses for coal ash rather than codisposal with municipal wastes in landfill facilities. Therefore, the number and type of the facilities availing themselves of the regulatory and administrative relief is unknown. However, based on the applications pending before the Department of Environmental Quality, it is expected that the volume of ash that may be managed under this regulation may exceed 100,000 cubic yards annually. There is no cost of implementation involved with the regulation.

Federal Requirement: There are no federal laws, regulations or other requirements specific to the disposal of coal ash.

Localities Affected: There are no known localities which will be particularly affected by the proposed regulation.

Summary:

This regulation provides for the use of coal combustion by-products and establishes appropriate standards for siting, design, construction, operation, and administrative procedures pertaining to their use, reuse, or reclamation.

The proposed regulation allows for the use of by-products in structural fills and mine land reclamation projects. It applies to all persons who use, reuse, or reclaim the by-products by applying them to or placing them on land and to the owners or operators of the coal mining facilities that accept the by-products for mine land reclamation on sites permitted by the Virginia Department of Mines, Minerals and Energy.

The regulation contains provisions regarding the siting of projects, the design and construction of runoff and cover systems, and closure of projects. It also provides minimum requirements for the operation of the site.

Preface:

This regulation provides for reasonable exemptions from the permitting requirements contained in Part VII of the Virginia Solid Waste Management Regulations (VR 672-20-10) and certain substantive facility standards contained in § 5.3 of VR 672-20-10, in order to promote the development of resource conservation and resource recovery systems as required by § 10.1-1402(5) of the Code of Virginia.

VR 672-20-20. Regulation Governing Management of Coal Combustion By-Products.

PART I.
DEFINITIONS.

§ 1.1. Definitions as established in VR 672-20-10, Virginia Solid Waste Management Regulations.

The definitions set out in Part I of the Virginia Solid Waste Management Regulations (VR 672-20-10) are incorporated by reference.

§ 1.2. Definitions.

In addition to the definitions incorporated by reference, the following words and terms shall have, for the purpose of this regulation, the following meaning:

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

"CCB" means coal combustion by-products.

"CCB site" means all land and structures, other appurtenances, and improvements thereon used to manage CCB by the methods included in either § 2.3 A or § 2.3 B.

"Closure" means the act of securing a CCB site pursuant to the requirements of this regulation.

"Director" means the Director of the Department of Environmental Quality or the Director of the Department of Mines, Minerals and Energy depending on the context.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff.

"Speculatively accumulated material" means any material that is accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. CCB are not being accumulated speculatively when they can be used, reused, or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the accumulated CCB are being removed from the storage annually.

"TCLP" means a chemical analytical procedure described in the Virginia Hazardous Waste Management Regulations (VR 672-10-1).

PART II.
PURPOSE AND APPLICABILITY.

§ 2.1. Purpose.

The purpose of this regulation is to provide for the use of coal combustion by-products (CCB) and to establish appropriate standards for siting, design, construction, operation, and administrative procedures pertaining to their use, reuse, or reclamation.

§ 2.2. Applicability.

A. This regulation applies to all persons who use, reuse, or reclaim CCB by applying them to or placing them on land in a manner other than addressed in § 3.2 or § 3.3 of the Virginia Solid Waste Management Regulations (VR 672-20-10).

B. This regulation establishes minimum standards for the owners or operators of coal mining facilities that accept CCB for mine reclamation or mine refuse disposal on a mine site permitted by the Virginia Department of Mines, Minerals and Energy (DMME) unless otherwise exempt under § 3.3 B of the Solid Waste Management Regulations (VR 672-20-10). If the permit issued by the DMME in accordance with the Virginia Surface Mining Regulations (VR 480-03-19) specifies the applicable conditions set forth in Parts III and IV of this regulation, the permittee is exempt from this regulation.

C. Conditions of applicability are as follows.

1. Persons using CCB other than in a manner prescribed under this regulation shall manage their waste in accordance with all provisions of the Virginia Solid Waste Management Regulations (VR 672-20-10);

2. Materials which are accumulated speculatively, materials which are not utilized in a manner described in the operation plan required by § 3.3 of this regulation, and off-specification materials which cannot be utilized or reprocessed to make them usable shall be managed in accordance with all appropriate provisions of the Virginia Solid Waste Management Regulations (VR 672-20-10); and

3. Storage, stockpiling, and other processing or handling of CCB, which may need to occur prior to their final placement or use, reuse, or reclamation, shall be in a manner necessary to protect human health and safety and the environment. For projects permitted by the DMME, the storage, stockpiling, or handling of CCB shall be managed in accordance with the Virginia Surface Mining Regulations (VR 480-03-19).

§ 2.3. Relationship to other regulations.

This regulation does not affect the Virginia Solid Waste Management Regulations (VR 672-20-10) or other pertinent regulations of the department or other agencies of the Commonwealth, except that persons subject to and in compliance with this regulation are exempt from the Virginia Solid Waste Management Regulations (VR 672-20-10) and the Financial Assurance Regulations for Solid Waste Facilities (VR 672-20-1) for those activities covered by this regulation.

§ 2.4. Enforcement and appeals.

A. All administrative enforcement and appeals taken from actions of the director relative to the provisions of this regulation shall be governed by the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

B. The owner or operator of the CCB site who violates any provision of this regulation will be considered to be operating an unpermitted facility as provided for in § 2.7 of the Solid Waste Management Regulations (VR 672-20-10) and shall be required to either obtain a permit as required by Part VII or close under Part V of those regulations.

C. The requirement to obtain a permit or to close the project shall not preclude additional action for

remediation or enforcement, including (without limitations) the assessment of civil charges or civil penalties, as is otherwise authorized by law.

PART III.
MANAGEMENT STANDARDS.

Article 1.
Locational Restrictions.

§ 3.1. Locational restrictions.

Coal combustion by-products used, reused, or reclaimed on or below ground shall not be placed:

1. In areas subject to base floods unless it can be shown that CCB can be protected from inundation or washout and that flow of water is not restricted;

2. With the vertical separation between the CCB and the maximum seasonal water table or bedrock less than two feet;

3. Closer than:

a. 100 feet of any perennial stream,

b. 100 feet of any water well (other than a monitoring well) in existence at the onset of the project,

c. 25 feet of a bedrock outcrop, unless the outcrop is properly treated to minimize infiltration into fractured zones,

d. 100 feet of a sinkhole, or

e. 25 feet from any property boundary or, in the case of projects permitted by the DMME, 25 feet from the permit boundary.

(NOTE: All distances are to be measured in the horizontal plane.)

4. In wetlands, unless applicable federal, state and local permits are obtained;

5. On the site of an active or inactive dump, unpermitted landfill, lagoon, or similar facility, even if such facility is closed.

Article 2.
Design and Construction.

§ 3.2. Design and construction.

This section prescribes design and construction standards for CCB sites. The owner or operator of such a site shall prepare appropriate design plans and a design report that address, at a minimum, the requirements contained in this section.

1. A survey benchmark shall be identified and its location referenced on drawings and maps of the site.

2. During construction and filling, off-site runoff shall be diverted around the use, reuse or reclamation areas. The uncovered active CCB fill areas shall be graded to a maximum slope of 5.0% and a smooth surface maintained to provide for sheet flow runoff and to prevent dusting. Runoff from the use, reuse or reclamation area shall be controlled and contained by use of diversion ditches, sediment traps, berms or collection ponds in accordance with the site erosion control plan. The use, reuse, or reclamation projects shall be designed to divert surface water runon from a 25-year, 24-hour storm event. For projects permitted by the DMME, the standards for runon, grading, and runoff shall be in accordance with the Coal Surface Mining Reclamation Regulations (VR 480-03-19).

3. Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Side slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper side slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management units shall be supported by necessary calculations and included in the design report.

4. The finished top slope shall be at least 2.0% to prevent ponding of water, except where covered by a building, a paved roadway, a paved parking surface, paved walkways or sidewalks, or similar structures.

5. Upon reaching the final grade, the placed material shall be covered in accordance with the requirements of Article 4 of this part.

Article 3.
Operations.

§ 3.3. Operations.

The owner or operator of a CCB site shall prepare an operation plan. At a minimum, the plan shall address the requirements contained in this section.

1. Tracking of mud or CCB onto public roads from the site shall be controlled at all times to minimize nuisances.

2. The addition of any solid waste including but not limited to hazardous, infectious, construction, debris, demolition, industrial, petroleum-contaminated soil, or municipal solid waste to CCB is prohibited. This prohibition does not apply to solid wastes from the extraction, beneficiation and processing of ores and minerals conditionally exempted under § 3.3 A 2 of the Solid Waste Management Regulations.

3. Fugitive dust shall be controlled at the site so it

does not constitute nuisances or hazards.

4. After preparing the subbase, CCB shall be placed in no greater than 12-inch layers. The CCB shall then be compacted to a minimum 95% of the maximum dry density achievable at its optimum moisture content in accordance with the Standard Proctor method, ASTM test designation D 698, or to a minimum of 80% relative density as determined by ASTM test designation D 4254 for coal combustion bottom ash and boiler slag. Field compaction tests shall be taken for each 5,000 cubic yards placed. The placement and compaction of CCB on coal mine sites shall be subject to the applicable requirements of the Coal Surface Mining Reclamation Regulations (VR 480-03-19).

5. A surface runon and runoff control program shall be implemented to control and reduce the infiltration of surface water through the CCB and to control the runoff from the placement area to other areas and to surface waters.

6. Runoff shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES Permit issued pursuant to the State Water Control Board regulation, VR 680-14-01, or otherwise approved by the department.

7. CCB site development shall be in accordance with the Virginia Erosion and Sediment Control Regulations (VR 625-02-00) or the Coal Surface Mining Reclamation Regulations (VR 480-03-19), as applicable.

Article 4.
Closure.

§ 3.4. General.

Upon reaching the final grade, the owner or operator of a CCB site shall close his project in a manner that minimizes the need for further maintenance.

§ 3.5. Exemptions from the closure requirements.

A. An owner or operator of a site that constructs a building, a paved roadway, a paved parking surface, paved walkways and sidewalks, or other similar structures on top of the fill within a reasonable time period of reaching the final grade not to exceed 12 months shall be exempt from the requirements of this article for the portions of the CCB site directly under the construction area.

B. An operator of a coal mine site permitted by the DMME who is reclaiming a site in conformance with the Coal Surface Mining Reclamation Regulations (VR 480-03-19) shall be exempt from the closure requirements contained in the section.

§ 3.6. Closure criteria.

A. The owner or operator shall install a final cover system that is designed and constructed to:

1. Minimize infiltration through the closed CCB site by the use of an infiltration layer that contains a minimum 12 inches of earthen material, and

2. Minimize erosion of the final cover by the use of an erosion control layer that contains a minimum of six inches of earthen material and is capable of sustaining the growth of indigenous plant species or plant species adapted to the area.

B. The use of the property after closure shall not disturb the integrity of the final cover, unless the purpose of the disturbance is to construct buildings, paved roadways, paved parking surfaces, paved walkways and sidewalks, or other similar facilities.

C. Within 90 days after placement of the final cover is complete, the owner or operator shall submit:

1. To the local land recording authority, a survey plat prepared by a professional land surveyor registered by the Commonwealth, indicating the location and dimensions of the placement areas. The plat filed with the local land recording authority shall contain a note, prominently displayed, which states the owner's or operator's future obligation to restrict disturbance of the site.

2. To the department, a statement signed by a registered professional engineer that construction has been completed in accordance with the design plans and report prepared to satisfy the requirements of § 3.2 and closure has been performed in accordance with closure plan prepared under § 3.7.

§ 3.7. Closure plan and amendment of plan.

A. The owner or operator of the CCB site shall have a written closure plan. This plan shall identify the steps necessary to completely close the site. The plan shall include, at least, a schedule for final closure including, as a minimum, the anticipated date when CCB will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates.

B. The owner or operator may amend his plan at any time during the active life of the project. The owner or operator shall so amend his plan any time changes in operating plans or project design affect the closure plan.

C. At any time during the operating life of the project, the plan shall be made available to the department upon request of the director.

§ 3.8. Time allowed for closure.

The owner or operator shall complete closure activities in accordance with the closure plan and within six

months after receiving the final volume of CCB. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that he has taken all necessary steps to eliminate any significant threat to human health and the environment from the unclosed but inactive project.

PART IV.
ADMINISTRATIVE REQUIREMENTS.

§ 4.1. General.

Notwithstanding any provisions of Part VII of the Virginia Solid Waste Management Regulations (VR 672-20-10), the owner or operator of a site which manages only CCB allowed under § 2.3 of this regulation shall not be required to have a solid waste management facility permit, neither must a CCB facility operator certified by the Board for Waste Management Facility Operators directly supervise operations at the site, if the owner or operator at least 30 days prior to initial placement of CCB:

1. Provides the director a certification that he has legal control over the CCB site for the project life and the closure period. For the purposes of this section, on a coal mine site permitted by the DMME, demonstration of legal right to enter and begin surface coal mining and reclamation operations shall constitute compliance with the provisions of this section.

2. With the exception of projects permitted by the DMME, provides the director the certification from the governing body of the county, city, or town in which the CCB site is to be located that the location and operation of the CCB site are consistent with all applicable ordinances.

3. Provides the director with a general description of the intended use, reuse, or reclamation of CCB. Such description will include:

a. A description of the nature, purpose and location of the CCB site, including a topographic map showing the site area and available soils, and geological maps. The description shall include an explanation of how CCB will be stored prior to use, reuse or reclamation, if applicable.

b. The estimated beginning and ending dates for the operation.

c. An estimate of the volume of the CCB to be utilized.

d. A description of the proposed type of CCB to be used, reused or reclaimed, including physical and chemical characteristics of the CCB. The chemical description shall contain the results of TCLP analyses for the constituents shown in Table 1. The description shall also contain a statement that the project will not manage CCB that contain any constituent at a level exceeding those shown in the table.

TABLE 1.
LIST OF CONSTITUENTS AND MAXIMUM LEVELS.

Constituent	*Level, mg/lit*
Arsenic	*5.0*
Barium	*100*
Cadmium	*1.0*
Chromium	*5.0*
Lead	*5.0*
Mercury	*0.2*
Selenium	*1.0*
Silver	*5.0*

4. Provides the director with a certification by a professional engineer licensed to practice by the Commonwealth that the project meets the locational restrictions of § 3.1 of this regulation. Such certificate shall contain no qualifications or exemptions from the requirements.

5. Furnishes to the director a certificate signed by a professional engineer licensed to practice by the Commonwealth that the project has been designed in accordance with the standards of § 3.2 of this regulation, if applicable. Such certificate shall contain no qualifications or exceptions from the requirements and plans.

6. Submits to the director an operational plan describing how the standards of § 3.3 will be met.

7. Submits to the director a closure plan describing how the standards of Article 4 of Part III will be met, if applicable.

8. Submits to the director a signed statement that the owner or operator shall allow authorized representatives of the Commonwealth, upon presentation of appropriate credentials, to have access to areas in which the activities covered by this regulation will be, are being, or have been conducted to ensure compliance.

§ 4.2. Project modifications.

The owner or operator of a CCB site may modify the design and operation of the project by furnishing the department a new certificate required by subdivision 6 of § 4.1 and a new operational plan required by subdivision 7 of § 4.1. Whenever modifications in the design or operation of the project affect the provisions of the closure plan, the owner or operator shall prepare an amended plan in accordance with the requirements of Article 4 of Part III.

PART V.
VARIANCES.

§ 5.1. Applicability.

The director may grant a variance from any requirement contained in Part III of this regulation to the owner or operator of the CCB site if he demonstrates to the satisfaction of the director that granting the variance will not result in an additional risk to the public health or the environment beyond the risk which would be imposed without the variance.

§ 5.2. Administrative procedures.

The administrative procedures associated with the submission of the variance petition, its processing and resolution will be accomplished in accordance with the requirements of § 9.6 of the Solid Waste Management Regulations (VR 672-20-10).

VA.R. Doc. No. R94-1134; Filed July 20, 1994, 11:40 a.m.

* * * * * * * *

REGISTRAR'S NOTICE: The Virginia Waste Management Board has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: **VR 672-60-1. Waste Tire End User Reimbursement.**

Statutory Authority: §§ 10.1-1402.11, 10.1-1422.3, and 10.1-1422.4 of the Code of Virginia.

Public Hearing Date: August 30, 1994 - 10 a.m.
Written comments may be submitted until September 8, 1994.
(See Calendar of Events section for additional information)

Basis: Sections 10.1-1422.3 and 10.1-1422.4 of the Code of Virginia authorize the Department of Environmental Quality to provide a partial reimbursement to end users of Virginia waste tires and requires the development of regulations that stipulate the types of uses eligible, procedures for applying for and processing of reimbursements, and amount of reimbursement.

Purpose: Section 10.1-1422.4 states that the purpose of this partial reimbursement of costs is to promote the use of waste tires by enhancing markets for waste tires, chips or similar materials. Enhanced markets can make it easier and less expensive to direct waste tires to processing areas other than landfills. There are over 700 piles containing over 17,000,000 waste tires scattered across Virginia. These piles represent a significant threat to the environment because of the potential for fire. Many piles exist because of the high cost of proper disposal.

Substance: The regulation defines the eligible end users, eligible uses, amount of reimbursement and procedures for applying for and processing of the reimbursement.

Eligible end users are persons who can show that they used Virginia generated waste tires in an eligible end use.

Eligible end uses are those that are beneficial and consistent with all local, state and federal regulations. Three distinct categories of use have been established, reflecting the waste management hierarchy: use constituting disposal; energy recovery; and material recovery.

The amount of reimbursement is a partial reimbursement of the purchase price or the cost of use of the waste tires, chips or similar materials. There is a maximum rate for each category of use.

An application for reimbursement is made on a form requiring information of the type of use, amount of material used, cost of use or purchase price, and a signature from the person certifying that the material was used according to the regulations.

Issues: Advantages to the public and the agency of implementing the regulation:

The public will have more options for disposal of tires and the cost of disposal can be reduced. Increased waste tire management options would conserve the scarce and expensive landfill space.

Additional markets can enhance the private and public options for waste tire management without controlling the choices of the public to deal with their waste tires.

Disadvantages to the public and the agency of implementing the regulation:

The end users of the waste tires will be forced to ask the persons who dispose of waste tires to document that the waste tires were generated in Virginia.

The agency can expect increased calls from interested parties. There could potentially be up to 400 requests for reimbursement each year. It will take the majority of the time of the three current employees to handle information calls and process the requests for

reimbursement.

Impact: There are up to 4,000 tire dealers and over 700 owners of tire piles that may be asked to document the origin of tires. Persons who handle the tires before they reach the end user will be asked to carry forward this documentation. The agency provides forms that may be used for this purpose.

The end users of waste tires will have to request the reimbursement and maintain the documentation on the use of the waste tires and the origin of the tires for five years after the reimbursement.

Summary:

This regulation provides the guidelines for the partial reimbursement, from the Waste Tire Trust Fund, of the cost of purchasing waste tires or chips or similar materials to the end users of Virginia generated waste tires.

VR 672-60-1. Waste Tire End User Reimbursement.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

A. The definitions set out in Part I of the Virginia Solid Waste Management Regulations (VR 672-20-10) are incorporated by reference.

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

"Amount of funds available" or "available funds" means for a given calendar year a maximum of 75% of the previous year's collection of the waste tire tax.

"Applicant" means any person or persons seeking reimbursement under these regulations.

"Asphalt pavement containing recycled rubber" means any hot mix or spray applied binder in asphalt paving mixture that contains rubber from waste tires which is used for asphalt pavement base, surface course or interlayer, or other road and highway related uses.

"Authorized signature" means the signature of an individual who has authority to sign on behalf of, and bind, the applicant.

"Burning" means the controlled burning of waste tires or chips or similar materials for the purpose of energy recovery.

"Cost of use" means the equipment, leasehold improvements, buildings, land, engineering, transportation, operating, taxes, interest, and depreciation or replacement costs of using waste tires, chips or similar materials incurred by the end user after deducting any tipping fee received by the end user.

"Daily cover" means using tires as an alternate cover placed upon exposed solid waste to control disease vectors, fires, odors, blowing litter and scavenging without presenting a threat to human health and the environment.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or the director's designee.

"Embankment" means a raised earthen structure to carry a roadway.

"End user" means:

1. For energy recovery: the person who utilizes the heat content or other forms of energy from the incineration or pyrolysis of waste tires, chips or similar materials;

2. For other eligible uses of waste tires: the last person who uses the tires, chips, or similar materials to make a product with economic value. If the waste tire is processed by more than one person in becoming a product, the "end user" is the last person to use the tire as a tire, as tire chips, or as similar materials. A person who produces tire chips or similar materials and gives or sells them to another person to use is not an end user.

"Energy recovery" means utilizing the heat content or other forms of energy from the incineration or pyrolysis of waste tires, chips or similar materials.

"Fill material for construction" means the material is used as a base or sub-base under the footprint of a structure, a paved parking lot, sidewalk, walkway or similar application.

"Generator" means any person whose act or process produces waste tires or whose act first causes a tire to become solid waste.

"Hauler" means a person who picks up or transports waste tires for the purpose of removal to a permitted storage, processing or disposal facility.

"Partial reimbursement" means reimbursement that does not exceed 90% of the amount spent to purchase waste tires, chips or similar materials or 90% of the cost of use if the waste tires, chips or similar materials were not purchased.

"Passenger tire equivalent" means a measure of passenger, truck tires, and oversize tires where: One passenger car tire equals 20 pounds or 1/100 ton, one

truck tire 20 to 24-inch rim equals 100 pounds or 1/20 ton and an over 24-inch rim equals 200 pounds or greater as computed by the end user.

"Processor" means a person engaged in the processing of waste tires by stamping, stripping, shredding or crumbing; that operates under a permit issued by the local, state, or federal government; or is exempt from permit requirements.

"Pyrolysis" means thermal treatment of a waste tire to separate it into other components with economic value.

"Reclamation" means the process by which a material is processed or reprocessed to recover a usable product or is regenerated to a usable form.

"Retreading" means reclaiming a waste tire by attaching a new tread to make a usable tire.

"Road bed base" means the foundation of a road prepared for surfacing.

"Similar materials" means waste tires processed by size reduction, other than tire chips.

"Tipping fee" means a fee charged to a person for disposal of a waste tire.

"Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is transported, or by which they may be drawn on a highway.

"Tire chips" means waste tires processed by size reduction.

"Tire pile" means an accumulation of waste tires that violates the Virginia Solid Waste Management Regulations (VR 672-20-10).

"Used or reused waste tires, chips, or similar material" means having once been waste and being:

1. Employed as an ingredient (including use as an intermediate) in a process to make a product, excepting those materials possessing distinct components that are recovered as separate end products; or

2. Employed in a particular function or application as an effective substitute for a commercial product or natural resource.

"Waste tire" means a tire that has been discarded because it is no longer suitable for its original intended purpose because of wear, damage or defect.

"Waste Tire Trust Fund" means the nonreverting fund set up by § 10.1-1422.3 of the Code of Virginia in which proceeds from the waste tire tax are deposited.

PART II.
GENERAL INFORMATION.

§ 2.1. Purpose of regulations.

The purpose of these regulations is to define the types of uses eligible for partial reimbursement, to establish the procedures for application and processing of reimbursement, and to establish the amount of reimbursement.

§ 2.2. Regulation review.

These regulations will be reviewed annually by the director to determine whether they should be continued, amended, or terminated based on the intent to enhance markets for waste tires, chips, or similar materials that is specified in the authorizing legislation.

PART III.
ELIGIBILITY FOR REIMBURSEMENT.

§ 3.1. End uses of waste tires eligible for reimbursement.

The following uses of waste tires, chips or similar materials will be eligible for the reimbursement if the use complies with applicable local ordinances and regulations and the Virginia Solid Waste Management Regulations (VR 672-20-10) or the equivalent regulations in another state:

1. Category I: Use Constituting Disposal. Category I use shall include using tires, chips or similar materials in a manner constituting disposal by being applied to or placed on the land; or used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land. Category I uses include, but are not limited to, the use of waste tires, chips or similar materials for:

a. Road bed base and embankments;

b. Fill material for construction projects; and

c. Daily cover at a permitted solid waste facility if the facility's permit is so modified.

2. Category II: Energy Recovery. Category II uses shall include burning of waste tires, chips or similar materials for energy recovery or pyrolysis. Category II uses include, but are not limited to:

a. Burning for energy recovery;

b. Pyrolysis.

3. Category III: Material Recovery. Category III uses shall include use, reuse, and reclamation of waste tires, chips, or similar materials to make products of economic value. Category III uses include, but are not

limited to:

a. Waste tires, chips, or similar materials physically or chemically bonded to form another product;

b. Asphalt pavement containing recycled rubber.

4. Uses that are not eligible for reimbursement:

a. Reuse as a vehicle tire;

b. Retreading;

c. Incineration without energy recovery; and

d. Landfilling, except use as daily cover.

