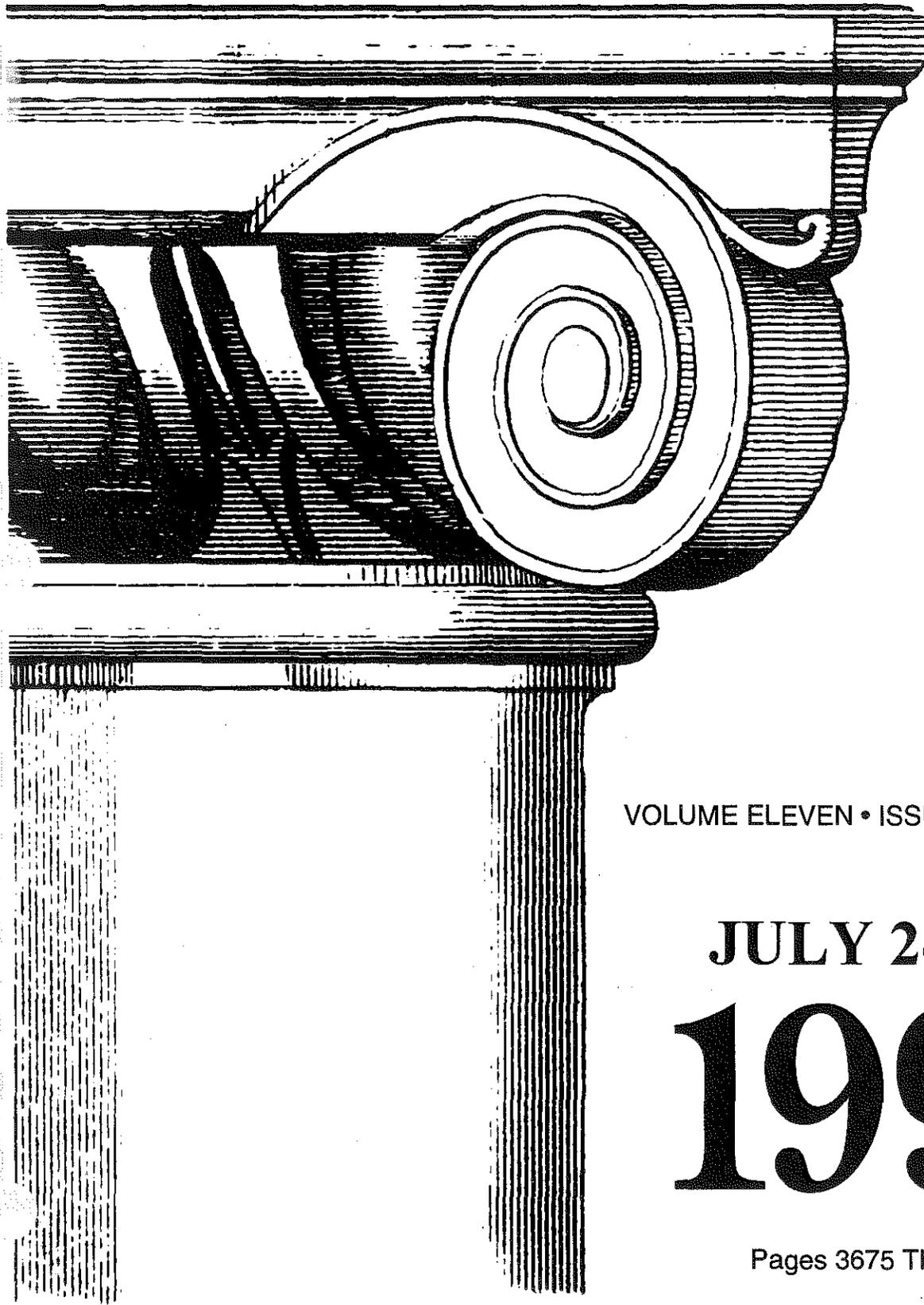


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THE VIRGINIA REGISTER

OF REGULATIONS

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JULY 24, 1995

1995

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THE VIRGINIA REGISTER INFORMATION PAGE

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, is 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 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 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-month 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 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

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

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NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

† Indicates entries since last publication of the *Virginia Register*

DEPARTMENT OF AVIATION (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Aviation intends to consider amending regulations entitled: **VR 165-1-02:1. Regulations Governing the Licensing and Operations of Airports, Aircraft and Obstructions to Airspace in the Commonwealth of Virginia.** The purpose of the proposed action is to (i) amend such regulations to conform them to legislative amendments enacted by the 1995 Session of the General Assembly regarding the licensing of airports per § 5.1-7 of the Code of Virginia; (ii) address the minimum standards specified for airport licensure; (iii) repeal and revise certain redundant and unnecessary provisions; and (iv) implement Executive Order 15 (94). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 5.1-2.2 of the Code of Virginia.

Public comments may be submitted until August 9, 1995.

Contact: Keith F. McCrea, Policy Analyst, Virginia Department of Aviation, 5702 Gulfstream Road, Sandston, VA 23150-2502, telephone (804) 236-3630, toll-free 1-800-292-1034, FAX (804) 236-3635, or (804) 236-3624/TDD ☎

VA.R. Doc. No. R95-563; Filed June 21, 1995, 8:43 a.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend § 1.9 B, which restricts pharmacological treatment of obesity. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 59.1-2900 et seq. of the Code of Virginia.

Public comments may be submitted until July 26, 1995.

Contact: Warren Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9908.

VA.R. Doc. No. R95-532; Filed June 5, 1995, 12:02 p.m.

DEPARTMENT OF STATE POLICE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to consider amending regulations entitled: **VR 545-01-07. Motor Vehicle Safety Inspection Rules and Regulations.** The purpose of the proposed action is to revise the Motor Vehicle Safety Inspection Rules and Regulations to be consistent with recent changes in state law, federal regulations, nationally accepted standards and automotive practices. Minor technical and administrative changes are included. The agency does not intend to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 46.2-1165 of the Code of Virginia.

Public comments may be submitted until July 26, 1995.

Contact: Captain W. Steven Flaherty, Safety Officer, Department of State Police, Safety Division, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 378-3479 or FAX (804) 378-3487.

VA.R. Doc. No. R95-544; Filed June 6, 1995, 11:07 a.m.

BOARD OF PSYCHOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to consider promulgating regulations entitled: **VR 565-01-3. Regulations Governing the Certification of Sex Offender Treatment Providers.** The purpose of the proposed action is to establish educational, experience and examination requirements; standards of ethics; grounds for disciplinary action; and fees for certification of sex offender treatment providers. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-3605 of the Code of Virginia.

Public comments may be submitted until July 26, 1995.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R95-531; Filed June 5, 1995, 12:02 p.m.

Notices of Intended Regulatory Action

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Notice of Intended Regulatory Action

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 consider promulgating regulations entitled: **VR 615-01-56. Public Assistance Programs - Meal and Snack Deductions for Self-Employed Day Care Providers.** The purpose of the proposed action is to establish a uniform allowable deduction for meals and snacks as a business expense for self-employed day care providers who care for children not residing in their homes. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until July 26, 1995.

Contact: Constance O. Hall, AFDC Program Manager,
Department of Social Services, 730 E. Broad St., Richmond,
VA 23219, telephone (804) 692-1730 or FAX (804) 692-1704.

VA.R. Doc. No. R95-543; Filed June 6, 1995, 2:02 p.m.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

Effective July 1, 1995, publication of notices of public comment periods in a newspaper of general circulation in the state capital is no longer required by the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). Chapter 717 of the 1995 Acts of Assembly eliminated the newspaper publication requirement from the Administrative Process Act. In *The Virginia Register of Regulations*, the Registrar of Regulations has developed this section entitled "Public Comment Periods - Proposed Regulations" to give notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

STATE WATER CONTROL BOARD

August 28, 1995 - 7 p.m. -- Public Hearing
Prince William County Administration Center, 1 County Complex, McCoart Building, Board Chambers, 4850 Davis Ford Road, Prince William, Virginia.

August 29, 1995 - 7 p.m. -- Public Hearing
James City County Board of Supervisors Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

August 31, 1995 - 7 p.m. -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors Room, Roanoke, Virginia.

September 25, 1995 -- 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 Water Control Board intends to repeal regulations entitled: **VR 680-14-01. Permit Regulation**. The purpose of the proposed regulatory action is to repeal the permit regulation in order to eliminate confusion and duplication from the concurrent adoption of a VPDES permit regulation and a VPA permit regulation.

Question and Answer Period: A question and answer period will be held one-half hour prior to the beginning of each public hearing at the same location. The Department of Environmental Quality staff will be present to answer questions regarding the proposed action.

Accessibility to Persons with Disabilities: The meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Zelda Hardy, Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4377 or (804) 762-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Hardy no later than 4 p.m. on Monday, August 14, 1995.

Other Pertinent Information: The department has conducted analyses on the proposed action related to basis, purpose, substance, issues and estimated

impacts. These are available upon request from Richard Ayers at the Department of Environmental Quality.

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

Written comments may be submitted until 4 p.m., Monday, September 25, 1995, to Zelda Hardy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 527-5059 or (804) 762-4261/TDD.

August 28, 1995 - 7 p.m. -- Public Hearing
Prince William County Administration Center, 1 County Complex, McCoart Building, Board Chambers, 4850 Davis Ford Road, Prince William, Virginia.

August 29, 1995 - 7 p.m. -- Public Hearing
James City County Board of Supervisors Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

August 31, 1995 - 7 p.m. -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors Room, Roanoke, Virginia.

September 25, 1995 -- 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 Water Control Board intends to adopt regulations entitled: **VR 680-14-01:1. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation**. The purpose of the proposed regulation is to adopt a VPDES permit regulation which will administer the VPDES program which controls the point source discharge of pollutants to surface waters of the state.

Question and Answer Period: A question and answer period will be held one-half hour prior to the beginning of each public hearing at the same location. The Department of Environmental Quality staff will be present to answer questions regarding the proposed action.

Public Comment Periods - Proposed Regulations

Accessibility to Persons with Disabilities: The meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Zelda Hardy, Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4377 or (804) 762-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Hardy no later than 4 p.m. on Monday, August 14, 1995.

Other Pertinent Information: The department has conducted analyses on the proposed action related to basis, purpose, substance, issues and estimated impacts. These are available upon request from Richard Ayers at the Department of Environmental Quality.

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

Written comments may be submitted until 4 p.m., Monday, September 25, 1995, to Zelda Hardy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 527-5059 or (804) 762-4261/TDD.

August 28, 1995 - 7 p.m. -- Public Hearing
Prince William County Administration Center, 1 County Complex, McCoart Building, Board Chambers, 4850 Davis Ford Road, Prince William, Virginia.

August 29, 1995 - 7 p.m. -- Public Hearing
James City County Board of Supervisors Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

August 31, 1995 - 7 p.m. -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors Room, Roanoke, Virginia.

September 25, 1995 -- 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 Water Control Board intends to repeal regulations entitled: **VR 680-14-03. Toxics Management Regulation.** The purpose of the proposed regulatory action is to repeal the Toxics Management Regulation to avoid duplication and confusion with the adoption of a VPDES permit regulation.

Question and Answer Period: A question and answer period will be held one-half hour prior to the beginning of each public hearing at the same location. The Department of Environmental Quality staff will be present to answer questions regarding the proposed action.

Accessibility to Persons with Disabilities: The meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Zelda Hardy, Office of Regulatory Services, Department of

Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4377 or (804) 762-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Hardy no later than 4 p.m. on Monday, August 14, 1995.

Other Pertinent Information: The department has conducted analyses on the proposed action related to basis, purpose, substance, issues and estimated impacts. These are available upon request from Richard Ayers at the Department of Environmental Quality.

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

Written comments may be submitted until 4 p.m., Monday, September 25, 1995, to Zelda Hardy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

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James City County Board of Supervisors Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

August 31, 1995 - 7 p.m. -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors Room, Roanoke, Virginia.

September 25, 1995 -- 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 Water Control Board intends to adopt regulations entitled: **VR 680-14-21. Virginia Pollution Abatement (VPA) Permit Regulation.** The purpose of the proposed regulation is to adopt a VPA permit regulation which will administer the VPA permit program which controls activities that do not result in a point source discharge to surface waters of the state.

Question and Answer Period: A question and answer period will be held one-half hour prior to the beginning of each public hearing at the same location. The Department of Environmental Quality staff will be present to answer questions regarding the proposed action.

Accessibility to Persons with Disabilities: The meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Zelda Hardy, Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4377 or (804) 762-4261/TDD. Persons needing interpreter services for the

Public Comment Periods - Proposed Regulations

deaf must notify Ms. Hardy no later than 4 p.m. on Monday, August 14, 1995.

Other Pertinent Information: The department has conducted analyses on the proposed action related to basis, purpose, substance, issues and estimated impacts. These are available upon request from Richard Ayers at the Department of Environmental Quality.

Statutory Authority: §§ 62.1-44.15, 62.1-44.16, 62.1-44.17, 62.1-44.18, 62.1-44.19, 62.1-44.20 and 62.1-44.21.

Written comments may be submitted until 4 p.m., Monday, September 25, 1995, to Zelda Hardy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 527-5059 or (804) 762-4261/TDD.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-04-8.7. Client Appeals Regulation.

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

The Department of Medical Assistance Services has **WITHDRAWN** the proposed amendments to the regulation entitled, "VR 460-04-8.7, Client Appeals Regulation" which was published in 11:14 VA.R. 2214-2222. The agency published the amendments in final form in 11:17 VA.R. 2758-2764 May 15, 1995, and they became effective June 15, 1995.

VA.R. Doc. No. R95-577; Filed June 26, 1995, 11:16 a.m.

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-14-01. Permit Regulation (REPEALING).

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

Public Hearing Dates:

August 28, 1995 - 7 p.m. (Prince William)

August 29, 1995 - 7 p.m. (Williamsburg)

August 31, 1995 - 7 p.m. (Roanoke)

Written comments may be submitted until September 25, 1995.

(See Calendar of Events section for additional information)

Basis: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(10) authorizes the State Water Control Board (SWCB) to adopt such regulations as it deems necessary to enforce the general water quality management program.

Purpose: The purpose of this proposed regulatory action is to repeal the Permit Regulation. The SWCB proposes to concurrently adopt separate regulations governing the Virginia Pollutant Discharge Elimination System (VPDES) Permit Program (VR 680-14-01:1) and the Virginia Pollution Abatement (VPA) Permit Program (VR 680-14-21).

Substance: This proposed regulatory action will eliminate any confusion and duplication of regulations which may result from the concurrent adoption of a VPDES Permit Regulation and a VPA Permit Regulation. These regulations will incorporate the intent and purpose of the Permit Regulation and include new federal and state requirements.

Issues: The primary advantage of this proposed repeal for both the public and the Department of Environmental Quality (DEQ) is that the regulations which are being proposed to replace the Permit Regulation are more up to date and are tailored to the specific type of activity being regulated. There

may be some disadvantage to the fact that the DEQ is changing from one regulation to another, but because the basic substance of the permit programs will remain the same, those affected by these regulations should be able to adapt to the new regulations in a short amount of time. During the public comment period on the Notice of Intended Regulatory Action one comment was received that questioned the need for the proposed repeal and suggested that the separation of the VPDES and VPA permit programs would result in increased bureaucracy. As these are ongoing programs, there should be no increased bureaucracy.

Estimated Impact: The proposed repeal of the Permit Regulation will have no impact on the public nor the environment as the purpose and scope of the regulation will be transferred into the proposed VPDES Permit Regulation and the proposed VPA Permit Regulation.

Affected Locality: This proposed rulemaking will not cause a particular locality to bear any disproportionate material impact not experienced by other localities.

Applicable Federal Requirements: The proposed repeal of this regulation is not subject to federal requirements. Any federal requirements associated with the permit programs governed by this regulation will be met by the adoption of the VPDES Permit Regulation (VR 680-14-01:1).

Summary:

The State Water Control Board (SWCB) proposes to repeal the Permit Regulation (VR 680-14-01). This regulation delineates the authority and general procedures to be followed in connection with issuing Virginia Pollutant Discharge Elimination System (VPDES) and Virginia Pollution Abatement (VPA) permits. The board intends to concurrently with this repeal adopt a VPDES Permit Regulation (VR 680-14-01:1) and a VPA Permit Regulation (VR 680-14-21) which will incorporate the purpose and substance of the Permit Regulation.

VA.R. Doc. No. R95-618; Filed June 30, 1995, 2:43 p.m.

REGISTRAR'S NOTICE: Due to its length, the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (VR 680-14-01:1) is not being published. Pursuant to § 9-6.14:22 of the Code of Virginia, a summary is being published in lieu of full text. The full text of the regulation is available from Richard Ayers, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 527-5059/TDD or (804) 762-4021, or may be viewed at the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 910 Capitol Street, Richmond, VA 23219.

Title of Regulation: VR 680-14-01:1. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

Statutory Authority: §§ 62.1-44.15, 62.1-44.16, 62.1-44.17, 62.1-44.18, and 62.1-44.19 of the Code of Virginia.

Public Hearing Dates:

August 28, 1995 - 7 p.m. (Prince William)

August 29, 1995 - 7 p.m. (Williamsburg)

August 31, 1995 - 7 p.m. (Roanoke)

Written comments may be submitted until September 25, 1995.

(See Calendar of Events section for additional information)

Basis: The basis for this proposed regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(7) authorizes the State Water Control Board (SWCB) to adopt rules governing the procedures for the issuance of permits. Further, § 62.1-44.15(10) authorizes the SWCB to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the SWCB to establish requirements for the treatment of sewage, industrial wastes and other wastes; and §§ 62.1-44.16, 62.1-44.17, 62.1-44.18 and 62.1-44.19 authorize the SWCB to regulate discharges of sewage, industrial wastes and other wastes.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System (NPDES) permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. The proposed VR 680-14-01:1 will be the specific regulation governing this authorization.

Purpose: This proposed regulation is designed to administer the Virginia Pollutant Discharge Elimination System (VPDES) permit program to control the point source discharge of pollutants to surface waters of the state.

Substance: This proposed regulation will: (i) include definitions specific to the VPDES permitting process; (ii) delineate when permits are required, when permits are prohibited, and list activities which are excluded from the permit program; (iii) establish the information requirements for applying for a VPDES permit; (iv) acknowledge the SWCB's authority to issue permits to special program areas such as storm water, concentrated animal feeding operations, concentrated aquatic animal production facilities, aquaculture projects, silviculture activities, and general permits; (v) list conditions which are applicable to all permits and those applicable to specified categories of permits; (vi) describe the process by which the Department of Environmental Quality (DEQ) shall establish limits and conditions in permits; (vii) include provisions for public involvement in the permit issuance process; (viii) establish causes for the transfer, modification, revocation and reissuance, and termination of permits; (ix) establish standards for the use or disposal of sewage sludge; (x) include pretreatment regulations for existing and new sources which discharge to publicly owned treatment works; (xi) identify the DEQ's intention to enforce permits; and (xii)

delegate the authority to administer the VPDES permit program for coal mine discharges to the Department of Mines, Minerals and Energy.

Issues: The VPDES permit program is administered by the DEQ under the federal Clean Water Act and the State Water Control Law. In order to satisfy the requirements of the EPA, the DEQ has opted to use the federal regulations adopted pursuant to the Clean Water Act as the basis for the proposed regulation. One part of the federal program proposed for adoption is the standards for use and disposal of sewage sludge. This program is currently being administered by EPA. Affected sewage treatment works are submitting applications and monitoring reports directly to EPA, outside of the existing VPDES permit process. DEQ will incur additional program costs for administration of the sludge use and disposal program. These increased costs are expected to be partially offset by revenue from permit fees. DEQ is soliciting public comment on the proposed regulation in general, and specifically on the proposal to accept delegation of authority from EPA to administer the sludge use and disposal requirements.

Public comment received following the publication of the Notice of Intended Regulatory Action has raised the issue of implementation of the DEQ's toxics management program through the general language of the federal regulation. Most of those who commented want the DEQ to continue to use its Toxics Management Regulation (VR 680-14-03) as the basis for decisions related to controlling toxicity in VPDES permits. The DEQ proposes to do this by revising the language of the Toxics Regulation and distributing it to DEQ permit writers in the form of a guidance document. The SWCB is proposing to repeal the Toxics Management Regulation through a separate rulemaking. The issue of allowing a permittee a discharge credit for the level of a pollutant in the facility's intake water raised numerous questions. Comments were received on the propriety of allowing intake credits and on the mechanism by which the decision to grant credits would be made. The proposal includes provisions for consideration of intake credits for water quality based effluent limitations.

The primary advantage of this proposed rulemaking is that it will provide the DEQ with a state regulation which reflects the latest requirements of federal regulations. This will bring Virginia's VPDES permit program into line with the federal NPDES program. This regulation will give the public a clearer picture of how VPDES permits are developed and issued because it contains more detailed language than the current permit regulation. It also more clearly defines the DEQ's regulation of point source discharges of toxic compounds, and storm water and the disposal of sewage sludge. These provisions will enhance the DEQ's ability to regulate discharges and thus should result in improved water quality in Virginia's streams, lakes and estuaries. Failure to adopt this proposed regulation will require DEQ to continue to administer the VPDES permit program with an outdated regulation. It may also cause EPA to evaluate taking back the permit program because the existing state regulation does not include the proposed language on toxics, sludge and storm water. This would result in municipalities and industries having to acquire permits from EPA.

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The new regulation will be substantially longer than the current version and, even though it follows the federal requirements, it is different from the existing Permit Regulation (VR 680-14-01). There may be some disadvantage in that DEQ is changing from one regulation to another, however, the basic substance of the permit programs remains the same. Therefore, those affected by these regulations will be able to adapt to the new regulations in a short amount of time.

Estimated Impact: This regulation will impact all of the approximately 3,200 VPDES permittees in that the governing regulation will be replaced with an updated version. There may be added costs to the permittees beyond those required under the existing regulation because the proposed regulation will include programs such as storm water and sludge management which are not part of the existing regulation. However, these added costs are a result of federal regulations applicable to those dischargers. The DEQ estimates that there will be up to 900 sludge generators affected by the new requirements. The average total annual cost for compliance with the federal standards is estimated at \$3,810 for each affected sewage treatment plant. This will vary according to the size of the plant and the amount and quality of the sludge generated. The total includes costs for sludge management, monitoring, recordkeeping, and reporting. The average cost per household served by the sewage treatment plants is estimated at \$1. Because these sludge use and disposal requirements are self implementing and apply regardless of whether the activity is administered by DEQ or EPA, the cost to the public is established by federal regulation and will not change if this part of the proposed regulation is or is not adopted.

The storm water permitting will involve an estimated 11 municipal sources and up to 15,000 industrial sites in the construction, heavy industrial, light industrial and miscellaneous categories. The municipalities will have to adopt ordinances in order to enforce the local storm water management program. The cost for making a municipal storm water VPDES permit application is estimated to range between \$76,000 and \$2 million. The local governments will then incur costs for establishing their storm water program, including capital investments, which can range up to \$9 million annually for large systems. An additional \$130,000 per year may be spent for monitoring. Industrial sites will incur expenses for development of Best Management Practices which range between \$1,600 and \$120,000 per site, depending on the size of the project. Annual costs associated with the operation and maintenance of these storm water controls are estimated to range from \$500 to \$18,000. The affected industrial and municipal facilities are already incurring these costs under the existing Permit Regulation, but the proposed regulation will make the storm water requirements more explicit and conform to federal regulations. The majority of the industrial sites will be covered by general permits being proposed as separate regulations.