§ 3.2. Eligible end users.

A. To be eligible for the reimbursement, the user shall be the end user of the waste tires, chips, or similar materials as defined in Part I of these regulations. The end user need not be located in Virginia.

B. To be eligible for the reimbursement, the waste tires, chips or similar materials utilized by the end user must be:

1. Waste tires, chips or similar materials from waste tires generated in Virginia and be documented as such according to the requirements in Part V of these regulations; and

2. Used, reused or reclaimed through a method specified in § 3.1 of these regulations.

PART IV.
REIMBURSEMENT RATES.

§ 4.1. Amount of reimbursement for purchased material.

As a partial reimbursement, the amount reimbursed shall be 90% of the amount spent to purchase the waste tires, chips or similar materials with maximum reimbursement rates listed in § 4.3.

§ 4.2. Amount of reimbursement for material used but not purchased.

As a partial reimbursement, the amount reimbursed shall be 90% of the cost of use of waste tires, chips or similar materials with maximum reimbursement listed in § 4.3.

§ 4.3. Maximum rates of reimbursement.

A. The maximum amount of the reimbursement for Category I use shall be $15 per ton.

B. The maximum amount of the reimbursement for Category II use shall be $30 per ton.

C. The maximum amount of the reimbursement for Category III use shall be $32 per ton.

§ 4.4. Available funds.

Applicants approved for reimbursement will be reimbursed their qualifying amount until such time as available funds are exhausted for the calendar year. If available funds for a calendar year are exhausted, no further reimbursement will be made for utilization of tires in that calendar year. Applications will be considered in order of receipt.

PART V.
VIRGINIA GENERATED WASTE TIRES.

§ 5.1. Qualification as Virginia generated waste tires.

A Virginia generated waste tire is a waste tire that is:

1. Discarded as the result of a sale, trade, or exchange in Virginia;

2. From a Virginia waste tire pile that existed prior to the effective date of these regulations; or

3. From a Virginia waste tire pile that was created without the land owner's knowledge or permission.

§ 5.2. Documentation.

To be considered as Virginia generated waste tires eligible for reimbursement, the waste tires must be documented as such in a manner acceptable to the director. Acceptable documentation must provide at a minimum a certifying statement signed by the end user stating that the waste tires are Virginia generated in accordance with the requirements of § 5.1 of these regulations. One type of acceptable documentation is form DEQ-WTC, completed in the following manner:

1. Completion of Part I by the generator. The generator, who has the waste tires for disposal, must fill in all pertinent information in Part I and sign the statement certifying that the waste tires are Virginia generated in accordance with the requirements of § 5.1 of these regulations. When the generator is not known, the property owner is the generator.

2. Completion of Part II by the hauler. The hauler must fill in all pertinent information in Part II and sign the statement certifying that he accepted the waste tires, chips or similar materials in the amounts indicated from the generator in Part I.

3. Completion of Part III by the collector, if applicable. The collector must fill in all pertinent information in Part III and sign the statement certifying that he accepted the waste tires, chips or similar materials in the amounts indicated from the hauler.

4. Completion of Part IV by the processor. The processor must fill in all pertinent information and sign the statement certifying that he accepted the waste tires, chips or similar materials in the amounts indicated in Part II from the hauler or an amount of waste tires, chips or similar materials equal to the amounts indicated in Part III from the collector.

PART VI.
APPLICATION PROCEDURES.

§ 6.1. Application for reimbursement.

A. A person may apply to the director for reimbursement from the Waste Tire Trust Fund for utilizing waste tires, chips or similar materials if the request for reimbursement is complete and complies with other provisions of these regulations.

B. The minimum application amount is 10,000 passenger tire equivalents or 100 tons of waste tires, chips or similar materials used.

C. In order to apply for reimbursement, the utilization of the waste tires, chips or similar materials must occur after the effective date of these regulations.

D. An applicant for reimbursement must file form DEQ-EURR with the director, providing at a minimum:

1. Applicant's name and address;

2. Name and location of facility where end use occurs;

3. A description of the end use;

4. A statement of the purchase cost of the waste tires, chips or similar materials or, if the waste tires, chips or similar materials were not purchased, the cost of use;

5. An authorized signature on the certification statement.

E. Application for reimbursement will be accepted up to the last business day of the month following a calendar quarter. Applications received after the one month deadline will be considered late and reimbursement will not be considered for that calendar quarter. Such a late application will be considered in the following calendar quarter unless the application has missed the deadline for the last quarter of the calendar year, in which case the utilization of waste tires, chips or similar materials will not be reimbursed.

F. An applicant for a reimbursement for utilization of waste tires, chips or similar materials is subject to audit by the director. Applicants shall allow access to all records related to waste tire management activities during normal business hours for the purpose of determining compliance with these regulations for up to five years from the date of reimbursement.

G. In addition to any other penalty imposed by law, any person who knowingly or intentionally provides false information to the director in claiming a reimbursement shall be ineligible to receive any reimbursement under these regulations.

PART VII.
PROCESSING OF APPLICATIONS.

§ 7.1. Review of application.

A. The director shall review a reimbursement application form for completeness and eligibility.

B. If an application is not complete as required in § 6.1 D, the director may require the applicant to submit missing information. The director may delay reimbursement until the information is received.

C. The director will process for payment all requests for reimbursement that are complete and in compliance with the regulations up to the amount of funds available, but in no case more than 75% of the previous year's tax collection as certified by the Department of Taxation. The complete applications will be processed in the order received and until available funds are exhausted.

D. The first time applications can be submitted is after the effective date of these regulations. The first payment will be processed in the calendar quarter following the effective date. Subsequently, applications are received and processed as specified in § 6.1 E of these regulations.

E. When an applicant believes an error has been made in the review of or response to his application, he shall notify the director in writing within 30 days of receiving the director's response. The notice shall contain a copy of the application and the director's response, a brief statement describing the believed error, and copies of any documents supporting the statement.

The director shall review the notice and attached documents and may further investigate the matter. The director shall advise the applicant in writing in due course of his response to the applicant's notice of error.

If the director concludes that an error has been made, he shall reinstate the application and act on it. If the available funds are exhausted, and would not have been had the director acted correctly on the application originally, the reinstated application shall be carried over to the next year and paid from funds available then.

VA.R. Doc. No. R94-1133; Filed July 20, 1994, 11:43 a.m.

APPENDIX A

COMMONWEALTH OF VIRGINIA
WASTE TIRE CERTIFICATION

PART I - GENERATOR CERTIFICATION

I certify under penalty of law that the information contained on this form is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for willful violations. I further certify that, to the best of my knowledge and belief, all the waste tires identified by me on this Waste Tire Certification and delivered to the hauler below were generated in the Commonwealth of Virginia in accordance of 5.1 of the Waste Tire End User Reimbursement Regulations (VR 672-60-1)

car or light truck tires _____
truck tires _____
off road tires _____
tons of tire material _____

Signature _____
Company Name _____
Address _____
City _____ State _____ Zip _____
ID# _____

PART II - HAULER CERTIFICATION

I certify that the waste tires, chips, or similar materials were received from the generator in the amounts indicated, to the best of my knowledge and belief.

car or light truck tires _____
truck tires _____
off road tires _____
tons of tire material _____

Signature _____
Company Name _____
ID# _____

PART III - COLLECTOR CERTIFICATION

I certify that the waste tires, chips, or similar materials were received from the hauler or generator in the amounts indicated, to the best of my knowledge and belief.

car or light truck tires _____
truck tires _____
off road tires _____
tons of tire material _____

Signature _____
Company Name _____
ID# _____

PART IV - PROCESSOR CERTIFICATION

I certify that the waste tires, chips, or similar materials were received from the collector, hauler, or generator in the amounts indicated, to the best of my knowledge and belief.

car or light truck tires _____
truck tires _____
off road tires _____
tons of tire material _____

Signature
Company Name
ID#

Department of Environmental Quality, Waste Tire Program, 629 East Main Street Richmond, Va 23219
DEQ-WTC

APPENDIX B

COMMONWEALTH OF VIRGINIA
END USER REIMBURSEMENT REQUEST

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____ CONTACT _____

LOCATION OF USE _____

PERIOD FROM _____ TO _____

1) _____ Documentation is available at our office that shows that the waste tires were generated in Virginia or the chips or similar materials were made from Virginia generated tires.

2a) _____ Purchase receipts for the waste tires, chips, or similar materials are available in our office; or

2b) _____ The waste tires, chips, or similar materials were not purchased but were used and the cost of use is computed below:

Certifiable use _____
Tons of material used _____
Total Purchase price or cost of use _____

Total cost of use $_____ per ton
Minus tipping fee $_____ per ton
Net cost of use $_____ per ton

I certify that the waste tires, chips, or similar materials were received in the amounts indicated, during the period specified, and to the best of my knowledge and belief, the cost of using the material and the documentation that the tires were Virginia generated as presented according to the Waste Tire End User Reimbursement Regulations (VR 672-60-1)

signature _____ date _____

For DEQ Use Only

Use	Rate	Tons	Calculation	Amount Due

Approved for Payment Processing _____ Date _____

Total _____

Mail by the last day of the month following the end of a calendar quarter with the required documentation.
Department of Environmental Quality, Waste Tire Program, 629 East Main Street, Richmond, VA 23219
DEQ-EURR

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

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

Effective Date: September 15, 1994.

Summary:

The regulation contains provisions covering standards of performance for regulated medical waste incinerators. The regulation will require owners of regulated medical waste incinerators to limit emissions of dioxins/furans, particulate matter, carbon monoxide, hydrogen chloride, and visible emissions to specified levels necessary to protect public health and welfare. This will be acccomplished through the establishment of emissions limits and process parameters based on control technology, and monitoring, testing, and record keeping to assure compliance with the limits.

Substantive amendments that were adopted by the board include:

1. The particulate matter standard for units with a rated capacity equal to or greater than 1000 pph was changed from 0.010 gr/dscf to 0.015 gr/dscf.

2. The carbon monoxide standard for units with a rated capacity equal to or greater than 500 pounds per hour was changed from 25 ppmvd to 50 ppmvd.

3. The hydrogen chloride standard was changed from a ppmvd limit to a percent reduction rate standard: 90% reduction for medium units; 95% for large units.

4. The dioxin/furan standard was changed to allow the option of either meeting the 8 gr/dscf emission limit or a 1:100,000 risk demonstration.

5. The opacity standard was changed from 5.0% to 10%.

6. Most compliance provisions related to design and operation were eliminated, including:

a. final particulate matter control device inlet temperature,

b. burn-down cycle control,

c. rated capacity limitation,

d. flue gas temperature at the outlet of the final control device,

e. operator certification requirements,

f. operator training requirements, and

g. monitoring and notification, records and reporting requirements associated with the above.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Cindy M. Berndt, Regulatory Coordinator, State Air Pollution Control Board, 629 East Main Street, Richmond, VA 23219, telephone (804) 762-4378. There may be a charge for copies.

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

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

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

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

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

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

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

§ 120-05-0602. Definitions.

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

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

C. Terms defined.

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

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

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

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

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

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

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

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

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

["Potential hydrogen chloride emission rate" means the hydrogen chloride emission rate that would occur from the combustion of regulated medical waste in the absence of any hydrogen chloride emissions control.]

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

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

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

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

3. Pathological wastes;

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

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

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

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

Regulated medical waste shall not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. For incinerators with a rated capacity equal to or greater than 1000 pounds per hour: [~~0.010~~ 0.015] grains per dry standard cubic foot of exhaust gas corrected to 7.0% oxygen (dry basis).

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

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

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

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

~~1. For incinerators with a rated capacity equal to or greater than 500 pounds per hour: 25~~ 50] parts per million [by] volume dry average per operating cycle or per day, whichever is less in duration, corrected to 7.0% oxygen (dry basis). An operating cycle shall be the period of time from the initial loading of waste into the incinerator through the burn-down cycle.

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

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

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

1. For incinerators with a rated capacity equal to or greater than 500 pounds per hour and less than 1000 pounds per hour: 10% of the potential hydrogen chloride emission rate (90% reduction by weight or volume).

2. For incinerators with a rated capacity equal to or greater than 1000 pounds per hour: 5.0% of the potential hydrogen chloride emission rate (95% reduction by weight or volume).]

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

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

B. [~~No owner or other person shall cause or permit to be discharged into the atmosphere from any regulated medical waste incinerator any dioxin or furan emissions that will result in a maximum annual risk in excess of 1 in 1,000,000. Ambient air concentrations and risk assessments shall be determined using air quality analysis techniques and methods acceptable to the board.~~ A waiver from the provisions of subsection A of this section may be obtained from the board upon a demonstration to the board's satisfaction that the maximum annual risk does not exceed 1 in 100,000. Ambient air concentrations and risk assessments shall be determined using air quality analysis techniques and methods acceptable to the board.]

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

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

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any regulated medical waste incinerator any visible emissions which exhibit greater than [~~5.0%~~ 10%] opacity. Failure to meet the requirements of this section because of the presence of water vapor shall not be a violation of this section.

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

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

§ 120-05-0609. Standard for odor.

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

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

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

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

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

§ 120-05-0612. Compliance.

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

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

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

~~2.~~ 1.] The minimum primary chamber temperature shall be 1400°F or the manufacturer's recommended operating temperature, whichever is higher, for a period of time needed to achieve complete pyrolysis.

[~~3.~~ 2.] A secondary combustion chamber with afterburner is required. The minimum secondary chamber temperature shall be [~~2000°F~~ 1800°F] or the manufacturer's recommended operating temperature, whichever is higher, for a period of no less than two seconds.

[~~4.~~ 3.] Combustion [control systems shall include] chamber thermostats [~~are to ignite and fire~~ to ensure that] the auxiliary burners automatically [ignite and fire] in order to maintain the primary and secondary chamber temperatures.

[~~5.~~ 4.] An interlock system to prevent incinerator feeding prior to attaining the minimum secondary chamber temperature is required.

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

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

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

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

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

~~11.~~ 5.] The minimum sorbent injection rate, expressed in pounds per hour of active neutralizing agent, shall be calculated as follows:

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

where:

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

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

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

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

[D. All facilities are required to meet the compliance requirements of Part VII of the Virginia Waste Management Board's Regulated Medical Waste Management Regulations (VR 672-40-01:1).]

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

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

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

~~1. Summary of the applicable standards;~~

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

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

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

~~5. Procedures for maintaining proper combustion air supply levels;~~

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

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

~~8. Procedures for minimizing particulate matter carryover;~~

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

~~10. Procedures for handling ash;~~

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

~~12. Procedures for reporting and recordkeeping.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 120-05-0614. Monitoring.

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

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

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

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

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

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

~~5.~~ 4.] For all incinerators with a rated capacity equal to or greater than 1000 pounds per hour, continuous measurement, display and recording is required for carbon monoxide emissions, with carbon dioxide or oxygen diluent monitor.

[~~6.~~ 5.] A pH meter is required for each wet scrubber system.

[~~7.~~ 6.] A flow meter to measure the sorbent injection rate is required for each wet scrubber system.

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

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

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

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

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

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

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

1. Dates of emission tests and continuous monitoring measurements.

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

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

(1) The six-minute average opacity levels;

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

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

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

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

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

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

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

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

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

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

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

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

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

~~10.~~ 9.] For commercial regulated medical waste incinerators, records of the amount and types of waste brought in from off-site.

§ 120-05-0616. Registration.

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

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

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

§ 120-05-0618. Permits.

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

1. Construction of a facility.

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

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

4. Relocation of a facility.

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

VA.R. Doc. No. R94-1137; Filed July 20, 1994, 11:41 a.m.

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.

Effective Date: September 7, 1994.

Summary:

The final regulations are designed to (i) amend language to comply with legislative mandate; (ii) delete obsolete licensure requirements that were effective through December 31, 1992; (iii) modify the license endorsement and the education/examination requirements to avoid the inequitable, double standard used in granting a license to those members of the American Speech-Language and Hearing Association who hold a Certificate of Clinical Competence over those who do not join the association; (iv) replace the provision that allows applicants for licensure to meet different, rather than uniform, qualification requirements to ensure objective assessment and issuance of license; (v) delete the text of public participation guidelines promulgated under separate cover; and (vi) require disclosure of the use of unlicensed assistants and clarify supervision requirements.

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 Meredyth P. Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9111. There may be a charge for copies.

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~~ *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~~ *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.

"Speech-language disorders" means disorders in fluency, speech articulation, voice, receptive and expressive language (syntax, morphology, semantics, pragmatice), 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 54.4-114);

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 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~~ licensure] ; 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~~ licensure] ; and

(4) Has passed a qualifying examination approved by the board that was taken and passed within three years preceding the date of [~~application~~ licensure] ; 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~~ licensure] ; 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~~ licensure] ; and

d. Has passed a qualifying examination approved by the board that was taken and passed within three years preceding the date of [~~application~~ licensure] ; 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 I.~~

~~AND~~

~~c. 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, 1993.~~

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~~ *licensure*].

Exception: No further examination will be required for applicants having passed the board approved examination at any time prior to [~~application~~ *licensure*] 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 semester hours shall be in professional coursework. See Appendices ~~II 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~~ *their*] *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 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 pharnyngeal 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~~ *as well as*] *failure to disclose use and identity of* [*unlicensed*] *assistants* [*is* ~~*considered negligence*~~] *(see § ~~6.5~~ 6.7)* [*; . The disclosure and the identity of the unlicensed assistant shall be in writing and provided to the client prior to treatment. The disclosure shall be made a part of the client's file and shall be signed by the client or the client's representative.*]

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 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 [*: ; and*

15. Aiding and abetting unlicensed activity.]

~~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-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 lease 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 ~~III~~ *II* .
Professional Coursework.
~~Effective January 1, 1993.~~

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 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.

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~~ § *5.1 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;

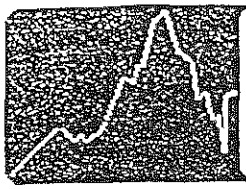
(2) 15 graduate clock hours in treatment; and

(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 ~~1.a-c~~ *subdivisions 1 a through 1 c* above.

2. 100 of the 350 clock hours may be at the undergraduate level.

VA.R. Doc. No. R94-1117; Filed July 15, 1994, 3:37 p.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 9907

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/Maiden	
Home Address	City	State	Zip Code
Social Security Number	Date of Birth	Area Code and Home Telephone No.	
		Work Telephone No.	

II 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

Should the status of your Audiology and Speech-Language Pathology license(s) in another jurisdiction change pending consideration of this application, you are required to inform this board in detail immediately. The failure to do so may constitute grounds for revocation of the same.

IV LICENSURE THROUGH CERTIFICATE OF CLINICAL COMPETENCE

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 of the District of Columbia apply for licensure under this section. See Section VI for required documentation.

[ ] I hold a current Certificate of Clinical Competence from ASHA, and

[ ] I have practiced Audiology and/or Speech-Language Pathology for one 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)

V LICENSURE THROUGH EDUCATION/EXAMINATION

If you are applying for licensure through education/examination, complete the applicable parts in this section. See Part VI for required documentation.

[ ] I have passed the National Examination _____ (Date) _____ (Score)

OR

[ ] I have been actively engaged in audiology and/or speech-language pathology for the past 24 months.

_____ (Date Began) _____ (Professional Area)

[ ] I hold a Master's Degree or its equivalent.

[ ] I have completed 75 semester hours of coursework

[ ] 27 semester hours were in basic science

[ ] 36 semester hours were in professional coursework

[ ] I have completed 375 clock hours of supervised clinical observation and supervised clinical practicum combined within the program of the college or university I attended.

[ ] My supervisor was _____ (Name)

[ ] 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.

VII AFFIDAVIT

AFFIDAVIT
(To be completed by a Notary Public)

State of_____ County/City of_____

I, _____ am requesting to be licensed to practice Audiology and Speech-Language Pathology in the Commonwealth of Virginia. I will at all times abide by the laws of the Commonwealth, and Rules, Regulations and Bylaws of the Board of Audiology and Speech-Language Pathology. I understand that should I violate any of these laws or the rules and regulations, action will be taken against my license by due process.

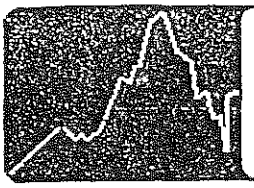
I hereby certify that all statements contained in this application, and all representations and documents presented by me in connection with this application are true and correct. I further agree to submit to questioning by the Board or any member or agent thereof, and to substantiate any statement to the Board or its agent as it deems necessary.

_____
Signature of Applicant

Subscribed and sworn to before me this _____ day of _____ 19_____.

My Commission expires _____.

_____
SEAL Notary Public



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_____

Has this licensee ever been suspended, revoked, or otherwise disciplined? Yes_____ No_____. If yes, please explain (end of form). Is there a probationary period in force? Yes_____ No_____. If yes, please explain below.

I certify that the information contained in this Endorsement Certification Form is true in every respect in accordance with the records on file with:

_____

(State and Official Name of Board)

SEAL

_____

Executive Officer

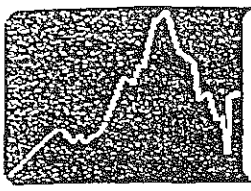
_____

Title

_____

Date

EXPLANATIONS:



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

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	Zip Code

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: _____

_____

2. Company: _____ Date of Employment: _____
   Job Responsibilities: _____
   _____

3. Company: _____ Date of Employment: _____
   Job Responsibilities: _____
   _____

4. Company: _____ Date of Employment: _____
   Job Responsibilities: _____
   _____

V 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.

VII AFFIDAVIT

AFFIDAVIT
(To be completed by a Notary Public)

State of_____ County/City of_____

I, _____ am requesting to be licensed to practice Audiology and Speech-Language Pathology in the Commonwealth of Virginia. I will at all times abide by the laws of the Commonwealth, and Rules, Regulations and Bylaws of the Board of Audiology and Speech-Language Pathology. I understand that should I violate any of these laws or the rules and regulations, action will be taken against my license by due process.

I hereby certify that all statements contained in this application, and all representations and documents presented by me in connection with this application are true and correct. 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

Subscribed and sworn to before me this _____ day of _____ 19_____.

My Commission expires _____.

_____
S E A L Notary Public

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1 A of the Code of Virginia when promulgating wildlife management regulations, including the length of seasons, bag limits and methods of take set on the wildlife resources within the Commonwealth of Virginia; however, it is required by § 9-6.14:22 to publish all proposed and final regulations.

Title of Regulations: **VR 325-02. Game.**
VR 325-02-1. In General.
VR 325-02-6. Deer.

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

Effective Date: September 8, 1994.

Summary:

Summaries are not provided since, in most instances, the summary would be as long as or longer than the full text.

VR 325-02. GAME.

VR 325-02-1. In General.

§ 1. Hunting in the snow.

Except as otherwise provided in VR 325-02-17, § 5, it shall be lawful to hunt game birds and game animals in the snow.

§ 2. Hunting with crossbows, arrows to which any drug, chemical or toxic substance has been added or explosive-head arrows prohibited.

A. Generally.

Except as otherwise provided by law or regulation, it shall be unlawful to use a crossbow, arrows to which any drug, chemical or toxic substance has been added or arrows with explosive heads at any recorded or electrically amplified imitation of animal or bird calls or sounds; provided, that time for the purpose of hunting wild birds or wild animals. A crossbow is defined as any bow that can be mechanically held in the drawn or cocked position.

B. Crossbows permitted for persons with permanent physical disabilities.

[*For the purposes of this section*] *any person,* [~~*upon receiving*~~ *possessing*] *a medical doctor's written statement based on a physical examination* [; ~~*and in compliance with written criteria as provided by the Department of Game and Inland Fisheries,*~~] *declaring* [*that*] *such person* [~~*having*~~ *has a*] *permanent physical* [~~*disabilities which prevent them*~~ *disability that prohibits the person from holding the mass weight of a conventional bow and arrow at arm's length perpendicular to the body, or drawing or pulling or releasing the bow string of a conventional bow, and thus prevents that person*] *from hunting with conventional archery equipment, may hunt with a crossbow on* [~~*their*~~ *his*] *own property during established special archery seasons. The doctor's written statement must be* [~~*on their*~~ *carried by the*] *person while hunting* [*and a copy of the doctor's written statement must be provided to the department on a form provided by the department, prior to hunting*] *with a crossbow* [*and the department's verification form shall be presented upon demand to any officer whose duty it is to enforce the game and inland fish laws*] .

§ 3. Recorded wild animal or wild bird calls or sounds prohibited in taking game; coyotes and crows excepted.

It shall be unlawful to take or attempt to take wild animals and wild birds, with the exception of coyotes and crows, by the use or aid of recorded animal or bird calls or sounds or electronic calls may be used on private lands for hunting coyotes with the written permission of the landowner.

§ 4. Live birds or animals as decoys prohibited.

Game birds and game animals shall not be taken by the use or aid of live birds or animals as decoys.

§ 5. Poisoning of wild birds and wild animals prohibited; certain control programs excepted.

It shall be unlawful to put out poison at any time for the purpose of killing any wild birds and wild animals, provided that rats and mice may be poisoned on one's own property. The provisions of this section shall not apply to the Commissioner of Agriculture and Consumer Services, or his representatives or cooperators, and those being assisted in a control program following procedures developed under the "Virginia Nuisance Bird Law."

§ 6. Hunting with dogs or possession of weapons in certain locations during closed season.

A. National forests and department-owned lands.

It shall be unlawful to have in possession a bow or a gun which is not unloaded and cased or dismantled, in the national forests and on department-owned lands and on lands managed by the department under cooperative agreement except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, waterfowl, in all counties west of the Blue Ridge Mountains and on national forest lands east of the Blue Ridge Mountains and migratory game birds in all counties east of the Blue Ridge Mountains. The provisions of this section shall not prohibit the conduct of any activities authorized by the board or the establishment and

operation of archery and shooting ranges on the above-mentioned lands. The use of firearms and bows in such ranges during the closed season period will be restricted to the area within established range boundaries. Such weapons shall be required to be unloaded and cased or dismantled in all areas other than the range boundaries. The use of firearms or bows during the closed hunting period in such ranges shall be restricted to target shooting only and no birds or animals shall be molested.

B. Certain counties.

Except as otherwise provided in VR 325-02-1, § 6-1, it shall be unlawful to have either a shotgun or a rifle in one's possession when accompanied by a dog in the daytime in the fields, forests or waters of the counties of Augusta, Clarke, Frederick, Page, Shenandoah and Warren, and in the counties east of the Blue Ridge Mountains, except Patrick, at any time except the periods prescribed by law to hunt game birds and animals.

C. Meaning of "possession" of bow or firearm.

For the purpose of this section the word "possession" shall include, but not be limited to, having any bow or firearm in or on one's person, vehicle or conveyance.

D. It shall be unlawful to chase with a dog or train dogs on national forest lands or department-owned lands except during authorized hunting, chase, or training seasons that specifically permit these activities on these lands.

E. It shall be unlawful to possess or transport a loaded gun in or on any vehicle at any time on national forest lands or department-owned lands. For the purpose of this section a "loaded gun" shall be defined as a firearm in which ammunition is chambered or loaded in the magazine or clip, when such magazine or slip is found engaged or partially engaged in a firearm. The definition of a loaded muzzleloading gun will include a gun which is capped or has a charged pan.

§ 6-1. Open dog training season.

A. Private lands and certain military areas.

It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on private lands, Fort A.P. Hill and Fort Pickett. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, must comply with all regulations and laws pertaining to hunting and no game shall be taken; provided, however, that weapons may be in possession when training dogs on captive waterfowl and pigeons so that they may be immediately shot or recovered, except on Sunday.

B. Designated portions of certain department-owned lands.

It shall be lawful to train dogs on quail on designated portions of the Amelia Wildlife Management Area, Chester F. Phelps Wildlife Management Area, Chickahominy Wildlife Management Area and Dick Cross Wildlife Management Area from September 1 to the day prior to the opening date of the quail hunting season, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.

§ 7. Quantico Marine Reservation; training or running dogs.

It shall be unlawful to train deer dogs at any time, or to train or run any dogs in the designated hunting areas between March 1 and September 1, both dates inclusive, within the confines of Quantico Marine Reservation.

§ 8. Quantico Marine Reservation; hunting after sunset prohibited.

It shall be unlawful to hunt with any firearm or bow and arrow after sunset on any day within the confines of Quantico Marine Reservation.

§ 9. Hog Island Wildlife Management Area; waterfowl refuge established.

Hog Island, in Surry County, and all of the waters of the James River within a radius of 1,000 yards contiguous thereto is hereby declared a waterfowl refuge for the purpose of developing a feeding and resting area for such birds.

§ 10. Hog Island Wildlife Management Area; hunting, trapping, etc., prohibited; exception.

It shall be unlawful to hunt, shoot, kill, trap or molest or attempt to hunt, shoot, kill, trap or molest at any time any waterfowl including ducks, geese, brant, or coot, or to hunt, shoot, kill, trap, molest, or attempt to hunt, shoot, kill, trap, or molest any other birds or animals on or in the area described in § 9 of this regulation, except at designated times from waterfowl blinds established by the department, provided that the department may, when deemed necessary for the better development of said refuge, remove by trapping or otherwise any birds or animals as would not be beneficial to the purposes for which such refuge is established.

§ 11. Hog Island Wildlife Management Area; possession of loaded gun prohibited; exception.

It shall be unlawful to have in possession at any time a gun which is not unloaded and cased or dismantled on that portion of the Hog Island Wildlife Management Area bordering on the James River and lying north of the Surry Nuclear Power Plant, except while hunting deer or waterfowl in conformity with a special permit issued by the department.

§ 12. Disturbing waterfowl adjacent to Lands End Waterfowl Management Area.

It shall be unlawful to take, attempt to take, pursue or disturb waterfowl within the public waters adjacent to the Lands End Waterfowl Management Area located in King George County for such distance offshore as may be established by the board and properly posted so as to give adequate notice to the public.

§ 13. Hunting, etc., prohibited on Buggs Island and certain waters of the Gaston Reservoir.

It shall be unlawful to hunt or have in one's possession a loaded gun on Buggs Island or to shoot over or have a loaded gun upon the water on Gaston Reservoir (Roanoke River) from a point beginning at High Rock and extending to the John H. Kerr Dam.

§ 14. Trapping prohibited except by permit on certain wildlife management areas.

It shall be unlawful to trap except by department permit on the Chicahominy, Barbour's Hill, Briery Creek, Hog Island, Lands End, Pocahontas-Trojan, Powhatan and Saxis Wildlife Management Areas.

§ 15. Molesting, damaging, removing or disturbing traps prohibited; release of game from lawful traps prohibited.

It shall be unlawful to willfully molest, damage or remove any trap, or any lawfully caught bird or animal therefrom, or in any way disturb traps or snares legally set by another person.

§ 16. Marking of traps by person setting.

Any person setting or in possession of a steel leghold or body gripping trap or snare shall have it marked by means of nonferrous metal tag bearing his name and address. This requirement shall not apply to landowners on their own land, nor to a bona fide tenant or lessee within the bounds of land rented or leased by him, nor to anyone transporting any such trap from its place of purchase.

§ 17. Trapping fur-bearing animals damaging property during closed season.

When fur-bearing animals are doing damage to crops or other property, the game warden of the county may issue a permit to the landowner or his lessee to trap such fur-bearing animals as are doing damage. Where such a permit is obtained by a landowner or a lessee, it shall be lawful during the closed season to trap such animals as are doing damage.

§ 18. Restricted use of body-gripping traps in excess of 7-1/2 inches.

The use of body-gripping traps with a jaw spread in excess of 7-1/2 inches is prohibited except when such traps are covered by water.

§ 19. Restricted use of above ground body-gripping traps in excess of five inches.

It shall be unlawful to set above the ground any body-gripping trap with a jaw spread in excess of five inches baited with any lure or scent likely to attract a dog.

§ 20. Restricted use of certain steel leg-hold traps.

It shall be unlawful to set above the ground any steel leg-hold trap with teeth set upon the jaws or with a jaw spread exceeding 6-1/2 inches.

§ 21. Use of deadfalls prohibited; restricted use of snares.

It shall be unlawful to trap, or attempt to trap, on land any wild bird or wild animal with any deadfall or snare; provided, that snares with loops no more than 12 inches in diameter and with the top of the snare loop set not to exceed 12 inches above ground level may be used with the written permission of the landowner.

§ 22. Dates for setting traps in water.

It shall be unlawful to set any trap in water prior to December 1.

§ 23. Animal population control.

Whenever biological evidence suggests that populations of game animals may exceed or threaten to exceed the carrying capacity of a specified range, or whenever the health or general condition of a species, or the threat of human public health and safety indicates the need for population reduction, the director is authorized to issue special permits to obtain the desired reduction during the open season by licensed hunters on areas prescribed by wildlife biologists. Designated game species may be taken in excess of the general bag limits on special permits issued under this section under such conditions as may be prescribed by the director.

§ 24. Wanton waste.

No person shall kill or cripple and knowingly allow any nonmigratory game bird or game animal to be wasted without making a reasonable effort to retrieve the animal and retain it in their possession. Nothing in this section shall permit a person to trespass or violate any state, federal, city or county law, ordinance or regulation.

§ 25. Sunday hunting on controlled shooting areas.

A. Except as otherwise provided in the sections appearing in this regulation, it shall be lawful to hunt pen-raised game birds seven days a week as provided by § 29.1-514. The length of the hunting season on such

preserves and the size of the bag limit shall be in accordance with rules of the board. For the purpose of this regulation, controlled shooting areas shall be defined as licensed shooting preserves.

B. It shall be unlawful to hunt pen-raised game birds on Sunday on controlled shooting areas in those counties having a population of not less than 54,000, nor more than 55,000, or in any county or city which prohibits Sunday operation by ordinance.

VR 325-02-6. Deer.

§ 1. Open season; generally.

Except as otherwise provided by local legislation and with the specific exceptions provided in the sections appearing in this regulation, it shall be lawful to hunt deer from the third Monday in November through the first Saturday in January, both dates inclusive.

§ 2. Open season; cities and counties west of Blue Ridge Mountains and certain cities and counties or parts thereof east of Blue Ridge Mountains.

It shall be lawful to hunt deer on the third Monday in November and for 11 consecutive hunting days following in the cities and counties west of the Blue Ridge Mountains (except on the Radford Army Ammunition Plant in Pulaski County), and in the counties (including cities within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad except in the City of Lynchburg), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad), and on the Chester F. Phelps and G. Richard Thompson Wildlife Management areas.

§ 2-1. Open season; cities of Virginia Beach, Chesapeake and Suffolk east of Dismal Swamp Line.

It shall be lawful to hunt deer from October 1 through November 30, both dates inclusive, in the cities of Virginia Beach, Chesapeake, and Suffolk east of the Dismal Swamp Line.

§ 2-2. (Repealed.)

§ 2-3. Open season; Back Bay National Wildlife Refuge and False Cape State Park.

It shall be lawful to hunt deer on the Back Bay National Wildlife Refuge and on False Cape State Park from October 1 through October 31.

§ 3. (Repealed.)

§ 4. Bow and arrow hunting.

A. Early special archery.

It shall be lawful to hunt deer with bow and arrow from the first Saturday in October through the Saturday prior to the third Monday in November, both dates inclusive, except where there is a closed general hunting season on deer.

B. Late special archery season west of Blue Ridge Mountains and certain cities and counties east of Blue Ridge Mountains.

In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer with bow and arrow from the Monday following the close of the general firearms season on deer west of the Blue Ridge Mountains through the first Saturday in January, both dates inclusive, in all cities and counties west of the Blue Ridge Mountains and in the counties of (including cities within) Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line) and Virginia Beach.

C. Either-sex deer hunting days.

Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section.

D. Carrying firearms prohibited.

It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery season.

E. Requirements for bow and arrow.

Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. Use of dogs prohibited during bow season.

It shall be unlawful to use dogs when hunting with bow and arrow from the ~~second~~ *first* Saturday in October through the Saturday prior to the ~~second~~ *third* Monday in November, both dates inclusive.

G. Crossbows permitted for persons with permanent physical disabilities.

As provided in § 2 B of VR 325-02-1, it shall be lawful for persons whose permanent physical disabilities prevent them from hunting with conventional archery equipment to hunt deer with a crossbow on their own property as provided in subsections A, B, C, D, and F of this section.

§ 5. Muzzleloading gun hunting.

A. Early special muzzleloading season.

It shall be lawful to hunt deer with muzzleloading guns from the first Monday in November through the Saturday prior to the third Monday in November, both dates inclusive, in all cities and counties where hunting with a rifle or muzzleloading gun is permitted, except in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line) and Virginia Beach.

B. Late special muzzleloading season west of Blue Ridge Mountains and in certain cities and counties east of Blue Ridge Mountains.

It shall be lawful to hunt deer with muzzleloading guns from the third Monday in December through the first Saturday in January, both dates inclusive, in all cities and counties west of the Blue Ridge Mountains, and east of the Blue Ridge Mountains in the counties of (including the cities within) Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad).

C. Either-sex deer hunting days.

Deer of either sex may be taken during the entire early special muzzleloading season in all cities and counties east of the Blue Ridge Mountains (except on national forest lands, state forest lands, state park lands, department-owned lands and Philpott Reservoir) and on the first Saturday only in all cities and counties west of the Blue Ridge (except Buchanan, Dickenson, Lee, Russell (except the Clinch Mountain Wildlife Management Area), Scott, Tazewell (except the Clinch Mountain Wildlife Management Area), Washington (except the Clinch Mountain Wildlife Management Area), Wise and on national forest lands in Page, Rockingham, Shenandoah, and Smyth) and on the Clinch Mountain Wildlife Management Area and east of the Blue Ridge Mountains on national forest lands, state forest lands, state park lands, department-owned lands and on Philpott Reservoir. It shall be lawful to hunt deer of either sex during the last six days of the late special muzzleloading season in all cities and counties west of the Blue Ridge Mountains (except Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, Washington, Wise and on national forest lands in Smyth and on the Clinch Mountain Wildlife Management Area) and in the counties (including cities within) or portions of counties east of the Blue Ridge Mountains listed in subsection B of this section. Provided further it shall be lawful to hunt deer of either sex during the last day only of the last special muzzleloading season in the cities and counties within Dickenson (north of Pound River and west of Russell Fork River), Lee, Russell, Scott, Tazewell, Washington, Wise and on national forest lands in Smyth and on the Clinch Mountain Wildlife Management Area.

D. Use of dogs prohibited.

It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns.

E. Muzzleloading gun defined.

A muzzleloading gun, for the purpose of this regulation, means a single shot flintlock or percussion weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single lead projectile or sabot (with a .38 caliber or larger nonjacketed lead projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent). Open or peep sights only (iron sights) are permitted during special muzzleloading seasons.

F. Unlawful to have other firearms in possession.

It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

§ 6. Bag limit; generally; bonus deer permits and tag usage.

The bag limit for deer statewide shall be two a day, three a license year, one of which must be antlerless. Antlerless deer may be taken only during designated either-sex deer hunting days during the special archery season, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted and on Fort Belvior and other special deer problem and harvest management areas identified and so posted by the Department of Game and Inland Fisheries during the special archery, special muzzleloading gun and the general firearms seasons. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.

§ 7. General firearms season either-sex deer hunting days; Saturday following third Monday in November and last two hunting days.

During the general firearms season, deer of either sex may be taken on the Saturday immediately following the third Monday in November and the last two hunting days only, in the counties of (including cities within) Alleghany, Augusta, Bath, Bland, Carroll, Craig, Giles, Grayson, Highland, Montgomery, Page (except on national forest lands), Pulaski (except on the Radford Army Ammunition Plant), Roanoke, Rockbridge, Rockingham (except national forest lands), Shenandoah (except national forest lands), Smyth (except on national forest lands and Clinch Mountain Wildlife Management Area), Wythe and on Fairystone Farms Wildlife Management Area, Fairystone State Park, Philpott Reservoir, and Turkeycock Mountain Wildlife Management Area.

§ 8. (Repealed)

§ 9. (Repealed)

§ 10. General firearms season either-sex deer hunting days; full season.

During the general firearms season, deer of either sex may be taken full season, in the counties of (including cities within) Amherst (west of U.S. Route 29, except on national forest lands), Bedford, Botetourt (except on national forest lands), Campbell (west of Norfolk Southern Railroad and in the City of Lynchburg only on private lands for which a special permit has been issued by the chief of police), Clarke, Fairfax (restricted to certain parcels of land by special permit), Floyd, Franklin (except Philpott Reservoir and Turkeycock Mountain Wildlife Management Area), Frederick (except on national forest lands), Henry (except on Fairystone Farms Wildlife Management Area, Fairystone State Park, Philpott Reservoir, and Turkeycock Mountain Wildlife Management Area), Loudoun, Nelson (west of Route 151, except on national forest lands), Patrick (except Fairystone Farms Wildlife Management Area, Fairystone State Park and Philpott Reservoir), Pittsylvania (west of Norfolk Southern Railroad), Warren (except on national forest lands) and on Back Bay National Wildlife Refuge, Fort A.P. Hill, Caledon Natural Area, Camp Peary, Cheatham Annex, Chincoteague National Wildlife Refuge, Dahlgren Surface Warfare Center Base, Dam Neck Amphibious Training Base, Dismal Swamp National Wildlife Refuge, Eastern Shore of Virginia National Wildlife Refuge, False Cape State Park, Fentress Naval Auxiliary Landing Field, Fisherman's Island National Wildlife Refuge, Fort Belvoir, Fort Eustis, Fort Lee, Fort Pickett, Harry Diamond Laboratory, Langley Air Force Base, Naval Air Station Oceana, Northwest Naval Security Group, Presquile National Wildlife Refuge, Quantico Marine Corps Reservation, Radford Army Ammunition Plant, Sky Meadows State Park, York River State Park, Yorktown Naval Weapons Station and Hog Island Wildlife Management Area (except on the Carlisle Tract).

§ 11. General firearms season either-sex deer hunting days; first Saturday immediately following third Monday in November and last six days.

During the general firearms season, deer of either sex may be taken the Saturday immediately following the third Monday in November in the counties (including cities within) of Lee, Russell, Scott, Tazewell, Washington, Wise, and on the Clinch Mountain Wildlife Management Area, Buckingham-Appomattox State Forest, Cumberland State Forest and Pocahontas State Forest, Prince Edward State Forest and on national forest lands in Frederick, Page, Shenandoah, Smyth, Rockingham and Warren counties.

§ 12. (Repealed.)

§ 13. General firearms season either-sex deer hunting days; first Saturday immediately following third Monday in November and last six days.

During the general firearms season, deer of either sex may be taken on the first Saturday immediately following the third Monday in November and the last six hunting days, in the counties of (including cities within) Middlesex, Mathews, Warren and York (except on Camp Peary, Cheatham Annex and Naval Weapons Station) and on the Horsepen Lake Wildlife Management Area, James River Wildlife Management Area, Occoneechee State Park, Amelia Wildlife Management Area, Briery Creek Wildlife Management Area, Dick Cross Wildlife Management Area, White Oak Mountain Wildlife Management Area and Powhatan Wildlife Management Area and on national forest lands in Amherst, Botetourt and Nelson counties ; and in the Cities of Chesapeake (except on Dismal Swamp National Wildlife Refuge, Fentress Naval Auxiliary Landing Field and on the Northwest Naval Security Group), and Virginia Beach (except on Back Bay National Wildlife Refuge, Dam Neck Amphibious Training Base, Naval Air Station Oceana and, False Cape State Park and Fentress Naval Auxiliary Landing Field).

§ 14. General firearms season either-sex deer hunting days; first three Saturdays following third Monday in November and last 24 hunting days.

During the general firearms season, deer of either sex may be taken on the first three Saturdays immediately following the third Monday in November and on the last 24 hunting days, in the counties of (including cities within) Accomack (except Chincoteague National Wildlife Refuge), Greensville, Isle of Wight, Northhampton (except Eastern Shore of Virginia National Wildlife Refuge and Fisherman's Island National Wildlife Refuge), Southampton, Surry (except Hog Island Wildlife Management Area), and Sussex, and in the City of Suffolk (except on the Dismal Swamp National Wildlife Refuge).

§ 14.1. General firearms season either-sex deer hunting days; first two Saturdays immediately following third Monday in November and last 12 hunting days.

During the general firearms season, deer of either sex may be taken on the first two Saturdays immediately following the third Monday in November and on the last 12 hunting days, in the counties of (including the cities within) Albemarle, Amelia (except Amelia Wildlife Management Area), Amherst (east of U.S. Route 29), Appomattox (except Buckingham-Appomattox State Forest), Brunswick (except Fort Pickett), Buckingham (except on Buckingham-Appomattox State Forest and Horsepen Lake Wildlife Management Area, Campbell (east of Norfolk Southern Railroad except City of Lynchburg), Caroline (except Fort A.P. Hill), Charles City (except on Chickahominy Wildlife Management Area), Charlotte, Chesterfield (except Pocahontas State Forest and Presquile National Wildlife Refuge), Culpeper (except on Chester F. Phelps Wildlife Management Area), Cumberland (except on Cumberland State Forest), Dinwiddie (except on Fort Pickett), Essex, Fauquier (except on the G. Richard Thompson and Chester F. Phelps Wildlife Management Areas, Sky Meadows State Park and Quantico Marine Reservation), Fluvanna, Gloucester, Goochland, Greene, Halifax, Hampton (except on Langley Air Force Base), Hanover, Henrico (except Presquile National Wildlife Refuge), James City (except York River State Park), King and Queen, King George (except Caledon Natural Area and Dahlgren Surface Warfare Center), King William,

Lancaster, Louisa, Lunenburg, Madison, Mecklenburg (except Dick Cross Wildlife Management Area, Occoneechee State Park), Nelson (east of Route 151 except James River Wildlife Management Area), New Kent, Newport News (except Fort Eustis), Northumberland, Nottoway (except on Fort Pickett), Orange, Pittsylvania (east of Norfolk Southern Railroad except White Oak Mountain Wildlife Management Area), Powhatan (except Powhatan Wildlife Management Area), Prince Edward (except on Prince Edward State Forest and Briery Creek Wildlife Management Area), Prince George (except on Fort Lee), Prince William (except on Harry Diamond Laboratory and Quantico Marine Reservation), Rappahannock, Richmond, Spotsylvania, Stafford (except on Quantico Marine Reservation), Westmoreland, and York (except on Camp Peary, Cheatham Annex and Yorktown Naval Weapons Station).

§ 14.2. General firearms season; bucks only.

During the general firearms season, only deer with antlers visible above the hairline may be taken in that portion of Dickenson County lying north of the Pound River and west of the Russell Fork River and on the Chester F. Phelps Wildlife Management Area, G. Richard Thompson Wildlife Management Area, Chickahominy Wildlife Management Area and on the Carlisle Tract of Hog Island Wildlife Management Area.

§ 15. Tagging deer and obtaining official game tag; by licensee.

A. Detaching game tag from license.

It shall be unlawful for any person to detach the game tag from any license to hunt deer prior to the killing of a deer and tagging same. Any detached tag shall be subject to confiscation by any representative of the department.

B. Immediate tagging of carcass.

Any person killing a deer shall, before removing the carcass from the place of kill, detach from his special license for hunting deer the appropriate tag and shall attach such tag to the carcass of his kill. Place of kill shall be defined as the location where the animal is first reduced to possession.

C. Presentation of tagging carcass for checking; obtaining official game check card.

Upon killing a deer and tagging same, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the tagged carcass to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the deer was killed. At such time, the tag attached to the carcass shall be exchanged for an official game check card, which shall be securely attached to the carcass and remain attached until the carcass is processed.

D. Destruction of deer prior to tagging; forfeiture of untagged deer.

It shall be unlawful for any person to destroy the identity (sex) of any deer killed unless and until tagged and checked as required by this section. Any deer not tagged as required by this section found in the possession of any person shall be forfeited to the Commonwealth to be disposed of as provided by law.

§ 16. Tagging deer and obtaining official game tag; by person exempt from license requirement.

Upon killing a deer, any person exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the deer was killed. At such time, the person shall be given an official game check card furnished by the department, which shall be securely attached to the carcass and remain attached until the carcass is processed.

§ 17. Hunting prohibited in certain counties.

It shall be unlawful to hunt deer at any time in the counties of Arlington, Buchanan and in that portion of Dickenson County south of the Pound River and east of the Russell Fork River.

§ 18. Hunting with dogs prohibited in certain counties and areas.

A. Generally.

It shall be unlawful to hunt deer with dogs in the counties of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad, and in the City of Lynchburg), Fairfax, Franklin, Henry, Loudoun, Nelson (west of Route 151), Northampton, Patrick and Pittsylvania (west of Norfolk Southern Railroad); and on the Amelia, Chester F. Phelps, G. Richard Thompson and Pettigrew Wildlife Management Areas.

B. Special provision for Greene and Madison counties.

It shall be unlawful to hunt deer with dogs during the first 12 hunting days in the counties of Greene and Madison.

§ 19. Hunting with dogs or drives prohibited on Quantico Marine Reservation.

It shall be unlawful to use dogs or to organize drives for

the purpose of hunting deer within the confines of Quantico Marine Reservation.

§ 20. Sale of hides.

It shall be lawful to sell hides from any legally taken deer.

VA.R. Doc. No. R94-1136; Filed July 20, 1994, 11:53 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (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 (b) of the Code of Virginia, which excludes regulations that are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 460-04-8.7. Client Appeals Regulations.**

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

Effective Date: October 1, 1994.

Summary:

The purpose of this action is to amend the Commonwealth's regulations concerning Client Appeals (VR 460-04-8.7) due to the order of the U.S. District Court (Civil Action No. 92-00072) for the Western District of Virginia.