In addition, the DEQ will incur additional program costs for administration of the sludge management provisions of the proposed regulation. Other parts of the proposed regulation are already being administered by the DEQ under the existing regulation. The cost of administering the additional

programs should be partially offset by the revenue from permit fees.

Applicable Federal Requirements: The proposed regulation is based on the NPDES permit regulations promulgated in Title 40 of the Code of Federal Regulations at 40 CFR Parts 122, 123, 124, 125, 129, 133, 403, and 503. The following paragraphs discuss provisions of the proposed regulation which are not found in the federal regulations or represent significant departures from the federal language.

The draft regulation proposes a provision for schedules in permits which allow up to four years for compliance with water quality-based permit limits after the permit is issued. This is allowed, but not required, under the Clean Water Act and is being done so that existing discharges will have some time to build new treatment facilities or change their operating procedures before having to comply with new stricter limits. The alternative is to make all dischargers meet the new limits for such things as toxics at the effective date of the new permit. Most existing dischargers would not be able to comply with such a requirement.

The proposed regulation contains language prohibiting discharges without a permit and requiring that anyone who does discharge without a permit must notify the DEQ immediately. This proposed regulation would also prohibit the permitting of any discharge when discharging to publicly owned treatment works is reasonably available, unless the owner of the treatment works refuses in writing to accept the wastewater. This is being proposed in order to reduce a proliferation of small point source discharges in areas served by central sewers.

The proposed regulation contains requirements based on state law that no application for a permit can be considered complete until the local governing body has certified that the activity applying for a permit is in compliance with all applicable zoning ordinances. The application for a privately owned treatment works must also have a certification that the plant is incorporated with and in compliance with all relevant regulations or orders of the State Corporation Commission.

Unusual or extraordinary discharges from permitted facilities are to be reported within 24 hours. This reporting requirement is in addition to the federal requirement for reporting noncompliance with permit conditions. It is possible that a spill or another event could occur which would adversely affect state waters, but would not technically be considered noncompliance with the permit. This provision makes the permittee responsible for reporting such incidents to the DEQ. If the requirement is not included, certain spills may go unreported and no permit violation would occur.

The draft regulation includes language from the current permit regulation which deals with publicly owned treatment works. It specifically addresses action plans which must be submitted when the plant reaches 95% of its design capacity for three consecutive months. This requirement allows the DEQ and the permittee to work out a plan to deal with the amount of sewage being treated at the plant so that the plant does not get into a situation where it is handling more sewage than it can adequately treat.

Another provision requires that the owner hire an operator for the treatment plant who is licensed as required by the

regulations of the Board for Waterworks and Wastewater Works Operators. This will help to ensure that the plant is operated properly by someone with the appropriate amount of experience and training.

The proposed regulation stipulates that when the DEQ decides to deny a permit application, the owner must be notified of the steps to take to obtain approval of the application. The notification is based on the State Water Control Law and helps to assure due process for the owner regarding his request for a permit.

The submittal of plans and specifications or concept engineering reports, which is a requirement of the State Water Control Law, would not be subject to public notice under the proposal. The federal regulations are silent on this issue and the DEQ wants to make it clear that these documents are not given separate notice from permit applications or draft permits. The requirement that the applicant pay the cost of the public notice of a draft permit is included as an addition to the federal language.

The SWCB's Procedural Rule No. 1 is given as the source of procedures for requesting public hearings and for decisions from public hearings. The federal language applies to permit actions only when there are no corresponding state procedures.

The causes for termination of a permit are those listed in the State Water Control Law, instead of the causes listed in the federal regulations. Where the two lists of causes do not overlap substantially, the federal cause is also listed.

The proposed regulation includes language from the existing permit regulation dealing with state enforcement capabilities, delegation of authority to the Department of Mines, Minerals and Energy for permits issued to industrial activity associated with coal mines.

Affected Locality: This rulemaking will not cause a particular locality to bear any disproportionate material impact not experienced by other localities because the proposed regulation addresses the statewide VPDES permit program.

Summary:

The State Water Control Board (SWCB) proposes to adopt a separate Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Currently the VPDES permit program is administered under the SWCB's Permit Regulation (VR 680-14-01) along with the Virginia Pollution Abatement (VPA) Permit program. Concurrent with this proposed rulemaking is the proposed repeal of the Permit Regulation and the proposed adoption of a separate VPA Permit Regulation.

The current Permit Regulation was last amended in 1989 and does not represent the latest changes to the federal regulations. The adoption of a separate VPDES Permit regulation will replace the VPDES portion of the existing Permit Regulation. The text of the proposed regulation follows that of the federal NPDES permit regulations as closely as possible.

VA.R. Doc. No. R95-619; Filed June 30, 1995, 2:46 p.m.

Title of Regulation: VR 680-14-03. Toxics Management Regulation (REPEALING).

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

Public Hearing Dates:

August 28, 1995 - 7 p.m. (Prince William)

August 29, 1995 - 7 p.m. (Williamsburg)

August 31, 1995 - 7 p.m. (Roanoke)

Written comments may be submitted until September 25, 1995.

(See Calendar of Events section for additional information)

Basis: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program and § 62.1-44.21 authorizes the SWCB to require any owner to furnish information necessary to determine the effect of the discharge on the quality of state waters.

Purpose: The proposed repeal of this regulation is necessary in order to eliminate duplication and possible contradictions which may arise following the adoption of the VPDES Permit Regulation (VR 680-14-01:1).

Substance: The State Water Control Board (SWCB) intends to repeal the Toxics Management Regulation (VR 680-14-03). This regulation delineates the authority and general procedures to be followed in connection with identifying and eliminating surface water discharges of toxics materials. This action is being proposed in order to eliminate any confusion and duplication of regulations which may result from the concurrent adoption of a proposed VPDES Permit Regulation (VR 680-14-01:1). The proposed VPDES Permit Regulation will include language from the federal National Pollutant Discharge Elimination System (NPDES) regulations on the evaluation of effluent toxicity and the mechanisms for control of toxicity through chemical specific and whole effluent toxicity limitations. The testing requirements and decision criteria of the Toxics Management Regulation will be used as staff guidance in the implementation of the toxics control provisions of the VPDES Permit Regulation. The Department of Environmental Quality's (DEQ) position on the control of toxic pollutants will not be substantially altered as a result of this proposed action.

Issues: Public comments received following the publication of the Notice of Intended Regulatory Action have raised the issue of implementation of the DEQ's toxics management program through the language of the federal regulations proposed for adoption in the VPDES Permit Regulation. The federal regulations give general statements about the method the permitting authority is to use in determining whether or not a discharge is toxic. Most of those who commented want the DEQ to continue to use the very specific language of its Toxics Management Regulation (VR 680-14-03) as the basis for decisions related to controlling toxicity in VPDES permits. The DEQ proposes to do this by revising the language of the Toxics Regulation and distributing it to agency permit writers in the form of a guidance document. That guidance would be

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used to implement the general methods given in the new regulation. This proposal drew some criticism because agency guidance is not subject to the same public review as are regulations.

There was some concern that EPA may not allow the DEQ to continue to use the Toxics Management Regulation as implementation guidance because it does not coincide exactly with EPA's own guidance on this subject. However, until EPA adopts its guidance as regulation, the DEQ is free to use its own judgment as to the applicability of EPA guidance to the VPDES permit program.

Estimated Impact: This regulation will impact all of the approximately 500 holders of VPDES permits who are currently subject to the requirements of the Toxics Management Regulation. However, there should not be a significant difference in the regulation of these discharges or the costs incurred by permittees because under the new VPDES Permit Regulation (VR 680-14-01:1), they will still be required to monitor their discharges for and control any pollutants in toxic concentrations.

Affected Locality: This rulemaking will not cause a particular locality to bear any disproportionate material impact not experienced by other localities.

Applicable Federal Requirements: The repeal of this regulation is not subject to federal requirements.

Summary:

The State Water Control Board (SWCB) proposes to repeal the Toxics Management Regulation (VR 680-14-03). This regulation delineates the authority and general procedures to be followed in connection with identifying and eliminating surface water discharges of toxics pollutants. The proposed VPDES Permit Regulation (VR 680-14-01:1) includes language on the evaluation of effluent toxicity and the mechanisms for control of toxicity through chemical specific and whole effluent toxicity limitations. The testing requirements and decision criteria of the Toxics Management Regulation will be used as staff guidance in the implementation of the toxics control provisions of the VPDES Permit Regulation.

VA.R. Doc. No. R95-616; Filed June 30, 1995, 2:43 p.m.

Title of Regulation: VR 680-14-21. Virginia Pollutant Abatement (VPA) Permit Regulation.

Statutory Authority: §§ 62.1-44.15, 62.1-44.16, 62.1-44.17, 62.1-44.18, 62.1-44.19, 62.1-44.20, and 62.1-44.21 of the Code of Virginia.

Public Hearing Dates:

August 28, 1995 - 7 p.m. (Prince William)
August 29, 1995 - 7 p.m. (Williamsburg)
August 31, 1995 - 7 p.m. (Roanoke)

Written comments may be submitted until September 25, 1995.

(See Calendar of Events section for additional information)

Basis: The basis for this proposed regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(7) authorizes the State Water Control Board (SWCB) to adopt rules governing the issuance of permits. Further, § 62.1-44.15(10) authorizes the SWCB to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the SWCB to establish requirements for the treatment of sewage, industrial wastes and other wastes; §§ 62.1-44.16 through 62.1-44.19 authorize the SWCB to regulate discharges of sewage, industrial wastes and other wastes; and §§ 62.1-44.20 and 62.1-44.21 allow the SWCB the right of entry to obtain information or to require information to be furnished by an owner.

Purpose: This proposed regulation is designed to administer the Virginia Pollution Abatement (VPA) permit program. These permits control pollutant management activities that do not result in a point source of discharge of pollutants to surface waters of the state. The objective of this program is to assure that these pollutant management activities do not adversely affect the quality of Virginia's surface or ground waters.

Substance: This proposed regulation will: (i) include definitions specific to the VPA permitting process; (ii) delineate the activities for which permits are required, when permits are prohibited, and list activities which are excluded from the permit program; (iii) establish the information requirements for applying for a VPA permit; (iv) list conditions which are applicable to all permits and those applicable to specified categories of permits; (v) describe the process by which the Department of Environmental Quality (DEQ) shall establish limits and conditions in permits; (vi) include provisions for public involvement in the permit issuance process; (vii) include special requirements for treatment plants approaching their design capacity and for the licensure of operators of treatment works; (viii) establish causes for the transfer, modification, revocation and reissuance, and termination of permits; (ix) recognize certain special program areas such as animal feeding operations, general permits and the disposal of pollutants into wells; and (x) identify the DEQ's intention to enforce permits.

Issues: Public comment received following the issuance of the Notice of Intended Regulatory Action has raised the issue of the DEQ's intention to permit sewage sludge generators under Virginia Pollutant Discharge Elimination System (VPDES) permits rather than continuing to issue VPA permits to those who dispose of the sewage sludge. This change is made necessary by the promulgation of new federal regulations governing the use and disposal of sewage sludge.

This transition may cause some confusion as the permits are converted from one program to another. The DEQ intends to allow current holders of VPA permits for sewage sludge use or disposal to operate under the VPA permit until its current term expires. At that time, the regulation of the sewage sludge disposal operation would come under the sludge generator's VPDES permit.

The current Permit Regulation (VR 680-14-01) recognizes that there are still a number of No-Discharge Certificates in effect for activities which should be unregulated or should be

covered under VPA permits. This situation was to be rectified over a 10-year period as the No-Discharge Certificate holders are notified and the conversion is made. The proposed regulation retains this transition process, but it sets a deadline of July 1, 1998, for the notification of No-Discharge Certificate holders and a date of July 1, 1999, when all No-Discharge Certificates will expire, regardless of whether or not the Certificate was originally issued with an expiration date.

Many parts of the Permit Regulation, which have been applied to VPA permits in the past, are derived from the federal National Pollutant Discharge Elimination System (NPDES) regulations and are more applicable to the VPDES permits. Where appropriate those provisions have been deleted from the proposed VPA regulation. This will result in simpler and clearer language in VPA permits.

Estimated Impact: This regulation will impact all of the approximately 900 current and projected holders of VPA permits. However, except for sewage sludge use and disposal permittees, there should not be a significant difference in the administration of these permits or the costs incurred by permittees under the new regulation compared to the previous Permit Regulation. VPA permits have generally been issued to two categories of discharges, land application of sludge and animal feeding operations. Those permittees who currently hold VPA permits for the use or disposal of sewage sludge may be required to obtain VPDES permits or they may have to obtain permits from another state agency with responsibility for sludge handling and disposal. The other primary category of discharges that hold VPA permits is animal feeding operations, and this change will not affect them. General permits for animal feeding operations will be issued under the general permit authority section of this proposed regulation.

Affected Locality: This rulemaking will not cause a particular locality to bear any disproportionate material impact not experienced by other localities because the proposed regulation addresses the statewide VPA permit program.

Applicable Federal Requirements: There are no federal requirements applicable to the VPA permit program.

Summary:

The State Water Control Board (SWCB) proposes to adopt a separate Virginia Pollution Abatement (VPA) Permit Regulation. The proposed VPA Permit Regulation will delineate the procedures and requirements to be followed in connection with VPA permits issued by the Department of Environmental Quality (DEQ) pursuant to the State Water Control Law. This action is being proposed concurrently with the proposed repeal of the Permit Regulation (VR 680-14-01).

In 1988 the SWCB adopted the Permit Regulation. This regulation governs both the VPA permit program and the Virginia Pollutant Discharge Elimination System (VPDES) permit program. The SWCB now proposes to adopt separate regulations for the VPA and VPDES permit programs, and to repeal the current Permit Regulation.

Any pollutant management activity which does not result in a point source discharge to surface waters may be required to obtain a VPA permit in order to ensure that the activity does not alter the physical, chemical or biological properties of state waters. VPA permits may be used to authorize the land application of sewage, sludge, animal waste or industrial waste or the complete reuse and recycle of wastewater.

VR 680-14-21. Virginia Pollutant Abatement (VPA) Permit Regulation.

PART I. GENERAL.

§ 1.1. Definitions.

The following words and terms, when used in this regulation and in VPA permits issued under this regulation shall have the meanings defined in the State Water Control Law, unless the context clearly indicates otherwise and as follows:

"Animal feeding operation" means a lot or facility together with any associated treatment works where the following conditions are met:

- 1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and*
- 2. Crops, vegetation forage growth, or post-harvest residues are not sustained over any portion of the operation of the lot or facility.*

"Best Management Practices (BMP)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. BMP's include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bypass" means intentional diversion of waste streams from any portion of a treatment works.

"Concentrated animal feeding operation" means an animal feeding operation at which:

- 1. More than the following number and types of animals are confined:*
 - a. 1,000 slaughter and feeder cattle,*
 - b. 700 mature dairy cattle (whether milked or dry cows),*
 - c. 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),*
 - d. 500 horses,*
 - e. 10,000 sheep or lambs,*

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- f. 55,000 turkeys,
- g. 100,000 laying hens or broilers,
- h. 1,000 animal units, and

2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25-year, 24-hour storm.

"Director" means the Director of the Department of Environmental Quality.

"Discharge" means, when used without qualification, a discharge of a pollutant or any addition of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or ocean other than discharge from a vessel or other floating craft when being used as a means of transportation.

"Draft VPA permit" means a document indicating the director's tentative decision to issue, deny, modify, revoke and reissue, terminate or reissue a VPA permit. A notice of intent to terminate a VPA permit and a notice of intent to deny a VPA permit are types of draft VPA permits. A denial of a request for modification, revocation and reissuance or termination is not a draft VPA permit.

"General VPA permit" means a VPA permit issued by the director authorizing a category of pollutant management activities within a geographic area.

"Intensified animal feeding operation" means an animal feeding operation at which:

- 1. Less than or equal to 1,000 animal units but more than the following number and type of animals are confined:

- a. 300 slaughter and feeder cattle,
- b. 200 mature dairy cattle (whether milked or dry cows),
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds),
- d. 150 horses,
- e. 3,000 sheep or lambs,
- f. 16,500 turkeys,
- g. 30,000 laying hens or broilers,
- h. 300 animal units, and

2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25-year, 24-hour storm.

"Land application" means the introduction of wastewaters or sludge into or onto the ground for treatment or reuse.

"Limitation" means any restriction imposed by the director on quantities, rates or concentration of pollutants which are managed by pollutant management activities.

"Monitoring report" means forms supplied by the director for use in reporting of self-monitoring results of the permittee.

"Municipality" means a city, county, town, district association, authority or other public body created under the law and having jurisdiction over disposal of sewage, industrial, or other wastes.

"Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban storm water runoff or mine runoff that is not collected or discharged as a point source.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Overflow" means the unintentional discharge of wastes from any portion of a treatment works.

"Permittee" means an owner or operator who has a currently effective VPA permit issued by the director.

"Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.

"Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the director determines that such injection or disposal will result in the degradation of ground or surface water resources.

"Pollutant management activity" means a treatment works with a potential or actual discharge to state waters, but which does not have a point source discharge to surface waters.

"Privately owned treatment works (PVOTW)" means any sewage treatment works not publicly owned.

"Publicly owned treatment works (POTW)" means any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

"Public hearing" means a fact-finding proceeding held to afford interested persons an opportunity to submit factual data, views, and arguments to the board.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the federal Clean Water Act (33 U.S.C. 1251 et seq.), the law, and board regulations, standards and policies.

"Sludge" means solids, residues, and precipitates separated from or created by the unit processes of a treatment works.

"State Water Control Law (law)" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Surface water" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. "Wetlands" adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.

"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the Clean Water Act, 33 U.S.C. 1251 et seq., which after discharge will, on the basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health or other adverse environmental effects.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling and/or reclamation of sewage or liquid industrial waste, or other waste necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit limitations because of factors beyond the permittee's reasonable control. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Virginia Pollution Abatement (VPA) permit" means a document issued by the director, pursuant to this regulation, authorizing pollutant management activities under prescribed conditions.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the director pursuant to VR 680-14-01:1, authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"VPA application" means the standard form or forms approved by the director for applying for a VPA permit.

§ 1.2. Purpose.

This regulation delineates the procedures and requirements to be followed in connection with VPA permits issued by the director pursuant to the State Water Control Law.

§ 1.3. Requirements and prohibitions.

A. All pollutant management activities covered under a VPA permit shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm.

B. 1. Except in compliance with a VPA permit, or another permit, issued by the director, it shall be unlawful for any person to:

- a. Discharge into, or adjacent to, state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

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b. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

2. In the event a discharge not authorized by permit should occur, which may adversely affect state waters or may endanger public health, the owner shall make an oral report of the discharge, to the director, immediately upon discovery of the discharge and, in any event, no later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the director, within five days of discovery of the discharge.

a. The written report shall contain:

- (1) A description of the nature of the discharge;
- (2) The cause of the discharge;
- (3) The date on which the discharge occurred;
- (4) The length of time that the discharge continued;
- (5) The volume of the discharge;
- (6) If the discharge is continuing, how long it is expected to continue;
- (7) If the discharge is continuing, what the expected total volume of the discharge will be; and
- (8) Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the permit.

b. Discharges reportable to the director under the immediate reporting requirements of other regulations are exempted from this requirement.

c. VPA permits may be utilized to authorize pollutant management activities including, but not limited to, animal feeding operations, storage or land application of sewage, sludge, industrial waste or other waste; or the complete reuse or recycle of wastewater. Point source discharges of pollutants to surface waters may be authorized by a VPDES permit (See VR 680-14-01:1, VPDES Permit Regulation).

D. No VPA permit shall be issued in the following circumstances:

1. Where the terms or conditions of the VPA permit do not comply with the applicable regulations or requirements of the law;
2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into state waters; or
3. For any pollutant management activity that is in conflict with any area-wide or basin-wide water quality control and waste management plan or policy established by the board pursuant to the law.

§ 1.4. Exclusions.

The following do not require a VPA permit:

1. The introduction of sewage, industrial waste or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with VPA permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality or other person not leading to treatment works;
2. Any introduction of pollutants from nonpoint source agricultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to concentrated or intensified animal feeding operations;
3. Return flows from irrigated agricultural land;
4. Land disposal activity, including the use and disposal of sewage sludge and waste treatment by septic tanks, when this activity is authorized by a State Department of Health permit or otherwise authorized by the Department of Environmental Quality; and
5. Discharges authorized by EPA under the Safe Drinking Water Act Underground Injection Control Program (UIC), 40 CFR 144, and approved, in writing, by the director.

§ 1.5. Effect of a VPA permit.

A. Compliance with a VPA permit constitutes compliance with the VPA permit requirements of the law.

B. The issuance of a VPA permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

PART II. PERMIT APPLICATION AND ISSUANCE.

§ 2.1. Application for a VPA permit.

A. Duty to apply. Any owner of a pollutant management activity who does not have an effective VPA permit, except persons covered by general VPA permits or excluded under § 1.4, shall submit a complete application to the director in accordance with this section.

1. a. A complete VPA permit application shall be submitted by the owner of the pollutant management activity before a VPA permit can be issued. This item does not apply where general VPA permits are applicable.
- b. The director may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the owner has supplied missing or

deficient information and the director considers the application complete. Further, when the owner becomes aware that he omitted one or more relevant facts from a VPA permit application, or submitted incorrect information in a VPA permit application or in any report to the director, he shall promptly submit such facts or the correct information.

2. a. Any owner proposing a new pollutant management activity shall submit an application for a VPA permit 180 days prior to the date planned for commencing erection, construction or expansion or employment of new processes at any site. There shall be no operation of said facilities prior to the issuance of a VPA permit.

b. Any owner with an existing pollutant management activity that has not been permitted shall submit an application within 60 days upon being requested to by the director. The director, after determining there is pollution occurring, may allow the construction of treatment works prior to permit issuance. There shall be no operation of said treatment works prior to permit issuance.

c. Owners currently managing pollutants who have effective VPA permits shall submit a new application 180 days prior to proposed facility expansions, production increases, or process modification which will:

(1) Result in significantly new or substantially increased amounts of pollutants being managed or a significant change in the nature of the pollutant management activity; or

(2) Violate or lead to violation of the terms and conditions of the effective VPA permit.

3. Pursuant to § 62.1-44.15:3 of the Code of Virginia no application for a VPA permit will be deemed complete until the director receives notification from the governing body of the county, city or town in which the pollutant management activity is to take place that the location and operation of the pollutant management facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia. If the governing body of any county, city or town fails to respond within 45 days following receipt of a written request by certified mail, return receipt requested, by an applicant for certification that the location and operation of the proposed facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia, the application shall be deemed complete for the purposes of this regulation.