DMAS is required by Title 42 of the Code of Federal Regulations Part 431 Subpart E to provide to applicants for and recipients of medical assistance the right to appeal denied eligibility and denied services. DMAS fulfills this requirement through its process of client appeals, as contained in its regulations Client Appeals (VR 460-04-8.7) as administered by the Division of Client Appeals (via hearing officers) and the Medical Assistance Appeals Panel (MAAP).

The present DMAS administrative appeals process involves two levels. The first level permits the client who is dissatisfied with the agency decision denying or reducing eligibility or services, to appeal the decision to the department. A hearing officer conducts a fair hearing and issues a binding decision. Hearing officers are empowered to consider all issues that may be raised in the course of an appeal - factual, procedural, and legal. If a hearing officer determines that an eligibility policy is in clear conflict with state or federal law and that the law establishes a clear course of conduct which must be followed, the officer must apply the controlling law to the case under review without regard to policy conflicts.

The second level of appeal is the MAAP consisting of three administrative law judges. This affords an additional level of appeal that other public assistance clients do not have.

In 1989, the U.S. District Court for the Western District of Virginia decided in Mowbray v. Kozlowski that Virginia was not applying the contiguous property rules correctly. As part of the decision, the court ordered DMAS' hearing officers to allow appellants to present argument on issues of state or federal law without undue interference. The decision concerning contiguous property was appealed to the Court of Appeals for the Fourth Circuit and subsequently overturned. However, the issue of hearing officers determining questions of law was not appealed.

Since the 1989 decision in the Mowbray v. Kozlowski case, hearing officers have been applying the controlling law when the policy is in clear conflict with the law.

Since this action only provides for the addition of clarifying language to the existing regulations and no substantive policy changes are being made, there are no advantages or disadvantages to either applicants for or recipients of medical assistance services, nor to providers of those services.

Since this action is a clarification of existing policy, there is no fiscal or budget impact. Since the clarified policy applies statewide, there are no specific locality impacts.

Agency Contact: Copies of the regulation may be obtained from Victoria Simmons, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-7933.

VR 460-04-8.7. Client Appeals Regulations.

PART I.
GENERAL.

Article 1.
Definitions.

§ 1.1. Definitions.

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

"Agency" means:

1. An agency which, on the department's behalf, makes determinations regarding applications for benefits provided by the department; and

2. The department itself.

"Appellant" means an applicant for or recipient of medical assistance benefits from the department who seeks to challenge an adverse action regarding his benefits or his eligibility for benefits.

"Department" means the Department of Medical Assistance Services.

"Division" means the department's Division of Client Appeals.

"Final decision" means a written determination by a hearing officer which is binding on the department, unless modified on appeal or review.

"Hearing" means the evidentiary hearing described in this regulation, conducted by a hearing officer employed by the department.

"Panel" means the Medical Assistance Appeals Panel.

"Representative" means an attorney or agent who has been authorized to represent an appellant pursuant to these regulations.

Article 2.
The Appeal System.

§ 1.2. Division of Client Appeals.

The division maintains an appeals system for clients to challenge adverse actions regarding services and benefits provided by the department:

1. Hearing officer review. Appellants shall be entitled to a hearing before a hearing officer. See Part II of these regulations.

2. Medical Assistance Appeals Panel Review. An appellant who believes the hearing officer's decision is incorrect may, at his option, appeal to the Medical Assistance Appeals Panel for review. See Part III of these regulations.

§ 1.3. Time limitation for appeals.

Hearing officer appeals shall be scheduled and conducted to comply with the 90-day time limitation imposed by federal regulations, unless waived in writing by the appellant or the appellant's representative. Any further review by the panel shall not be considered subject to the 90-day limitation.

§ 1.4. Judicial review.

An appellant who believes a final decision as defined herein or a decision of the Medical Assistance Appeals Panel is incorrect may seek judicial review of either pursuant to § 9-6.14:1 et seq. of the Code of Virginia and Part 2A, Rules of the Virginia Supreme Court.

Article 3.
Representation.

§ 1.5. Right to representation.

An appellant shall have the full right to representation by an attorney or agent at all stages of appeal.

§ 1.6. Designation of representative.

A. Agents.

An agent must be designated in a written statement which is signed by the appellant. If the appellant is physically or mentally unable to sign a written statement, the division may allow a family member or other person acting on appellant's behalf to represent the appellant.

B. Attorneys.

If the agent is an attorney or a paralegal working under the supervision of an attorney, a signed statement by such attorney or paralegal that he is authorized to represent the appellant prepared on the attorney's letterhead, shall be accepted as a designation of representation.

C. Substitution.

A member of the same law firm as a designated representative shall have the same rights as the designated representative.

D. Revocation.

An appellant may revoke representation by another person at any time. The revocation is effective when the department receives written notice from the appellant.

Article 4.
Notice and Appeal Rights.

§ 1.7. Notification of adverse agency action.

The agency which makes an initial adverse determination shall inform the applicant or recipient in a written notice:

1. What action the agency intends to take;

2. The reasons for the intended action;

3. The specific regulations that support or the change in law that requires the action;

4. The right to request an evidentiary hearing, and the methods and time limits for doing so;

5. The circumstances under which benefits are continued if a hearing is requested (see § 1.10); and

6. The right to representation.

§ 1.8. Advance notice.

When the agency plans to terminate, suspend or reduce an individual's eligibility or covered services, the agency must mail the notice described in § 1.7 at least 10 days before the date of action, except as otherwise permitted by federal law.

§ 1.9. Right to appeal.

An individual has the right to file an appeal when:

1. His application for benefits administered by the department is denied. However, if an application for State Local Hospitalization coverage is denied because of a lack of funds which is confirmed by the hearing officer, there is no right to appeal.

2. The agency takes action or proposes to take action which will adversely affect, reduce, or terminate his receipt of benefits;

3. His request for a particular medical service is denied, in whole or in part;

4. The agency does not act with reasonable promptness on his application for benefits or request for a particular medical service; or

5. Federal regulations require that a fair hearing be granted.

§ 1.10. Maintaining services.

A. If the agency mails the 10-day notice described in § 1.8 and the appellant files his Request for Appeal before the date of action, his services shall not be terminated or reduced until the hearing officer issues a final decision unless it is determined at the hearing that the sole issue is one of federal or state law or policy and the appellant is promptly informed in writing that services are to be terminated or reduced pending the final decision.

B. If the agency's action is sustained on appeal, the agency may institute any available recovery procedures against the appellant to recoup the cost of any services furnished to the appellant, to the extent they were furnished solely by reason of § 1.10 A of these regulations.

Article 5.
Miscellaneous Provisions.

§ 1.11. Division records.

A. Removal of records.

No person shall take from the division's custody any original record, paper, document, or exhibit which has been certified to the division except as the Director of Client Appeals authorizes, or as may be necessary to furnish or transmit copies for other official purposes.

B. Confidentiality of records.

Information in the appellant's record can be released only to a properly designated representative or other person(s) named in a release of information authorization signed by an appellant, his guardian or power of attorney.

C. Fees.

The fees to be charged and collected for any copies will be in accordance with Virginia's Freedom of Information Act or other controlling law.

D. Waiver of fees.

When copies are requested from records in the division's custody, the required fee shall be waived if the copies are requested in connection with an individual's own review or appeal.

§ 1.12. Computation of time limits.

A. Acceptance of postmark date.

Documents postmarked on or before a time limit's expiration shall be accepted as timely.

B. Computation of time limit.

In computing any time period under these regulations, the day of the act or event from which the designated period of time begins to run shall be excluded and the last day included. If a time limit would expire on a Saturday, Sunday, or state or federal holiday, it shall be extended until the next regular business day.

PART II.
HEARING OFFICER REVIEW.

Article 1.
Commencement of Appeals.

§ 2.1. Request for appeal.

Any written communication from an appellant or his representative which clearly expresses that he wants to present his case to a reviewing authority shall constitute an appeal request. This communication should explain the basis for the appeal.

§ 2.2. Place of filing a Request for Appeal.

A Request for Appeal shall be delivered or mailed to the Division of Client Appeals.

§ 2.3. Filing date.

The date of filing shall be the date the request is

postmarked, if mailed, or the date the request is received by the department, if delivered other than by mail.

§ 2.4. Time limit for filing.

A Request for Appeal shall be filed within 30 days of the appellant's receipt of the notice of an adverse action described in § 1.7 of these regulations. It is presumed that appellants will receive the notice three days after the agency mails the notice. A Request for Appeal on the grounds that an agency has not acted with reasonable promptness may be filed at any time until the agency has acted.

§ 2.5. Extension of time for filing.

An extension of the 30-day period for filing a Request for Appeal may be granted for good cause shown. Examples of good cause include, but are not limited to, the following situations:

1. Appellant was seriously ill and was prevented from contacting the division;

2. Appellant did not receive notice of the agency's decision;

3. Appellant sent the Request for Appeal to another government agency in good faith within the time limit;

4. Unusual or unavoidable circumstances prevented a timely filing.

§ 2.6. Provision of information.

Upon receipt of a Request for Appeal, the division shall notify the appellant and his representative of general appeals procedures and shall provide further detailed information upon request.

Article 2.
Prehearing Review.

§ 2.7. Review.

A hearing officer shall initially review an assigned case for compliance with prehearing requirements and may communicate with the appellant or his representative and the agency to confirm the agency action and schedule the hearing.

§ 2.8. Medical Assessment.

A. A hearing officer may order an independent medical assessment when:

1. The hearing involves medical issues such as a diagnosis, an examining physician's report, or a medical review team's decision; and

2. The hearing officer determines it necessary to have an assessment by someone other than the person or team who made the original decision, for example, to obtain more detailed medical findings about the impairments, to obtain technical or specialized medical information, or to resolve conflicts or differences in medical findings or assessments in the existing evidence.

B. A medical assessment ordered pursuant to this regulation shall be at the department's expense and shall become part of the record.

§ 2.9. Prehearing action.

A. Invalidation.

A Request for Appeal may be invalidated if it was not filed within the time limit imposed by § 2.4 or extended pursuant to § 2.5.

1. If the hearing officer determines that the appellant has failed to file a timely appeal, the hearing officer shall notify the appellant and the appellant's representative of the opportunity to show good cause for the late appeal.

2. If a factual dispute exists about the timeliness of the Request for Appeal, the hearing officer shall receive evidence or testimony on those matters before taking final action.

3. If the individual filing the appeal is not the appellant or an authorized representative of the appellant under the provisions of § 1.6 A, the appeal shall be determined invalid.

4. If a Request for Appeal is invalidated, the hearing officer shall issue a decision pursuant to § 2.24.

B. Administrative dismissal.

A Request for Appeal may be administratively dismissed without a hearing if the appellant has no right to appeal under § 1.9 of these regulations.

1. If the hearing officer determines that the appellant does not have the right to an appeal, the hearing officer shall issue a final decision dismissing the appeal and notify the appellant and appellant's representative of the opportunity to appeal to the Medical Assistance Appeals Panel or seek judicial review.

2. If a Request for Appeal is administratively dismissed, the hearing officer shall issue a decision pursuant to § 2.24.

C. Judgment on the record.

If the hearing officer determines from the record that the agency's determination was clearly in error and that

the case should be resolved in the appellant's favor, he shall issue a decision pursuant to § 2.24.

D. Remand to agency.

If the hearing officer determines from the record that the case might be resolved in the appellant's favor if the agency obtains and develops additional information, documentation, or verification, he may remand the case to the agency for action consistent with the hearing officer's written instructions. The remand order shall be sent to the appellant and any representative.

E. Removal to the Medical Assistance Appeals Panel.

In cases where the sole issue is one of state or federal law or policy, the case may, with the appellant's approval, be removed to the Medical Assistance Appeals Panel. The panel shall render a decision on the merits of the appeal solely upon the facts as stipulated to by the appellant and the hearing officer. Otherwise, said cases shall proceed according to the provisions of Part III of these regulations.

1. Before such removal, the hearing officer will send the appellant a statement of undisputed facts and identify the legal questions involved.

2. If the appellant accepts the hearing officer's statement of facts and legal questions involved, he may agree to removal to the panel.

3. If appellant disputes any facts, wants to present additional evidence, or desires a face-to-face hearing, removal is inappropriate, and a hearing must be held.

Article 3.
Hearing.

§ 2.10. Evidentiary hearings.

A hearing officer shall review all agency determinations which are properly appealed; conduct informal, fact-gathering hearings; evaluate evidence presented; and issue a written final decision sustaining, reversing, or remanding each case to the agency for further proceedings.

§ 2.11. Scheduling.

To the extent possible, hearings will be scheduled at the appellant's convenience, with consideration of the travel distance required.

§ 2.11:1. Rescheduling.

A hearing shall be rescheduled at the claimant's request no more than twice unless compelling reasons exist.

§ 2.12. Notification.

When a hearing is scheduled, the appellant and his representative shall be notified in writing of its time and place.

§ 2.13. Postponement.

A hearing may be postponed for good cause shown. No postponement will be granted beyond 30 days after the date of the Request for Appeal was filed unless the appellant or his representative waives in writing the 90-day deadline for the final decision.

§ 2.14. Location.

The hearing location shall be determined by the division. If for medical reasons the appellant is unable to travel, the hearing may be conducted at his residence.

The agency may respond to a series of individual requests for hearings by conducting a single group hearing:

1. Only in cases in which the sole issue involved is one of federal or state law or policy; and

2. Each person must be permitted to present his own case or be represented by his authorized representative.

§ 2.15. Client access to records.

Upon the request of the appellant or his representative, at a reasonable time before the date of the hearing, as well as during the hearing, the appellant and his representative may examine the content of appellant's case file and all documents and records the agency will rely on at the hearing.

§ 2.16. Subpoenas.

Appellants who require the attendance of witnesses or the production of records, memoranda, papers, and other documents at the hearing may request issuance of a subpoena in writing. The request must be received by the division at least five business days before the hearing is scheduled. Such request must include the witness' name, home and work address, county or city of work and residence, and identify the sheriff's office which will serve the subpoena.

§ 2.17. Role of the hearing officer.

The hearing officer shall conduct the hearing, decide on questions of evidence ~~and~~ , procedure *and law* , question witnesses, and assure that the hearing remains relevant to the issue or issues being appealed. The hearing officer shall control the conduct of the hearing and decide who may participate in or observe the hearing.

§ 2.18. Informality of hearings.

Hearings shall be conducted in an informal, nonadversarial manner. The appellant or his representative

has the right to bring witnesses, establish all pertinent facts and circumstances; present an argument without undue interference, and question or refute the testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

§ 2.19. Evidence.

The rules of evidence shall not strictly apply. All relevant, nonrepetitive evidence may be admitted, but the probative weight of the evidence will be evaluated by the hearing officer.

§ 2.20. Record of hearing.

All hearings shall be recorded either by court reporter, tape recorders, or whatever other means the agency deems appropriate. All exhibits accepted or rejected shall become part of the hearing record.

§ 2.21. Oath or affirmation.

All witnesses shall testify under oath which shall be administered by the court reporter or the hearing officer, as delegated by the department's director.

§ 2.22. Dismissal of Request for Appeal.

Request for Appeal may be dismissed if:

1. The appellant or his representative withdraws the request in writing; or

2. The appellant or his representative fails to appear at the scheduled hearing without good cause, and does not reply within 10 days after the hearing officer mails an inquiry as to whether the appellant wishes further action on the appeal.

§ 2.23. Post-hearing supplementation of the record.

A. Medical assessment.

Following a hearing, a hearing officer may order an independent medical assessment as described in § 2.8.

B. Additional evidence.

The hearing officer may leave the hearing record opened for a specified period of time in order to receive additional evidence or argument from the appellant. If the record indicates that evidence exists which was not presented by either party, with the appellant's permission, the hearing officer may attempt to secure such evidence.

C. Appellant's right to reconvene hearing or comment.

If the hearing officer receives additional evidence from a person other than the appellant or his representative, the hearing officer shall send a copy of such evidence to the appellant and his representative and give the appellant the opportunity to comment on such evidence in writing or to reconvene the hearing to respond to such evidence.

D. Any additional evidence received will become a part of the hearing record, but the hearing officer must determine whether or not it will be used in making the decision.

§ 2.24. Final decision.

After conducting the hearing ~~and~~ , reviewing the record *and deciding questions of law* , the hearing officer shall issue a written final decision which either sustains or reverses the agency action or remands the case to the agency for further action consistent with his written instructions. The hearing officer's final decision shall be considered as the agency's final administrative action pursuant to 42 CFR, 431.244(f). The final decision shall include:

1. A description of the procedural development of the case;

2. Findings of fact which identify supporting evidence;

3. Citations to supporting regulations and law;

4. Conclusions and reasoning;

5. The specific action to be taken by the agency to implement the decision; and

6. Notice of further appeal rights to the Medical Assistance Appeals Panel or state court. This notice shall include information about the right to representation, time limits for requesting review, the right to submit written argument and the right to present oral argument.

7. The notice shall state that a final decision may be appealed directly to circuit court as provided in § 9-6.14:16 B of the Code of Virginia and § 1.4 of these regulations. If an optional appeal is taken to the panel, judicial review shall not be available until the panel has acted under Part III.

§ 2.25. Transmission of the hearing record.

The hearing record shall be forwarded to the appellant and his representative with the final decision.

PART III.
MEDICAL ASSISTANCE APPEALS PANEL.

Article 1.
General.

§ 3.1. Composition of the Medical Assistance Appeals Panel.

The panel shall consist of a senior administrative law

judge and two administrative law judges who are appointed by the director of the department and shall serve at his pleasure.

§ 3.2. Function of the panel.

The panel shall review and decide appeals from hearing officers' decisions by evaluating the evidence in the record and any written and oral argument submitted, consistent with relevant federal and state law, regulations, and policy.

Article 2.
Commencement of Panel Review.

§ 3.3. Commencing panel review.

An appeal is commenced when the appellant or his representative files a Request for Review, or another written statement indicating the appellant's belief that the hearing officer's decision is incorrect which includes a written acknowledgement that the 90-day requirement set forth in 42 C.F.R. § 431.244(f) does not apply.

§ 3.4. Place of filing Request for Review and Acknowledgement.

The Request for Review and Acknowledgement shall be filed with the Medical Assistance Appeals Panel, Department of Medical Assistance Services, 600 E. Broad St. Richmond, VA 23219.

§ 3.5. Time limit for filing.

A Request for Review shall be filed within 12 days from the date the hearing officer's decision is mailed.

§ 3.6. Extension of time for filing.

An extension of the 12-day period for filing a Request for Review may be granted for good cause shown. A request for an extension shall be in writing and filed with the panel. The request shall include a complete explanation of the reasons that an extension is needed. Good cause includes unusual or unavoidable circumstances which prevented a timely appeal (see § 2.5).

§ 3.7. Dismissal.

A. A Request for Review shall be dismissed if an Acknowledgement is not executed or if the request was not filed within the time limit imposed by § 3.5 or extended pursuant to § 3.6. If a factual dispute exists about the timeliness of the Request for Review and Acknowledgement, the panel shall receive evidence or testimony on those matters before taking final action.

B. A dismissal shall constitute the panel's final disposition of the appeal.

C. Judgment on the record.

If the panel determines from the evidence in the record that the hearing officer's decision was clearly in error and that the case should be resolved in the appellant's favor, the panel may issue a final decision without receiving written or oral argument from appellant.

Article 3.
Written Argument.

§ 3.8. Right to present written argument.

An appellant may file written argument to present reasons why the hearing officer's decision is incorrect.

§ 3.9. Time limitation.

Written argument by the appellant, if any, shall be filed with the panel within 10 days after the Request for Review is filed.

§ 3.10. Extension.

An extension of the time limit for filing written argument may be granted for good cause shown.

§ 3.11. Evidence.

No additional evidence shall be accepted with the written argument unless it is relevant, nonrepetitive and not reasonably available at the hearing level through the exercise of due diligence.

Article 4.
Oral Argument.

§ 3.12. Requesting oral argument.

An appellant or his representative may ask for a hearing to present oral argument with the Request for Review.

§ 3.13. Place of hearing.

Hearings shall be held at the Department of Medical Assistance Services' central office in Richmond, 600 E. Broad Street, Suite 1300, Richmond, Virginia 23219.

§ 3.14. Notice of hearing.

A. Scheduling the hearing.

Unless judgment on the record is issued pursuant to § 3.7 C, a hearing will be set, and, to the extent possible, scheduled at the appellant's convenience.

B. Notification.

As soon as a hearing is scheduled, the person requesting it will be notified at least seven days in advance.

C. Postponement.

A hearing may be postponed by the appellant or his representative for good cause shown.

§ 3.15. Function of the senior administrative law judge.

The senior administrative law judge shall be the presiding member of the panel and shall issue all decisions on behalf of the panel. If the senior administrative law judge is absent, the director shall appoint one of the administrative law judges to assume the duties of the senior administrative law judge.

§ 3.16. Recorded hearing.

The hearing shall be tape recorded.

§ 3.17. Evidence.

No additional evidence will be accepted at the oral argument unless it meets the requirements of § 3.11 and is presented to the panel in advance of the hearing.

Article 5.
Disposition.

§ 3.18. Disposition.

A. Vote.

The panel decision is made by majority vote, and the decision may be to sustain, reverse or remand the hearing officer's decision.

B. Summary affirmance.

By majority vote the panel may summarily affirm the hearing officer's decision by adopting the hearing officer's decision as its own.

C. Content of decisions.

Decisions shall be in writing and shall consist of an opinion stating facts with supporting evidence, reasons and conclusions, citations to supporting law and regulations, and an order describing the specific action to be taken to implement the decision. Information about further appeal rights will also be provided.

D. Remand to hearing officer.

A remand order shall clearly state the panel's instructions for further development of the evidence or the legal or policy interpretation to be applied to the facts on record.

E. The panel decision shall be sent to appellant and his representative and the agency. This shall constitute the panel's final disposition of the appeal.

Article 6.
Reconsideration.

§ 3.19. When reconsideration is accorded.

A decision unfavorable to the appellant may be reconsidered by the panel on its own motion or upon motion by the appellant or his representative alleging error of fact or application of law or policy.

§ 3.20. Filing and content.

Appellant's motion for reconsideration must be filed within 12 days after entry of the panel's decision. This motion shall set forth clearly and specifically the alleged error(s) in the panel's decision.

§ 3.21. Review.

The administrative law judge who wrote the majority opinion shall review the sufficiency of the allegations set forth in the motion and may request additional written argument from the appellant.

§ 3.22. Disposition.

The ruling on the motion for reconsideration shall be in writing and entered as the final order in the case. If the motion is granted, a new decision will be issued in accordance with § 3.18.

VA.R. Doc. No. R94-1119; Filed July 19, 1994, 9:55 a.m.

BUREAU OF INSURANCE

July 5, 1994

ADMINISTRATIVE LETTER 1994-7

TO: ALL COMPANIES LICENSED TO WRITE AUTOMOBILE LIABILITY AND AUTOMOBILE PHYSICAL DAMAGE INSURANCE IN VIRGINIA

RE: MANDATORY OFFER OF RENTAL REIMBURSEMENT COVERAGE

For policies effective on and after July 1, 1994, § 38.2-2230 of the Code of Virginia states:

> Every insurer issuing a new or renewal policy of motor vehicle insurance, as defined in § 38.2-2212, which provides comprehensive or collision coverage, shall offer in writing to the named insured the option of purchasing rental reimbursement coverage.

The purpose of this letter is to inform each company licensed to write automobile liability and automobile physical damage insurance of the application of § 38.2-2230.

§ 38.2-2230 applies to all policies subject to the provisions of § 38.2-2212 of the Code of Virginia. The offer of rental reimbursement coverage must be made by every insurer issuing a new or renewal "policy of motor vehicle insurance," as defined in § 38.2-2212 which provides comprehensive or collision coverage. Subsection A of § 38.2-2212 states the following:

"Policy of motor vehicle insurance or policy means a policy or contract for bodily injury or property damage liability insurance issued or delivered in this Commonwealth covering liability arising from the ownership, maintenance, or use of any motor vehicle, insuring as the named insured one individual or husband and wife who are residents of the same household, and under which the insured vehicle designated in the policy is either:

> a. A motor vehicle of a private passenger, station wagon, or motorcycle type that is not used commercially, rented to others, or used as a public or livery conveyance where the terms public or livery conveyance do not include car pools, or
>
> b. Any other four-wheel motor vehicle which is not used in the occupation, profession, or business, other than farming, of the insured, or as a public or livery conveyance, or rented to others. The term policy of motor vehicle insurance or policy does not include (i) any policy issued through the Virginia Automobile Insurance Plan, (ii) any policy covering the operation of a garage, sales agency, repair shop, service station, or public parking place, (iii) any policy providing insurance only on an excess basis, or (iv) any other contract providing insurance to the named insured even though the contract may incidentally provide insurance on motor vehicles."