4. No application for a VPA permit from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the director with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

B. Duty to reapply. Any permittee with an effective VPA permit shall submit a new application at least 180 days before the expiration date of the effective VPA permit unless permission for a later date has been granted by the director. The director shall not grant permission to submit an application later than the expiration date of the existing VPA permit.

C. Information requirements. All applicants for VPA permits shall provide information in accordance with forms provided by the director.

§ 2.2. Signatory requirements.

Any application, report, including monitoring reports, or certifications shall be signed as follows:

1. Application.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

c. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.

2. Reports. All reports required by VPA permits and other information requested by the director shall be signed by:

a. One of the persons described in subdivision 1 of this section; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision 1 of this section; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

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(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the director prior to or together with any separate information, or applications to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

§ 2.3. Conditions applicable to all VPA permits.

A. Duty to comply. The permittee shall comply with all conditions of the VPA permit. Any permit noncompliance is a violation of the law, and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit renewal application.

B. Duty to halt or reduce activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this VPA permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to minimize, correct or prevent any pollutant management activity in violation of this VPA permit which has a reasonable likelihood of adversely affecting human health or the environment.

D. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with permit conditions. Proper operation and maintenance includes effective plant performance, adequate funding, adequate licensed operator staffing, an adequate laboratory and process control, including appropriate quality assurance procedures.

E. Permit action.

1. A VPA permit may be modified, revoked and reissued, or terminated as set forth in this regulation.

2. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the director. This provision shall not be used to extend the expiration date of the effective VPA permit.

3. VPA permits may be modified, revoked and reissued or terminated upon the request of the permittee or interested persons, or upon the director's initiative, to reflect the requirements of any changes in the statutes or regulations.

4. VPA permits continued under § 2.8 remain effective and enforceable.

F. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the director may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to records required by the VPA permit;

2. Have access to, inspect and copy any records that must be kept as part of VPA permit conditions;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the VPA permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring VPA permit compliance or as otherwise authorized by law.

G. Duty to provide information.

1. The permittee shall furnish to the director, within a reasonable time, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, terminating the VPA permit, or to determine compliance with the VPA permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by the permittee.

2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the director prior to commencing construction.

H. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the VPA permit, and records of all data used to complete the application for the VPA permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the director at any time.

3. Records of monitoring information shall include:

a. The date, exact place and time of sampling or measurements;

b. The name of the individual or individuals who performed the sampling or measurements;

c. The date or dates analyses were performed;

d. The name of the individual or individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used; and

f. The results of such analyses.

4. Monitoring shall be conducted according to analytical methods promulgated pursuant to § 304(h) of the Clean Water Act (33 U.S.C. 1251 et seq.) and listed in the Code of Federal Regulations at 40 CFR Part 136 (1992). Any other test procedure not listed in 40 CFR Part 136 (1992) shall be specified in the VPA permit as approved by the director.

I. Reporting requirements.

1. The permittee shall give prompt notice to the director of any planned changes to the design or operation of the pollutant management activity.

2. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the director by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the director within five days of discovery of the discharge in accordance with subdivision 6 of this section. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

a. Unusual spillage of materials resulting directly or indirectly from processing operations;

b. Breakdown of processing or accessory equipment;

c. Failure or taking out of service of some or all of the treatment works; and

d. Flooding or other acts of nature.

3. The permittee shall give at least 10 days advance notice to the director of any planned changes to the facility or activity which may result in noncompliance.

4. Monitoring results shall be reported at the intervals specified in the applicable VPA permit.

a. Monitoring results shall be reported in a format acceptable to the director.

b. If a permittee monitors the pollutant management activity, at a sampling location specified in the VPA permit, for any pollutant more frequently than required by the VPA permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

c. If the permittee monitors the pollutant management activity, at a sampling location specified in the VPA permit, for any pollutant that is not required to be

monitored by the VPA permit, and uses approved analytical methods the permittee shall report the results with the monitoring report.

d. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the VPA permit.

5. Reports of compliance or noncompliance with or any progress report on interim and final requirements contained in any compliance schedule in the VPA permit shall be submitted no later than 14 days following each scheduled date.

6. 24-hour reporting.

a. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health. An oral report must be provided as soon as possible, but in no case later than 24 hours from the time the permittee becomes aware of the circumstances. A written report shall be submitted within five days and shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and, if the noncompliance has not been corrected, how long it is expected to continue, steps planned or taken to reduce, eliminate and prevent a recurrence of the noncompliance. The director may waive the written report requirements on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported. All other noncompliance reports which may not adversely effect state waters shall be submitted with the monitoring report. Reports shall include overflows.

b. The following shall be included as information which must be reported within 24 hours under this subdivision:

(1) Any unanticipated bypass; and

(2) Any upset which causes a discharge to surface waters.

J. Bypass.

1. A bypass of the treatment works is prohibited except as provided herein.

2. If the permittee knows in advance of the need for a bypass, he shall notify the director promptly at least 10 days prior to the bypass. After considering its adverse effects the director may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage ("severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production); and

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b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. If an unplanned bypass occurs, the permittee shall notify the director as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in subdivision 2 of this subsection and in light of the information reasonably available to the owner at the time of the bypass.

K. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;
2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;
3. That the 24-hour reporting requirements to the director were met; and
4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the VPA permit.

L. Signature requirements. All applications, reports, or information submitted to the director shall be signed and certified as required in § 2.2.

M. Transfers. This VPA permit is not transferable to any person except after notice to the director, according to § 5.4. The director may require modification or revocation and reissuance of the VPA permit to change the name of the permittee and incorporate such other requirements as may be necessary.

§ 2.4. Conditions applicable to publicly or privately owned sewage treatment works.

Publicly or privately owned sewage treatment works shall provide adequate notice to the director of the following:

1. Any new introduction of pollutants into a privately or publicly owned sewage treatment works from an indirect discharger which would be subject to limitations and standards for the pollutant management activity; and
2. Any substantial change in quantity or quality of pollutants being introduced into the privately or publicly

owned sewage treatment works and any anticipated impact the change may have on such treatment works.

§ 2.5. Establishing limitations and other VPA permit conditions.

In addition to the conditions established in §§ 2.3 and 2.4, each VPA permit shall include conditions meeting the following requirements where applicable.

1. Determination of limitations. The director shall establish VPA permit limitations and conditions based on the nature of the pollutant management activity in order to ensure compliance with technology-based limitations, water quality standards, the law and all regulations promulgated thereunder. These limitations and conditions may include, but are not limited to, duration of VPA permits, monitoring requirements, limitations to control toxic pollutants, BMPs and schedules of compliance.

2. Duration of VPA permits. VPA permits issued under this regulation shall have an effective date and an expiration date which will determine the life of the VPA permit. VPA permits shall be effective for a fixed term not to exceed 10 years as specified in the VPA permit, except that the VPA permits for concentrated animal feeding operations shall not exceed five years. The term of the VPA permits shall not be extended by modification beyond the maximum duration. The VPA permit shall expire at the end of the term unless an application for a new VPA permit has been timely filed as required by these regulations and the director is unable, through no fault of the permittee, to issue a new VPA permit before the expiration date of the previous VPA permit.

3. Monitoring requirements.

a. All VPA permits may specify:

- (1) Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods;
- (2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring; and
- (3) Applicable reporting requirements based upon the impact of the regulated activity on water quality.

b. VPA permits may include requirements to report monitoring results with a frequency dependent on the nature and effect of the pollutant management activity.

c. In addition, the following monitoring requirements may be included in the VPA permits:

- (1) Mass or other measurements specified in the VPA permit for each pollutant of concern;
- (2) The volume of waste, wastewater or sludge managed by the activity; and
- (3) Other measurements as appropriate.

4. *Best Management Practices (BMPs).* Where numeric limits are infeasible, or where BMPs are necessary to achieve limitations and standards or to carry out the purposes and intent of the law, the VPA permit may require the use of BMPs to control or abate the management of pollutants.

5. *Sludge disposal.* The VPA permit shall include, where appropriate, specific requirements for disposal of all sludge.

6. *Schedules of compliance.* The VPA permit may specify a schedule, when appropriate, leading to compliance with the VPA permit as soon as possible. When schedules of compliance are applicable the following shall be incorporated:

a. *Schedule or schedules of compliance shall require the permittee to take specific steps where necessary to achieve expeditious compliance with the VPA permit;*

b. *The schedule of compliance shall set forth interim time periods not more than one year apart for the submission of reports of progress toward completion of each requirement; and*

c. *Schedule or schedules of compliance may be modified by modification of the VPA permit for good cause beyond the control of the permittee (e.g., act of God, strike, flood, material shortage).*

§ 2.6. Draft VPA permit formulations.

A. Upon receipt of a complete application, the director shall make a decision to tentatively issue the VPA permit or deny the application. If a tentative decision is to issue the VPA permit then a draft VPA permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft VPA permit:

1. *Conditions, limitations, standards and other requirements applicable to the VPA permit;*

2. *Compliance schedules where applicable; and*

3. *Monitoring requirements.*

B. If the tentative decision is to deny the application, the director shall so advise the owner of that decision and the requirements necessary to obtain approval. The owner may withdraw the application prior to board action. If the application is not withdrawn or conditions satisfied for the tentative approval to issue, the director shall provide public notice and opportunity for a public hearing prior to formal board action on the application.

C. This section does not apply where a general VPA permit is applicable.

§ 2.7. Fact sheet.

A. The director shall prepare a fact sheet to accompany all draft VPA permits. These fact sheets shall be made available to the public upon request.

B. The fact sheet shall include:

1. *A brief description of the pollutant management activity to be permitted;*

2. *An explanation of the statutory provisions on which the VPA permit requirements are based;*

3. *Calculations or other necessary explanations of the derivation of the VPA permit conditions or limitations;*

4. *The location of each pollutant management activity;*

5. *The reasons for any requested modifications;*

6. *A description of the procedures and sequence of events for reaching the final decision; and*

7. *The name and telephone number of a person to contact for additional information.*

§ 2.8. Continuation of expiring VPA permits.

A. *Expiring VPA permits are automatically continued pending issuance of a new VPA permit if:*

1. *The permittee has submitted a timely and complete application as required by these regulations, unless the director has given permission for a later submittal, which shall not extend beyond the expiration date of the original VPA permit; and*

2. *The director is unable, through no fault of the permittee, to issue a new VPA permit before the expiration date of the previous VPA permit.*

B. *Continued VPA permits remain effective and enforceable against the permittee.*

PART III. PUBLIC INVOLVEMENT.

§ 3.1. Public notice of VPA permit action and public comment period.

A. Every draft VPA permit shall be given public notice, paid for by the owner, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the pollutant management activity.

B. The director shall allow a period of at least 30 days following the date of the initial newspaper public notice for interested persons to submit written comments on the tentative decision and to request a public hearing.

C. The contents of the public notice of an application for a VPA permit shall include:

1. *The name and address of the applicant. If the location of the pollutant management activity differs from the address of the applicant the notice shall also state the location of the pollutant management activity;*

2. *A brief description of the business or activity conducted at the facility;*

3. *A statement of the tentative determination to issue or deny a VPA permit;*

4. *A brief description of the final determination procedure;*

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5. The address and phone number of a specific person at the state office from whom further information may be obtained; and

6. A brief description on how to submit comments and request a hearing.

D. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

§ 3.2. Public access to information.

Pursuant to § 62.1-44.21 of the Code of Virginia, all information pertaining to VPA permit processing or in reference to any source of any pollutant shall be available to the public, unless the information has been identified by the applicant as a trade secret. In any case, the VPA permit and the VPA permit application remain public information. All information claimed confidential must be identified as such at the time of submission to the director. Otherwise, all information will be made available to the public. Notwithstanding the foregoing, any supplemental information that the director may obtain from filings made under the Virginia Toxic Substances Information Act (TSIA), § 32.1-239 et seq. of the Code of Virginia, shall be subject to the confidentiality requirements of TSIA.

§ 3.3. Conditions requested by other government agencies.

If during the comment period any other state agency with jurisdiction over fish, wildlife, or public health advises the director in writing that the imposition of specified conditions upon the VPA permit is necessary to avoid substantial impairment of human health or of fish, shellfish, or wildlife resources, the director shall consider the inclusion of the specified conditions in the VPA permit. If any conditions requested are not included in the VPA permit the director shall notify the agency of the reasons for not including the conditions.

§ 3.4. Public comments and hearings.

A. A comment period of at least 30 days following the initial date of the newspaper public notice of the formulation of a draft VPA permit shall be provided. During this period any interested persons may submit written comments on the draft VPA permit and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised pursuant to the board's Procedural Rule No. 1, or its successor. All comments shall be considered by the director in preparing the final VPA permit and shall be responded to in writing.

B. The board shall hold a public hearing where there is a significant degree of public interest relevant to a draft VPA permit. The board may hold a public hearing in any case. Public notice of that hearing shall be given as specified in § 3.5. Nothing in this subsection shall relieve the board of the requirement to hold a hearing where a hearing is required by applicable law or regulation.

C. Any hearing convened pursuant to this section will be held in the geographical area of the proposed pollutant management activity, or in another appropriate area. Related

groups of VPA permit applications may be considered at any such hearing.

D. If changes are made to the VPA permit based on public comments, the permittee and all persons who commented will be notified of the changes and given an opportunity to comment on them. No further public notice is required.

E. Any owner aggrieved by any action of the board taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing pursuant to § 62.1-44.25 of the Code of Virginia.

F. Proceedings at, and the decision from, the public hearing will be governed by the board's Procedural Rule No. 1 or its successor.

§ 3.5. Public notice of hearing.

A. Public notice of any hearing held pursuant to § 3.4 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the county or city where the pollutant management activity is to occur; and
2. Notice of the hearing shall be sent to all persons and government agencies which received a copy of the notice of the VPA permit application.

B. Notice shall be effected pursuant to subsection A of this section at least 30 days in advance of the hearing.

C. The content of the public notice of any hearing held pursuant to § 3.4 shall include at least the following:

1. Name and address of each owner whose application will be considered at the hearing and a brief description of the owner's pollutant management activities or operations;
2. A brief reference to the public notice issued for the VPA permit application, including identification number and date of issuance unless the public notice includes the hearing notice;
3. Information regarding the time and location for the hearing;
4. The purpose of the hearing;
5. A concise statement of the issues raised by the persons requesting the hearing;
6. The name of a contact person and the address at which interested persons may obtain further information, request a copy of the draft VPA permit prepared pursuant to § 2.6, request a copy of the fact sheet prepared pursuant to § 2.7 and inspect or arrange for receipt of copies of forms and related documents; and
7. A brief reference to the rules and procedures to be followed at the hearing.

PART IV.
SPECIAL PERMIT REQUIREMENTS.

§ 4.1. Treatment plant loadings approaching capacity.

A. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPA permit for each month of any three consecutive month period, the owner shall within 30 days notify the director in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the VPA permit.

B. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could reasonably be anticipated, resulting from high influent flows.

C. Upon receipt of the owner's plan of action, the director shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

D. Failure to timely submit an adequate plan shall be deemed a violation of the VPA permit.

E. Nothing herein shall in any way impair the authority of the board to take enforcement action under § 62.1-44.15, § 62.1-44.23, or § 62.1-44.32 of the Code of Virginia.

§ 4.2. Operator requirements.

A. The permittee shall employ or contract at least one operator who holds a current wastewater license appropriate for the permitted facility, if required by the VPA permit. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators (VR 675-01-02). Notwithstanding the foregoing requirement, unless the pollutant management activity is determined by the director on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

1. That have a design hydraulic capacity equal to or less than 0.04 million gallons per day;
2. That discharge industrial waste or other waste from coal mining operations; or
3. That do not utilize biological or physical/chemical treatment.

B. In making this case-by-case determination, the director shall consider the location of the pollutant management activity with respect to state waters, the size of the pollutant management activity, the quantity and nature of pollutants reaching state waters and the treatment methods used at the treatment works.

C. The permittee shall notify the director in writing whenever he is not complying, or has grounds for anticipating he will not comply, with the requirements of subsection A of this section. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

PART V.
PERMIT MODIFICATION, REVOCATION AND
REISSUANCE, AND TERMINATION.

§ 5.1. Modification, revocation and reissuance, and termination.

A. VPA permits shall be modified, revoked and reissued, or terminated only as authorized by this section.

B. A VPA permit may be modified in whole or in part, revoked and reissued, or terminated.

C. VPA permit modifications shall not be used to extend the term of a VPA permit.

D. Modification, revocation and reissuance, or termination of VPA permit may be initiated by the director, interested persons, or permittee under applicable provisions of this regulation.

E. The director may require an updated VPA permit application in order to modify or revoke and reissue a VPA permit.

§ 5.2. Causes for termination.

A. The following are causes for terminating a VPA permit during its term, or for denying a VPA permit renewal application, after public notice and opportunity for a public hearing:

1. The permittee has violated any regulation or order of the board, any condition of a VPA permit, any provision of the law, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;
2. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a VPA permit, or in any other report or document required under the law or these regulations;
3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by VPA permit modification or termination; or
4. There exists a material change in the basis on which the VPA permit was issued that requires either a temporary or a permanent reduction or elimination of any pollutant management activity controlled by the VPA permit necessary to protect human health or the environment.

B. A VPA permit may be terminated without public notice and opportunity for a hearing when the termination is mutually agreed to by the permittee and the director.

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§ 5.3. Causes for modification.

A VPA permit may be modified, but not revoked and reissued, except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility which require the application of VPA permit conditions that differ from those of the existing VPA permit or are absent from it;
2. When new information becomes available about the operation or pollutant management activity covered by the VPA permit which was not available at VPA permit issuance and would have justified the application of different VPA permit conditions at the time of VPA permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VPA permit was based;
4. When it becomes necessary to change final dates in compliance schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc.;
5. When changes occur which are subject to "reopener clauses" in the VPA permit;
6. When the permittee begins or expects to begin to use or manufacture any toxic pollutant not reported in the application; or
7. When other states were not notified of the change in the VPA permit and their waters may be affected by the pollutant management activity.

§ 5.4. Transfer of VPA permits.

A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a VPA permit shall be transferred only if the VPA permit has been modified to reflect the transfer or has been revoked and reissued to the new owner.

B. Automatic transfer. Any VPA permit shall be automatically transferred to a new owner if:

1. The current owner notifies the director 30 days in advance of the proposed transfer of the title to the facility or property;
2. The notice to the director includes a written agreement between the existing and proposed new owner containing a specific date of transfer of VPA permit responsibility, coverage and liability between them; and
3. The director does not within the 30-day time period notify the existing owner and the proposed owner of its intent to modify or revoke and reissue the VPA permit.

§ 5.5. Minor modification.

A. Upon request of the permittee, or upon director initiative with the consent of the permittee, minor modifications may be made in the VPA permit without following the public involvement procedures.

B. Minor modification may only:

1. Correct typographical errors;
2. Require reporting by the permittee at a frequency other than that required in the VPA permit;
3. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date;
4. Allow for a change in name, ownership or operational control when the director determines that no other change in the VPA permit is necessary, provided that a written agreement containing a specific date for transfer of VPA permit responsibility, coverage and liability from the current to the new permittee has been submitted to the director;
5. Delete the listing of a land application site when the pollutant management activity is terminated and does not result in an increase of pollutants which would exceed VPA permit limitations;
6. Reduce VPA permit limitations to reflect a reduction in the permitted activity when such reduction results from a shutdown of processes or pollutant generating activities or from connection of the permitted activity to a POTW;
7. Change plans and specifications where no other changes in the VPA permit are required;
8. Authorize treatment facility expansions, production increases or process modifications which will not cause a significant change in the quantity of pollutants being managed or a significant change in the nature of the pollutant management activity; or
9. Delete VPA permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated.

PART VI. SPECIAL PROGRAMS.

§ 6.1. Animal feeding operations.

A. All animal feeding operations shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm. Concentrated and intensified animal feeding operations are pollutant management activities subject to the VPA permit program. Two or more animal feeding operations under common ownership are considered, for the purposes of this regulation, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case designation of concentrated or intensified animal feeding operations.

1. The director may designate any animal feeding operation which does not fall under the definitions of "concentrated animal feeding operation" or "intensified animal feeding operation," as defined in § 1.1, as a concentrated or intensified animal feeding operation upon determining that it is a potential or actual

contributor of pollution to state waters. In making this designation the director shall consider the following factors:

- a. The size of the operation;
- b. The location of the operation relative to state waters;
- c. The means of conveyance of animal wastes and process waters into state waters;
- d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into state waters;
- e. The means of storage, treatment, or disposal of animal wastes; and
- f. Other relevant factors.

2. A VPA permit application shall not be required for a concentrated or intensified animal feeding operation designated under subdivision 1 of this subsection until the director has conducted an on-site inspection of the operation and determined that the operation shall be regulated under the VPA permit program.

§ 6.2. General VPA permits.

The director may issue a general VPA permit in accordance with the following:

1. Sources. A general VPA permit may be written to regulate a category of pollutant management activities within a geographic area that:

- a. Involve the same or similar types of operations;
- b. Manage the same or similar types of wastes;
- c. Require the same VPA permit limitations or operating conditions;
- d. Require the same or similar monitoring; and
- e. In the opinion of the director, are more appropriately controlled under a general VPA permit than under individual VPA permits.

2. Administration.

- a. General VPA permits will be issued, modified, revoked and reissued, or terminated pursuant to the law and the board's Public Participation Guidelines (VR 680-41-01:1).
- b. The director may require any person operating under a general VPA permit to apply for and obtain an individual VPA permit. Interested persons may petition the director to take action under this subdivision. Cases where an individual VPA permit may be required include the following:

- (1) Where the pollutant management activity is a significant contributor of pollution;
- (2) Where the owner is not in compliance with the conditions of the general VPA permit;

(3) When a water quality management plan containing requirements applicable to such sources is approved; or

(4) When a permitted activity no longer meets general VPA permit conditions.

c. Any owner operating under a general VPA permit may request to be excluded from the coverage of the general VPA permit by applying for an individual VPA permit.

d. When an individual VPA permit is issued to an owner the applicability of the general VPA permit to the individual permittee is automatically terminated on the effective date of the individual VPA permit.

e. When a general VPA permit is issued which applies to an owner already covered by an individual VPA permit, such owner may request exclusion from the provisions of the general VPA permit and subsequent coverage under an individual VPA permit.

f. A general VPA permit may be revoked as to an individual owner for any of the reasons set forth in § 5.2 or subdivision 2 b of this section subject to appropriate opportunity for a hearing.

§ 6.3. Control of disposal of pollutants into wells.

A. No right to dispose of pollutants into wells shall exist under this regulation, except as authorized pursuant to a VPA permit issued by the director.

B. Whenever an applicant for a VPA permit proposes to dispose of pollutants into a well or wells, the director shall prohibit the proposed disposal, or specify terms and conditions in the VPA permit which shall control the proposed disposal in order to prevent the pollution of and protect all beneficial uses of state waters, protect the public health and welfare, and require compliance with all applicable water quality standards.

PART VII.
ENFORCEMENT.

§ 7.1. Enforcement.

A. The board may enforce the provisions of this regulation by:

- 1. Issuing directives in accordance with the law;
- 2. Issuing special orders in accordance with the law;
- 3. Issuing emergency special orders in accordance with the law;
- 4. Seeking injunction, mandamus or other appropriate remedy as authorized by the law;
- 5. Seeking civil penalties under the law.
- 6. Seeking remedies under the law or under other laws including the Common Law.

B. The board encourages citizen participation in all its activities, including enforcement. In particular:

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1. The director will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the board's purview;

2. The board will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule, or in any administrative enforcement action when authorized by the board's Procedural Rule; and

3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the director will publish public notice of such settlement or order in a newspaper of general circulation in the county, city or town in which the pollutant management activity is located, and at the state capital. This notice will identify the owner, specify the enforcement action to be taken and specify where a copy of the settlement or order can be obtained. Appeals will be public noticed in accordance with Procedural Rule No. 1. A consent special order is an order issued without a hearing and with the written consent of the affected owner. For the purpose of this regulation, an emergency special order is not a consent special order. The board shall consider all comments received during the comment period before taking final action.

4. When a VPA permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that at the time of VPA permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

- a. The VPA permit amendment does not have to go to public notice, and
- b. The terms of the new consent order are the same as issued to the previous owner.

5. Notwithstanding subdivision 3 of this subsection, a special order may be issued by agreement at a board meeting without further notice when a hearing has been scheduled to issue a special order, to the affected owner, whether or not the hearing is actually held.

PART VIII.

DELEGATION OF AUTHORITY; TRANSITION.

§ 8.1. Delegation of authority.

The director, or a designee acting for him, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 8.2. Transition.

Upon the effective date of this regulation the following will occur:

1. All VPA applications received after that date will be processed in accordance with this regulation.
2. Any owner holding a No-Discharge Certificate will be notified by the director of the deadline for applying for a VPA permit, unless this notification has already been

made. All notifications shall be completed by July 1, 1998. Upon notification by the director, the permittee shall have 180 days to apply for a VPA permit. The existing No-Discharge Certificate will remain in effect until the new VPA permit is issued. Concurrent with the issuance of the VPA permit, the No-Discharge Certificate will be revoked subject to appropriate notice and opportunity for public hearing. Notwithstanding the foregoing, all No-Discharge Certificates, whether or not the certificate bears an expiration date, shall expire no later than July 1, 1999.

VA.R. Doc. No. R95-617; Filed June 30, 1995, 2:44 p.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulation.

DEPARTMENT OF EDUCATION (BOARD OF)

Title of Regulation: VR 270-01-0014. Management of the Student's Scholastic Record in the Public Schools of Virginia.

Statutory Authority: § 4 of Article VIII of the Constitution of Virginia and §§ 22.1-16, 22.1-287.1, 22.1-288.2 and 22.1-289 of the Code of Virginia.

Effective Date: August 23, 1995.

Summary:

Federal law, specifically the Family Educational Rights and Privacy Act, 34 CFR 99 mandates the management of scholastic records. Certain confidentiality requirements regarding the records of special education students are also mandated by the regulations implementing the Individuals with Disabilities Education Act, 34 CFR 300. In addition, Regulations Governing Special Education Programs for Children with Disabilities in Virginia (VR 270-01-0007) incorporate the requirements of this regulation by reference. Finally, § 22.1-289 E of the Code of Virginia requires that the Board of Education "adopt regulations concerning the transfer and management of scholastic records," § 22.1-288.2 refers to parental notification in accordance with the regulations of the Board of Education governing the management of scholastic records, and § 22.1-287.1 refers to release of directory information in accordance with regulations of the Board of Education.

The regulation has three requirements:

1. Adherence to applicable state and federal laws and regulations, including the Family Educational Rights and Privacy Act, 34 CFR 99; Individuals with Disabilities Education Act, 34 CFR 300; and the following sections of the Code of Virginia: §§ 22.1-287, 22.1-287.1, 22.1-288, 22.1-288.2, 22.1-289, 16.1-305.1, and 32.1-36.1.
2. Maintenance of a notice of adjudication or conviction received by a local superintendent.
3. Notification of parents of their right to review and request an amendment of a student's scholastic record in accord with the procedures set forth in 34 CFR 99.

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 James E. Laws, Jr., Regulatory Coordinator, Department of Education, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2924.

Preamble:

The data in the individual student's scholastic record, and the legal and ethical maintenance and the use of such data, have become a matter of concern to students, parents, and school and community personnel. This concern stems from the increasing number of non-school individuals and agencies requesting access to and information from these records. Because scholastic records are written and maintained for the purpose of enhancing educational programming consistent with high professional standards, the local education agency (LEA) has a responsibility to protect the rights and privacy of the student and his parents. The LEA, therefore, must adhere to state and federal statutes designed to safeguard information in scholastic records.

VR 270-01-0014. Management of the Student's Scholastic Record in the Public Schools of Virginia.

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:~~

~~"Access to records" — See definition of "Disclosure."~~

~~"Days" are specified as either "calendar days" or "administrative working days." "Administrative working days" means days exclusive of Saturdays, Sundays, and officially designated holidays of the local school division.~~

~~"Calendar days" means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school division level. Whenever any period of time fixed by this procedure shall expire on a Saturday, Sunday or school holiday, the period of time of taking such action under this procedure shall be extended to the next day, not a Saturday, Sunday or school holiday.~~

~~"Destruction" means physical destruction or the removal of personal identifiers from information so that information is no longer personally identifiable.~~

~~"Disclosure" means permitting access or the release, transfer, or other communication of education (scholastic) records of the student or the personally identifiable information contained therein, orally or in writing, or by electric means, or by any other means to any party.~~

~~1. Disclosure, through access, means the right to inspect, review and copy.~~

~~2. Disclosure, through release, means the surrender of specific information, orally or in writing, or electronically, upon receipt of a proper request.~~

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3. ~~Disclosures, through transfer, means the surrender of the entire record when transfer occurs within a local school division. It may also mean the surrender of a transcript of the record when transfer occurs between local school divisions or between a local school division and a postsecondary institution or another educational agency or institution.~~

~~"Educational records" See definition of "Scholastic Records."~~

~~"Eligible student" means a student who has attained 18 years of age or is attending an institution of postsecondary education. The permission or consent required of and the rights accorded to parents relative to scholastic records shall be accorded to said students.~~

~~"Financial aid" means payment of funds provided to an individual or a payment in kind of tangible or intangible property to the individual which is conditioned on the individual's attendance at an educational agency or institution.~~

~~"Local Education Agency" or "LEA" means the local school division or other public agencies responsible for providing educational services to students.~~

~~"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence that there is a state law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.~~

~~"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained.~~

~~"Party" means an individual, agency, institution or organization.~~

~~"Personally identifiable data" means (i) name of student; the student's parent(s), or other family member; (ii) the address of the student; (iii) personal identifier, such as the student's social security number or student number; (iv) a list of personal characteristics which would make it possible to identify the student with reasonable certainty; or (v) other information which would permit reasonably certain identification of the student.~~

~~"Public notice" means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcements, handbills, brochures and other methods which are likely to succeed in providing information to the public.~~

~~"Release of data from records" See definition of "Disclosure."~~

~~"Scholastic records," identified in federal legislation as "education records," means those records that are:~~

1. ~~Directly related to another student; and~~

~~2. Maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. Such information or data may be recorded in any medium including, but not limited to, handwriting, print, tapes, film, microfilm, and microfiche. Such records are classified in two categories:~~

~~"Category I (Cumulative)" means continuous and current records of significant factual information pertinent to the educational growth and development of individual students as they progress through school.~~

~~"Category II (Confidential)" means reports written by professional staff of the local school division for the express use of other professionals within the local school division; appropriate confidential information from the records of such cooperating individuals or agencies as psychiatrists, child welfare agencies, hospitals, or juvenile courts; and other confidential information.~~

~~"Student" means any individual for whom the LEA maintains scholastic records. The term does not include an individual who has not been in attendance at an LEA.~~

~~"Substitutes" means an individual who performs on a temporary basis the duties of the individual who made the record.~~

~~"Third party" means any person other than the first party (subject of the record) or the second party (custodian of the record).~~

~~"Transfer of record data" See definition of "Disclosure."~~

~~"Written notice" means direct communication to the student's home in the form of written statements in English and in the primary language of the home.~~

PART II.

RESPONSIBILITIES OF LOCAL EDUCATIONAL AGENCY.

§ 2-1. Establishment of policies and procedures.

~~Each local educational agency shall adopt a written policy and establish procedures for management of scholastic records consistent with minimum state and federal requirements.~~

PART III.

MANAGEMENT OF SCHOLASTIC RECORD.

§ 3-1. Management procedures; generally.

~~The management procedures adopted by each local educational agency (LEA) shall relate specifically to the collection, maintenance, security, use, disclosure and content of the individual student's scholastic record.~~

§ 3-2. Scholastic record.

~~A. The LEA shall require that all records (cumulative and confidential) maintained on an individual student be considered the student's official school record. Such record~~

shall hereinafter be called scholastic record(s) or educational record(s).

1. The LEA shall require that an accurate and complete individual, permanent, and cumulative record be maintained for each student enrolled in the LEA. Such record shall be called the Category I (cumulative) file.

2. The LEA shall require that a separate confidential record be developed and maintained apart from the cumulative record for certain students (i.e., those requiring differentiated programs or special services, such as gifted, handicapped, and students with special needs). Such records shall be called the Category II (confidential) file.

B. The LEA shall ensure the protection of confidentiality of personally identifiable information of the scholastic records during collection, storage, disclosure and destruction.

C. The LEA shall require that a notation be made in the Category I (cumulative) file to indicate the location of the Category II (confidential) file. Notations in the Category I (cumulative) file indicating the location of the Category II (confidential) file shall not contain personally identifiable information (such as "File located in Office of Special Education Administrator" is not permissible).

D. The LEA shall maintain a Category II (confidential) file for these handicapped children who have not yet become students, i.e., preschool or unserved.

E. The LEA should maintain all scholastic records in a central location accessible to professional personnel within the school or LEA, or both, who have legitimate educational interests in the student(s).

F. The LEA shall require that the superintendent or designee be responsible for the collection, maintenance, security, use, disclosure and content of the scholastic record.

§ 3.3. Management procedures.

A. The LEA management procedure for scholastic records shall:

1. Specify the types of student data to be collected and recorded;
2. Establish responsibilities for collection, maintenance and security of scholastic records;
3. Identify the parties to whom scholastic record data may be disclosed, the types of data to be disclosed, and the circumstances for disclosure;
4. Specify the criteria for determining which of the above parties are "school officials" and what is considered to be "legitimate educational interest";
5. Specify methods to challenge, amend, correct and expunge information found in scholastic record(s);
6. Provide for the periodic evaluation of scholastic records by professional personnel and the removal of data no longer educationally useful;

7. Require the superintendent or designee to be present for scholastic record interpretation and explanation as follows:

a. When all parties have access to Category I (cumulative) file, with the exception of professional (see § 8.6 13 and adult clerical (see § 8.6 2) personnel of the LEA.

b. When all parties have access to Category II (confidential) file with the exception of adult clerical personnel (see § 8.6 2) of the LEA.

8. Specify a schedule of fees for disclosure of scholastic records as follows:

a. The LEA may charge a fee for copies of the scholastic record(s) at reasonable cost, not to exceed the cost of reproduction.

b. Such fee shall not effectively prevent the parents, or their designee, from exercising their right to inspect and review said records. However, no fee may be charged for a copy of the Individualized Education Program (IEP).

c. The LEA may not charge a fee for search and retrieval.

9. Apply to each public and private agency providing educational or related services, or both, to handicapped children and to any other participating agency which collects, maintains, or uses personally identifiable information or from which such information is obtained.

10. Require all LEA personnel to be informed of such policy and procedures.

11. Ensure that all persons collecting or using personally identifiable information in scholastic records receive training or instruction regarding state's policies and procedures.

12. Require notification to all parents and students of their rights relative to the scholastic record. Parents and eligible students shall have an opportunity for a hearing to challenge the content of their child's records to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student and to provide in opportunity for the correction or deletion of inaccurate, misleading, or inappropriate information therein and for the insertion of a written explanation of the parents respecting the content of the records. Conditions and procedures for amending the content of the student's scholastic record are outlined in the Amendment Procedure (see Part VI).

13. Require notification at least annually, to the parents of students in attendance (including those parents identified as having primary or home language other than English) and eligible students in attendance by such means as are reasonably likely to inform them of their rights as follows:

a. The types and location of scholastic records and information maintained therein;

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b. ~~The title and address of the official responsible for the maintenance of scholastic records, the parties to whom data may be disclosed, and the purpose for disclosure;~~

c. ~~The policies for reviewing and expunging scholastic records;~~

d. ~~The policy and procedures for disclosure of data from scholastic records;~~

e. ~~The right of parents and eligible students to challenge the content of scholastic records and to file with the Family Educational Rights and Privacy Act Office a complaint concerning an alleged failure by the LEA to comply with 20 U.S.C. 1232g;~~

f. ~~The fee, if any, to the parent or eligible student for reproducing copies of scholastic records;~~

g. ~~The data designated as directory information; and~~

h. ~~The right of parents and eligible students to obtain, upon request, a copy of the LEA written policy and procedure on the management of the scholastic records and the location of same.~~

14. ~~Inform local agencies cooperating with the LEA in the student's educational development of such policy and procedures.~~

15. ~~Maintain for the public inspection a current listing of names and positions of employees within the LEA who have access to personally identifiable data in scholastic records.~~

PART IV.

CONTENT OF THE SCHOLASTIC RECORD.

§ 4.1. ~~The content of the scholastic record shall be limited to data needed by the LEA to assist the student in his personal, social, educational, and career development and his educational and vocational placement.~~

§ 4.2. ~~The content of the scholastic record shall not include records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.~~

§ 4.3. ~~The specific types of data to be included in the Category I (cumulative) and the requirements for collection, maintenance and disposition are charted as follows:~~

A. Required.

DATA	COLLECTION	MAINTENANCE/ DISPOSITION
1. Record Data Disclosure Form	All students	Retain permanently
2. Name and address of student	All students	Retain permanently
3. Birth date	All students	Retain permanently
4. Name and address of parent	All students	Retain permanently

5. Program of studies plan All students Retain permanently

6. Scholastic work completed All students Retain permanently

7. Level of achievement All students Retain permanently

a. Grades All students Retain permanently

b. Grade point average Secondary students, as appropriate Retain permanently

8. Type of diploma Secondary students, as appropriate Retain permanently

9. Attendance All students Retain permanently

10. Test data

a. Results of Normative Tests, such as achievement batteries from a secondary school, completes a program adopted by the Board of Education All students, as required by the State and/or local school division Retain state required test scores permanently; destroy test profiles and results of inventories five years after student graduates and leaves school

b. Results of Literacy Testing Program prescribed by the Board of Education Required students as appropriate Retain permanently

11. Cumulative Health record, including preschool physical examination report, and school entrance examination report All students Destroy when no longer educationally useful or five years after student graduates or leaves school

12. Certificate of Immunization All students Retain permanently

13. Record of employment counseling and placement All secondary students Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education, or leaves school.

14. Social Security Number (unless waiver is granted) All students Retain permanently

B. Recommended:

1. Results of other standardized group tests and inventories Students tested or inventoried Destroy when no longer educationally useful or five years after student graduates from a

		secondary school, completes a program adopted by the Board of Education or leaves school.	a. Education assessment	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.
2. School, community activities, experience	Students who engage in such activities	Destroy when no longer educationally useful or five years after a student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.	b. Physiological assessment, to include medical examination and assessment of speech, hearing, and vision	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.
3. Employment evaluations	All students in cooperative vocational programs	Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.	c. Physiological assessment (including results of individual tests)	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.
4. Record of counseling interviews (date, reason, etc., not content)	All students interviewed	Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.	d. Sociological assessment including the adaptive behavior checklist	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.
5. Citizenship status if other than United States	Student with such status	Retain permanently	e. Other assessments, as appropriate	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.
<p>§ 4.4. The specific types of data to be included in the Category II (confidential) file and the requirements for collection, maintenance and disposition are charted as follows:</p> <p>A. Required (all students as appropriate):</p>					
DATA	COLLECTION	MAINTENANCE/ DISPOSITION			
1. Record of referral	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.	3. Other pertinent reports as follows:		
			a. Permission for initial testing	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.
2. Reports of assessment—both initial and periodic—as follows:	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.	b. Permission for initial placement	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school, completes a program adopted by the Board of Education or leaves school.

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c. Record of parent conference to discuss special education placement (if policy of LEA)	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.	2. Legal, psychological and medical reports	Students with such reports	by the Board of Education or leaves school. Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.
d. Summary of minutes of eligibility committee findings for special education students	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.	3. Record of sensitive physical problems	Students with such problems	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.
e. Permission for release of information if appropriate	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.	4. Verified reports of serious or recurrent atypical behavior patterns	Students with such problems	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.
f. Report of annual review of placement (if policy of LEA)	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.	5. Reports from institutions and agencies such as juvenile court, social welfare, etc.	Students with such reports	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.
g. Reports of appeals, if appropriate	All students, as appropriate	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.	6. Counselor or teacher case studies	Students with such studies	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.
4. Individualized Education Program (IEP)	All students, as appropriate	Review annually. Expired IEPs must be retained for five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.	7. Confidential interviews and/or recommendations	Students with such reports	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.
			8. Vocational assessment data	Students with such reports	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted by the Board of Education or leaves school.

~~B. Recommended (students requiring differentiated programs or special needs students):~~

DATA	COLLECTION	MAINTENANCE/ DISPOSITION
1. Social histories	Students with such reports	Destroy when no longer educationally useful or five years after student graduates from a secondary school; completes a program adopted

PART V. DIRECTORY INFORMATION.

~~§ 5.1. Personally identifiable information in a student's scholastic record may be classified as directory information. Data which may be directory information is as follows:~~

- ~~1. Name of student in attendance or no longer in attendance;~~
- ~~2. Address;~~

3. ~~Date and place of birth;~~
4. ~~Telephone listing;~~
5. ~~Dates of attendance;~~
6. ~~Participation in officially recognized activities and sports;~~
7. ~~Height and weight, if member of athletic team;~~
8. ~~Awards and honors received; and~~
9. ~~Other similar information.~~

~~§ 5.2. Should the LEA elect to designate and make public directory information, it shall give annual written and public notice indicating those categories of data designated as directory information for its students and the right of refusal for the disclosure of such data.~~

~~§ 5.3. After such notice has been given, a reasonable time not more than 15 days shall be allowed for a parent or eligible student to notify the LEA in writing that any part of or all such information about the student shall not be disclosed without prior consent.~~

~~§ 5.4. In the absence of parent or eligible student request for nondisclosure, the LEA may disclose directory information in accordance with the LEA policy.~~

~~§ 5.5. The LEA is not required to maintain a record of the disclosure of directory information.~~

~~PART VI. AMENDMENT PROCEDURE.~~

~~§ 6.1. The parent or eligible student who believes that information in the scholastic record of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the LEA which maintains the record amend it regardless of when the information was entered in the record.~~

~~§ 6.2. The LEA shall decide whether to amend the scholastic record in accordance with the request within a reasonable period of time no more than 15 days after the receipt of the request. If the LEA agrees to amend, then the amendment shall be made in writing, inserted in the student's scholastic record, and maintained in accordance with maintenance and disposition.~~

~~§ 6.3. The LEA may utilize informal attempts to reconcile differences; however, the parent or eligible student may exercise the right to a hearing without benefit of the decision from any informal proceeding.~~

~~§ 6.4. If the LEA decides to refuse to amend the scholastic record of the student in accordance with the request, it shall, within 15 days inform the parent or eligible student of the refusal and advise of the right to a hearing.~~

~~§ 6.5. The LEA shall on written request provide an opportunity for a hearing to enable the parent or eligible student to challenge information in the scholastic record to ensure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student.~~

~~§ 6.6. If, as a result of the hearing, the LEA decides that the information is inaccurate, misleading or otherwise in violation~~

~~of the privacy or other rights of the student, it shall amend the scholastic record of the student accordingly and so inform the parent or eligible student in writing.~~

~~§ 6.7. If, as a result of the hearing, the LEA decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place in the scholastic record of the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the LEA.~~

~~§ 6.8. Any such explanation placed in the scholastic record of the student shall:~~

- ~~1. Be maintained by the LEA as part of the scholastic record of the student as long as the record or contested portion thereof is maintained; and~~
- ~~2. Be disclosed by the LEA when the scholastic record of the student or the contested portion thereof is disclosed to any party.~~

~~§ 6.9. A hearing held under § 6.5 shall be conducted according to the procedures as follows:~~

- ~~1. The hearing shall be held within 45 calendar days after the LEA has received the written request. The parent or the eligible student shall be given written notice by the LEA of the date, place, and time of the hearing;~~
- ~~2. The hearing may be conducted by any party, including an official of the LEA who does not have a direct interest in the outcome of the hearing;~~
- ~~3. The parent or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues and to question the person(s) who have entered the information;~~
- ~~4. The parent or eligible student may be assisted or represented by individuals of his choice at his expense, including an attorney;~~
- ~~5. The LEA shall make its decision in writing within a reasonable period of time after the conclusion of the hearing;~~
- ~~6. The decision of the LEA shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision; and~~
- ~~7. The evidence shall become a permanent part of the student's scholastic record.~~

~~PART VII. ACCESS.~~

~~§ 7.1. Each The LEA shall permit parents or eligible student to inspect and review scholastic records relating to the student which are collected, maintained or used by the LEA. The LEA shall comply with a request without unnecessary delay and in no case more than 14 calendar days after the request has been made.~~

~~§ 7.2. The LEA shall comply with a request to inspect and review scholastic records before any meeting regarding an individualized education program or hearing relating to the~~

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identification, evaluation, or educational placement of the student or provision of a free appropriate public education.

§ 7.3. The right to inspect and review scholastic records includes:

1. The right to a response from the LEA to reasonable requests for explanations and interpretations of the scholastic records;
2. The right to request that the LEA provide copies of the scholastic records containing the information, if failure to provide the copies would effectively prevent the parent from exercising the right to inspect and review the scholastic records; and
3. The right to have a representative of the parent inspect and review the scholastic records.

§ 7.4. An LEA may presume that both parents have the authority to inspect and review records relating to the student unless the LEA has been advised that both parents do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

§ 7.5. Each LEA shall keep a record of parties obtaining access to scholastic records collected, maintained, or used. (See § 8.3 and Record Data Disclosure Form)

§ 7.6. If any scholastic record includes information on more than one student, the parents of those students shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

§ 7.7. When requested, each LEA shall provide parents or eligible student with a list of the types and locations of scholastic records collected, maintained, or used by the LEA.

PART VIII. DISCLOSURE.

§ 8.1. When a request for disclosure of scholastic record data is made, such a request shall be granted immediately, if practicable, but in no case more than five administrative working days after the date of the request. If the LEA determines that it is practically impossible to provide the requested records or to determine whether they are available within the five administrative working days, the LEA shall inform the requesting party and shall have an additional seven administrative working days to provide the requested records.

§ 8.2. An LEA may disclose, upon student transfer, information from scholastic records to another LEA without parental consent, unless prohibited by other applicable law.