Commercial automobile policies endorsed to provide coverage for individual named insureds may also be subject to the provisions of § 38.2-2230. Rental reimbursement coverage must be offered when a commercial automobile policy provides comprehensive or collision coverage for automobiles of the private passenger type or motorcycles when such vehicles are subject to the provisions of § 38.2-2212. Commercial automobile policies written to provide coverage for individual named insureds are subject to the provisions of § 38.2-2212 when a risk meets the definition of "policy of motor vehicle insurance."

§ 38.2-2230 requires a positive offer, in writing, with each new or renewal policy. Insurers have flexibility as to the manner in which the offer is given; however, the offer must not be ambiguous or obscure and must be given not later than at the time the new or renewal policy is delivered.

The attached example may be of help in determining the kind of notice or offer that a company should use in order to comply with § 38.2-2230. Notices used by individual insurers are not subject to our approval, and should not be filed with the Bureau of Insurance; however, future market conduct examinations will include a determination of whether companies are complying with the statute.

Insurers whose filings do not include provisions for accommodating the provisions of § 38.2-2230 should submit the appropriate rule and, if applicable, rate filings as soon as possible in order to comply with the July 1, 1994, effective date.

Questions regarding § 38.2-2230 may be directed to the Bureau of Insurance, Property and Casualty Division, at (804) 371-9965.

/s/ Steven T. Foster
Commissioner of Insurance

NOTICE:

ADDITIONAL COVERAGE AVAILABLE

FOR POLICIES THAT PROVIDE COMPREHENSIVE OR COLLISION COVERAGES, COVERAGE MAY NOW BE ADDED FOR THE REIMBURSEMENT OF RENTAL VEHICLE EXPENSES.

WHEN THE VEHICLE YOU OWN IS DAMAGED BECAUSE OF A LOSS OR AN ACCIDENT AND WITHDRAWN FROM NORMAL USE, THIS ADDITIONAL COVERAGE PROVIDES FOR REIMBURSEMENT OF EXPENSES INCURRED FOR THE RENTAL OF A SUBSTITUTE VEHICLE OF EQUIVALENT TYPE AND

PURPOSE.

CONTACT YOUR AGENT OR COMPANY REPRESENTATIVE IF YOU WISH TO ADD THIS COVERAGE OR NEED ADDITIONAL INFORMATION.

VA.R. Doc. No. R94-1109; Filed July 14, 1994, 4:39 p.m.

DIRECTOR'S ORDER NUMBER TWENTY-ONE (94)

VIRGINIA'S SECOND ON-LINE GAME LOTTERY; "LOTTO," FINAL RULES FOR GAME OPERATION; THIRD REVISION

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the revised rules for game operation in Virginia's second on-line game lottery, "Lotto." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of on-line game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order supersedes Director's Order Number Thirty-Two (90), issued October 31, 1990. This Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Richard G. Wilkinson
Acting Director
Date: June 23, 1994

VA.R. Doc. No. R94-1110; Filed July 14, 1994, 1:09 p.m.

DIRECTOR'S ORDER NUMBER TWENTY-FIVE (94)

VIRGINIA'S FORTY-THIRD INSTANT GAME LOTTERY; "GOLD RUSH," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's forty-third instant game lottery, "Gold Rush." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Richard G. Wilkinson
Acting Director
Date: July 1, 1994

VA.R. Doc. No. R94-1111; Filed July 14, 1994, 1:09 p.m.

DIRECTOR'S ORDER NUMBER TWENTY-SIX (94)

"GOLD RUSH"; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Gold Rush" promotional game and drawing rules for the Instant Game 43 kickoff events which will be conducted at various lottery retailer locations throughout the Commonwealth on Thursday, July 28, 1994. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until July 31, 1994, unless otherwise extended by the Director.

/s/ Richard G. Wilkinson
Interim Director
Date: July 13, 1994

VA.R. Doc. No. R94-1112; Filed July 14, 1994, 1:10 p.m.

DIRECTOR'S ORDER NUMBER TWENTY-SEVEN (94)

SOUTHSIDE SPEEDWAY PROMOTION RAFFLE DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the Southside Speedway Promotion Raffle Drawing Rules for the raffle drawings which will be conducted during the Southside Speedway event which will take place in Richmond on Friday, July 8, 1994. These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until July 31, 1994, unless otherwise extended by the Director.

/s/ Richard G. Wilkinson
Interim Director
Date: July 8, 1994

VA.R. Doc. No. R94-1113; Filed July 14, 1994, 1:10 p.m.

DIRECTOR'S ORDER NUMBER TWENTY-EIGHT (94)

RACING PROMOTIONS RAFFLE DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the Racing Promotions Raffle Drawing Rules for the raffle drawings which will be conducted at various locations throughout the Commonwealth beginning Saturday, July 9, 1994. These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Richard G. Wilkinson
Interim Director
Date: July 8, 1994

VA.R. Doc. No. R94-1114; Filed July 14, 1994, 1:10 p.m.

DIRECTOR'S ORDER NUMBER TWENTY-NINE (94)

CERTAIN DIRECTOR'S ORDERS RESCINDED

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby rescind the following Director's Orders:

Order Number	Date Issued	Subject
10(89)	06/14/89	Virginia's Sixth Instant Game Lottery; ''Photo Finish,'' Final Rules for Game Operation.
20(91)	08/09/91	Virginia's Sixth Instant Game Lottery; ''Photo Finish,'' End of Game.
33(91)	12/16/91	Virginia's Twenty-Second Instant Game Lottery; ''Wild Card,'' Final Rules for Game Operation.
13(92)	04/06/92	Virginia's Twenty-Sixth Instant Game Lottery; ''Cash Vault,'' Final Rules for Game Operation.
18(92)	07/27/92	Virginia's Twenty-Eighth Instant Game Lottery; ''Money Tree,'' Final Rules for Game Operation.
25(93)	08/26/93	Virginia's Twenty-Second Instant Game Lottery; ''Wild Card,'' End of Game.
33(93)	11/12/93	Virginia's Twenty-Sixth Instant Game Lottery, ''Cash Vault,'' and Virginia's Twenty-Eighth Instant Game Lottery, ''Money Tree''; End of Game.
10(94)	03/01/94	Virginia's ''Cash 5'' Free Ticket Giveaway Game; Final Rules for Game Operation; Revised.
14(94)	03/18/94	''Winner's Circle''; Virginia Lottery Retailer Promotional Program Rules.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Richard G. Wilkinson
Interim Director
Date: July 12, 1994

VA.R. Doc. No. R94-1115; Filed July 14, 1994, 1:10 p.m.

Virginia Tax Bulletin

Virginia Department of Taxation

JULY 1, 1994 94-8

INTEREST RATES
THIRD QUARTER 1994

Rates changed: State and certain local interest rates are subject to change every quarter based on changes in the federal rates established pursuant to I.R.C. § 6621. The federal rates for the third quarter of 1994 will be 8% for tax underpayments (assessments), 7% for tax overpayments (refunds), and 10% for "large corporate underpayments" as defined in I.R.C. § 6621(c). Va. Code § 58.1-15 provides that the underpayment rate for Virginia taxes will be 2% higher than the corresponding federal rates. Accordingly, the Virginia rates for the third quarter of 1994 will be 10% for tax underpayments, 7% for tax overpayments, and 12% for "large corporate underpayments".

Rate for Addition to Tax for Underpayments of Estimated Tax

Taxpayers whose taxable year ends on March 31, 1994: For the purpose of computing the addition to the tax for underpayment of Virginia estimated income taxes on Form 760C (for individuals, estates and trusts), Form 760F (for farmers and fishermen) or Form 500C (for corporations), the second quarter 9% underpayment rate will apply through the due date of the return, July 15, 1994.

Taxpayers whose taxable year ends on June 30, 1994: 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) or Form 760F (for farmers and fishermen), the third quarter 10% underpayment rate will apply through the due date of the return, October 15, 1994.

Local Tax

Assessments: Localities assessing interest on delinquent taxes pursuant to Va. Code § 58.1-3916 may impose interest at a rate not to exceed 10% for the first year of delinquency, and at a rate not to exceed 10% or the federal underpayment rate in effect for the applicable quarter, whichever is greater, for the second and subsequent years of delinquency. For the third quarter of 1994, the federal underpayment rate is 8%.

Refunds: Localities which have provided for refund of erroneously assessed taxes may provide by ordinance that such refund be repaid with interest at a rate which does not exceed the rate imposed by the locality for delinquent taxes.

Recent Interest Rates

Accrual Period Beginning	Through	Overpayment (Refund)	Underpayment (Assessment)	Large Corporate Underpayment
1-Jan-87	30-Sep-87	8%	9%	---
1-Oct-87	31-Dec-87	9%	10%	---
1-Jan-88	31-Mar-88	10%	11%	---
1-Apr-88	30-Sep-88	9%	10%	---
1-Oct-88	31-Mar-89	10%	11%	---
1-Apr-89	30-Sep-89	11%	12%	---
1-Oct-89	31-Mar-91	10%	11%	---
1-Apr-91	30-Jun-91	9%	10%	---
1-Jul-91	31-Dec-91	9%	12%	14%
1-Jan-92	31-Mar-92	8%	11%	13%
1-Apr-92	30-Sep-92	7%	10%	12%
1-Oct-92	30-Jun-94	6%	9%	11%
1-Jul-94	30-Sep-94	7%	10%	12%

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) 367-8037
Soft Drink Excise Tax	(804) 367-8098
Aircraft Sales & Use Tax	(804) 367-8098
Other Sales & Use Taxes	(804) 367-8037

The LEGISLATIVE RECORD

Volume 4
Number 2

July 1994

VIRGINIA DIVISION OF LEGISLATIVE SERVICES

Coal and Energy Commission

June 21, 1994, Abingdon

The Virginia Coal and Energy Commission met to examine declining Virginia coal exports and to determine whether the commission could provide any assistance in addressing a problem currently costing Southwest Virginia's economy millions of dollars. Testimony from coal industry officials revealed that the problem's primary source is the downward spiral in international coal prices. Fierce competition in the overseas market from lower-cost foreign competitors—principally Australia—coupled with technological advances and declining coal consumption worldwide have caused prices to drop precipitously. Few Virginia coal companies can effectively compete for international coal sales at current prices, the commission was told.

International Market

Since 1982 the market price for metallurgical coal has dropped $20.85, with nearly one-third of that reduction occurring within the past three years. As a consequence, since 1990 over 1,000 mining production jobs were eliminated; at the same time, coal production tonnage skidded from nearly 47 million tons in 1990 to just over 40 million in 1993. The export of Virginia metallurgical (or "met") coal is critical to the Commonwealth's coal industry. According to the Virginia Center for Coal and Energy Research, in 1992 nearly 40 percent of Virginia-mined coal was sold in the international export market, and nearly 80 percent of that tonnage was metallurgical grade.

According to a Pittston Company official, plummeting international market prices for met coal has resulted in the closure of five Pittston mines within the past nine months. Pittston estimates that these mine closures will result in nearly $40 million in economic losses to Dickenson, Tazewell, and Wise Counties (Figure 1). The 478 jobs lost through the shutdowns, and the $18.5 million in annual wages associated with these jobs, figure heavily in the regional economic impact. Virginia's railroad companies will lose out on an estimated $30 million in annual transportation revenue associated with the five mines' previous production output.

Japanese industry, the largest purchaser of met coal in the international market, dominates the overseas market and establishes the market price for met coal. Australia's proximity to Japan has provided its coal industry a tremendous advantage in the world's number one coal export market; its shipping costs to Japan are substantially lower than those incurred by producers in the U.S., Canada, and the former Soviet Union. Australian producers have also invested heavily in high-technology mining equipment, thereby lowering labor costs, and the Aus-

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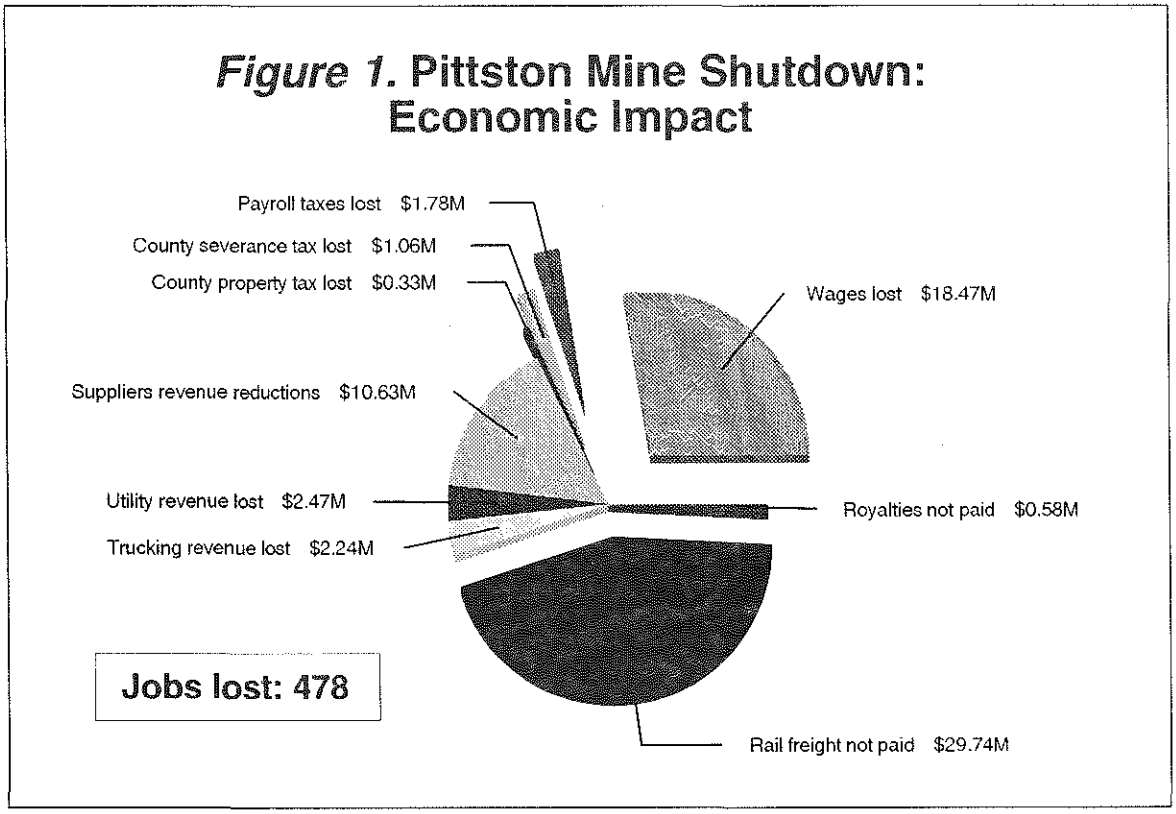
5 SB 411: Special Subcommittee Studying the Proposed Virginia Whistle Blower Protection Act

7 SJR 152: Joint Commission on Management of the Commonwealth's Work Force



Source: Pittston Company.

tralian government has contributed to this industry's competitiveness by eliminating export taxes on coal and by permitting its currency to decline relative to the U.S. dollar.

The net effect: Australia is a low-cost producer currently dominating the international export market for met coal (Figure 2). U.S. Department of Energy projections conclude that by the year 2000—despite expected declines in overall coal consumption—Australia will increase its production and market share, selling more tonnage in the international market than the U.S., Canada, the former Soviet Union, and all other exporters combined. U.S. sales are expected to continue their slide from a high of 63 million tons in 1990 to 40 million tons by the year 2000. The 20 million ton drop from 1991 to 1993 in coal export shipments from Hampton Roads lends credence to these projections.

Virginia's met coal industry is at a critical point; its very survival may be at stake. Pittston's remaining six deep mines and coal processing plants were operated at a $6 million loss in 1993. These Pittston facilities provide nearly 700 jobs paying $28 million in annual wages and account for over $2.5 million in county severance taxes. Noting that Virginia's steam coal industry enjoys the assistance of a $3 per-ton state tax credit provided Virginia's electrical utilities purchasing Virginia steam coal, Pittston suggested that reciprocal legislation for the met coal industry—possibly providing tonnage-based credits to railroads transporting Virginia coal to the ports—could provide a vital boost to Virginia's met coal industry.

Perspectives of Other Companies

Representatives of other Southwest Virginia businesses echoed Pittston's theme that the coal industry is in need of assistance. However, their differing perspectives indicate that it may not be easy to develop a simple remedy.

Consol Coal Group and Island Creek are suffering from export problems related to last year's labor contract difficulties. Consol is struggling to keep its Virginia mines open five days a week while working to find buyers for its coal around the world. It remains one of the largest exporters of coal, and sends Virginia coal to 21 countries. Developing a solution to the woes of Virginia's coal companies will be complicated by several factors:

- The increasing use of electric ovens in steel production is reducing the demand for coke, which reduces the worldwide demand for met coal;
- While Virginia's coal production has declined in recent years, national production has jumped to record levels as the result of increased production from Wyoming and other western states; and

■ Restrictions on nitrous oxide (NOx) under consideration by the Northeast Transportation Commission could hurt the market for Virginia's steam coal by making its use by electrical utilities too expensive.

Proposals to increase the subsidy for the use of Virginia coal in power plants could result in the closing of out-of-state coal mines located closer to a Virginia power plant than any Virginia coalfields. Other speakers had mentioned that approximately 25 percent of the 10 million tons of coal burned in Virginia's power plants is mined in the Commonwealth, notwithstanding the existing tax credit of three dollars per ton on Virginia coal burned by electric utilities. A larger tax credit was mentioned as a way of allowing more Virginia steam coal to be burned here by offsetting the cheaper transportation and production costs associated with West Virginia coal. While transportation costs are an issue, tax credits for railroads hauling coal will not help all producers. Further complicating the picture is the fact that rebates are currently being provided by railroads to some companies.

Representatives of The United Company and Amvest Corporation stressed that the problems in the coal industry are not limited to those firms exporting met coal. United does not export coal, yet has had to reduce the number of its employees and contractors by over 50 percent in the last five years. Related supply businesses have also suffered as the industry declines. Amvest has one export contract and is blending and selling much of its metallurgical-grade coal in the steam market.

Coal exports are also threatened by the proposed increase in the vessel tonnage tax now pending in Congress. The measure would raise the cost of a ton of coal by approximately 15 cents. The purpose of the tax is to subsidize the conversion of shipyards from the production of military vessels to commercial vessels. Though the goal is laudable, the coal industry is concerned that bulk shippers will be put at a competitive disadvantage with foreign rivals.

Reductions in coal industry employment are felt throughout the economies of the five coal-producing counties of Southwest Virginia. Statistical information on the correlation between service industries and the decline in the coal industry is being developed and will be shared with the commission.

The commission agreed to renew its call for a Governor's Symposium on coal export issues, a recommendation of the study of coal exports conducted pursuant to SJR 208 (1993). The coal subcommittee was asked to develop appropriate recommendations, which are to be reviewed by the full commission prior to the 1995 Session of the General Assembly.

Virginia CEED

The maintenance of a viable coal industry in Virginia will depend on the ability of coal to remain a viable option for electric power production and other industrial applications. Ensuring that coal receives appropriate consideration as an energy option is the task of the Center for Energy and Economic Development (CEED), a national nonprofit organization dedicated to educating people about the benefits of coal.

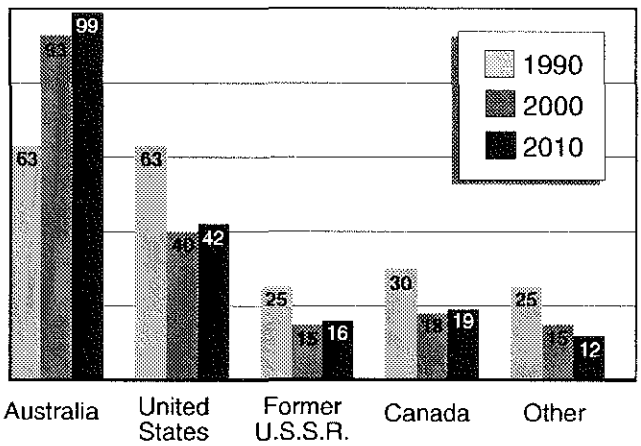
A Virginia chapter of CEED has been organized, and Joseph Vipperman of Appalachian Power Company has been elected as its president. Members of Virginia CEED include the two largest electrical utility companies, both major coal-hauling rail companies, and all three coal associations.

Virginia CEED pledged to take an active role in attempting to sideline the Connecticut proposal under consideration by the Northeast Transportation Commission. Though the NTC's jurisdiction extends only to Northern Virginia, it would set a precedent for statewide expansion. Additionally, the proposal's detrimental effect on the demand for coal would impair the market for Virginia steam coal in the northeast.

Chairman Nolen suggested that the commission may discuss at a future meeting the siting of additional electric generating facilities, the fuels they use, and the power plant permitting process. Though he acknowledged that the power companies have no plans for additional generating capacity, the issue is tied to the commission's purpose of maintaining or increasing the use of coal in Virginia.

The Honorable Frank W. Nolen, *Chairman*
Legislative Services contact: Arlen K. Bolstad

Figure 2. Met Coal Export Trends (in million tons)



Source: U.S. Department of Energy.

SJR 17: Joint Subcommittee Studying Privatization of Certain State Government Functions

June 20, 1994, Richmond

After a general discussion of the joint subcommittee's 1993 work and its interim report (Senate Document No. 64, 1994), there was a discussion of this year's work plan. The joint subcommittee has agreed to examine the following areas:

- Development of a state policy on privatization,
- Development of a checklist for use in evaluating potential areas of privatization,
- Creation of a state policy regarding employees affected by privatization,
- Creation of a mechanism to provide for the long-term implementation of privatization initiatives, and
- Study of the Qualifying Transportation Facilities Act of 1994.

Chairman Stosch briefed the joint subcommittee on the work of the Privatization and Procurement Committee of the Governor's Strike Force, which he also chairs, and stated his intention to coordinate the efforts of the two groups so as to avoid duplication.

The next meeting of the joint subcommittee is scheduled for August 2, 1994, at 10 a.m. in Senate Room A of the General Assembly Building. This meeting will focus exclusively on the Qualifying Transportation Facilities Act of 1994, which was passed during the 1994 Session but has an effective date of July 1, 1995.

The Honorable Walter A. Stosch, *Chairman*
Legislative Services contact: Jeffrey F. Sharp

HJR 66: Joint Subcommittee to Study State and Federal Law on Privacy, Confidentiality and Mandatory Disclosure of Information Held or Used by Government Agencies

June 20, 1994, Richmond

Delegate L. Karen Darner, subcommittee chair, outlined some of the basic objectives for the study, which will undertake a comprehensive review of confidentiality and disclosure laws of agencies serving the public. The study will provide a forum for discussions of many privacy issues relating to the collection of and access to personal information, such as a person's address, educational background, criminal history, employment record, financial position, and health status.

Prior Studies

A number of confidentiality and disclosure issues were uncovered during the Commission on Youth's 1993 study on the confidentiality of juvenile records. In recent years, there has been a concerted effort to increase interagency collaboration in the delivery of services to children and families in order to eliminate duplication for the client in applying for service and ensure continuity in the delivery of service. However, such programs also increase the need for the exchange of "confidential" information between service providers, who frequently are unfamiliar with the confidentiality and disclosure requirements outside their own discipline. Even within their own discipline, there are sometimes gray areas where federal and state laws conflict and where there are simultaneous duties to disclose personal information and to protect the privacy of the client. This problem is intensified because local providers often receive different legal interpretations on which conflicting law prevails. Another problem identified by the commission was the different expungement proceedings by third party recipients of information, who in many cases are not covered by expungement requirements governing the collecting agency.

Some of the problems associated with interagency collaboration were also examined by a 1992 teleconference led by Howard M. Cullum, then Secretary of Health and Human Resources. The conference was instrumental in the development of a universal client release form that enables participating agencies serving the same client to repeatedly share "confidential information" after the client gives his initial consent. As a follow-up, the subcommittee requested staff to report at the next meeting the status of the form under the current administration and how well it has been received by local providers.

Federal and State Privacy Acts

Staff briefed the subcommittee on the major provisions of the Federal and State Privacy Acts, which provide safeguards against the invasion of privacy through the misuse of records by federal, state, and local agencies. The acts place certain restrictions and requirements on the collection, maintenance, and dissemination of information by government agencies. Information collected by each agency must be relevant, accurate, current, and clearly necessary. No information can be collected except as explicitly or implicitly authorized by law. Individuals are entitled to learn the purpose of such collection and to correct inaccurate information. Although the privacy acts restrict the collection of and access to information in many respects, they do not make personal information confidential. Whether personal information must be kept confidential or released depends upon the governing statutes and the regulations and practices adopted by the agency.

Work Plan and Future Meetings

Before undertaking any serious deliberations, the subcommittee agreed that it needed to have a thorough understanding of the laws, regulations, and practices followed by the various state agencies. To assist the subcommittee with this task, agencies will be asked to (i) identify applicable mandatory state and federal confidentiality and disclosure laws, (ii) determine under what circumstances disclosure laws supersede confidentiality laws, and (iii) identify existing state expungement laws to ascertain where third party expungement provisions are necessary to ensure confidentiality beyond the origin of the information.

For its next meeting, the subcommittee plans to have the secretaries present a summary of their agencies' findings. In addition, the subcommittee will examine how other states handle the exchange of information between agencies and what privacy issues are on the horizon in those other states. The subcommittee agreed to meet in late August to allow sufficient time for the agencies to compile the information and for the members to review it.

The Honorable L. Karen Darner, *Chair*
Legislative Services Contact: Ginny Edwards

SB 411: Special Subcommittee Studying the Proposed Virginia Whistle Blower Protection Act

June 23, 1994, Richmond

The special subcommittee held its first meeting to consider the proposed Whistle Blower Protection Act (SB 411), which was carried over from the 1994 Session in the House Committee on Courts of Justice. Information presented to the subcommittee revealed that 36 states have enacted some form of whistle blower protection statute, including Maryland, West Virginia, North Carolina, South Carolina, and the District of Columbia. Of those states, 22 allow civil actions; 14 allow the prevailing party to recover attorneys' fees.

Fraud, Waste, and Abuse Hotline

The proposed Whistle Blower Protection Act grew out of the Commonwealth's Fraud, Waste, and Abuse Hotline, created by Executive Order 57 in 1992. The first annual report from the State Internal Auditor, which covers the period October 1, 1992 through October 30, 1993, reveals that in the first year of operation 920 hotline calls were received, with 829 investigated. Of those investigated, 211 resulted in instances of fraud, waste, and abuse resulting in $435,151 in costs.

Legislatively, fraud, waste, and abuse in the public sector have been the subject of several bills. In 1984, a bill was passed requiring state agencies, courts, and local constitutional officers to report to the Auditor of Public Accounts and State Police fraudulent transactions involving funds or property under their control (see §2.1-155.3).

In 1993, HB 1406 exempted from the Virginia Freedom of Information Act "investigative notes, correspondence, documentation and information furnished and provided to or produced by or for the Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline." This bill also provided that personal information systems maintained by the State Internal Auditor that deal with communication and investigation relating to the hotline are exempted from the provisions of the Privacy Protection Act of 1976. The intent of this legislation was to protect the confidentiality and privacy rights of those reporting to the State Internal Auditor.

Other Commissions

The Governor's Commission on Campaign Finance Reform, Government Accountability and Ethics was created by Governor Wilder through Executive Order 46 in 1992. In December 1992, the commission issued its report, "Public

Service, Public Trust." The commission was in favor of whistle blower protection due in large part to the new state employee fraud, waste, and abuse hotline. The Joint Subcommittee Studying the Report of the Governor's Commission on Campaign Finance Reform, Government Accountability and Ethics (SJR 217, 1993) agreed with the Governor's Commission favoring whistle blower protection. SB 486 (1994), an outgrowth of the study, contained provisions for the creation of a Virginia whistle blower protection act. However, during the course of the 1994 Session, the whistle blower provisions of SB 486 were removed and SB 486 ultimately failed.

Role of the Grievance Procedure

The role of the grievance procedure is important to the consideration of the Virginia Whistle Blower Protection Act, since it is the current mechanism whereby a state employee may seek redress for an adverse job action. During the 1994 Session, some questioned both the need for a separate statute to address whistle blower protection and the personnel classifications (i.e., which state employees) that would be covered by any whistle blower act.

The status of the grievance procedure, however, is changing. SB 408, passed this year, revises the current grievance procedure but contains a reenactment clause that requires the bill to be reenacted by the 1995 Session in order to go into effect. In addition, the Department of Employee Relations Counselors is to conducting public hearings on the grievance procedure generally and SB 408 in particular.

Only non-probationary, classified employees are covered by the current grievance procedure, with part-time and contract employees excluded from its protections. Additionally, only grievable issues (e.g., disciplinary actions, application of personnel polices and rules, acts of retaliation for using/participating in the grievance process) are actionable by an employee under the grievance procedure.

The key changes to the grievance procedure offered in SB 408 (as it will become effective if reenacted by the 1995 Session) include streamlining management steps, requiring all hearings to be conducted by a hearing officer instead of a panel, and placing affirmative responsibilities on state agencies for assuring that a climate of positive employee relations is instituted. Under SB 408, the Department of Employee Relations Counselors (DERC) would monitor the whole process and comment on the substance of actions taken to remedy a particular situation.

Overview of SB 411

Generally, SB 411 prohibits acts of retaliation against all public employees, including those in a temporary or part-time status, who report improper governmental actions. As long as the employee acts in good faith and discloses the alleged impropriety to the designated authority, the bill makes retaliation against the employee illegal. To be protected, employees who disclose a wrongdoing must do so in good faith and upon a reasonable belief that their allegations are accurate.

An employee is required to give prior notification of the wrongdoing to his agency head before disclosing it to parties outside of the agency, unless the agency head is the subject of the complaint, in which case the employee notifies the agency head's appointing authority.

The bill makes it illegal for an employer to discriminate or retaliate against any employee for reporting violations covered by the Whistle Blower Protection Act. It also allows whistle blowers covered by the grievance process to initiate a grievance. DERC must transmit a copy of the grievance to the State Internal Auditor for investigation. Any employee may file an action in circuit court alleging a violation of the act. Election of either the grievance procedure or filing an action in circuit court precludes the availability of the other.

The director of the Department of Employee Relations Counselors advised the subcommittee that a separate whistle blower protection act is needed because the grievance procedure is too limited to address employees suffering adverse job action caused by their reporting instances of fraud, waste, and abuse to the state hotline. Additionally, all employees are not covered by the grievance procedure and appropriate relief is an issue. Members of the special subcommittee suggested that for the grievance procedure to be effective, the hearing officer must have the authority to prescribe a remedy. However, they expressed concern about how such authority would figure into the orderly management of the agency.

Subcommittee Actions

After discussing the merits of the grievance procedure and the Whistle Blower Protection Act, the special subcommittee by consensus agreed to make retaliation for reporting an instance of fraud, waste, or abuse a grievable issue under the grievance procedure, thereby incorporating whistle blower protection into the grievance procedure. The special subcommittee also agreed to institutionalizing the state fraud, waste, and abuse hotline in the *Code of Virginia*, since the executive order that created the hotline is due to expire this fall.

The Honorable Clifton A. Woodrum, *Chairman*
Legislative Services contact: Maria J.K. Everett

SJR 152: Joint Commission on Management of the Commonwealth's Work Force

June 14, 1994, Richmond

The first meeting of 1994 included a discussion of the changes proposed to the state grievance procedure, an overview of the work of the Governor's Commission on Government Reform as it relates to the Work Force Commission, a report by the Task Force on Continuous Quality Improvement, and a description of the 1994 work plan.

Grievance Procedure

The Statewide Task Force on the Grievance Procedure and the Department of Employee Relations Counselors are conducting a series of public hearings concerning proposed changes to the state employee grievance procedure. Complaints that the current procedure is ineffective and does not adequately address employee concerns prompted the introduction of SB 408, which must be re-enacted by the 1995 Session of the General Assembly to become law. Proposed changes to the procedure include the use of mediation in the process, elimination of the three-member panel, and the designation of hearing officers to hear grievances and make determinations. In addition, the Department of Employee Relations Counselors will monitor and evaluate the effectiveness of employee relations programs in state agencies. The department will conduct 20 public hearings around the state during the summer to receive comments on the proposed changes.

Governor's Commission on Government Reform

The Governor's Commission on Government Reform and the Joint Commission on Management of the Commonwealth's Work Force share areas of mutual interest. Among other issues, the Governor's Commission is examining compensation systems, retirement benefits for part-time employees, expanded use of job-sharing and other family friendly policies, more hiring flexibility for agency heads, management training, cafeteria benefits, application of the Fair Labor Standards Act, and streamlined lay-off policies. Included in its recommendations will be "quick fix" solutions to some problems as well as longer-term solutions where they are more appropriate.

Task Force on Continuous Quality Improvement

Chairman Hull of the Task Force on Continuous Quality Improvement cited seven goals that the task force proposes for implementing quality management in Virginia:

1. Provide access to quality management orientation and training for all state employees.
2. Facilitate adoption of quality management in all state agencies, including the elimination of barriers to implementation.
3. Establish state agencies as the benchmarks for other organizations.
4. Ensure that adequate preparation has occurred within state agencies to assure a high level of success, including implementation of a management skills development plan.
5. Monitor, measure, and report success in all agencies implementing quality management.
6. Assure long-term commitment to quality management principles in state government.
7. Establish a permanent network to support coordination and cooperation among state agencies implementing quality management.

In addition, the task force recommended an implementation plan that involves the Governor, the General Assembly, and the private sector. Staffing of the initiative would be provided by the Governor's Office, a central state agency, or an office established for this purpose.

Continuous quality improvement initiatives have already been successfully launched in a number of state agencies, including the Virginia Employment Commission, the Medical College of Virginia Hospitals, and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

The commission agreed to include the implementation plan in the material that will be available for public comment and to send a copy of the draft plan to the Governor's Commission on Government Reform for their consideration.

1994 Work Plan

The commission will concentrate its efforts in five areas during 1994:

■ With the assistance of a grant from the Commission on the State and Local Public Service, the commission will host a one-day forum in October to identify ideas and exemplary practices for removing barriers to a high performance work force. This forum is cosponsored by Virginia Commonwealth University, the Virginia Chapter of the American Society of Public Administration, the Virginia Municipal League, the Virginia Association of Counties, and the Virginia Institute on Government. Also participating is the Governor's Commission on Government Reform. Employee-management communication, reward systems, retention and mobility of employees, and public manager competencies are among the issues that are likely to be discussed.

■ An inventory and evaluation of existing employee benefit programs and disability retirement will be conducted by consultants to the commission.

■ The 1994 Appropriation Act directed the commission to examine agency head compensation, both the level and the manner in which increases are determined.

■ Career development, including employee mobility and training, will be reviewed this year.

■ Finally, the commission intends to conduct public hearings on its 1993 and 1994 preliminary recommendations.

The Honorable Richard C. Holland, *Chairman*
Legislative Services Contact: Nancy L. Roberts

The Legislative Record summarizes the activities of Virginia legislative study commissions and joint subcommittees. Published in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia.

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Notices of upcoming meetings of all legislative study commissions and joint subcommittees appear in the Calendar of Events in *The Virginia Register of Regulations.*

Symbol Key †
† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

STATE AIR POLLUTION CONTROL BOARD

† Notice of Right to Petition for Regulation Revision HH Concerning Regulated Medical Waste Incinerators

Introduction

The 1992 General Assembly of Virginia passed legislation to require the promulgation of regulations concerning regulated medical waste by September 1, 1993. This legislation was resubmitted to the General Assembly in the 1993 session; however, the deadline for promulgation of regulations remained September 1, 1993. Due to changes in the Administrative Process Act, and in order to meet the September 1 deadline, the board adopted an emergency regulation covering regulated medical waste incinerators which was effective June 28, 1993, and remained in effect for one year. In order to comply with the legislation, the board was required to adopt a permanent regulation.

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

On July 14, 1994, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution" (VR 120-01), specifically, Standards of Performance for Regulated Medical Waste Incinerators (Rule 5-6). The regulation is to be effective on September 15, 1994.

Right to Petition

In accordance with the Administrative Process Act, subsection J of § 9-6.14:7.1 of the Code of Virginia:

> If one or more changes with substantial impact are made to a proposed regulation from the time that it is published as a final regulation, any person may petition the agency within thirty days from the publication of the final regulation to request an opportunity for oral and written submittals on the changes to the regulation. If the agency receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation, the agency shall suspend the regulatory process for thirty days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact. Agency denial of petitions for a comment period on changes to the regulation shall be subject to judicial review.

In adopting the regulated medical waste regulation, the board requested that notice of the right to petition be announced. Persons wishing to exercise their right to petition should follow the procedures described below. A copy of the final regulation has been published in the August 8, 1994, edition of the Virginia Register. It may also be obtained from the contact listed below.

Procedures

All requests must be received by the department by close of business September 7, 1994, to be considered. Requests may be submitted by mail, facsimile transmission (FAX number: 804-762-4510) or by personal delivery. All requests must be submitted to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240. Facsimile copies will be considered only if followed by receipt of the original within one week.

Agency Contact

The department contact for any questions about this notice is:

Karen G. Sabasteanski
Policy Analyst
Air Programs Section
Department of Environmental Quality
P.O. Box 10009
Richmond, Virginia 23240
Phone: (804) 762-4426

DEPARTMENT OF GENERAL SERVICES

Division of Forensic Science

Notice to the Public

Title of Regulation: **VR 330-02-01. Regulations for Breath Alcohol Testing.**

Statutory Authority: §§ 18.2-267 and 18.2-268 of the Code of Virginia.

In accordance with § 3.2 of the Regulations for Breath Alcohol Testing and under the authority of § 18.2-267 of the Code of Virginia, the following devices are approved for use as preliminary breath test devices:

1. The ALCOLYSER, manufactured by Lyon

Laboratories, Ltd., Cardiff, Wales, United Kingdom.

2. The PREVENT, manufactured by BHP Diagnostix, West Chester, Pennsylvania.

3. The A.L.E.R.T. (Alcohol Level Evaluation Road Tester), Models J2A, J3A, and J3AC, manufactured by Alcohol Countermeasure Systems, Inc., Port Huron, Michigan.

4. The ALCO-SENSOR, ALCO-SENSOR II, ALCO-SENSOR III, and ALCO-SENSOR IV, manufactured by Intoximeters, Inc., St. Louis, Missouri.

5. The CMI SD 2, manufactured by Lyon Laboratories, Barry, United Kingdom.

6. The LIFE LOC PBA 3000*, manufactured by Life Loc Inc., Wheat Ridge, Colorado.

* When used in the direct sensing mode only.

In accordance with § 2.6 of the Regulations for Breath Alcohol Testing and under the authority of § 18.2-268 of the Code of Virginia, the following ampuls are approved for use in conducting breath tests on approved breath test devices:

1. Breathalyzer ampuls, manufactured by National Draeger, Inc., Pittsburgh, Pennsylvania.

2. Guth ampuls, manufactured by Guth Laboratories, Inc., Harrisburg, Pennsylvania.

In accordance with § 2.6 of the Regulations for Breath Alcohol Testing and under the authority of § 18.2-268 of the Code of Virginia, the following breath test devices are approved for use in conducting breath tests:

1. The Breathalyzer, Model 900A, manufactured by the Stephenson Corporation, Red Bank, New Jersey.

2. The Breathalyzer, Model 900A, manufactured by Smith & Wesson, Corp., Springfield, Massachusetts.

3. The Breathalyzer, Model 900A, manufactured by National Draeger, Inc., Pittsburgh, Pennsylvania.

4. The Intoximeter, Model 3000, equipped with the Virginia field module and external printer, manufactured by Intoximeters, Inc., Richmond, California.

5. The Intoxilyzer, Model 5000, Series 768VA, equipped with the Virginia test protocol, simulator monitor, and external printer, manufactured by CMI, Inc., Owensboro, Kentucky.

DEPARTMENT OF LABOR AND INDUSTRY

Notice to the Public

The Virginia State Plan for the enforcement of Virginia Occupational Safety and Health (VOSH) laws commits the Commonwealth to adopt regulations identical to, or as effective as, those promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the federal level. Therefore, the Virginia Department of Labor and Industry is reissuing the following federal OSHA notice:

U.S. Department of Labor
Occupational Safety and Health Administration
29 CFR Parts 1910, 1915, 1926, and 1928
(Docket No. H-122)

Indoor Air Quality; Proposed Rule

Agency: Occupational Safety and Health Administration (OSHA)

Action: Extension of Comment Period and Rescheduling of Hearing.

Summary: The Occupational Safety and Health Administration (OSHA) is extending the comment period and dates for submitting notices of intention to appear, as well as hearing testimony and evidence, and is postponing the public hearing on the proposed rule on indoor air quality which was published on April 5, 1994 (59 FR 15968). The comment period was to end on June 29, 1994; public hearings were scheduled to begin on July 12, 1994. Following publication of the proposal, 13 written requests to extend the comment period or postpone the public hearing were received. As a result of these requests, OSHA is extending the comment period to August 13, 1994. Public hearings will be scheduled to begin on September 20, 1994.

Text: Full text of the proposed rulemaking can be found in Volume 59, No. 113, pg. 30560 of the Federal Register.

Dates: Comments must be postmarked on or before August 13, 1994. Notices of intention to appear at the public hearing must be postmarked on or before August 5, 1994. Testimony and evidence to be submitted at the hearing must be postmarked by August 13, 1994. The hearing will commence at 9:30 a.m., Tuesday, September 20, 1994, in Washington, D.C.

Addresses: Comments are to be submitted in quadruplicate or one original (hard copy) and one disk (5 1/4 or 3 1/2) in WP 5.0, 5.1, 6.0 or Ascii to the Docket Office, Docket No. H-122, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219-7894. Any material not submitted on

disk, e.g., studies, articles, etc., must be submitted in quadruplicate.

An additional copy of the comments should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219.

Notices of intention to appear and testimony and evidence are to be submitted in quadruplicate to Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N-3649, Washington, D.C. 20210, telephone (202) 219-8615.

The hearing will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C.

For further information contact: Mr. James F. Foster, Office of Public Affairs, OSHA, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219-8151.

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you 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

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

VIRGINIA AGRICULTURAL COUNCIL

August 22, 1994 - 9 a.m. – Open Meeting
Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

An annual business meeting. The agenda will consist of an annual review of finances, progress reports on approved projects, and general business matters. The council will allot 30 minutes at the conclusion of the business meeting for the public to appear before the council. Any person who needs any accommodation in order to participate at the meeting should contact Thomas R. Yates at least 10 days before the meeting date so that suitable arrangements can be made for any appropriate accommodations.

Contact: Thomas R. Yates, Assistant Secretary, Virginia Agricultural Council, 1100 Bank St., Suite 203, Richmond, VA 23219, telephone (804) 786-6060.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia State Apple Board

† **August 16, 1994 - 9 a.m.** – Open Meeting
Graves Mountain Lodge, Route 670, Syria, Virginia. ♿

The board will discuss finances, marketing programs, and recruitment of a new marketing director. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Nancy Israel, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Richmond, VA 23219, telephone (804) 786-3952.

Virginia Marine Products Board

† **September 6, 1994 - 5:30 p.m.** – Open Meeting
Kiln Creek and Country Club, 1003 Brick Kiln Boulevard, Newport News, Virginia. ♿

The board will meet to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business.

Contact: Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Blvd., Suite B, Newport News, VA 23602, telephone (804) 874-3474.

ALCOHOLIC BEVERAGE CONTROL BOARD

August 8, 1994 - 9:30 a.m. – Open Meeting
August 22, 1994 - 9:30 a.m. – Open Meeting
September 7, 1994 - 9:30 a.m. – Open Meeting
September 19, 1994 - 9:30 a.m. – Open Meeting
Alcoholic Beverage Control Board, 2901 Hermitage Road, Richmond, Virginia. ♿

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Road, P. O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

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

† **August 30, 1994 - 10 a.m.** – Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

An informal fact-finding conference in regard to the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects v. Albert E. Neighbors, Jr. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8500. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

Contact: Carol A. Mitchell, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

VIRGINIA ASBESTOS LICENSING BOARD

September 21, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad St., Conference Room 3, Richmond, Virginia

A general meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD

AUCTIONEERS BOARD

September 9, 1994 – Written comments may be submitted through this date.

September 20, 1994 - 9 a.m. – Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Auctioneers Board intends to **repeal** regulations entitled: **VR 150-01-2. Rules and Regulations for the Virginia Board of Auctioneers** and **adopt** regulations entitled: **VR 150-01-2:1. Rules and Regulations for the Virginia Board of Auctioneers.** The proposed regulations establish entry requirements for licensure of auctioneers and auction firms, examination for licensure, licensure by reciprocity, standards of practice regarding advertising, contract, escrow accounts, records and the standards of conduct for auctioneers. The proposed regulations are a result of legislative amendments enacted to § 54.1-603 of the Code of Virginia, which repealed the registration and certification program for auctioneers and established a single licensure program.

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

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

VIRGINIA AVIATION BOARD

† **August 11, 1994 - 4 p.m.** – Open Meeting
† **August 12, 1994 - 8 a.m.** – Open Meeting
Sheraton Airport Inn, 4700 South Laburnum Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Aviation staff. Location accessible to the handicapped. Individuals with a disability should contact Nancy Brent 10 days prior to the meeting if assistance is needed.

Contact: Nancy C. Brent, Virginia Aviation Board, 4508 S. Laburnum Ave., Richmond, VA 23231, telephone (804) 236-3625.

Virginia Aviation Conference

† **August 17, 1994 - 9 a.m.** – Open Meeting
† **August 18, 1994 - 9 a.m.** – Open Meeting
† **August 19, 1994 - 9 a.m.** – Open Meeting
Renaissance Hotel, 13869 Park Center Road, Herndon, Virginia. (Interpreter for the deaf provided upon request)

An annual meeting jointly sponsored by the Virginia Aviation Board, Department of Aviation, Virginia Airport Operators Council and Virginia Aviation Trades Association. Applications for state funding will be presented to the board, and other matters of interest to the Virginia aviation community will be discussed. There will also be guest speakers. Location accessible to the handicapped. Individuals with disabilities should contact Nancy Brent 10 days prior to the meeting if assistance is needed.

Contact: Nancy C. Brent, 4508 S. Laburnum Ave., Richmond, VA 23231-2422, telephone (804) 236-3625.

BOARD FOR BARBERS

August 8, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

A meeting to:

1. Review correspondence
2. Review examination contract
3. Conduct review and disposition of enforcement cases
4. Conduct routine board business

A public comment period will be scheduled during the meeting. No public comment will be accepted after that period. However, the meeting is open to the public. Any person who needs any accommodations in order to participate at the meeting should contact Karen O'Neal at least 10 days before the meeting date so that suitable arrangements can be made for an appropriate accommodation.

Contact: Karen O'Neal, Assistant Director, Board for Barbers, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-0500.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Central Area Review Committee

August 18, 1994 - 2 p.m. – Open Meeting
September 15, 1994 - 2 p.m. – CANCELLED
Chesapeake Bay Local Assistance Department, 8th Street Office Building, 8th and Broad Streets, 7th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Central Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. Public comment will not be received at the committee meeting. Written comments, however, are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

Northern Area Review Committee

August 18, 1994 - 10 a.m. – Open Meeting
September 15, 1994 - 10 a.m. – CANCELLED
Chesapeake Bay Local Assistance Department, 8th Street Office Building, 8th and Broad Streets, 7th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Northern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. Public comment will not be received at the committee meeting. Written comments, however, are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

Southern Area Review Committee

August 24, 1994 - 10 a.m. – Open Meeting
September 28, 1994 - 10 a.m. – Open Meeting
Chesapeake Bay Local Assistance Department, 8th Street Office Building, 8th and Broad Streets, 7th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will review local Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. Public comment will not be received at the committee meeting. Written comments, however, are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

August 11, 1994 - 9:30 a.m. – Open Meeting
Theater Row Building, 730 East Broad Street, Lower Level, Conference Room 1, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The council will meet to discuss issues, concerns and programs that impact child day programs, camps, school age programs, and preschool/nursery schools. The public comment period will begin at 10 a.m. Please call ahead of time for possible changes in meeting time.

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

COUNCIL ON CHILD DAY AND EARLY CHILDHOOD PROGRAMS

August 9, 1994 - 10 a.m. – Open Meeting
State Capitol, Capitol Square, House Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly business meeting. Public comment will not be accepted.

Contact: Peggy O. Harrelson, Acting Director, Washington Bldg., 1100 Bank St., Suite 1116, Richmond, VA 23219, telephone (804) 371-8603.

COMPENSATION BOARD

August 25, 1994 - 1 p.m. – Open Meeting
† **September 28, 1994 - 1 p.m.** – Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 9th Floor, Room 913/913A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A routine business meeting.

Contact: Bruce W. Haynes, Executive Secretary, Compensation Board, P. O. Box 710, Richmond, VA 23206-0686, telephone (804) 786-3886/TDD ☎

BOARD FOR CONTRACTORS

Recovery Fund Committee

September 21, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in executive session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact Christine Martine at (804) 367-8561. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration of your request.

Contact: Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-8561.

BOARD OF CORRECTIONAL EDUCATION

† **August 19, 1994 - 10 a.m.** – Open Meeting
James Monroe Building, 7th Floor, 101 North 14th Street, Richmond, Virginia.

A monthly meeting to discuss general business of the department.

Contact: Patty Ennis, Executive Secretary Sr., 101 North 14th Street, 7th Floor, Richmond, VA 23219, telephone (804) 225-3314.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

August 17, 1994 - 10 a.m. – Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ♿

A meeting to discuss matters as may be presented to the board.