§ 8.3. The LEA shall keep permanently with the student's cumulative and confidential files a Record Data Disclosure Form showing:

1. The parties who have requested or obtained scholastic record data disclosure, with the exception of adult clerical and professional personnel within LEA; the parent or eligible student; and the parties receiving directory information;
2. The agency or institution represented, if appropriate;
3. The date of the disclosure;

4. The specific legitimate interest of such disclosure and the purpose for which the data will be used; and

5. The signature of the superintendent or designee.

§ 8.4. The record data disclosure form shall be available to the parent or eligible student, to school officials responsible for record maintenance, and to parties authorized.

§ 8.5. Personally identifiable information from scholastic records, with the exception of directory information shall be disclosed to a third party only on the condition that such party will not redisclose such information without the written consent of the parent or eligible student. Such disclosure shall be accompanied by a written statement explaining the above stated condition. If the third party is an institution, agency, or organization, the disclosed personal information may be used by its officers, employees and agents, but only for purposes for which the disclosure was made.

§ 8.6. When parental consent is required in order to release a student's records, and the parent refuses to give such consent, the LEA must use informal means to secure the consent. If the parent continues to refuse to give consent, the LEA must provide written notification to the person/agency requesting the information that parental consent is required and has been refused. If the LEA wishes to disclose information and has been unable to secure the necessary consent through informal means, the LEA may use more formal measures, as appropriate, to effect the release of the information.

§ 8.7. Parties to whom scholastic record data shall be disclosed, upon request, and the conditions of such disclosures are charted as follows: (x indicates disclosure is permitted)

Party	Category ↓ (cumulative) file	Category ↓ (confidential) file
1. Accrediting Organization: Without prior written consent of the parent or eligible student, data shall be disclosed to accrediting organizations in order to carry out their accrediting functions.	x	
2. Adult Clerical Personnel: Without prior written consent of the parent or eligible student, adult clerical personnel charged with record maintenance responsibility shall have access to scholastic records for maintenance purposes only.	x	x
3. Eligible Student Who is Subject of Record: Without prior written consent of the parent, data shall be disclosed to the eligible student, subject to the following limitations:	x	x
a. Following eligible student notification of the right to disclosure of data from his record, if a waiver of his right to disclosure of confidential letters and statements of recommendation has been obtained, the eligible student shall not have access to confidential letters and statements of recommendation relative to admission to an educational agency or institution, applications for employment, and the receipt of an honor or honorary recognition.		

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not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed with no longer needed for the purpose for which it was collected. The term "organization" includes, but is not limited to federal, state, and local agencies and independent organizations.

b. At the discretion of the LEA superintendent, record data shall be released to the staff of a college, university, or educational research and development organization or laboratory without prior written consent of the parent or eligible student under the following conditions:

- (1) If such information is necessary to a research project or study conducted, sponsored or approved by the college, university, or educational development organization or laboratory, and
- (2) If no student will be identified by name in the information submitted for research.

10. Parent. x x

Data shall be disclosed to the parent or guardian of the student including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access until the student is 18 years of age or is enrolled in an institution of post secondary education subject to the following limitations:

- a. Following parental notification of right to disclosure of data from student's record, if a waiver of this right to access to confidential letters and statements of recommendation has been obtained, the parent shall not have access to confidential letters and statements of recommendation relative to admission to an educational agency or institution, applications for employment, and the receipt of an honor or honorary recognition.
- b. Where the waiver is applied, the parent shall, upon request, be notified of the names of all persons making confidential recommendations and such recommendations shall be used solely for the purpose for which they were specifically intended.
- c. This waiver may be revoked at any time with the understanding that confidential letters and statements of recommendation submitted in reliance upon the waiver shall remain confidential.
- d. If any record includes data on more than one student, the parent shall have the right to inspect and review only that data relating to his child, or to be informed of that specific data.

11. Parents of Dependent Student (See Internal Revenue Code) x x

Data shall be disclosed. No prior written consent is required.

12. Principal/Designee of School Student Plans to Attend and/or Appropriate Official of Post-Secondary Institution Student Plans to Attend. x x

a. Transfer of Record Data within a School Division.

When a student moves from grade to grade or school to school within the LEA, his entire record shall follow him to indicate educational/developmental patterns. Prior written consent of parent or eligible student is not required for this transfer.

b. Other Transfer. x x

When a student transfers to another LEA, or postsecondary education, a transcript of his record to include academic achievement, standardized test data, cumulative health-physical fitness record, medical records, other pertinent information, etc., where appropriate shall be sent promptly, upon request, to the appropriate official of the LEA or school in which he seeks or intends to enroll. The LEA transferring the data shall make a reasonable effort to notify the parent or eligible student of such a transfer and shall provide him with a copy of the record, if desired, and an opportunity for a hearing to challenge the content of the record. The division superintendent or his designee shall notify the local police or sheriff's department for investigation as a possible missing child of any enrolled pupil whose cumulative record he is unable to obtain within 60 days or sooner, if the division superintendent or his designee has reason to suspect that the pupil is a missing child.

13. Professional Personnel Within School or School Division. x x

Without prior written consent of the parent or eligible student, data shall be disclosed to those professionals determined by the LEA to have legitimate educational interests in the student. (Professional personnel who copy data shall protect the confidentiality of such data.)

14. Public, Private School, College, University, Military. x x

Without prior consent of the parent or eligible student, names and addresses of present and former students may be disclosed to the following for the purpose of informing students and former students of available educational and career opportunities:

- a. Any officer or employee of a public or private school, college or university;
- b. Any official of a private business or professional school or college; and
- c. Any official recruiting representative of the military forces of the Commonwealth and the United States.

All school divisions electing to disclose the aforementioned information to parties named in 14.a and 14.b shall provide disclosure on the same basis to the parties named in 14.

15. State Superintendent of Public Instruction or Member of his Staff. x x

See Governmental and Educational Auditors, Evaluators, and Researchers.

16. Student (under eighteen) Who is Subject of Record. x x

Record data shall be disclosed to the student (under eighteen) who is the subject of the record with these limitations:

- a. Written consent of the parent may be required by the LEA for access of the students under eighteen years of age except in instances where the student is an emancipated minor or is enrolled in an institution of higher education.
- b. Students, including those enrolled in institutions of postsecondary education, shall not have access to financial records of the parents.

c. Following student notification of right of access to his record, the student may waive his right to inspect and review confidential letters and confidential statements for admission to an educational agency or institution; application for employment; and/or the receipt of an honor.

d. An educational agency or institution may request, but may not require that a parent or a student waive his rights.

e. To be valid, a waiver must be in writing and signed by the parent or student, as appropriate.

(1) Where the waiver is applied the student shall, upon request, be notified of the names of all persons making confidential recommendations and such recommendations shall be used solely for the purpose for which they were specifically intended. Should such recommendations be used for a different purpose, the waiver becomes void and the student has the right to inspect and review the recommendation.

(2) The waiver may be revoked at any time with the understanding that confidential letters and statements of recommendation submitted in reliance upon the waiver shall remain confidential.

17. Other Parties.

a. With prior written consent of the parent or eligible student, disclosure shall be made to a party or class of parties other than those listed in the foregoing paragraphs 1 through 16 subject to the following conditions:

(1) The written consent must specify records to be disclosed, the reasons for such disclosure, and the party or class of parties to which information shall be disclosed; and shall be signed and dated by the parent or eligible student.

(2) A copy of the records shall be made available, upon request, to the parent or eligible student, and to the student who is not an eligible student if so requested by the student's parents.

b. Following reasonable effort to notify, in advance, the parent or eligible student, disclosure shall be made in compliance with judicial order or pursuant to any lawfully issued subpoena.

c. Unless the parent or eligible student has submitted a written request for nondisclosure, directory information may be disclosed to other upon request at the option of the LEA.

PART IX.
DESTRUCTION.

§ 9.1. The LEA shall inform parents or eligible student when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the student;

§ 9.2. When personally identifiable information concerning a student with disabilities is no longer needed, it must be destroyed at the request of the parents (except that the student's name, address, telephone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time

limitation). If parents do not request the destruction of the personally identifiable information, it may be retained permanently. Destruction of scholastic records is the best protection against improper and unauthorized disclosure; however, the scholastic records may be needed for other purposes. When informing parents or eligible student about their rights under this section, the LEA should remind them that the scholastic records may be needed by the student or the parents for social security benefits or other purposes. If the parents or eligible student request that the information be destroyed, then the LEA shall retain only that information required under state law and regulations.

§ 9.3. Prior to destruction of data, a reasonable effort shall be made by the LEA to notify parents or eligible student that they have a right to be provided with a copy of data.

§ 1. Definitions.

The terms used in these regulations, except as otherwise defined herein, shall be in accord with the definitions contained in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, 34 CFR 99; the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1485, 34 CFR 300; and § 22.1-289 of the Code of Virginia.

§ 2. Management of scholastic record.

A. Local education agencies shall manage the scholastic records of all students in compliance with applicable law, including the [Family] Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, 34 CFR 99; the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1485, 34 CFR 300; and §§ [2.1-377 through 2.1-386, 16.1-260, 16.1-305.1, 16.1-305.2, 22.1-3.1, 22.1-270, 22.1-271.2,] 22.1-287, 22.1-287.1, 22.1-288, 22.1-288.2, 22.1-289, [46.1-305.1, and] 32.1-36.1 [and 42.1-76 through 42.1-91] .

B. Every notice of adjudication or conviction received by a local superintendent, and information contained in the notice, which is not a disciplinary record, shall be maintained by him and by any others to whom he disseminates it, separately from all other records concerning the student. However, if the school administrators or the school board takes disciplinary action against the student based upon an incident which formed the basis for the adjudication or conviction, the notice shall become a part of the student's disciplinary record. As used herein, "disciplinary record" means a record which is directly related to a student and any disciplinary action taken against that student for violation of school rules or policies occurring on school property or at school-sponsored events.

§ 3. Access.

A parent, guardian or other person having control or charge of a student shall be notified of his right to review, and to request an amendment of, the student's scholastic record in accordance with the procedures set forth in 34 CFR 99.

VA.R. Doc. No. R95-615; Filed June 30, 1995, 11:50 a.m.

Final Regulations

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.

Effective Date: August 23, 1995.

Summary:

The regulation is divided into five parts, and establishes additional definitions, clarifies entry requirements, provides information regarding examinations, implements new provisions for renewal and reinstatement, and clarifies standards of practice and conduct.

The regulation defines the following terminology regarding hearing aid specialists: affidavit, board, department, reciprocity, reinstatement, renewal and hearing aid specialist.

The 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 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 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, candidates will be allowed 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. Prior regulation allowed candidates two attempts to pass the licensing examination.

The 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.

Requirements and procedures for renewal and reinstatement are clarified in Part III and Part IV. The 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 30 days 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 regulation incorporates board policy regarding the use of purchase agreement terminology to comply with the Model Purchase Agreement provided by the board.

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

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 Karen W. O'Neal, Assistant Director, Board for Hearing Aid Specialists, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-0500.

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;

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- 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 may] 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 physician] 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 and Temporary Permit Candidates to be paid by all applicants for initial licensure except reciprocal applicants]	\$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 [4 calendar month 30 day] grace period
Reinstatement	\$350	[30 days 4] - 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, on December 31 of each even-numbered year] 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

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have the license reinstated by submitting a reinstatement form and a renewal fee of \$140 plus an additional \$140 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~~ 30 days] 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~~ 30 days] 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, [and] 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;

e. 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

2. 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

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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 client*] to a physician unless the [*patient client*] 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 of 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

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

h. [g. h.] 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.

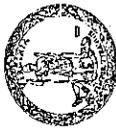
7. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or of a misdemeanor involving moral turpitude there being no appeal pending therefrom or the time for appeal having elapsed. Any pleas of nolo contendere shall be considered a conviction 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. R95-586; Filed June 28, 1995, 11:52 a.m.



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 A HEARING AID SPECIALISTS LICENSE

Applicants applying for licensure via reciprocity/physicians check appropriate category and submit the required fee: <input type="checkbox"/> Licensure by Reciprocity - \$190 (includes exam fee) <input type="checkbox"/> Licensure for Physicians - \$130	Applicants applying for licensure by examination and/or for a temporary permit shall submit the required fees: <input type="checkbox"/> Application Fee - \$130 <input type="checkbox"/> Examination Fee - \$110 <input type="checkbox"/> Temporary Permit Fee - \$130
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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 lying, cheating, stealing, sexual offense, drug distribution, or physical injury, or relating to the practice of the profession 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

Table with 4 columns: Dates, Employer's Name and Address, Description of Duties, Name of Dept. Head/Supervisor. Rows for To/From dates.

C. Have you passed the National Institute of Hearing Instruments Specialists (NIHIS) exam? 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)

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.

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:



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 lying, cheating, stealing, sexual offense, drug distribution, or physical injury, or relating to the practice of the profession 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 duly 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

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 Part II: Board Practical Examination - \$95
- Section I - NIHIS Exam Section I - Administration of Audiometric Tests
 Section II - VA Rules and Regs Section II - Taking of Ear mold 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: _____

Final Regulations

DEPARTMENT OF TRANSPORTATION

REGISTRAR'S NOTICE: The following regulations were filed by description with the Registrar of Regulations in accordance with § 2.3 of the Virginia Code Commission Regulations Implementing the Virginia Register Act. Section 2.3 of the Virginia Code Commission Regulations allows the Registrar to authorize the filing of a regulatory document by description in lieu of filing the entire text pursuant to criteria identified in that section.

Title of Regulation: VR 385-01-30. Delegation of Duties (DPM 1-6).

Statutory Authority: § 33.1-8 of the Code of Virginia.

Effective Date: March 8, 1995 (filed by description 6/26/95).

Exemptions Claimed:

This regulation is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1 C 2 of the Code of Virginia, which excludes from Article 2 of the Administrative Process Act regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. Subdivision 2 a of § 2.3 of the Virginia Code Commission Regulations allows regulations concerning public officers and employees to be filed by description subject to the authorization of the Registrar of Regulations.

Summary:

The Delegation of Duties directive (VR 385-01-30) is published as Department Policy Memorandum (DPM) 1-6 in the Department Policy Memoranda Manual. It lists the duties the commissioner has delegated to his senior staff as provided for by § 33.1-8 of the Code of Virginia.

VA.R. Doc. No. R95-628; Filed June 26, 1995, 9:14 a.m.

Title of Regulation: VR 385-01-36. Internal Audit Charter (DPM 5-1).

Statutory Authority: §§ 2.1-234.32 and 33.1-8 of the Code of Virginia.

Effective Date: March 8, 1995 (filed by description 6/26/95).

Exemptions Claimed:

This regulation is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1 C 2 of the Code of Virginia, which excludes from Article 2 of the Administrative Process Act regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. Subdivision 2 a of § 2.3 of the Virginia Code Commission Regulations allows regulations concerning public officers and employees to be filed by description subject to the authorization of the Registrar of Regulations.

Summary:

The Internal Audit Charter establishes the mission, reporting responsibilities, authority, functions, limitations, and standards which VDOT's Internal Audit Division follows in performing its assigned duties in compliance with agency policy and state law. The charter is published as Department Policy Memorandum (DPM) 5-1 in the Department Policy Memoranda Manual.

VA.R. Doc. No. R95-627; Filed June 26, 1995, 9:14 a.m.

EMERGENCY REGULATIONS

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: State Plan for Medical Assistance
Relating to Durable Medical Equipment.

VR 460-03-3.1100. Narrative for the Amount, Duration
and Scope of Services.

VR 460-02-3.1300. Standards Established and Methods
Used to Assure High Quality of Care.

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

Effective Dates: July 1, 1995, through June 30, 1996.

Summary:

1. **REQUEST:** The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Durable Medical Equipment. This regulation will expand the availability of this service to all Medicaid recipients regardless of their use of home health services.

2. **RECOMMENDATION:** Recommend approval of the Department's request to take an emergency adoption action regarding Durable Medical Equipment. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Robert C. Metcalf
Director

Date: May 5, 1995

3. CONCURRENCES:

/s/ Kay C. James
Secretary of Health and Human Resources

Date: June 20, 1995

4. APPROVED:

/s/ George F. Allen
Governor

Date: June 29, 1995

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations

Date: June 30, 1995

DISCUSSION

6. **BACKGROUND:** The sections of the State Plan affected by this action are the Narrative for the Amount, Duration and Scope of Services, Supplement 1 to Attachment 3.1 A&B (VR 460-03-3.1100) and Standards Established and Methods Used to Assure High Quality of Care, Attachment 3.1 C (VR 460-02-3.1300). The purpose of this emergency regulation is to eliminate the requirement that recipients meet home bound criteria in order to receive durable medical equipment by expanding the coverage of medically necessary durable medical equipment and supplies to the entire Medicaid population. This change was mandated by § 396E.5. of the 1995 Appropriations Act.

Durable medical equipment and supplies (DME) are a federally required service under home health services (42 CFR 440.70). Title 42 of the Code of Federal Regulations

(CFR) § 441.15 defines that home health services include, at a minimum, nursing services, home health aide services, and medical supplies, equipment, and appliances. The State Plan is required to indicate that these are covered services for the categorically needy recipients and medically needy recipients to whom skilled nursing facility services are provided under the Plan.

The Department of Medical Assistance Services (DMAS) has been providing home health services, and the concomitant DME since 1969. For most of this time, the Virginia Department of Health, through its local health departments, granted prior authorization for DME consistent with DMAS policies. Approximately six years ago, DMAS assumed responsibility for authorizing durable medical equipment and supplies. Historically, DMAS has provided all available DME to patients meeting home health services criteria but only certain DME to the entire Medicaid population. The entire Medicaid population are currently limited to: ostomy, respiratory, and dialysis equipment and supplies.

In order to receive any other DME, i.e., wheelchairs, diapers, augmentative communication devices, Medicaid recipients had to meet the home health criteria, their physicians had to order the equipment or supply which had to be medically necessary. Home health criteria are as follows: the patient is unable to leave home without the assistance of others or the use of special equipment; the patient is ordered by the physician to restrict his activity due to a weakened condition; the patient has a mental or emotional problem which is manifested in part by refusal to leave his home environment or is of such a nature that it would not be considered safe for him to leave home unattended; or the patient has an active communicable disease and the physician restricts the patient to prevent exposing others to the disease.

This regulation will allow DMAS to provide medically necessary durable medical equipment to the entire Medicaid population regardless of whether the individual meets the above home health criteria. The primary advantage of this change is that persons who are Medicaid eligible that do not meet the home health criteria will be able to get durable medical equipment and supplies. For example, recipients who are diabetic will be able to obtain Medicaid coverage of their diabetic supplies without having to meet the home health criteria. There are no readily identifiable disadvantages to the public for this regulatory action. Providing DME to the entire Medicaid population will permit more recipients who have not been able to obtain medically necessary DME to have their medical needs met.

Durable medical equipment and supplies still must be ordered by a physician and be medically necessary to treat a health care condition. A Certificate of Medical Necessity (CMN) is required and must be in place before services are rendered. A CMN must be based on an assessment of the patient's medical needs. The CMN must contain all medical documentation that is required by DMAS' DME guidelines. The CMN is valid for six months for Medicaid recipients who are 21 years of age and under (children). For the adult population, the CMN is valid for one year. DMAS has the authority to determine the time a CMN is valid based on

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submitted medical documentation. The CMN may be completed by the DME provider and other health care professionals, but must be signed and dated, at the time of service, by the attending physician. Supporting documentation may be attached to the CMN; however, the physician's order, in its entirety, must be recorded on the CMN. The DME provider must provide the equipment and supplies as prescribed by the attending physician on the CMN. Orders must not be changed unless the DME provider obtains a new or revised CMN with the physician signature prior to ordering or providing to the patient the equipment or supplies. It is the responsibility of the DME provider to maintain a copy of the CMN on file for DMAS' post payment audit reviews.

Generic orders are not acceptable and each component must be individually identified. Durable medical equipment providers are not allowed to create or revise CMN's or supporting documentation for equipment or supplies provided after the post payment review has taken place.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

The Code of Federal Regulations §§ 440.70 and 441.15 establish and define home health services and the companion durable medical equipment. The Health Care Financing Administration has notified DMAS that coverage of DME and supplies must be consistently applied across all recipient groups. All covered DME and supplies may be restricted to only those individuals who meet the homebound criteria or the service may be made available to the entire Medicaid population. In order to avoid the negative impact on those persons already receiving DME and supplies, DMAS is expanding this service's coverage to all Medicaid recipients.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the July 1, 1995, effective date established by the 1995 Appropriations Act.

8. NEED FOR EMERGENCY ACTION: The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the 1995 Appropriations Act, he must take this emergency adoption action once the Governor approves. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because the Appropriation Act requires this regulation be effective within 280 days from the

enactment of the law. As such, this regulation may be adopted without public comment with the prior approval of the Governor. Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

9. FISCAL/BUDGETARY IMPACT: DMAS estimates that expenditures for DME will increase approximately \$1,000,000 total funds (\$500,000 GF; \$500,000 NGF) in FY 96 as a result of this regulatory change. The majority of these expenditures is expected to be for the purchase of blood glucose monitors and supplies which allow diabetics to monitor their blood sugar levels at home. DMAS has not received any additional appropriations for this initiative and will reimburse any DME expenditures incurred with existing FY 96 appropriations. There are no localities which are uniquely affected by these regulations as they apply statewide.

DMAS currently has approximately 1600 enrolled DME providers. Neither DMAS' reimbursement methodology nor amount of payment to providers is being affected by this regulatory change. It is reasonable to expect the number of enrolled DME providers to increase with this expansion of DME to the entire Medicaid population. DMAS is unable to predict how much expansion will take place. The increase of enrolled Medicaid DME providers will also mean more recipients will be served and have the opportunity to exercise freedom of choice when selecting an enrolled provider. The availability of adequate providers has been problematical in rural areas where the small DME providers have been the only source of such medical care. However, prior authorization requirements and the review of utilization of services to recipients will permit DMAS to control DME expenditures.

10. RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective on July 1, 1995. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department would lack the authority to comply with the requirement of the 1995 Appropriations Act to expand the coverage of durable medical equipment to all Medicaid recipients.

11. APPROVAL SOUGHT FOR VR 460-03-3.1100 and VR 460-02-3.1300.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

VR 460-03-3.1100. Narrative for the Amount, Duration and Scope of Services.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. ~~Durable Medical medical supplies, and equipment, and appliances (DME) suitable for use in the home.~~

1. ~~General requirements and conditions.~~

a. ~~All medically necessary medical supplies, and equipment, and appliances are shall be covered for Medicaid recipients who meet home health criteria. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase. All medical supplies, equipment, and appliances shall be provided in accordance with guidelines found in the Virginia Medicaid DME and Supplies Manual.~~

b. ~~DME providers shall be responsible for adhering to DMAS' guidelines for durable medical equipment and supplies.~~

c. ~~DME must be ordered by a physician and be medically necessary to treat a health care condition.~~

d. ~~The DME provider must provide the equipment and supplies as prescribed by the attending physician on the Certificate of Medical Necessity (CMN). Orders must not be changed unless the DME provider obtains a new or revised CMN with the attending physician's dated signature prior to ordering or providing the DME to the patient.~~

e. ~~A CMN must be completed (including the attending physician's signature and dating) before services may be rendered. A CMN must be based on an assessment of the patient's medical needs. The CMN shall be valid for six months for Medicaid recipients who are 21 years of age and younger. The CMN shall be valid for 12 months for persons older than 21 years of age.~~

f. ~~DMAS shall have the authority to determine a different (from those specified above) length of time a CMN may be valid based on medical documentation submitted on the CMN. The CMN may be completed by the DME provider or other health care professionals, but it must be signed and dated by the attending physician. Supporting documentation may be attached to the CMN but the attending physician's entire order must be on the CMN. Generic orders shall not be acceptable and each equipment or supply component must be individually identified (for example, "IV supplies" is not acceptable).~~

g. ~~Documentation requirements. It shall be the responsibility of the DME provider to maintain a copy of the CMN on file for DMAS' post payment audit review purposes. DME providers shall not be permitted to create or revise CMNs or supporting documentation for this service after the initiation of the post payment review audit process. The initiation of the post payment review audit process shall be unannounced.~~

2. ~~Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and~~

~~supplies, and respiratory equipment and oxygen, and ostomy supplies, as authorized by the agency. Reserved.~~

3. ~~Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:~~

a. ~~Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners~~

b. ~~Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office~~

c. ~~Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales)~~

d. ~~Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface;) mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (i.e., electric wheelchair plus a manual chair); cleansing wipes~~

e. ~~Prosthesis, except for artificial arms, legs, and their supportive devices which must be preauthorized by the DMAS central office (Effective July 1, 1989)~~

f. ~~Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and non-legend drugs~~

g. ~~Orthotics, including braces, splints, and supports~~

h. ~~Home or vehicle modifications~~

i. ~~Items not suitable for or not used primarily in the home setting (i.e., car seats, equipment to be used while at school, etc.)~~

j. ~~Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.)~~

4. ~~For coverage of blood glucose meters for pregnant women, refer to Supplement 3 to Attachment 3.1 A & B.~~

5. ~~Durable medical equipment, supplies, and appliances must be ordered by a physician and be medically necessary to treat a health care condition. The physician shall complete a written certificate of medical necessity (CMN) for all durable medical equipment, supplies, and appliances based on an assessment of the patient's needs. The medical equipment and supply provider shall~~

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~~keep a copy of the certificate of medical necessity. The certificate of medical necessity shall be signed and dated by the physician. Reserved.~~

6. The medical equipment and supply vendor must provide the equipment and supplies as prescribed by the physician on the certificate of medical necessity. Orders shall not be changed unless the vendor obtains a new certificate of medical necessity prior to ordering or providing the equipment or supplies to the patient.

7. Medicaid shall not provide reimbursement to the medical equipment and supply vendor for services provided prior to the date prescribed by the physician or prior to the date of the delivery or when services are not provided in accordance with published policies and procedures. If reimbursement is denied for one of these reasons, the medical equipment and supply vendor may not bill the Medicaid recipient for the service that was provided.

8. Only supplies, ~~and equipment, and appliances~~ that are considered medically necessary shall be covered. All of the following must be met to be considered medically necessary. The supplies, equipment, or appliance must be:

- a. a reasonable and *medically* necessary part of the recipient's treatment plan;
- b. consistent with the symptoms, diagnosis, or medical condition of the illness or injury under treatment;
- c. not furnished for the convenience, *safety or restraint* of the recipient, the family, the attending practitioner, or other practitioner or supplier;
- d. necessary and consistent with generally accepted professional medical standards (i.e., not experimental or investigational);
- e. established as safe and effective for the recipient's treatment protocol; and
- f. furnished at the most appropriate level which is suitable for use in the recipient's home environment.

9. Coverage of enteral nutrition (EN) and total parenteral nutrition (TPN) which do not include a legend drug shall be limited to when the nutritional supplement is the sole source form of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary to treat a medical condition. Coverage of EN and TPN shall not include the provision of routine infant formulae. *A nutritional assessment shall be required for all recipients receiving nutritional supplements.*

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.
2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually without authorization. Limits shall apply per recipient regardless

of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

F. The following services are not covered under the home health services program:

1. Medical social services;
 2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;
 3. Community food service delivery arrangements;
 4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;
 5. Custodial care which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and
 6. Services related to cosmetic surgery.
8. Private duty nursing services.
- A. Not provided.
9. Clinic services.
- A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.
- B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:
1. are provided to outpatients;
- VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.**

I. Home Health Services.

1. Home health services which meet the standards prescribed for participation under Title XVIII will be supplied.
2. Home health services shall be provided by a licensed home health agency on a part-time or intermittent basis to a homebound recipient in his place of residence. The place of residence shall not include a hospital or nursing facility. Home health services must be prescribed by a physician and be part of a written plan of care utilizing the Home Health Certification and Plan of Treatment forms which the physician shall review at least every 62 days. *For receipt of DME-only services, refer to the following DME section.*
3. Except in limited circumstances described in subsection 4 below, to be eligible for home health services, the patient must be essentially homebound. The patient does not have to be bedridden. Essentially homebound shall mean:

- a. the patient is unable to leave home without the assistance of others who are required to provide medically necessary health care interventions or the use of special medical equipment;
 - b. the patient has a mental or emotional problem which is manifested in part by refusal to leave the home environment or is of such a nature that it would not be considered safe for him to leave home unattended;
 - c. the patient is ordered by the physician to restrict activity due to a weakened condition following surgery or heart disease of such severity that stress and physical activity must be avoided;
 - d. the patient has an active communicable disease and the physician quarantines the patient.
4. Under the following conditions, Medicaid will reimburse for home health services when a patient is not essentially homebound. When home health services are provided because of one of the following reasons, an explanation must be included on the Home Health Certification and Plan of Treatment forms:
- a. when the combined cost of transportation and medical treatment exceeds the cost of a home health services visit;
 - b. when the patient cannot be depended upon to go to a physician or clinic for required treatment, and, as a result, the patient would in all probability have to be admitted to a hospital or nursing facility because of complications arising from the lack of treatment;
 - c. when the visits are for a type of instruction to the patient which can better be accomplished in the home setting;
 - d. when the duration of the treatment is such that rendering it outside the home is not practical.
5. Covered Services: Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.
- a. Nursing services
 - b. Home health aide services
 - c. Physical therapy services
 - d. Occupational therapy services
 - e. Speech-language pathology services
 - f. Medical supplies, equipment, and appliances suitable for use in the home.
6. General Conditions. The following general conditions apply to skilled nursing, home health aide, physical therapy, occupational therapy, and speech-language pathology services provided by home health agencies.
- a. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his or her license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician

working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

b. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The written plan of care shall appear on the Home Health Certification and Plan of Treatment forms.

c. A physician recertification shall be required at intervals of at least once every 62 days, must be signed and dated by the physician who reviews the plan of care, and should be obtained when the plan of care is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. Recertifications must appear on the Home Health Certification and Plan of Treatment forms.

d. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

e. ~~The physician orders~~ *Certificate of Medical Necessity (CMN)* for durable medical equipment and supplies shall include the specific item identification ~~including all modifications order and each component must be individually identified.~~ *The CMN must include a narrative clinical diagnosis, the frequency of use, the number of supplies needed monthly, and an estimate of how long the recipient will require the use of the equipment or supplies. All durable medical equipment or supplies requested ordered must be directly related to the physician's plan of care and to the patient's condition and medical treatment.*

f. A written physician's statement located in the medical record must certify that:

(1) the home health services are required because the individual is confined to his or her home (except when receiving outpatient services);

(2) the patient needs licensed nursing care, home health aide services, physical or occupational therapy, speech-language pathology services, or durable medical equipment and/or supplies;

(3) a plan for furnishing such services to the individual has been established and is periodically reviewed by a physician; and

(4) these services were furnished while the individual was under the care of a physician.

g. The plan of care shall contain at least the following information:

(1) diagnosis and prognosis

(2) functional limitations

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- (3) orders for nursing or other therapeutic services
- (4) orders for medical supplies and equipment, when applicable
- (5) orders for home health aide services, when applicable
- (6) orders for medications and treatments, when applicable
- (7) orders for special dietary or nutritional needs, when applicable
- (8) orders for medical tests, when applicable, including laboratory tests and x-rays

7. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided. *It is the responsibility of DME providers to maintain copies of the certificates of medical necessity (CMN) on file for post payment audit reviews. Durable medical equipment and supplies that are not documented on the CMN for which reimbursement has been made by Medicaid will be retracted. Supporting documentation is allowed to justify the medical need for durable medical equipment and supplies. Supporting documentation does not replace the requirement for a CMN. The dates of the supporting documentation must coincide with the dates of service on the CMN and the medical disciplinary providing the supporting documentation must be identified by name and title. DME providers are not allowed to create or revise CMNs or supporting documentation for durable medical equipment and supplies provided after the post payment audit review has taken place.*

8. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

a. **Nursing Services.** Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

b. **Home Health Aide Services.** Home health aides must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A recipient may not receive duplicative home health aide and personal care aide services.

c. **Rehabilitation Services.** Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical

practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by physicians of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.

(1) Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(2) Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(3) Speech-language pathology services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech Pathology. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech Pathology.

d. Durable Medical Equipment and Supplies: *Persons needing only DME/supplies may obtain such services directly from the DME provider without having to consult or obtain services from a home health service or home health provider. Durable medical equipment, DME/supplies, and/or appliances must be ordered by the physician, be related to the needs medical treatment of the patient, and the complete order must be on the CMN included on the plan of care for persons receiving home health services in addition to durable medical equipment and supplies DME/supplies.* Treatment supplies used for treatment during the visit are included in the visit rate of the home health provider. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.

e. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.

J. Optometrists' services are limited to examinations (refractions) after preauthorization by the State Agency except for eyeglasses as a result of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT).

VA.R. Doc. No. R95-612; Filed June 30, 1995, 11:08 a.m.

Title of Regulation: VR 460-04-2.2100. Medical Assistance Eligibility Resulting from Welfare Reform.

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

Effective Dates: July 1, 1995, through June 30, 1996.

Summary:

1. **REQUEST:** The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Medical Assistance Eligibility Resulting from Welfare Reform. This regulation will reflect the medical assistance transitional benefits mandated in § 63.1-133.46 D of the Code of Virginia as amended in House Bill 2001 relating to individuals who lose Aid to Families With Dependent Children cash assistance.

2. **RECOMMENDATION:** Recommend approval of the Department's request to take an emergency adoption action regarding Medical Assistance Eligibility Resulting from Welfare Reform. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Robert C. Metcalf
Director
Date: June 16, 1995

3. **CONCURRENCES:**

/s/ Kay C. James
Secretary of Health and Human Resources
Date: June 27, 1995

4. **APPROVED:**

/s/ George Allen
Governor
Date: June 29, 1995

5. **FILED WITH:**

/s/ Joan W. Smith
Registrar of Regulations
Date: June 30, 1995

DISCUSSION

6. **BACKGROUND:** The regulations affected by this action are Medical Assistance Eligibility Resulting from Welfare Reform (VR 460-04-2.2100).

The 1995 session of the Virginia General Assembly enacted House Bill 2001 (HB 2001) which enables Virginia to implement the Virginia Independence Program (VIP). VIP is a comprehensive, statewide welfare reform program which changes Aid to Families With Dependent Children (AFDC) cash assistance from a permanent to a temporary form of assistance to be provided while individuals prepare for self-sufficiency. The goals of VIP are to reduce long-term dependence on welfare, to emphasize personal responsibility, and to enhance opportunities for personal initiative and self-sufficiency by promoting the value of work. A major part of this welfare reform initiative is VIP's employment component, the Virginia Initiative for Employment not Welfare (VIEW). VIEW is a work program to be implemented statewide on a four-year, phased-in basis which will promote self-reliance, self-improvement and personal responsibility, and will be required for those families who cannot be diverted from the receipt of ongoing cash assistance. While HB 2001 includes major revisions to AFDC eligibility and establishes work requirements and time limited assistance for a portion of the AFDC population, a number of the provisions apply to all AFDC recipients and some provisions affect eligibility for and receipt of medical assistance.

Several of the provisions of HB 2001 require waivers from the mandates of public assistance programs that must be approved by the U.S. Department of Health and Human Services. The Welfare Reform provisions of HB 2001 must be implemented on either July 1, 1995, or the effective date of approval of the federal waivers, whichever date is later. Regardless of the implementation date, HB 2001 mandates that necessary regulations be promulgated within 280 days of enactment of the legislation. Because the Medicaid provisions of House Bill 2001 must be implemented concurrently with the Welfare Reform provisions in the AFDC program, the Medicaid provisions, which are not exempt under § 9-6.14:4.1(C)(4)(a), must also meet the 280 day promulgation requirement. Thus, this emergency regulation is necessary to ensure that individuals who lose AFDC because of the requirements of House Bill 2001 continue to receive Medicaid for the transition period.

Currently, under federal legislation, individuals who lose AFDC benefits because of increased earnings from employment are entitled to up to 12 months of Medicaid as long as they continue to have a dependent child residing in the household throughout the period, the family makes

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required periodic reports of income, and the family's gross income does not exceed 185% of the federal poverty income guideline. HB 2001 extends this transitional medical assistance to individuals who lose AFDC for reasons other than increased earnings from employment. HB 2001 provides that a former AFDC recipient may continue to receive Medicaid-covered services for up to 12 months after the termination of AFDC benefits, regardless of the reason for the termination, if they do not have health insurance available from their employer and their family income does not exceed 185% of the federal poverty income guideline.

In addition, HB 2001 provides that an individual who becomes ineligible for AFDC because of non-compliance with school attendance laws shall continue to be regarded as an AFDC recipient for purposes of Medicaid eligibility. Because these individuals continue to be considered AFDC recipients, these individuals are covered under Medicaid regulations already in effect, so they are not covered under the transitional benefits policy described in these regulations.

7. **AUTHORITY TO ACT:** The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the State Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

The Commonwealth has applied for the necessary waiver of Section 1902(a)(1) of the Social Security Act pertaining to the statewide availability of services. Waiver of this section will allow the Commonwealth to implement transitional medical assistance on a phased-in basis over a four year period concurrently with the employment and time-limit provisions of HB 2001.

Section 63.1-133.46 of the Code of Virginia, as amended by HB 2001, mandated up to 12 months of medical assistance to individuals whose AFDC is terminated, including individuals whose AFDC is terminated because of increased earnings from employment. However, § 1925 of the Social Security Act mandates up to 12 months of transitional assistance only for individuals who lose AFDC benefits because of increased earnings from employment and who received AFDC in three of the preceding six months. The Commonwealth has applied for the necessary § 1115(a)(2) waiver to extend transitional medical assistance beyond the limits of the mandate in § 1925 of the Social Security Act. Federal approval of this waiver grants the Commonwealth the authority to extend transitional assistance to individuals who lose AFDC for reasons other than increased earnings and who have not received AFDC for the required three months in the preceding six months.

In its original § 1115(a)(2) waiver application, the Commonwealth requested the authority to terminate transitional medical assistance during the first six months of the 12-month extension period when the family income exceeds 185% of the federal poverty level or if insurance is

available through their employer. These provisions were required as part of HB 2001. Because these two provisions are more restrictive than the requirements of § 1925, the U.S. Secretary of Health and Human Services does not have the authority to approve these provisions. Section 1925 of the Social Security Act requires a 185% income test only in the second six months of the 12-month extension period; no income test may be applied to the first six months. Individuals who lose AFDC are automatically eligible for the first six months regardless of their earnings.

Also, HB 2001 requires the denial or termination of transitional medical assistance if an individual has medical insurance available through his employer. However, there is no authority in § 1925 to deny transitional medical assistance to individuals solely because they have insurance available through an employer. Instead, the federal law requires, as a condition of eligibility, that an individual apply for any employer-based coverage for which they are eligible. Because the state legislation contradicts federal legislation, the Commonwealth must comply with the federal legislation. Therefore, the availability of employer-based medical insurance will not result in loss of transitional medical assistance, but failure to apply for that insurance will.

Without an emergency regulation, this policy cannot become effective until the publication and concurrent public comment and review period requirements of Article 2 of the APA are met. Therefore, an emergency regulation is needed to meet the July 1, 1995, effective date established by the General Assembly.

8. **NEED FOR EMERGENCY ACTION:** The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. This regulation, which is not exempt under § 9-6.14:4.1(C)(4)(a), qualifies as an emergency as provided for in § 9-6.14:4.1(C)(5)(i) and (ii), because HB 2001 requires that the State Board of Social Services promulgate regulations implementing the provisions of the Virginia Independence Program (VIP) within 280 days of the enactment of the legislation. The medical assistance services included in VIP are administered by the Department of Medical Assistance Services. To enable the Board of Social Services to comply with the requirements of HB 2001, DMAS must implement medical assistance regulations concurrent with those of the Board of Social Services. Without this regulation, individuals would lose their medical assistance coverage, which could prevent them from accessing medically necessary services. Such occurrence could involve an imminent threat to the health or safety of affected families. Emergency regulations may be adopted without public comment with the prior approval of the Governor. Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is concurrently initiating the notice and public comment requirements set forth in Article 2 of the APA.

9. **FISCAL/BUDGETARY IMPACT:** DMAS does not anticipate a significant fiscal impact related to these welfare reforms as enacted by the 1995 Appropriations Act. The reforms allow recipients to continue receiving AFDC benefits for the next two years, and provide for one year of transitional Medicaid benefits after they are no longer receiving AFDC.

The Department of Planning and Budget based its overall cost estimates on the assumption that all individuals currently receiving AFDC benefits would likely participate in the welfare reform program and would continue to receive AFDC benefits through FY 97. Significant Medicaid savings will likely not accrue until FY 99, because those eligible recipients whose AFDC benefits are terminated after two years from the enactment of VIP may receive Medicaid benefits for the one year transitional period.

These regulations will impact only those individuals affected by the Virginia Independence Program (VIP) as defined in HB 2001. The VIEW portion of the VIP program will be phased-in over the next four years. The provisions of these regulations relating to transitional medical assistance will become effective in the areas of the Commonwealth in which VIEW is implemented. Only AFDC recipients residing in those areas will be affected.

Medicaid providers will not be directly affected by these regulations because Medicaid reimbursement or service coverage will not be affected.

10. **RECOMMENDATION:** Recommend approval of this request to adopt this emergency regulation to become effective upon its filing with the Registrar of Regulations. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, DMAS would lack the authority to implement the medical assistance provisions of HB 2001.

11. APPROVAL SOUGHT FOR VR 460-04-2.2100.

Approval of the Governor is sought for an emergency adoption of new Medicaid regulations in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

VR 460-04-2.2100. Medical Assistance Eligibility Resulting from Welfare Reform.

VIP/VIEW TRANSITIONAL MEDICAID BENEFITS

§ 1.0. Definitions.

"Aid to Families with Dependent Children" or "AFDC" means the public assistance programs authorized in §§ 406 and 407 of the Social Security Act and administered by the Virginia Department of Social Services. The term "AFDC" as used in these regulations includes Aid to Families with Dependent Children - Unemployed Parent (AFDC-UP).

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive assistance as defined in Virginia Department of Social Services' regulations.

"Caretaker-Relative" means the natural or adoptive parent or other relative, as specified in 45 Code of Federal Regulations (CFR), § 233.90(c)(1)(v), who is responsible for supervision and care of the needy child.

"Child" means an individual who would be considered a child under the AFDC State Plan.

"Family" means those individuals living in the household whose needs and income were included in determining the

AFDC eligibility of the assistance unit at the time that the AFDC benefits were terminated and individuals under AFDC sanction whose income but not needs were included. It also includes those individuals whose needs and income would be taken into account in determining the AFDC eligibility of the caretaker-relative's assistance unit under the AFDC State Plan if the family were applying in the current month.

"Family income" means all the earned income, as defined in the AFDC State Plan, of all the members of the family without application of any disregards except the family's cost of child care necessary for the employment of the caretaker-relative or those disregards required by another Federal statute.

"Transitional medical assistance" means extended medical assistance to participants in VIEW whose AFDC has been terminated voluntarily or involuntarily.

"Virginia Initiative for Employment not Welfare" or "VIEW" means the Job Opportunities and Basic Skills Training Program as implemented in the Commonwealth.

§ 2.0. Twelve month extension of eligibility for medical assistance.

A. **Requirements.** Notwithstanding any provision of the State Plan for Medical Assistance, each family which was receiving AFDC as a participant in VIEW immediately preceding the month in which such family becomes ineligible for AFDC, shall, subject to these provisions and without any reapplication for benefits, remain eligible for medical assistance for up to 12 consecutive months immediately succeeding AFDC termination. Individuals who have been eligible for the entire first six months may be eligible for continuation of transitional medical assistance for the second six months if they meet the additional eligibility requirements listed in § 2.0(C)(2).

B. **Notice of benefits.** In the notice of termination of AFDC benefits sent to a family meeting the requirements of paragraph A of this section, the local department of social services shall notify the family of its right to transitional medical assistance and include in such notice a description of the reporting requirements of § 4.0(B) and the circumstances described in § 2.0 under which such transitional assistance may be terminated.

C. Eligibility for Medical Assistance under VIEW.

1. **First six month period.** A participant of VIEW whose AFDC is terminated, either voluntarily or involuntarily, shall receive medical assistance, including transitional medical assistance for families with a working parent who becomes ineligible for AFDC financial assistance because of increased earnings, unless:

- The family ceases to include a child, or
- The caretaker-relative refuses to apply for health coverage offered by an employer as provided in § 3.0(B).

2. **Second six month period.** For families who received medical assistance during the entire first six-month period under subsection C 1, the following applies.

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a. Subject to § 2.0(C)(2)(b) and (c) below, assistance to a family during the second six month period shall terminate at the close of the first month in which:

(1) No child resides with the family, whether or not the child is (or would, if needy, be) a dependent child under AFDC;

(2) The family income exceeds 185 percent of the federal poverty level during the immediately preceding three month period;

(3) The caretaker-relative fails to meet the reporting requirements specified in § 4.0(B). Medical assistance under this provision shall terminate at the close of the 6th, 8th or 11th month of the 12-month period if the family fails to make the required report to the local department of social services, by the deadline specified in § 4.0(B), unless the family has established good cause for the failure to report on a timely basis;

b. Written notice before termination. No termination of assistance under these provisions shall become effective until the local department of social services provides the family with notice of the grounds for the termination.

c. Continuation in certain cases until redetermination.

(1) If a child is ineligible to receive transitional medical assistance under this section, but may be eligible for assistance under the State Plan for Medical Assistance because the child is described in clause (i) of § 1905(a) of the Social Security Act or clause (i)(IV), (i)(VI), (i)(VII), or (i)(IX) of § 1902(a)(10)(A) of the Social Security Act, the local department of social services shall not discontinue transitional medical assistance until that department has determined that the child is ineligible for medical assistance under the State Plan for Medical Assistance.