Contact: Vivian Toler, Secretary to the Board, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

† **September 26, 1994 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD ☎

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

August 26, 1994 – Written comments may be submitted through this date.

October 5, 1994 - 9 a.m. – Public Hearing
General Assembly Building, 910 Capitol Street, House Room D, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to adopt regulations entitled: **VR 240-01-15. Rules Relating to Compulsory Minimum Training Standards For Radar Operators.** The proposed regulations include specific training requirements for public law-enforcement officers employed by state and local law-enforcement agencies who operate radar as part of their assigned duties. These training standards include 18 performance based training objectives which each officer required to operate radar must meet prior to being able to operate the unit. Training for radar operators under the proposed regulations may be done at the employing agency by a certified radar operator instructor and records of the training provided are to be maintained by the employing agency. Retraining is required by December 31 of every third calendar year to ensure that the operating officer has retained proficiency in the operation of the speed measurement device. Provisions are available for the exemption or partial exemption of the training requirement based upon previous training and experience.

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

Written comments may be submitted through August 26, 1994, to L.T. Eckenrode, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219.

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

BOARD OF DENTISTRY

August 13, 1994 – Public comment may be submitted until this date.

Pursuant to subsections C and D § 9-6.14:9.1 of the Code of Virginia, Governor George Allen has determined that changes with substantial impact were made to the proposed regulations and is suspending the implementation of VR 255-01-1, Virginia Board of Dentistry Regulations, until after an additional 30-day public comment period. The Governor indicated his concern with the large amount of opposition to the "licensure by endorsement" provisions of the regulation.

These regulations establish continuing education for dentists and dental hygienists; licensure by endorsement for dentists and amend advertising a specialty.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9906.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

† **September 29, 1994 - 8:30 a.m.** – Public Hearing
General Assembly Building, 910 Capitol Street, Senate Room B, Richmond, Virginia.

† **October 7, 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 Education intends to amend regulations entitled: **VR 270-01-0009. Regulations Governing Literary Loan Applications in Virginia.** These regulations are being amended to include language required by the 1989 and 1990 sessions of the General Assembly relating to the ceiling on indebtedness to the fund and consolidation incentives; to include changes by the 1991 session to § 22.1-140 of the Code of Virginia; to include changes by the 1994 session to § 22.1-146 of the Code of Virginia; and to increase the maximum loan amount from $2.5 million to $5 million per project.

Statutory Authority: §§ 22.1-140 and 22.1-142 et seq. of the Code of Virginia.

Contact: Kathryn S. Kitchen, Division Chief, Department of Education, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2025 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF MONTGOMERY/TOWN OF BLACKSBURG

September 13, 1994 - 3 p.m. – Open Meeting
Montgomery County Courthouse, 3rd Floor, Board of Supervisors Room, Christiansburg, Virginia.

A meeting to discuss the development of a Hazardous Materials Emergency Response Plan for Montgomery County and the Town of Blacksburg.

Contact: Steve Via, New River Valley Planning District Commission, P. O. Box 3726, Radford, VA 24143, telephone (703) 639-9313 or FAX (703) 831-6093.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **August 10, 1994 - 5 p.m.** – Public Hearing
Broad Rock Library, 4820 Warwick Road, Richmond, Virginia.

A public hearing required for Reasonably Available Control Technology (RACT) determination for E.I. du Pont de Nemours Company in Richmond.

Contact: Randy Montaperto, Engineer, Department of Environmental Quality, 9210 Arboretum Parkway, Suite 250, Richmond, VA 23236, telephone (804) 323-2409.

Ad Hoc Advisory Committee on an Expanded Role for Local Governments in the Exceptional Waters Process

† **August 17, 1994 - 1 p.m.** – Open Meeting
Department of Environmental Quality, Innsbrook Office Park, 4900 Cox Road, Executive Conference Room, Glen Allen, Virginia.

The department has established an ad hoc advisory committee to assist DEQ staff in drafting a regulatory amendment to the Water Quality Standards Regulation (VR 680-21-01.3 C) to increase the participation of local governments in the nomination and designation procedure process for exceptional waters. Another meeting of the advisory committee has been scheduled for September 7, 1994, at 10 a.m. at 4900 Cox Road, Room 1004 in the Training Room; however, this date is not firm. Persons interested in attending the meetings of this committee should confirm the date with the contact person below.

Contact: Jean W. Gregory, Environmental Program

Manager, Department of Environmental Quality, 4900 Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5093.

Hazardous Waste Technical Advisory Committee

† **August 24, 1994 - 10 a.m.** – Open Meeting
Department of Environmental Quality, 4900 Cox Road, Glen Allen, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will meet to assist the department in drafting a proposed Amendment 14 to the Hazardous Waste Management Regulations, VR 672-10-1. The committee will be looking at the changes made in federal regulations since July 1, 1991, as a basis for the amendment. Meetings will be held on successive Wednesdays at the same time and place. Before attending, please check with William Gilley, as the meeting dates and times are subject to change.

Contact: William F. Gilley, Regulatory Service Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4214.

Technical Advisory Committee

August 11, 1994 - 10 a.m. – Open Meeting
September 1, 1994 - 10 a.m. – Open Meeting
Department of Environmental Quality, 629 East Main Street, 4th Floor Conference Room, Richmond, Virginia. ♿

The committee will meet in three sessions to assist the development of amendments to Financial Assurance Regulations for Solid Waste Disposal Facilities (Sanitary Landfills), VR 672-20-1. The draft of amended regulations developed as a result of these meetings will be presented to the Virginia Waste Management Board for consideration. If approved by the board, the proposed amendments will be further considered in public participation proceedings in accord with Public Participation Guidelines, VR 672-01-01:1.

Contact: Wladimir Gulevich, Ph.D., P.E., ORPD, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4218 or (804) 762-4021/TDD ☎

Waste Tire End User Reimbursement Advisory Committee

† **August 30, 1994 - 10 a.m.** – Open Meeting
Department of Environmental Quality, Innsbrook Office Park, 4900 Cox Road, Board Room, Richmond, Virginia. ♿

A presentation of the Waste Tire End User Reimbursement regulations. The regulations allow end users of Virginia waste tires to receive a partial reimbursement from the Waste Tire Trust Fund. The meeting is to receive comments on the proposed regulations including the costs and benefits of the regulation.

Contact: Allan Lassiter, Manager, Waste Tire Program, Department of Environmental Quality, P.O. Box 10009, 629 E. Main St., Richmond, VA 23240-0009, telephone (804) 762-4215.

Work Group on Detection/Quantitation Levels

September 14, 1994 - 1:30 p.m. – Open Meeting
Department of Environmental Quality, 4949 Cox Road, Lab Training Room, Room 111, 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 Environmental Quality. Other meetings of the work group have been scheduled at the same time and location for September 28, October 12, October 26, November 9, November 30, and December 14. However, these dates are not firm. Persons interested in the meetings of this work group should confirm the date with the contact person below.

Contact: Alan J. Anthony, Chairman, Department of Environmental Quality, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5070.

Virginia Pollution Prevention Advisory Committee

August 18, 1994 - 1 p.m. – Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia. ♿

A quarterly meeting. The advisory committee has been established to assist the Department of Environmental Quality in its implementation of voluntary pollution prevention technical assistance throughout the Commonwealth.

Contact: Bill Sarnecky, Environmental Engineer Senior, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4347.

VIRGINIA FIRE SERVICES BOARD

† **August 18, 1994 - 7:30 p.m.** – Public Hearing
Natural Bridge Motel of Virginia, Natural Bridge, Virginia.

A public hearing to discuss fire training and policies. The hearing is open to the public for their input and comments.

† **August 19, 1994 - 9 a.m.** – Open Meeting
Natural Bridge Motel of Virginia, Natural Bridge, Virginia.

An open meeting to discuss training and policies. The meeting is open to the public for comments and input.

Contact: V. Carole Necessary, Acting Secretary, Virginia Fire Services Board, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training Committee

† **August 18, 1994 - 10 a.m.** – Open Meeting
Natural Bridge Motel of Virginia, Natural Bridge, Virginia.

A committee meeting to discuss fire training and policies. The meeting is open to the public for their input and comments.

Contact: V. Carole Necessary, Acting Secretary, Virginia Fire Services Board, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

† **August 18, 1994 - 9 a.m.** – Open Meeting
Natural Bridge Motel of Virginia, Natural Bridge, Virginia.

A committee meeting to discuss fire training and policies. The meeting is open to the public for their input and comments.

Contact: V. Carole Necessary, Acting Secretary, Virginia Fire Services Board, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

† **August 18, 1994 - 1 p.m.** – Open Meeting
Natural Bridge Motel of Virginia, Natural Bridge, Virginia.

A committee meeting to discuss fire training and policies. The meeting is open to the public for their input and comments.

Contact: V. Carole Necessary, Acting Secretary, Virginia Fire Services Board, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF GAME AND INLAND FISHERIES

August 25, 1994 - 9 a.m. – Open Meeting
August 26, 1994 - 9 a.m. – Open Meeting
NOTE: CHANGE IN LOCATION
Department of Environmental Quality, 4900 Cox Road, Richmond, Virginia.

AMENDED NOTICE

The Board of Game and Inland Fisheries will meet to set the 1994-95 migratory waterfowl seasons and propose changes governing seasons, bag limits, methods of take and possession of fish and nongame wildlife. The board is also expected to consider wildlife management regulations relating to the following topics: (i) the possession of a validation card or permit when such a card or permit is required to hunt and to display such a card or permit upon demand of any officer; (ii) permit requirements for wolf hybrids; (iii) providing for the transport of certain nuisance species by animal control officers and businesses that specialize in nuisance animal damage control; and (iv) rescinding § 14 of VR 325-02-27, which provides for the shooting of wild birds and wild animals from stationary vehicles by disabled persons since the Code of Virginia now provides for this activity.

Administrative and procedural issues may also be discussed by the board. The board will also hold an executive session during this meeting. The appropriate chairmen of board committees may request committee meetings in conjunction with its August meeting or thereafter.

Please note: The board has changed its meeting procedure. Public comment is now accepted on the first meeting day. If the board completes its meeting agenda on August 25, it will not convene a meeting on August 26.

Contact: Belle Harding, Secretary to the Director, Board of Game and Inland Fisheries, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

BOARD FOR GEOLOGY

August 11, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia.

August 12, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia.

A general meeting.

Contact: David A. Vest, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8307 or (804) 367-9753/TDD

DEPARTMENT OF HEALTH (STATE BOARD OF)

August 12, 1994 - 11 a.m. – Open Meeting
Department of Health, 1500 East Main Street, Suite 214, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Executive Committee will conduct a planning session for 94-95.

Contact: Susan R. Rowland, MPA, Assistant to the

Commissioner, Department of Health, 1500 E. Main St, Richmond, VA 23219, telephone (804) 786-3564.

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September 9, 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 355-29-100. Board of Health Regulations Governing Vital Records.** Section 32.1-273 of the Code of Virginia authorizes the Board of Health to prescribe a fee, not to exceed $5.00, for searching and certification of vital records of birth, death, marriage, and divorce. Senate Bill 402, passed by the 1994 General Assembly, raises the maximum limit on vital records fees to $8.00. Accordingly, the proposed regulations raise the current fee of $5.00 to the new fee of $8.00. Comments on the costs and benefits of the proposal are requested.

Statutory Authority: § 32.1-273 of the Code of Virginia.

Contact: Deborah M. Little, Director, Office of Vital Records and Health Statistics, P. O. Box 1000, Richmond, VA 23208-1000, telephone (804) 371-6077 or FAX (804) 371-4800.

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August 27, 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 Health intends to amend regulations entitled: **VR 355-33-500. Rules and Regulations for the Licensure of Hospitals in Virginia.** Pursuant to the Commonwealth's efforts to increase organ, tissue and eye donation, the routine contact protocol regulations are an effort to ensure all families of medically suitable donors are given the opportunity to consider organ, tissue and eye donation. The regulations strengthen the donor program through the application of uniform requirements for hospitals to inform families of organ donor options. Implementation of the proposed regulations will help ensure families of donor candidates are advised of the options available and give them the opportunity to make their own decisions to donate. Comments on the costs and benefits of the proposal are requested.

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Written comments may be submitted until August 27, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230 or FAX (804) 367-2149.

Contact: Carrie Eddy, Policy Analyst, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2102 or FAX (804) 367-2149.

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August 27, 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 Health intends to amend regulations entitled: **VR 355-33-500. Rules and Regulations for the Licensure of Hospitals in Virginia.** Discharge planning services link patients departing the hospital with appropriate community resources, a service that is especially important for drug-exposed infants and their mothers. Implementation of the proposed regulations will strengthen hospital discharge planning for substance abusing postpartum women through the application of uniform requirements for informing substance abusing women of treatment services available in the community. Comments on the cost and benefits of the proposal are requested.

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Written comments may be submitted until August 27, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230 or FAX (804) 367-2149.

Contact: Carrie Eddy, Policy Analyst, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2102 or FAX (804) 367-2149.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

August 30, 1994 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting.

Contact: Kim Bolden Walker, Public Relations Coordinator, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

BOARD FOR HEARING AID SPECIALISTS

† **September 12, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting, followed by examination. Persons desiring to participate in the meeting and

requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

Contact: Karen W. O'Neal, Assistant Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD ☎

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† **September 12, 1994 - 9 a.m.** – Public Hearing

Department of Professional and Occupational Regulation, 5th Floor, Conference Room 3, 3600 West Broad Street, Richmond, Virginia.

† **October 8, 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 amend regulations entitled: **VR 375-01-02. Board of Hearing Aid Specialists Regulations.** The proposed regulations define additional terminology, clarify entry criteria for licensure, establish examination provisions incorporating board policy, clarify renewal and reinstatement procedures and the provisions regarding standards of practice and conduct, and adjust licensing fees as needed in accordance with § 54.1-113 of the Code of Virginia. All other amendments are for clarity, simplicity and readability.

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

Contact: Karen O'Neal, Assistant Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

COMMISSION ON THE FUTURE OF HIGHER EDUCATION IN VIRGINIA

September 14, 1994 - 10 a.m. – Open Meeting

General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ♿

The commission was created by SJR 139 and is charged with considering a variety of topics that are of interest to higher education in Virginia.

Contact: Anne M. Pratt, Associate Director, 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2629.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

September 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 Council of Higher Education for Virginia intends to adopt regulations entitled: **VR 380-04-01. Virginia Postsecondary Review Entity Regulations.** The proposed regulations establish the procedures and standards by which the SPRE may review institutions participating in the Title IV, HEA programs.

Statutory Authority: §§ 23-9.6:1 and 23-261 of the Code of Virginia.

Contact: Richard Myers, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-3189.

DEPARTMENT OF HISTORIC RESOURCES

State Review Board

August 16, 1994 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to consider the nomination of the following properties to the National Register of Historic Places.

1. Cumberland County Courthouse, Cumberland County
2. Locustville, Lancaster County
3. Norwood, Clarke County
4. Oakton Trolley Station, Fairfax County
5. Two-hundred Block West Franklin Street H.D. (boundary increase), City of Richmond
6. Wytheville Historic District, Wytheville, Wythe County

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

Board of Historic Resources

† **August 17, 1994 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general business meeting.

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

VIRGINIA HIV PREVENTION COMMUNITY PLANNING COMMITTEE

August 11, 1994 - 8 a.m. – Open Meeting

The Sheraton Inn-Richmond Airport, 4700 South Laburnum Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will continue to work on a comprehensive HIV Prevention Plan for the Commonwealth.

Contact: Elaine Martin, Coordinator, AIDS Education, P. O. Box 2448, Richmond, VA 23218, telephone (804) 786-0877 or toll free 1-800-533-4148/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

September 6, 1994 - 9 a.m. – Open Meeting

Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ♿ (Interpreter for the deaf provided upon request)

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

† **August 16, 1994 - 11 a.m.** – Open Meeting

Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ♿

A regular meeting of the Board of Commissioners of the Virginia Housing Development Authority to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

HJR NO. 76 INTERNET STAFF STUDY TEAM

† **August 25, 1994 - 10 a.m.** – Open Meeting
† **September 22, 1994 - 10 a.m.** – Open Meeting
Department of Information Technology, Richmond Plaza Building, 3rd Floor, Richmond, Virginia. ♿

A meeting to study whether the Commonwealth needs to establish protocols and guidelines regarding in-state access to the myriad files and components available through the Internet.

Contact: Marty Gillespie, Department of Information Technology, Director of Security, 110 S. 7th St., 3rd Floor, Richmond, VA 23219, telephone (804) 344-5705.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

† **September 1, 1994 - 10 a.m.** – Open Meeting
Capitol Building, House Room 4, Richmond, Virginia. ♿

A regular meeting of the council to discuss and/or act on a schedule for future meeting dates, and update of Apprenticeship Council bylaws.

Contact: Robert S. Baumgardner, Director, Apprenticeship Division, Virginia Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382.

STATE LAND EVALUATION ADVISORY COUNCIL

August 12, 1994 - 10 a.m. – Open Meeting
† **September 20, 1994 - 1 p.m.** – Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ♿

A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: Ronald W. Wheeler, Executive Assistant, Department of Taxation, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-6920.

STATE COUNCIL ON LOCAL DEBT

August 17, 1994 - 11 a.m. – Open Meeting
September 21, 1994 - 11 a.m. – Open Meeting
James Monroe Building, 101 N. 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A regular meeting subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to the meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P. O. Box 1879, Richmond, VA 23215, telephone (804) 225-4928.

LOCAL GOVERNMENT ADVISORY COMMITTEE

† **August 11, 1994 - 1 p.m.** – Open Meeting
Washington Building, 1100 Bank Street, 9th Floor Conference Room, Richmond, Virginia.

A regular business meeting.

Contact: Jerry Simonoff, Information Technology Manager, Council on Information Management, 1100 Bank St., 9th Floor, Richmond, VA 23219, telephone (804) 786-7711 or (804) 225-3624/TDD

STATE LOTTERY BOARD

† **August 22, 1994 - 10 a.m.** – Open Meeting
State Lottery Department, 2201 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106 or (804) 367-3000/TDD

VIRGINIA MANUFACTURED HOUSING BOARD

August 17, 1994 - 1 p.m. – Open Meeting
The Cavalier Hotel, Oceanfront at 42nd Street, Virginia Beach, Virginia. (Interpreter for the deaf provided upon request)

A regular monthly meeting.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Code Enforcement and Manufactured Housing Office, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160 or (804) 371-7089/TDD

MARINE RESOURCES COMMISSION

† **August 23, 1994 - 9:30 a.m.** – Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; and policy and regulatory issues.

The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans, fishery conservation issues, licensing, and shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing.

The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Sandra S. Schmidt, Secretary to the Commission, Marine Resources 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

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

August 12, 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 Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1100. Amount, Duration and Scope of Services; VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care; VR 460-02-4.1920. Methods and Standards Used to Establish Payment Rates – Other Types of Care; and VR 460-04-3.1300. Regulations for Outpatient Physical Rehabilitative Services: Physical Therapy and Related Services.** The purpose of this proposal is to amend the State Plan for Medical Assistance and VR 460-04-3.1300 concerning the authorization and utilization review of physical therapy and related services, and to provide guidelines for the provision of psychological and psychiatric services in schools.

DMAS has provided reimbursement for physical therapy and related services since 1978 under two major programs: general physical rehabilitative and intensive rehabilitative services. This regulation will allow DMAS to categorize general physical outpatient rehabilitation (physical therapy, occupational therapy, and speech-language pathology services) into two subgroups.

Physician orders are required and must be in place before any services are initiated. Guidelines are

provided when physical therapy and related conditions are to be considered for termination regardless of the already preauthorized number of visits or services. Guidelines are also provided for psychological and psychiatric services, and school divisions are added as an entity which can provide these services. In addition, revisions are made to the intensive rehabilitation regulations by moving detailed language for these services from the State Plan to state-only regulations. Finally, language is added to the reimbursement (fee-for-service) methodology section of the Plan to describe payment for physical therapy and related services that may be provided by schools and home health agencies. Language was added on the recommendation of the Health Care Financing Administration because this area had not been adequately described in the Plan previously.

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

Written comments may be submitted through August 12, 1994, to Mary Chiles, Manager, Division of Quality Care Assurance, 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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August 26, 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 Medical Assistance Services intends to adopt regulations entitled: **VR 460-04-8.16. DMAS-122 Adjustment Process.** The purpose of this action is to establish and clarify by regulation the DMAS-122 adjustment process for Medicaid recipients in long-term care facilities. Specifically, the roles of the Department of Medical Assistance Services and the Department of Social Services will be clarified. This process is federally mandated and is not a new requirement.

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

Written comments may be submitted through August 26, 1994, to Mary Chiles, 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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August 26, 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 Medical Assistance Services intends to adopt regulations entitled: **VR 460-10-2500. Medicaid Financial Eligibility Requirements - Families and Children.** The purpose of this action is to promulgate state regulations which describe the methods and procedures to be used in setting standards and determining eligibility for Aid to Families With Dependent Children-related medical assistance.

Because eligibility for receipt of Title XIX services is based on income and resources, when determining Medicaid eligibility it is necessary to determine the income and resources available to each individual in a family to determine whether that individual is eligible for Medicaid. Presently, Medicaid eligibility is determined in "family and children" cases by dividing the family unit into separate budget units when children have their own income to ensure that the income of the child is not deemed available to the support of his parent or his sibling. These regulations revise the methodologies for determining income and resource eligibility under Medicaid, including the financial responsibility of relatives, and for determining how the income and resources of members of families are to be considered during the determination of eligibility for Medicaid.

These proposed regulations track federal regulations published January 1, 1993, except in one significant area, "deeming," which is specifically prohibited under § 1902(a)(17)(D) of the Social Security Act. Only the income and resources of a parent for a child or of a spouse for a spouse may be deemed to be available if they are living together. In order to assure that the individual standards of Medicaid applicants are not reduced by the presence of any nonlegally responsible relative in the assistance unit, these individuals will be removed from the unit before the standards are prorated for individuals remaining in the unit.

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

Written comments may be submitted through August 26, 1994, to Ann Cook, Eligibility 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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September 23, 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 Medical Assistance Services intends to adopt regulations entitled: **VR 460-01-53, 460-01-53.1, 460-01-53.2, and 460-02-4.1730. Liens and Recoveries: OBRA 93 Estate Recoveries.** The purpose of this action is to amend the Plan for Medical Assistance concerning estate recoveries consistent with the requirements of OBRA 93 § 13612 and of §§ 32.1-326.1 and 32.1-327 of the Code of Virginia. The process of recovering funds when they have been expended for persons who had their own resources, but did not use them for their own medical care, returns general fund dollars to the Commonwealth.

Sections 32.1-326.1 and 32.1-327 of the Code of Virginia provide for the recovery, by the Title XIX agency, of expenditures for certain services from the estates of recipients. The Omnibus Budget Reconciliation Act of 1993 § 13612 (OBRA 93) permitted the recovery of Title XIX expended funds from the estates of individuals for all Medicaid covered services. The inclusion of states' estate recovery policies in their state plans for medical assistance was required by the cited OBRA section. Since 1984, DMAS has exercised its authority under state law and recovered expenditures for all Medicaid covered services. The fact that the new federal law makes recovery of institutional payments mandatory, but this degree of recovery an option for states lacking similar state authority, is what causes this regulatory action to be subject to the Article 2 requirements of the Administrative Process Act.

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

Written comments may be submitted through September 23, 1994, to Jesse R. Garland, Director, Fiscal Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

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September 23, 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 Medical Assistance Services intends to amend regulations entitled: **VR 460-02-4.1920, Methods and Standards for Establishing Payment Rates–Other Types of Care; VR 460-03-4.1921, Fees for Pediatric and Obstetric CPT Procedures; VR 460-03-4.1924, State Agency Fee Schedule: Resource Based Relative Value Scale.** The purpose of this proposal is to implement a new medical and surgical fee schedule for the agency which is based on the federal RBRVS. The program reimburses fee-for-service providers the lower of the state agency fee schedule or their actual charge to the general public. The 1994 Appropriations Act § 1-88(313)(W) directs the Board of Medical Assistance Services (BMAS) to develop a RBRVS-based physician fee schedule for approval by the HCFA. RBRVS-based reimbursement links the fee for a service to research-based estimates of the resources necessary to provide that service.