(2) If an individual ceases to receive transitional medical assistance under this section, but may be eligible for medical assistance under the State Plan for Medical Assistance because the individual is within a category of person for which medical assistance under the State Plan for Medical Assistance is available under § 1902(a)(10)(A) or (C) of the Social Security Act, the local department of social services shall not discontinue transitional assistance until that department determines that the individual is ineligible for medical assistance under the State Plan for Medical Assistance.

§ 3.0. Scope of coverage.

A. Subject to subparagraph § 3.0(B), during the 12-month extension period, the amount, duration, and scope of medical assistance made available to a family shall be the same as if the family were still receiving AFDC.

B. The Department of Medical Assistance Services (DMAS), at its option may, pursuant to the requirements of the Health Insurance Premium Payment Program (HIPP) in

VR 460-04-4.2230, pay a family's expenses for premiums, deductibles, coinsurance, and similar costs for health insurance or other health care coverage offered by an employer of the caretaker-relative or by an employer of the absent parent of a dependent child. If an employer offers such coverage to the caretaker-relative:

1. To receive transitional medical assistance coverage for himself and his family, the caretaker-relative shall make application for such employer coverage, but only if:

a. The employer does not require the caretaker-relative to make financial contributions for the coverage (whether through payroll deduction, payment of deductibles, coinsurance, or similar costs, or otherwise); and

b. DMAS provides, directly or otherwise, payment of any of the premium amount, deductible, coinsurance, or similar expense that the employee is otherwise required to pay; and

2. DMAS treats the coverage under the employer plan as a third party liability (as of 5/1/95 under § 1902(a)(25) of the Social Security Act).

C. DMAS shall consider payments for premiums, deductibles, coinsurance, and similar expenses as payments for medical assistance.

§ 4.0. Written notice and reporting requirements.

A. Notices. During the 3rd, 6th and 9th months of any transitional assistance DMAS shall notify the family of the reporting requirements.

B. Reporting requirements. To receive continued transitional medical assistance, a family shall report the following to the local department of social services, not later than the 21st day of the 4th, 7th, and 10th month in the period of transitional assistance: the family's gross monthly earnings and the family's costs for child care necessary for the employment of the caretaker-relative in each month of the preceding three-month period. The local department of social services may permit continued transitional medical assistance, notwithstanding a failure to report, if the family has established good cause for the failure to report on a timely basis.

C. Good Cause. The local department of social services may grant an extension regarding the reporting requirements for good cause shown, pursuant to the Medicaid Client Appeals regulations at VR 460-04-8.7.

D. Frequency of reporting. A family receiving transitional assistance shall not be required to report more frequently than as required under paragraph B.

E. Notice before termination. No termination of assistance shall become effective until the local department of social services provides the family with notice of the grounds for the termination. No termination shall be effective earlier than 10 days after the date of mailing of the notice.

§ 5.0. Appeals.

A. All appeals regarding the provision of services under these regulations shall be conducted pursuant to the Medicaid Client Appeals regulations at VR 460-04-8.7.

VA.R. Doc. No. R95-613; Filed June 30, 1995, 11:04 a.m.

Title of Regulation: VR 460-04-8.14. MEDALLION.

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

Effective Dates: July 1, 1995, through June 30, 1996.

Summary:

1. REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Expansion of MEDALLION Enrollment. This regulation will expand mandatory enrollment in the MEDALLION program to aged, blind, and disabled recipients.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Expansion of MEDALLION Enrollment. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Robert C. Metcalf
Director
Date: May 30, 1995

3. CONCURRENCES:

/s/ Kay C. James
Secretary of Health and Human Resources
Date: June 27, 1995

4. APPROVED:

/s/ George Allen
Governor
Date: June 29, 1995

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 30, 1995

DISCUSSION

6. BACKGROUND: The regulations affected by this action are MEDALLION (VR 460-04-8.14).

The Virginia managed care program, MEDALLION, operates under a waiver of § 1915(b)(1) of the Social Security Act, which provides for primary care case management. The waiver provides for continuity of care, reduced costs, promotion of the recipient's compliance and responsibility when accessing medical care, promotion of the educational and preventive aspects of health care, and assurance of adequate access to quality care for Medicaid recipients. The waiver allows Medicaid recipients to select a primary care physician (PCP) who provides, through an ongoing patient/physician relationship, primary care services and referral for all necessary specialty services.

The PCP assists the recipient in gaining access to the health care system and monitors on an ongoing basis the recipient's condition and health care needs. The PCP is responsible for locating, coordinating, and monitoring all primary care and other medical and rehabilitation services on behalf of recipients enrolled in the waiver program. The types of primary care providers enrolled in the waiver program are General and Family Practice physicians, Pediatricians, Internal Medicine physicians, Obstetricians and Gynecologists, Health Departments, Rural Health Centers and Federally Qualified Health Centers (FQHC), specialists now involved in primary care, and other specialists who agree to all the requirements of a PCP and serve special needs clients on a case-by-case basis.

Recipients enrolled in MEDALLION are restricted to services included under the waiver, and the services must be provided by their PCP or another qualified provider to whom the recipient was referred by the PCP. The current waiver applies only to recipients in these categories - Aid to Families with Dependent Children (AFDC); AFDC-related; and the medically needy, non spend-down.

Based on a requirement of the 1995 Appropriations Act, DMAS must expand the provisions of the waiver to include the aged, blind and disabled (ABD) who are not Medicare eligible and are non-institutionalized. Expanding MEDALLION to the designated ABD recipients will allow these individuals to receive the benefits of coordinated care and increased access to care. In addition, these recipients have not previously been afforded the opportunity to have their own primary care provider. MEDALLION ensures assignment to a PCP by either the recipient's choice or by assignment if the recipient elects not to choose a provider. As of March 1, 1995, 53,000 recipients were identified as meeting the eligibility requirements for MEDALLION in the ABD category. Of this number, 22,650 have used providers that are currently enrolled in MEDALLION; 21,277 have used non-MEDALLION providers; and 9,178 have not seen a provider in the last 12 months. Many of the non-MEDALLION providers identified are internal medicine physicians who may either be involved in the provision of primary care or the provision of subspecialty care. Because the majority of recipients have seen, within the last 12 months, either a primary care provider or an internal medicine subspecialist who has training in primary care, these recipients should experience a smooth entry into MEDALLION. However, for some recipients who have traditionally seen multiple specialty providers without the involvement of a primary care provider, there will be a period of adjustment to and understanding of the concept of managed care. To facilitate the adjustment to managed care, DMAS has provided notification to providers and recipients, held public forums, and attempted to disseminate information as early and clearly as possible.

Persons excluded from participating in the program are recipients receiving Medicare or personal care services; recipients residing in mental hospitals or skilled nursing facilities; recipients in foster care, subsidized adoptions, spend-down, or other waived community-based care programs; refugees; recipients with other medical insurance; and those recipients whose participating physicians have refused to enroll in MEDALLION.

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Services that are exempt from PCP authorization are dental services (dental services are provided only to persons under 21), EPSDT and immunization services provided through health departments, emergency room services, psychiatric/psychological services, pregnancy and pregnancy-related services, family planning services, routine newborn services, annual or routine vision examinations, pharmacy services, nursing home and ICF/MR services, and durable medical equipment. These services will continue to be received from any Medicaid provider.

7. **AUTHORITY TO ACT:** The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to promulgate permanent regulations based on the appropriate requirements of the APA.

The 1995 Appropriations Act requires DMAS to expand mandatory enrollment in the MEDALLION program to all Medicaid recipients, including aged, blind, and disabled recipients who do not receive Medicare or participate in community-based waiver programs. The provision requires this expansion to be effective July 1, 1995.

Without an emergency regulation, this amendment to the regulation cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the July 1, 1995, effective date established by the 1995 Appropriations Act.

8. **NEED FOR EMERGENCY ACTION:** The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because the 1995 Appropriation Act requires this regulation be effective within 280 days from the enactment of the law or regulation. As such, this regulation may be adopted without public comment with the prior approval of the Governor. Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

9. **FISCAL/BUDGETARY IMPACT:** MEDALLION primary care providers are General and Family Practice physicians, Pediatricians, Internal Medicine physicians, and Obstetricians and Gynecologists, health departments, rural health centers, Federally Qualified Health Centers (FQHC), specialists not involved in primary care, and other specialists who agree to provide primary care services. MEDALLION PCPs agree to provide 24 hour coverage for those clients assigned to them. Reimbursement for providers is based on a fee-for-service methodology and a \$3.00 management fee per month for each enrolled MEDALLION client. Providers should not be affected because they will continue to be reimbursed on a fee-for-service basis. The number of providers affected will

be determined by how many providers chose to enroll as PCPs. The Department is continuing to enroll providers to ensure adequate availability of services across the state. ABD recipients who are eligible for co-payments are required to pay the designated amount at the time of service. This requirement is consistent with the current Medicaid policy regarding co-payments.

The 1995 Appropriations Act requires DMAS to expand MEDALLION coverage to aged, blind and disabled recipients for a cost savings in FY 1996 of (\$355,000) GF, (\$355,000) NGF. This cost savings includes a reduction in inpatient hospitalization by 0.5% and in all other medical services by 1.5% for the affected population.

There are no localities which are uniquely affected by these regulations as they apply statewide.

10. **RECOMMENDATION:** Recommend approval of this request to adopt this emergency regulation to become effective July 1, 1995. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department would lack the authority to expand the MEDALLION program to cover the specified aged, blind and disabled individuals.

11. **APPROVAL SOUGHT FOR VR 460-04-8.14.**

Approval of the Governor is sought for an emergency modification of this Medicaid regulation in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

VR 460-04-8.14. MEDALLION.

§ 1. Definitions.

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

"ABD" shall mean aged, blind and disabled recipients of public assistance programs as defined by the Virginia Department of Social Services.

"ADG AFDC" means Aid to Families with Dependent Children which is a public assistance program, administered by the Department of Social Services, providing financial assistance to needy citizens.

"ADG AFDC related" means those recipients eligible for assistance as an extension of the ADG AFDC program, such as pregnant women and indigent children under specific ages. It shall not include foster care or spend-down medically needy clients.

"Ancillary services" means those services accorded to a client that are intended to support the diagnosis and treatment of that client. These services include, but are not necessarily limited to, laboratory, pharmacy, radiology, physical therapy, and occupational therapy.

"Client" or "clients" means an individual or individuals having current Medicaid eligibility who shall be authorized to participate as a member or members of "MEDALLION."

"*Comparison group*" means the group of Medicaid recipients whose utilization and costs will be compared against similar groups of "MEDALLION" clients.

"*Covering provider*" means a provider designated by the primary care provider to render health care services in the temporary absence of the primary provider.

"*DMAS*" means the Department of Medical Assistance Services.

"*Emergency services*" means services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

1. Placing the client's health in serious jeopardy;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part.

"*EPSDT*" means the Early and Periodic Screening, Diagnosis, and Treatment program.

"*Gatekeeper*" means the function performed by the "MEDALLION" primary care provider in controlling and managing assigned clients through appropriate levels of medical care.

"*General practitioner*" means a licensed physician who provides routine medical treatment, diagnosis, and advice to maintain a client's health and welfare.

"*Primary care provider*" or "*PCP*" means that "MEDALLION" provider responsible for the coordination of all medical care provided to a "MEDALLION" client and shall be recognized by DMAS as a Medicaid provider.

"*Site*" means, for purposes of these regulations, the geographical areas that best represent the health care delivery systems in the Commonwealth. In certain areas (sites), there may be two or more identifiable health care delivery systems.

"*Specialty*" or "*specialist services*" means those services, treatments, or diagnostic tests intended to provide the patient with a higher level of medical care or a more definitive level of diagnosis than that routinely provided by the primary care provider.

"*Spend-down*" means the process of reducing countable income by deducting incurred medical expenses.

"*State*" means the Commonwealth of Virginia.

§ 2. Program purpose.

The purpose of "MEDALLION" shall be to provide management in the delivery of health care services by linking the primary care provider (PCP) with targeted clients. The PCP shall provide medical services as appropriate for clients' health care needs and shall coordinate clients' receipt of other health services. This shall include, but not be limited to, referral to specialty providers as medically appropriate.

§ 3. "MEDALLION" clients.

Clients of "MEDALLION" shall be individuals receiving Medicaid as *ADG ABD, AFDC* or *ADG-related AFDC-related* categorically needy and medically needy (except those becoming eligible through spend-down) and except for foster care children, whether or not receiving cash assistance grants. The following exclusions shall apply:

1. Exclusions. The following individuals shall be excluded from participating in "MEDALLION":

- a. Individuals who are inpatients in mental hospitals and skilled nursing facilities;
- b. Individuals who are receiving personal care services;
- c. Individuals who are participating in foster care or subsidized adoption programs, who are members of spend-down cases, or who are refugees.
- d. *Individuals receiving Medicare;*

† e. A client may be excluded from participating in "MEDALLION" if any of the following apply:

- (1) Client not accepted to the caseload of any participating PCP.
- (2) Client whose enrollment in the caseload of assigned PCP has been terminated and other PCPs have declined to enroll the client.

2. Client enrollment process.

- a. All *ADG ABD, AFDC* or *ADG AFCD-related* recipients excepting those meeting one of the exclusions of § 3 shall be enrolled in "MEDALLION."
- b. Newly eligible individuals shall not participate in "MEDALLION" until completion of the Medicaid enrollment process. This shall include initial enrollment at the time of eligibility determination by Department of Social Services staff, or any subsequent reenrollment that may occur.
- c. Clients shall receive an interim Medicaid card from DMAS, and shall be provided authorized medical care in accordance with current procedures, after eligibility requirements are met.
- d. Once clients are fully registered as "MEDALLION" clients, they will receive a "MEDALLION" identification card ~~card to replace material in addition to~~ the Medicaid card.

3. PCP selection. Clients shall be given the opportunity to select the PCP of their choice.

- a. Clients shall notify DMAS of their PCP selection within 30 days of receiving their "MEDALLION" enrollment notification letter. If notification is not received by DMAS within that timeframe, DMAS shall select a PCP for the client.
- b. Selected PCP shall be a "MEDALLION" enrolled provider.

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c. PCP will provide 24-hour access, which shall include as a minimum a 24-hour telephone number to be placed on each client's "MEDALLION" identifier.

d. DMAS shall review client requests in choosing a specific PCP for appropriateness and to ensure client accessibility to all required medical services.

4. Mandatory assignment of PCP. Assignments shall be made for those clients not selecting a PCP as described in subdivision 3 of this section. The selection process shall be as follows:

a. Clients shall be assigned to "MEDALLION" providers on a random basis. The age, gender, and any special medical needs shall be considered in assigning a provider with an appropriate specialty. Any prior patient-provider relationships shall be maintained if appropriate. Families will be grouped and assigned to the same provider when possible.

b. Each site having two or more separately identifiable provider groups shall be divided into separate regions for client assignment. Clients shall initially be assigned to a PCP according to the region in which they reside. Should insufficient PCPs exist within the client's specific region, clients shall be assigned a PCP in an adjacent region.

c. Each PCP shall be assigned a client, or family group if appropriate, until the maximum number of clients the PCP has elected to serve has been reached, or until there are no more clients suitable for assignment to that PCP, or all clients have been assigned.

5. Changing PCPs. "MEDALLION" clients shall remain with the assigned PCP for a period of not less than six months. After that time clients may elect to change PCPs. Changes may be made annually thereafter.

a. Requests for change of PCP "for cause" are not subject to the six-month limitation, but shall be reviewed and approved by DMAS staff on an individual basis. Examples of changing providers "for cause" may include but shall not be necessarily limited to:

(1) Client has a special medical need which cannot be met in his service area or by his PCP.

(2) Client has a pre-existing relationship with a Medicaid provider rendering care for a special medical need.

(3) Mutual decision by both client and provider to sever the relationship.

(4) Provider or client moves to a new residence, causing transportation difficulties for the client.

(5) Provider cannot establish a rapport with the client.

b. The existing PCP shall continue to retain the client in the caseload, and provide services to the client until a new PCP is assigned or selected.

c. PCPs may elect to release "MEDALLION" clients from their caseloads for cause with review and approval by DMAS on a case-by-case basis. In such circumstances, § 3 5 b shall apply.

6. "MEDALLION" identification card *material*. Each client enrolled shall receive a "MEDALLION" card *identifier*, which shall replace ~~and be distinct from the Medicaid card in appearance, and embossed with the "MEDALLION" logo.~~

a. The front of the card *identifier* shall include the client's name, Medicaid case identification number, birthdate, sex, PCP's name, address, 24-hour access telephone number, and the effective time period covered by the card.

b. The "MEDALLION" Hot Line 800 number will be listed on the card *identifier*.

c. Clients shall contact their assigned PCP or designated covering provider to obtain authorization prior to seeking nonemergency care.

d. Emergency services shall be provided without delay or prior authorization. However, the emergency nature of the treatment shall be documented by the provider providing treatment and should be reported to the PCP after treatment is provided. Clients should inform the PCP of any emergency treatment received.

§ 4. Providers of services.

Providers who may enroll to provide "MEDALLION" services include, but are not limited to, physicians of the following primary care specialties: general practice, family practice, internal medicine, and pediatrics. Exceptions may be as follows:

1. Providers specializing in obstetric/gynecologic care may enroll as "MEDALLION" providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

2. Physicians with subspecialties may enroll as "MEDALLION" providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

3. Other specialty physicians may enroll as PCPs under extraordinary, client-specific circumstances when DMAS determines with the provider's and recipient's concurrence that the assignment would be in the client's best interests. Such circumstances may include, but are not limited to, the usual-and-customary practice of general medicine by a board-certified specialist, maintenance of a pre-existing patient-physician relationship, or support of the special medical needs of the client.

4. DMAS shall review applications from physicians and other health care professionals to determine appropriateness of their participating as a "MEDALLION" PCP.

§ 5. "MEDALLION" provider requirements.

A. PCPs must require their clients to present their currently effective "MEDALLION" card upon presentation for services.

B. PCPs shall track and document any emergency care provided to "MEDALLION" clients.

C. PCPs shall function as "gatekeeper" for assigned clients. Specific requirements shall include but are not necessarily limited to:

1. Providing patient management for the following services: physician, pharmacy, hospital inpatient and outpatient, laboratory, ambulatory surgical center, radiology, and durable medical equipment and supplies.
2. Providing or arranging for physician coverage 24 hours per day, seven days per week.
3. Determining the need for and authorizing when appropriate, all nonemergency care.
4. Being an EPSDT provider, or having a referral relationship with one, and providing or arranging for preventive health services for children under the age of 21 in accordance with the periodicity schedule recommended in the Guidelines for Health Supervision of the American Academy of Pediatrics (AAP).
5. Making referrals when appropriate, conforming to standard medical practices, to medical specialists or services as required. The referral duration shall be at the discretion of the PCP, and must be fully documented in the patient's medical record.
6. Coordinating inpatient admissions either by personally ordering the admission, or by referring to a specialist who may order the admission. The PCP must have admitting privileges at a local hospital or must make arrangements acceptable to DMAS for admissions by a physician who does have admitting privileges.
7. Maintaining a legibly written, comprehensive, and unified patient medical record for each client consistent with documentation requirements set forth in DMAS' Physician Manual.
8. Documenting in each client's record all authorizations for referred services.
9. Providing education and guidance to assigned clients for the purpose of teaching correct methods of accessing the medical treatment system and promoting good health practices.

§ 6. Services exempted from "MEDALLION."

A. The following services shall be exempt from the supervision and referral requirements of "MEDALLION":

1. Obstetrical services (*pregnancy and pregnancy related*);
2. Psychiatric and psychological services, to include but not be limited to mental health, mental retardation services;
3. Family planning services;

4. Routine newborn services when billed under the mother's Medicaid number;

5. Annual or routine vision examinations (*under age 21*);

6. Dental services (*under age 21*); and

7. Emergency services.

B. While reimbursement for these services does not require the referral from or authorization by the PCP, the PCP must continue to track and document them to ensure continuity of care.

§ 7. PCP payments.

A. DMAS shall pay for services rendered to "MEDALLION" clients through the existing fee-for-service methodology and a case management fee.

B. "MEDALLION" providers shall receive a monthly case management fee of \$3.00 per client.

C. PCPs may serve a maximum of 1,000 "MEDALLION" clients. Groups or clinics may serve a maximum of 1,000 "MEDALLION" clients per authorized PCP in the group or clinic. Exceptions to this will be considered on a case-by-case basis predicated upon client needs.

§ 8. Utilization review.

A. DMAS shall review claims for services provided by or resulting from referrals by authorized PCPs. Claims review shall include, but not be limited to, review for the following:

1. Excessive or inappropriate services;
2. Unauthorized or excluded services; and
3. Analysis of possible trends in increases or reductions of services.

§ 9. Client and provider appeals.

A. Client appeals. Clients shall have the right of appeal of any adverse action taken by DMAS consistent with the provisions of VR 460-04-8.7.

B. Provider appeals. Providers shall have the right to appeal any adverse action taken by DMAS under these regulations pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

§ 10. "MEDALLION" phase-in across the Commonwealth.

DMAS presently has federal authority to administer "MEDALLION" in its initial phase consistent with its approved waiver. At such time as DMAS receives approval from the federal funding authority to expand "MEDALLION," the program shall be expanded in a phased-in manner to encompass the larger geographic areas.

VA.R. Doc. No. R95-614; Filed June 30, 1995, 11:01 a.m.

Emergency Regulations

BOARD OF NURSING

Title of Regulation: VR 495-01-1. Regulations of the Board of Nursing.

Statutory Authority: §§ 54.1-2400 and 54.1-3000 et seq. of the Code of Virginia.

Effective Dates: August 1, 1995, through July 31, 1996.

Nature of Emergency and Necessity for Action:

Emergency regulations are essential because of an imminent threat to the health and safety of vulnerable residents of long term care facilities who are at great potential risk for abuse, neglect or misappropriation of property by nurse aides in those facilities. An emergency situation has been created by drastic cuts in federal funding for the Nurse Aide Program in Virginia.

The Virginia Board of Nursing began the current fiscal year on July 1, 1995, with a budget of \$1.1 million to operate the Nurse Aide Registry. In a letter dated October 26, 1994, the Department of Health Professions was advised that notice had been received from the Health Care Financing Administration (HCFA) of an overall reduction in funding. The total amount available for the Nurse Aide Registry for Fiscal Year 1995 is \$696,638. By the end of the first quarter expenditures totaling \$233,827 had been incurred by the Nurse Aide Registry, leaving \$462,811 for the remaining three quarters of Fiscal Year 1995.

The Department of Health Professions with the Virginia Board of Nursing has implemented significant changes to reduce expenditures and has cut its direct costs. Without additional funding, Virginia will no longer be in compliance with federal and Virginia law and regulation, and the following changes in services can be anticipated:

- Although approximately 35 complaints per month are received against Certified Nurse Aides, remaining funds will permit only 42 investigations between December 1, 1994, and June 30, 1995. As a result, 182 cases will be deferred or will go uninvestigated. Without investigation, the seriousness of these cases cannot be determined. The increasing delay in the adjudication of cases will result in an increased likelihood of continued practice of Certified Nurse Aides with allegations of abuse, neglect or misappropriation of property.
- Uninvestigated cases invite continued abuse or reemployment in another nursing home. Even with evidence of abuse, there are insufficient funds to proceed expeditiously to investigation and case adjudication. Without funds to conduct formal hearings, the only disciplinary action against a Certified Nurse Aide may be a reprimand with finding of abuse which does not prohibit employment by another facility.
- All disciplinary conferences and hearings will be scheduled in Richmond rather than conducting them in venue. This will preclude receiving testimony from many of the witnesses who are the

residents of long term care facilities and unable to travel, resulting in the reduced likelihood of a finding of abuse or neglect.