Prior to January 1, 1992, HCFA also used a fee schedule based on provider charges to reimburse physicians for their services rendered to Medicare beneficiaries. However, HCFA concluded that the fees it paid for services did not have a consistent, rational relationship to the actual resources utilized to provide those services. Therefore, HCFA developed a RBRVS-based fee schedule. HCFA assigned a "relative value" to each service expressed in relative value units (RVUs). HCFA computes the fee for a service by multiplying its RVUs times one of three conversion factors (CFs) which it developed for different types of services. The Department of Medical Assistance Services (DMAS) is amending HCFA's RVUs for its RBRVS-based fee schedule. DMAS will use HCFA's CFs after they have been adjusted by an additional factor to maintain budget neutrality. DMAS may revise the additional factor whenever HCFA updates its RVUs or CFs so that no change in expenditure will result solely from such update. DMAS will estimate RBRVS-type fees for services that have no HCFA RVUs and use existing fees for services for which it is unable to estimate an RBRVS-type fee. The RBRVS-based fees will be effective July 1, 1995, and will be phased in over a three-year period. There will be one fee schedule for the entire state with no geographic adjusters.

Implementation of the RBRVS-based fee schedule will affect each provider differently depending on the types of services provided since the allowable fee will increase for some services and decrease for others. The agency projects no significant negative issues involved in implementing this proposed change. The primary advantage of this regulation is that reimbursement for primary care services will be enhanced.

This change to the fee schedule is undertaken only after obtaining input from the physician community. During 1993, DMAS convened an advisory committee composed of physicians selected by professional societies throughout the state. After several months of deliberation, a majority of this group voted to recommend to the department that it proceed to seek authorization to implement a RBRVS-based fee schedule. The details of the present proposal are consistent with the recommendations of the committee. All physician providers and some nonphysician providers (such as nurse practitioners) throughout the

state will be affected. Provided there are no changes in the types of services provided as a result of the new fee schedule, there should be no impact on Medicaid recipients and the implementation of the new fee schedule should be budget neutral. Medicaid spent approximately $205 million (total funds) for these services in SFY 94, and expects to spend $244.8 million (total funds) in SFY 95. There are no localities which are uniquely affected by these regulations as they apply statewide.

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

Written comments may be submitted through September 23, 1994, to Scott Crawford, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

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† **October 7, 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 Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1940:1. Nursing Home Payment System (Balloon Loan Financing).** The purpose of this action is to amend the State Plan for Medical Assistance to specifically address existing reimbursement policies relating to balloon loan financing, in light of regulations addressing refinancing for nursing facilities. This amendment is the result of policies adopted by the Board of Medical Assistance Services on December 14, 1992, regarding refinancing of balloon loans in response to requests by providers that DMAS establish a policy for balloon loan financing based on current State Plan language. This action incorporates the specific language of the balloon loan financing policy into the State Plan.

The Nursing Home Payment System (NHPS) provides that costs incurred due to a refinancing cannot exceed the total costs that would have been allowable had the refinancing not occurred. This could be interpreted to prohibit reimbursement for the refinancing of a balloon loan at the expiration of the term of the original note since payment of the balloon principal would eliminate the debt on the nursing facility and the associated interest cost to the Medicaid program. Providers were asking for a specific policy to address balloon loan financing due to the reluctance of financial institutions to make long-term loans to the health care industry.

The department developed this policy in 1992 to accommodate the needs of the provider community at a minimum cost to the Medicaid program. Under this policy as promulgated, § 2.4 of the NHPS would permit the refinancing of a balloon loan as limited by the procedures.

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

Written comments may be submitted until October 7, 1994, to Richard Weinstein, Manager, Division of Cost Settlement, 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 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

BOARD OF MEDICINE

Credentials Committee

August 13, 1994 - 8:15 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 3 and 4, Richmond, Virginia.

The committee will meet in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and to discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director of Discipline, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD

Executive Committee

August 12, 1994 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 1 and 2, Richmond, Virginia.

The committee will meet in open and closed session to review cases of files requiring administrative action, adopt amendments for approval of promulgation of regulations as presented. The full board may meet at 1 p.m. to hold a formal hearing regarding a pending matter. The chairman will entertain public comments following the adoption of the agenda for 10 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director of Discipline, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD

Legislative Committee

September 9, 1994 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

The committee will meet to develop a recommendation to the full board on "short term use" of pharmacotherapy for weight loss; develop regulations for licensure by endorsement for doctors of chiropractic; develop regulations for implementation of House Bill 266 relating to unprofessional conduct; develop regulations for implementation of Senate Bill 474; and such other business that may be presented. The chairperson will entertain public comments following the adoption of the agenda for 10 minutes on any agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director of Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Physician's Assistants

† **September 9, 1994 - 2 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

The Advisory Committee on Physician's Assistants will (i) review the board's position on home care (house calls); (ii) review and adopt the additions to the list of approved schools; and (iii) review such other business that may be presented. There will be a 10 minute period for public comments on specific agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director of Licensing, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD OF)

September 11, 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to **repeal** regulations entitled: **VR 470-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 470-01-01:1. Public Participation Guidelines.** The purpose of this regulation is to adopt Public Participation Guidelines in conformance with § 9-6.14:7.1 of the Code of Virginia.

Statutory Authority: §§ 9-6.14:7.1 and 37.1-10 of the Code of Virginia.

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

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August 16, 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to **repeal** regulations entitled: **VR 470-02-03. Rules and Regulations for the Licensure of Private Psychiatric Hospitals; VR 470-02-07. Rules and Regulations for the Licensure of Correctional Psychiatric Facilities; VR 470-02-08. Rules and Regulations for the Licensure of Supported Residential Programs and Residential Respite Care/Emergency Services Facilities; VR 470-02-09. Rules and Regulations for the Licensure of Outpatient Facilities; VR 470-02-10. Rules and Regulations for the Licensure of Day Support Programs;** and **VR 470-02-11. Rules and Regulations for the Licensure of Residential Facilities** and **adopt** regulations entitled: **VR 470-02-13. Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of these regulatory actions is to redraft and consolidate six current licensure regulations for all licensable facilities except residential facilities for children.

Statutory Authority: § 37.1-10(6) and Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia.

Written comments may be submitted until August 16, 1994, to Jacqueline M. Ennis, Assistant Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214.

Contact: Edith Smith, Manager, Licensure Operations, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 371-6885.

VIRGINIA MENTAL HEALTH PLANNING COUNCIL

† **August 31, 1994 - 10 a.m.** – Open Meeting
Henrico County Mental Health and Retardation Services, 10299 Woodman Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

The council meets at least four times a year. Its mission is to advocate for a consumer and family

oriented, integrated and community-based system of mental health care of the highest quality. The council continuously monitors and evaluates the implementation of the state's mental health plan.

Contact: Jeanette DuVal, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 371-0359 or (804) 371-8977/TDD ☎

STATE MILK COMMISSION

† **August 17, 1994 - 10:30 a.m.** – Open Meeting
Ninth Street Office Building, 200 North 9th Street, Suite 1015, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to discuss industry issues, distributor licensing, Virginia base transfers, Virginia baseholding license amendments, regulations, fiscal matters, and to receive reports from staff of the Milk Commission. Additionally, the commission will review a request to consider amending Regulation No. 10, paragraph 7(G)(2) of the Rules and Regulations for the Control, Regulation and Supervision of the Milk Industry in Virginia. The commission may consider other matters pertaining to its responsibilities. Persons who require accommodations in order to participate at this meeting should contact Edward C. Wilson, Jr., Deputy Administrator, at least five days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, Milk Commission, 200 N. 9th St., Suite 1015, Richmond, VA 23219-3414, telephone (804) 786-2013/TDD ☎

DEPARTMENT OF MOTOR VEHICLES

Motor Vehicle Dealers' Advisory Board

† **September 7, 1994 - 9:30 a.m.** – Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿

A scheduled meeting of the board. No public comment will be received at this meeting.

Contact: L. Stephen Stupasky, Manager, Dealer Services, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23269-0001, telephone (804) 367-2921 or (804) 367-0261.

BOARD OF NURSING

Nurse Aide Registry

† **August 9, 1994 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **August 18, 1994 - 11 a.m.** – Open Meeting
Alcoholic Beverage Control Building, 8431 Timberlake Road, Suite A, Lynchburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

A formal hearing with certified nurse aides to determine what, if any, action should be recommended to the board. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., M.S.N., Assistant Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

Special Conference Committee

† **August 18, 1994 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A special conference committee comprised of two members of the Virginia Board of Nursing will conduct informal conferences with licensees to determine if any action should be recommended to the Board of Nursing. Public comment will not be received.

Contact: M. Teresa Mullin, R.N., Assistant Executive Director, Board of Nursing, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF OPTOMETRY

† **August 17, 1994 - 8 a.m.** – Open Meeting
† **August 17, 1994 - 3 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

An informal conference meeting. Brief public comment will be received at the beginning of the meeting.

† **August 17, 1994 - 9:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia. ♿

A general board meeting. Brief public comment will be received at the beginning of the meeting.

† **August 17, 1994 - 1:30 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A formal hearing. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

BOARD OF PHARMACY

August 10, 1994 - 8:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A board meeting and formal hearings. The board will ratify the Notice of Intent to promulgate regulations for foreign pharmacy graduates. This is a public meeting and there will be a 15 minute public comment period from 8:30 a.m. to 8:45 a.m.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS ADVISORY COUNCIL

August 18, 1994 - 9 a.m. – Open Meeting
Shoney's Inn, 7007 West Broad Street, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular bimonthly meeting. Time is provided for public comment at the start of the meeting.

Contact: Kenneth Shores, Department for Rights of Virginians with Disabilities, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2042 Voice or TDD ☎

REAL ESTATE APPRAISER BOARD

† **September 20, 1994 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD ☎

Complaints Committee

August 31, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to review complaints. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration of your request.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD ☎

REAL ESTATE BOARD

August 15, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A formal hearing in regard to the Real Estate Board v. Linda P. Hackett. File Number 93-00242.

Contact: Barbara B. Tinsley, Legal Assistant, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8589.

August 23, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A formal hearing in regard to the Real Estate Board v. Larry J. Timbrook. File Number 93-00594.

Contact: Barbara B. Tinsley, Legal Assistant, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8589.

STATE REHABILITATION ADVISORY COUNCIL

September 23, 1994 - 10 a.m. – Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.

A regular quarterly meeting.

Contact: Dr. Ronald C. Gordon, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019 or (804) 662-9040/TDD ☎

VIRGINIA RESOURCES AUTHORITY

August 9, 1994 - 9:30 a.m. – Open Meeting
Virginia Resources Authority, The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

The board will meet to approve minutes of the meeting of July 12, 1994; 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., Virginia Resources Authority, 909 E. Main St., Suite 607, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

August 10, 1994 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room A, Richmond, Virginia.

† **September 21, 1994 - 10 a.m.** – Open Meeting
County of Henrico, Administrative Building, 4301 East Parham Road, Board of Supervisors Board Room, Richmond, Virginia.

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, 1500 E. Main St., P.O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

August 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 Social Services intends to repeal regulations entitled: **VR 615-01-01. Public Participation Guidelines.** The purpose of this action is to repeal existing public participation guidelines.

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

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

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August 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 Social Services intends to adopt regulations entitled: **VR 615-01-01:1. Public Participation Guidelines.** This regulation describes the ways in which the state board and department will solicit and consider public comments.

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

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

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† **October 7, 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 amend regulations entitled: **VR 615-01-29. Aid to Families with Dependent Children (AFDC) Program - Disregarded Income and Resources.** The proposed regulation modifies AFDC regulations to require that all bona fide loans be disregarded in the evaluation of financial eligibility for benefits. The regulation defines what is required for a loan to be considered bona fide.

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

Written comments may be submitted through October 7, 1994, to Constance O. Hall, AFDC Program Manager, Division of Benefit Programs, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Peggy Friedenberg, Policy Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

September 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 Virginia Soil and Water Conservation Board intends to amend regulations entitled: **VR 625-02-00. Erosion and Sediment Control Regulations.** Sections 10.1-502 and 10.1-561 of the Code of Virginia authorize the Virginia Soil and Water Conservation Board to promulgate regulations to implement the Erosion and Sediment

Control Law. This action is necessary to amend the existing regulations which became effective September 13, 1990, due to the passage of Chapter 925 of the 1993 Virginia Acts of Assembly and other legislative changes since last amendment. The regulations establish minimum statewide standards for the control of soil erosion, sediment deposition and nonagricultural runoff from land-disturbing activities that must be met in local erosion and sediment control programs, and also by state agencies that conduct land-disturbing activities. Land-disturbing activities include, but are not limited to, clearing, grading, excavating, transporting and filling of land.

Statutory Authority: §§ 10.1-502 and 10.1-561 of the Code of Virginia.

Contact: James P. Edmonds, Urban Conservation Engineer, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3997 or FAX (804) 786-1798.

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September 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 Virginia Soil and Water Conservation Board intends to adopt regulations entitled: **VR 625-02-01. Erosion and Sediment Control Certification Regulations.** The proposed regulations establish minimum statewide standards for the certification of erosion and sediment control plan reviewers, inspectors, and program administrators. The regulations provide four classifications of certification: Program Administrator, Plan Reviewer, Inspector, and Combined Administrator. In addition, the regulations provide for eligibility requirements, fees, examinations, applications, and discipline of certified personnel. Training will be based upon the Erosion and Sediment Control Law and attendant regulations which establish minimum statewide standards for the control of soil erosion, sediment deposition and nonagricultural runoff from land-disturbing activities. Land-disturbing activities include, but are not limited to, clearing, grading, excavating, transporting and filling of land. Certification will be based upon completion of the training programs, work experience or combination thereof, plus obtaining a passing grade on the certification test. Recertification and decertification are also covered by the regulations.

Statutory Authority: §§ 10.1-502 and 10.1-561 of the Code of Virginia.

Contact: James P. Edmonds, Urban Conservation Engineer, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3997 or FAX (804) 786-1798.

SECRETARY OF TRANSPORTATION

August 10, 1994 - 1 p.m. – Open Meeting
J. Sargeant Reynolds Community College, North Run Business Park Auditorium, Richmond, Virginia.

The Secretary of Transportation is conducting a strategic planning process to develop strategies to improve the efficiency and effectiveness of the Commonwealth's transportation system. Transportation, business and community leaders and the public are asked to provide their suggestions and ideas.

Contact: Kevin Landergan, Senior Policy Analyst, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 371-7632.

COMMONWEALTH TRANSPORTATION BOARD

† **August 17, 1994 - 2 p.m.** – Open Meeting
Department of Transportation, 1401 East 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.

† **August 18, 1994 - 10 a.m.** – Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

TREASURY BOARD

August 17, 1994 - 9 a.m. – Open Meeting
September 21, 1994 - 9 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia.

A regular meeting of the board.

Contact: Gloria J. Hatchel, Administrative Assistant to the Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

VIRGINIA RACING COMMISSION

† **August 10, 1994 - 9:30 a.m.** – Open Meeting
State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia.

A regular commission meeting including a discussion of the review of regulations.

† **August 31, 1994 - 9:30 a.m.** – Open Meeting
State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia.

A meeting to discuss applications to construct, own and operate a racetrack.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VIRGINIA VOLUNTARY FORMULARY BOARD

† **September 12, 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 May 1, 1994. Copies of the proposed revisions to the Formulary are available for inspection at the Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on September 12, 1994, will be made a part of the hearing record.

Contact: James K. Thomson, Bureau of Pharmacy Services, Virginia Voluntary Formulary Board, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WASTE MANAGEMENT BOARD

† **September 7, 1994 - 7 p.m.** – Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

† **September 8, 1994 - 7 p.m.** – Public Hearing
Clinch Valley Community College, Norton, Virginia.

† **October 7, 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 Waste Management Board intends to adopt regulations entitled **VR 672-20-20. Regulation Governing Management of Coal Combustion By-Products.** The purpose of the proposed regulation is to provide for the use of coal combustion by-products and to establish appropriate standards for siting, design, construction, operation and administrative procedures pertaining to their use, reuse, or reclamation. The board seeks specific comments regarding clarification or the need for testing schedules (frequency/volumes) for TCLP tests for coal combustion by-products as presented in § 4.1 C 4.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Written comments may be submitted through October 7, 1994, to Deborah G. Pegram, Hearing Reporter, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009.

Contact: Walt Gulevich, Office Director, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia, 23240-0009, telephone (804) 762-4218.

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† **August 30, 1994 - 10 a.m.** – Public Hearing
Department of Environmental Quality Board Room, Innsbrook Office Park, 4900 Cox Road, Glen Allen, Virginia.

† **September 8, 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 of the Code of Virginia that the Virginia Waste Management Board intends to adopt regulations entitled **VR 672-60-1. Waste Tire End User Reimbursement.** This regulation provides the guidelines for the partial reimbursement, from the Waste Tire Trust Fund, of the end users of Virginia generated waste tires. The promulgation of VR 672-60-1 is exempt from the requirements of the Administrative Process Act pursuant to § 9-6.14:4.1 B of the Act.

Statutory Authority: §§ 10.1-1402.11, 10.1-1422.3 and 10.1-1422.4 of the Code of Virginia.

Contact: Allan Lassiter, Manager, Waste Tire Program, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009, telephone (804) 762-4215.

STATE WATER CONTROL BOARD

August 22, 1994 - 10 a.m. – Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

A regular meeting.

Contact: Doneva A. Dalton, Hearings Reporter, 629 E.

Main St., P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4379.

LEGISLATIVE

HOUSE COMMITTEE ON AGRICULTURE

August 24, 1994 - 10 a.m. – Open Meeting
August 25, 1994 - 10 a.m. – Open Meeting
Stratford Inn, 2500 Riverside Drive, Danville, Virginia.

A two day retreat is scheduled beginning with Commissioner Courter describing possible policy initiatives and future plans for the agency. There will also be presentations by representatives of the various sectors of the tobacco industry. On the second day, there will be a tour of a tobacco farm and processing plant. At 1:30 p.m. on the 25th, there will be a meeting of HJR 224 (Tobacco Farming) at the Stratford Inn.

Contact: Martin Farber, Research Associate, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA CODE COMMISSION

Title 15.1 Recodification Task Force

† **August 18, 1994 - 10 a.m.** – Open Meeting
† **September 28, 1994 - 10 a.m.** – Open Meeting
† **October 20, 1994 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Street, 6th Floor Conference Room, Richmond, Virginia. &

A meeting to review working documents for Title 15.1 recodification.

Contact: Michelle L. Browning, Operations Staff Assistant, Division of Legislative Services, General Assembly Building, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING CRIME AND VIOLENCE PREVENTION THROUGH COMMUNITY ECONOMIC DEVELOPMENT

† **August 19, 1994 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Street, 6th Floor Conference Room, Richmond, Virginia.

The subcommittee will meet for the purpose of hearing recommendations. HJR 236.

Contact: Oscar Brinson, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING STATE AND FEDERAL LAW ON PRIVACY, CONFIDENTIALITY AND MANDATORY DISCLOSURE OF INFORMATION HELD OR USED BY GOVERNMENTAL AGENCIES

August 22, 1994 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia.

The subcommittee will meet for the purpose of hearing recommendations. HJR 66.

Contact: Ginny Edwards, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA HOUSING STUDY COMMISSION

August 11, 1994 - 10 a.m. – Public Hearing
Clinch Valley College, Theatre/Drama Building, Wise, Virginia.

Public hearings will be held on the following issues:

HJR 241 pursuant to the health and safety issues of residential rental property not covered under the Virginia Residential Landlord and Tenant Act.

HJR 251 pursuant to the need for legislation to authorize local governments to inspect rental property between occupancies to ensure compliance with applicable state codes and their enforcement authority when violations are found.

HJR 489 (1993) pursuant to blighted and deteriorated neighborhoods in the Commonwealth.

HJR 163 (1992) pursuant to homelessness in Virginia, specifically, appeal bond reform (HB 501) and terrorized tenants (HB 1381).

Other issues related to affordable housing in Virginia.

Persons wishing to speak should contact Nancy M. Ambler, Esquire, Executive Director, Virginia Housing Study Commission, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 225-3797.

Contact: Nancy D. Blanchard, Virginia Housing Study Commission, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986, Ext. 565.

STATE WATER COMMISSION

August 8, 1994 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Street, House

Room C, Richmond, Virginia.

The commission will be reviewing options for role in state water development and utilization and hearing from some localities on their views.

Contact: Shannon Varner, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

August 8
Alcoholic Beverage Control Board
Barbers, Board for
Water Commission, State

August 9
Child Day and Early Childhood Programs, Virginia Council on
† Nursing, Board of
- Nurse Aide Registry
Resources Authority, Virginia

August 10
† Environmental Quality, Department of
Pharmacy, Board of
Sewage Handling and Disposal Appeals Review Board
Transportation, Secretary of
† Virginia Racing Commission

August 11
† Aviation Board, Virginia
Child Day-Care Council
Environmental Quality, Department of
- Technical Advisory Committee
Geology, Board for
Health, Department of
- HIV Prevention Community Planning Committee, Virginia
† Local Government Advisory Committee

August 12
† Aviation Board, Virginia
Geology, Board for
Health, Department of
Land Evaluation Advisory Council, State
† Local Government Advisory Committee
Medicine, Board of
- Executive Committee

August 13
Medicine, Board of
- Credentials Committee

August 15
Real Estate Board

August 16
† Agriculture and Consumer Services, Department of
- Virginia State Apple Board
† Historic Resources, Department of
- State Review Board
† Virginia Housing Development Authority

August 17
† Aviation Conference, Virginia
Corrections, Board of
† Environmental Quality, Department of
- Ad Hoc Advisory Committee on an Expanded Role for Local Governments in the Exceptional Waters Process
† Historic Resources Board, Virginia
Local Debt, State Council on
Manufactured Housing Board, Virginia
† Milk Commission, State
† Optometry, Board of
† Transportation Board, Commonwealth
Treasury Board

August 18
† Aviation Conference, Virginia
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
- Northern Area Review Committee
Environmental Quality, Department of
- Pollution Prevention Advisory Committee
† Fire Services Board, Virginia
- Fire/EMS Education and Training Committee
- Fire Prevention and Control Committee
- Legislative/Liaison Committee
Protection and Advocacy for Individuals with Mental Illness Advisory Council
† Nursing, Board of
- Nurse Aide Registry
- Special Conference Committee
† Transportation Board, Commonwealth
† Title 15.1 Recodification Task Force

August 19
† Aviation Conference, Virginia
† Correctional Education, Board of
† Crime and Violence Prevention through Community Economic Development, Joint Subcommittee Studying
† Fire Services Board, Virginia

August 22
Alcoholic Beverage Control Board
Agricultural Council, Virginia
Disclosure of Information Held or Used by Governmental Agencies, Joint Subcommittee Studying State and Federal Law on Privacy, Confidentiality and Mandatory
† Lottery Department, State
Water Control Board, State

August 23
† Marine Resources Commission
Real Estate Board

August 24
Agriculture, House Committee on
Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
† Environmental Quality, Department of
- Hazardous Waste Technical Advisory Committee

August 25
Agriculture, House Committee on
Compensation Board
Game and Inland Fisheries, Board of
† HJR No. 76 Internet Staff Study Team

August 26
Game and Inland Fisheries, Board of

August 30
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
† Environmental Quality, Department of
Health Services Cost Review Council

August 31
† Mental Health Planning Council, Virginia
Real Estate Appraiser Board
- Complaints Committee
† Virginia Racing Commission

September 1
Environmental Quality, Department of
- Technical Advisory Committee
† Labor and Industry, Department of
- Virginia Apprenticeship Council

September 6
† Agriculture and Consumer Services, Department of
- Virginia Marine Products Board
Hopewell Industrial Safety Council

September 7
Alcoholic Beverage Control Board
† Motor Vehicle Dealers' Advisory Board

September 9
Medicine, Board of
- Legislative Committee
- Advisory Board on Physician's Assistants

September 12
† Hearing Aid Specialists, Board for

September 13
Emergency Planning Committee - Local, County of Montgomery/Town of Blacksburg

September 14
Environmental Quality, Department of
- Work Group on Detection/Quantitation Levels
Higher Education in Virginia, Commission on the Future of

September 17
Visually Handicapped, Department for the
- Vocational Rehabilitation Advisory Council

September 19
Alcoholic Beverage Control Board

September 20
† Real Estate Appraiser Board
† Land Use Advisory Council, State

September 21
Asbestos Licensing Board, Virginia
Contractors, Board for
Local Debt, State Council on
† Sewage Handling and Disposal Appeals Review Board
Treasury Board

September 22
† HJR No. 76 Internet Staff Study Team

September 23
Rehabilitation Advisory Council, State

September 26
† Cosmetology, Board for

September 28
Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
† Compensation Board
† Virginia Code Commission
- Title 15.1 Recodification Task Force

October 20
† Virginia Code Commission
- Title 15.1 Recodification Task Force

PUBLIC HEARINGS

August 10
† Environmental Quality, Department of

August 11
Housing Study Commission, Virginia

August 18
† Fire Services Board, Virginia

August 30
† Waste Management Board, Virginia

September 7

† Waste Management Board, Virginia

September 8
† Waste Management Board, Virginia

September 12
† Hearing Aid Specialists, Board for
† Voluntary Formulary Board, Virginia

September 20
Auctioneers Board

September 29
† Education, Department of

October 5
Criminal Justice Services, Department of (Board)