- Federal law requires investigation of cases of abuse, neglect, or misappropriation of property of residents of nursing homes receiving Medicaid or Medicare funding. However, the Board also receives and investigates complaints of other violations such as substance abuse or unprofessional conduct by Certified Nurse Aides. The Board also receives and investigates complaints against CNA's in other long term care facilities, such as homes for adults or in private employment. Without additional funding, those cases may not be investigated or adjudicated, leaving a very vulnerable population unprotected.
- Twenty investigations of applicants with criminal convictions will be deferred, resulting in a delay in authorization to be tested and jeopardizing the continued employment of these aides.
- Formal Hearings, required for revocation of certification, are unlikely to be held. While a finding of abuse made following an informal conference will prohibit employment in nursing homes, the individual will retain the certification which may be presented for employment in home care and other settings. This will enable the employment of abusive aides in other settings, such as hospitals and private homes.
- Pre-employment verification of certification by employers (required by federal regulation) will be more difficult due to reduced ability to respond to telephone and written requests and may result in delays in employment of the nurse aides and shortages in long term care facilities.
- Renewals now processed within two days of receipt will be delayed, and those received close to expiration date may not be renewed prior to lapse of certification, resulting in lay-offs for those delayed.
- Thirty percent of the 125 federally required biennial on-site reviews of programs will be deferred, resulting in noncompliance by the Board with federal law.

Two examples of egregious cases of abuse or neglect are as follows:

- (1) An investigation was conducted on behalf of the Board after receiving an allegation that a Certified Nurse Aide (CNA) had physically abused a nursing home resident, who sustained a significant bruise to the left side of his face. The CNA admitted slapping the resident but asserted that he was defending himself.

In this case, the formal hearing which would have been held in the past and would likely have resulted in revocation of the CNA's certificate was not held due to insufficient funding. Instead, a

reprimand with a finding of abuse was issued following an informal conference prohibiting, by federal law, employment in nursing homes. However, the CNA has retained certification and may work in settings other than a nursing home.

- (2) An investigation was conducted on behalf of the Board after receiving information that a Certified Nurse Aide had allegedly acted in an unprofessional manner by sexually abusing more than one resident of a home for adults. The CNA was summarily suspended pending a formal hearing.

This case involves a CNA employed in an Adult Care Residence and is presented as an investigation and disciplinary action not required by federal mandate but involving allegations of actions which put elderly persons at significant risk. If not investigated, the CNA would have continued to work and would present a continuing danger to patients.

Inability to investigate all complaints in a timely manner, to initiate formal hearings for the revocation of certification, or to investigate and act on allegations in settings other than federally supported nursing homes places some of our most vulnerable citizens in imminent danger.

Alternatives Considered:

To address this crisis, the Board of Nursing and the Department of Health Professions have taken the following actions:

- 1) Reduced expenditures for the Nurse Aide Registry by 30% in direct operating costs, resulting in delays in certification, renewals, and verifications and in a drastic reduction in required on-site reviews of educational programs and delays in new approval. All of the above consequences place the Virginia Registry in jeopardy of losing its federal funding for non-compliance.
- 2) Reduced investigations and administrative proceedings by 50%, resulting in potential for continued employment by abusive nurse aides as described above.
- 3) Requested a budget amendment by the Health Care Financing Administration (HCFA) to alleviate the impact of a drastic cut in funding for the Nurse Aide Registry. The Department contacted the liaison office in Washington to solicit support for a budget amendment or for legislation to change federal law which prohibited charging a fee for activities of the Registry required by HCFA. No response has been received.
- 4) Met with a representative of the Secretary of Health and Human Resources to apprise her office of the crisis situation and to receive advice on alternatives. At the request of the Secretary, the Director of the Department, John Hasty, convened a task force of representatives from other affected agencies within

the Secretariat, but no resolution has been achieved.

- 5) Requested an opinion from HCFA regarding the level of funding for Virginia's Nurse Aide Program and about alternatives to offset the shortage of Medicare funds. The following response was received from the Department of Health and Human Services: "The statutory prohibitions against charges to nurse aides do not apply to Virginia's statutory due process requirements,...which exceed Federal requirements. Therefore, the State is permitted to charge fees for these activities." Based on that response, the Board is requesting Emergency Regulations to establish a renewal fee for Certified Nurse Aides sufficient to support case adjudication as required under Virginia statutes.

Current regulations require return of the completed application for renewal with "the required fee." (§ 5.5 B 2) Emergency Regulations set the biennial renewal fee at \$20 as the amount necessary to cover required expenses as allowed by Federal rules.

/s/ John W. Hasty
Director
Department of Health Professions
Date: May 30, 1995

/s/ Kay C. James
Secretary of Health and Human Services
Date: June 20, 1995

/s/ George F. Allen
Governor
Date: June 29, 1995

Preamble:

These regulations state the requirements for approval of nursing and nurse aide education programs, the licensing of registered nurses and practical nurses, the registration of clinical nurse specialists and the certification of nurse aides in the Commonwealth of Virginia. The regulations have been adopted by the Virginia State Board of Nursing under the authority of Chapter 24 (§ 54.1-2400) and Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

The Board believes that each practitioner of nursing is accountable to the Commonwealth and to the public to maintain high professional standards of practice in keeping with the ethics of the profession of nursing.

The registered nurse shall be responsible and accountable for making decisions that are based upon educational preparation and experience in nursing. The registered nurse shall be held accountable for the quality and quantity of nursing care given to patients by himself or others who are under his supervision. The registered nurse who is a clinical nurse specialist is authorized to provide advanced nursing services consistent with the requirements of law and regulations.

The licensed practical nurse shall be held accountable for the quality and quantity of nursing care given to

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patients by himself based upon educational preparation and experience.

The certified nurse aide is required to meet standards consistent with federal and state law and regulations in employment settings receiving Medicare and Medicaid reimbursement for care rendered.

VR 495-01-1. Regulations of the Board of Nursing.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, State Council of Higher Education or an Act of the General Assembly.

"Baccalaureate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, the State Council of Higher Education or an Act of the General Assembly.

"Board" means the Board of Nursing.

"Clinical nurse specialist" means a licensed registered nurse who holds:

1. A master's degree from a board approved program which prepares the nurse to provide advanced clinical nursing services; and
2. Specialty certification from a national certifying organization acceptable to the board or an exception available from March 1, 1990, to July 1, 1990.

"Conditional approval" means a time-limited status which results when an approved nursing education program has failed to maintain requirements as set forth in Article 2 of Part II of these regulations.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide learning experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure, offered by a Virginia school, that leads to a diploma or certificate in practical nursing, provided the school is authorized by the appropriate governmental agency.

"Program director" means a registered nurse who has been designated by the controlling authority to administer the nursing education program.

"Provisional approval" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved.

§ 1.2. Delegation of authority.

A. The executive director of the board shall issue a certificate of registration to each person who meets the requirements for initial licensure under §§ 54.1-3017, 54.1-3018, 54.1-3020 and 54.1-3021 of the Code of Virginia. Such certificates of registration shall bear the signature of the president of the board, the executive director and the director of the Department of Health Professions.

B. The executive director shall issue license to each applicant who qualifies for such license under § 54.1-3011 of the Code of Virginia. Such licenses shall bear the name of the executive director.

C. The executive director shall be delegated the authority to execute all notices, orders and official documents of the board unless the board directs otherwise.

§ 1.3. Fees.

Fees required in connection with the licensing of applicants by the board are:

1. Application for Licensure by Examination	\$25
2. Application for Licensure by Endorsement	\$50
3. Biennial Licensure Renewal	\$40
4. Reinstatement of License	\$50
5. Duplicate License	\$15
6. Verification of License	\$25

7. Transcript of All or Part of Applicant/Licensee Records	\$20
8. Returned Check Charge	\$15
9. Application for C.N.S. Registration	\$50
10. Biennial Renewal of C.N.S. Registration	\$30
11. Reinstatement of Lapsed C.N.S. Registration	\$25
12. Verification of C.N.S. Registration to Another Jurisdiction	\$25

PART II. NURSING EDUCATION PROGRAMS.

Article 1. Establishing a Nursing Education Program.

§ 2.1. Phase I.

A. An institution wishing to establish a nursing education program shall:

1. Submit to the board, at least 15 months in advance of expected opening date, a statement of intent to establish a nursing education program;
2. Submit to the board, along with the statement of intent, a feasibility study to include the following information:
 - a. Studies documenting the need for the program;
 - b. Purpose and type of program;
 - c. Availability of qualified faculty;
 - d. Budgeted faculty positions;
 - e. Availability of clinical facilities for the program;
 - f. Availability of academic facilities for the program;
 - g. Evidence of financial resources for the planning, implementation and continuation of the program;
 - h. Anticipated student population;
 - i. Tentative time schedule for planning and initiating the program; and
 - j. Current catalog, if applicable.
3. Respond to the board's request for additional information.

B. A site visit shall be conducted by a representative of the board.

C. The Education Special Conference Committee (the "committee"), comprised of not less than three members of the board, shall, in accordance with § 9-6.14:11 of the Code of Virginia, receive and review applications and the report of the site visit and shall make recommendations to the board regarding the grant or denial of approval of Phase I.

1. If the board accepts the recommendation to approve Phase I, the institution may apply for provisional approval of the nursing education program as set forth in these regulations.

2. If the committee recommendation is to deny approval of Phase I, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

§ 2.2. Phase II.

A. The application for provisional approval shall be complete when the following conditions are met:

1. A program director has been appointed and there are sufficient faculty to initiate the program (§ 2.6 of these regulations);
2. A tentative written curriculum plan developed in accordance with § 2.9 of these regulations has been submitted.

B. The committee shall, in accordance with § 9-6.14:11 of the Code of Virginia, make recommendations to the board for the grant or denial of provisional approval.

1. If provisional approval is granted:

- a. The admission of students is authorized; and
- b. The program director shall submit quarterly progress reports to the board which shall include evidence of progress toward application for approval and other information as required by the board.

2. If the committee recommendation is to deny approval of Phase II, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

C. Following graduation of the first class, the institution shall apply for approval of the nursing education program.

§ 2.3. Phase III.

A. The application for approval shall be complete when a self-evaluation report of compliance with Article 2 of this part has been submitted and a survey visit has been made by a representative of the board.

B. The committee shall, in accordance with § 9-6.14:11 of the Code of Virginia, receive and review the self-evaluation and survey reports and shall make a recommendation to the board for the grant or denial of approval.

C. If the committee's recommendation is to deny approval of Phase III, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

Article 2. Requirements for Approval.

§ 2.4. Organization and administration.

A. The institution shall be authorized to conduct a nursing education program by charter or articles of incorporation of the controlling institution, by resolution of its board of control, or by the institution's own charter or articles of incorporation.

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B. Universities, colleges, community or junior colleges, proprietary schools and public schools offering nursing education programs shall be accredited by the appropriate state agencies and the Southern Association of Colleges and Schools.

C. Hospitals conducting a nursing education program shall be accredited by the Joint Commission on Accreditation of Healthcare Organizations.

D. Any agency or institution that is utilized by a nursing education program shall be one that is authorized to conduct business in the Commonwealth of Virginia, or in the state in which the agency or institution is located.

E. The authority and responsibility for the operation of the nursing education program shall be vested in a program director who is duly licensed to practice professional nursing in Virginia and who is responsible to the controlling board, either directly or through appropriate administrative channels.

F. A written organizational plan shall indicate the lines of authority and communication of the nursing education program to the controlling body; to other departments within the controlling institution; to the cooperating agencies; and to the advisory committee, if one exists.

G. Funds shall be allocated by the controlling agency to carry out the stated purposes of the program. The program director of the nursing education program shall be responsible for the budget recommendations and administration, consistent with the established policies of the controlling agency.

§ 2.5. Philosophy and objectives.

Written statements of philosophy and objectives shall be:

1. Formulated and accepted by the faculty;
2. Directed toward achieving realistic goals;
3. Directed toward the meaning of education, nursing and the learning process;
4. Descriptive of the practitioner to be prepared; and
5. The basis for planning, implementing and evaluating the total program.

§ 2.6. Faculty.

A. Qualifications.

1. Every member of a nursing faculty, including the program director, shall hold a current license to practice as a registered nurse in Virginia.
2. Every member of a nursing faculty responsible for teaching students in a cooperating agency located outside the jurisdictional limits of Virginia shall meet the licensure requirements of that jurisdiction.
3. The program director and each member of the nursing faculty shall maintain professional competence through such activities as nursing practice, continuing education programs, conferences, workshops, seminars, academic courses, research projects and professional writing.

4. For baccalaureate degree programs:

- a. The program director shall hold a doctoral degree.
- b. Every member of the nursing faculty shall hold a graduate degree. Faculty members without a graduate degree with a major in nursing shall have a baccalaureate degree with a major in nursing.

5. For associate degree and diploma programs:

- a. The program director shall hold a graduate degree, preferably with a major in nursing.
- b. The majority of the members of the nursing faculty shall hold a graduate degree, preferably with a major in nursing.
- c. Other members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

6. For practical nursing programs.

- a. The program director shall hold a baccalaureate degree, preferably with a major in nursing.
- b. The majority of the members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

7. Exceptions to provisions of subdivisions 4, 5, and 6 of this subsection shall be by board approval.

a. Initial request for exception.

(1) The program director shall submit a request for initial exception in writing for considerations at a regular board meeting prior to the term during which the nursing faculty member is scheduled to teach.

(2) A description of teaching assignment, a curriculum vitae and a statement of intent, from the prospective faculty member, to pursue the required degree shall accompany each request.

b. Request for continuing exception.

(1) Continuing exception will be based on the progress of the nursing faculty member toward meeting the degree required by these regulations during each year for which the exception is requested.

(2) The program director shall submit the request for continuing exception in writing for consideration at a regular board meeting prior to the next term during which the nursing faculty member is scheduled to teach.

(3) A list of courses required for the degree being pursued and college transcripts showing successful completion of a minimum of two of the courses during the past academic year shall accompany each request.

c. The executive director of the board shall be authorized to make the initial decision on requests for exceptions. Any appeal of that decision shall be in accordance with the provisions of the Administrative

Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

B. Number.

1. The number of faculty shall be sufficient to prepare the students to achieve the objectives of the educational program and such number shall be reasonably proportionate to:

- a. Number of students enrolled;
- b. Frequency of admissions;
- c. Education and experience of faculty members;
- d. Number and location of clinical facilities; and
- e. Total responsibilities of the faculty.

2. When students are giving direct care to patients, the ratio of students to faculty in clinical areas shall not exceed 10 students to one faculty member.

C. Conditions of employment.

1. Qualifications and responsibilities for faculty positions shall be defined in writing.

2. Faculty assignments shall allow time for class and laboratory preparation; teaching; program revision; improvement of teaching methods; academic advisement and counseling of students; participation in faculty organizations and committees; attendance at professional meetings; and participation in continuing education activities.

D. Functions. The principal functions of the faculty shall be to:

1. Develop, implement and evaluate the philosophy and objectives of the nursing education program;
2. Participate in designing, implementing, teaching, and evaluating and revising the curriculum;
3. Develop and evaluate student admission, progression, retention and graduation policies within the framework of the controlling institution;
4. Participate in academic advisement and counseling of students; and
5. Provide opportunities for student and graduate evaluation of curriculum and teaching and program effectiveness.

E. Organization.

1. The nursing faculty shall hold regular meetings for the purpose of developing, implementing and evaluating the nursing education program.
2. Minutes of faculty and committee meetings, including actions taken, shall be recorded and available for reference.
3. There shall be provision for student participation.

§ 2.7. Admission, promotion and graduation of students.

A. Requirements for admission to the nursing education program shall not be less than the statutory requirements that will permit the graduate to be admitted to the appropriate licensing examination.

EXPLANATORY NOTE: Reference subdivision 1 of subsection A of § 54.1-3017 of the Code of Virginia: The equivalent of a four-year high school course of study is considered to be:

1. A General Educational Development (GED) certificate for high school equivalence; or
2. Satisfactory completion of the college courses required by the nursing education program.

B. Students shall be selected on the basis of established criteria and without regard to age, race, creed, sex or national origin.

C. Requirements for admission, readmission, advanced standing, progression, retention, dismissal and graduation shall be available to the students in written form.

§ 2.8. School records; student records; school bulletin or catalogue.

A. A system of records shall be maintained and be made available to the board representative and shall include:

1. Data relating to accreditation by any agency or body,
2. Course outlines,
3. Minutes of faculty and committee meetings,
4. A record of the performance of graduates on the licensing examination,
5. Survey reports.

B. A file shall be maintained for each student. Each file shall be available to the board representative and shall include:

1. The student's application,
2. High school transcript or copy of high school equivalence certificate,
3. Current record of achievement.

A final transcript shall be retained in the permanent file of the institution.

Provision shall be made for the protection of student and graduate records against loss, destruction and unauthorized use.

C. Current information about the nursing education program shall be published periodically and distributed to students, applicants for admission and the board. Such information shall include:

1. Description of the program.
2. Philosophy and objectives of the controlling institution and of the nursing program.
3. Admission and graduation requirements.

Emergency Regulations

4. Fees.
5. Expenses.
6. Financial aid.
7. Tuition refund policy.
8. Education facilities.
9. Living accommodations.
10. Student activities and services.
11. Curriculum plan.
12. Course descriptions.
13. Faculty-staff roster.
14. School calendar.

§ 2.9. Curriculum.

A. Curriculum shall reflect the philosophy and objectives of the nursing education program, and shall be consistent with the law governing the practice of nursing.

B. The ratio between nursing and nonnursing credit shall be based on a rationale to ensure sufficient preparation for the safe and effective practice of nursing.

C. Learning experiences shall be selected to fulfill curriculum objectives.

D. Nursing education programs preparing for practical nursing licensure shall include:

1. Principles and practice in nursing encompassing the attainment and maintenance of physical and mental health and the prevention of illness for individuals and groups throughout the life cycle;
2. Basic concepts of the nursing process;
3. Basic concepts of anatomy, physiology, chemistry, physics and microbiology;
4. Basic concepts of communication, growth and development, interpersonal relations, patient education and cultural diversity;
5. Ethics, nursing history and trends, vocational and legal aspects of nursing, including regulations and sections of the Code of Virginia related to nursing; and
6. Basic concepts of pharmacology, nutrition and diet therapy.

E. Nursing education programs preparing for registered nurse licensure shall include:

1. Theory and practice in nursing, encompassing the attainment and maintenance of physical and mental health and the prevention of illness throughout the life cycle for individuals, groups and communities;
2. Concepts of the nursing process;
3. Concepts of anatomy, physiology, chemistry, microbiology and physics;

4. Sociology, psychology, communications, growth and development, interpersonal relations, group dynamics, cultural diversity and humanities;

5. Concepts of pharmacology, nutrition and diet therapy, and pathophysiology;

6. Concepts of ethics, nursing history and trends, and the professional and legal aspects of nursing, including regulations and sections of the Code of Virginia related to nursing; and

7. Concepts of leadership, management and patient education.

§ 2.10. Resources, facilities and services.

A. Periodic evaluations of resources, facilities and services shall be conducted by the administration, faculty, students and graduates of the nursing education program.

B. Secretarial and other support services shall be provided.

C. Classrooms, conference rooms, laboratories, clinical facilities and offices shall be available to meet the objectives of the nursing education program and the needs of the students, faculty, administration and staff.

D. The library shall have holdings that are current, pertinent and accessible to students and faculty, and sufficient in number to meet the needs of the students and faculty.

E. Written agreements with cooperating agencies shall be developed, maintained and periodically reviewed. The agreement shall:

1. Ensure full control of student education by the faculty of the nursing education program, including the selection and supervision of learning experiences.
2. Provide that an instructor shall be present on the clinical unit(s) unit or units to which students are assigned for direct patient care.
3. Provide for cooperative planning with designated agency personnel.

F. Any observational experiences shall be planned in cooperation with the agency involved to meet stated course objectives.

G. Cooperating agencies shall be approved by the appropriate accreditation, evaluation or licensing bodies, if such exist.

§ 2.11. Program changes.

A. The following proposed changes require board approval prior to their implementation:

1. Proposed changes in the nursing education program's philosophy and objectives that result in program revision.
2. Proposed changes in the curriculum that result in alteration of the length of the nursing education program.

B. Other additions, deletions or revisions of courses shall be reported to the board with the annual report required in § 2.13 A of these regulations.

§ 2.12. Procedure for approval of program change.

A. When a program change is contemplated, the program director shall inform the board or board representative.

B. When a program change is requested, a plan shall be submitted to the board including:

1. Proposed change,
2. Rationale for the change,
3. Relationship of the proposed change to the present program.

C. Fifteen copies of these materials shall be submitted to the board at least three weeks prior to the board meeting at which the request will be considered.

Article 3.

Maintaining or Closing an Approved Nursing Education Program.

§ 2.13. Maintaining an approved nursing education program.

A. The program director of each nursing education program shall submit an annual report to the board.

B. Each nursing education program shall be reevaluated at least every eight years and shall require:

1. A comprehensive self-evaluation report based on Article 2 of this part, and
2. A survey visit by a representative(s) of the board on dates mutually acceptable to the institution and the board.

C. The Education Special Conference Committee (the "committee"), comprised of not less than three members of the board, shall, in accordance with § 9-6.14:11 of the Code of Virginia, receive and review the self-evaluation and survey reports and shall make a recommendation to the board for grant of continued or conditional approval.

1. A nursing education program shall continue to be approved provided the requirements set forth in Article 2 of this part are attained and maintained.
2. If the committee determines that a nursing education program is not maintaining the requirements of Article 2 of this part, the committee shall recommend to the board that the program be placed on conditional approval and the governing institution shall be given a reasonable period of time to correct the identified deficiencies.
 - a. The committee shall receive and review reports of progress toward correcting identified deficiencies and, when a final report is received at the end of the specified time showing correction of deficiencies, make a recommendation to the board for grant of continued approval.
 - b. If the governing institution fails to correct the identified deficiencies within the time specified by the

committee or the board, the board or a panel thereof may withdraw the approval following a hearing.

c. The governing institution may request a formal hearing before the board or a panel thereof pursuant to § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia if it objects to any action of the board relating to conditional approval.

D. Interim visits shall be made to the institution by board representatives at any time within the eight-year period either by request or as deemed necessary by the board.

§ 2.14. Closing of an approved nursing education program; voluntary closing; closing as a result of denial or withdrawal of approval; custody of records.

A. When the governing institution anticipates the closing of a nursing education program, it shall notify the board in writing, stating the reason, plan and date of intended closing. The governing institution shall choose one of the following closing procedures:

1. The program shall continue until the last class enrolled is graduated.
 - a. The program shall continue to meet the standards for approval until all of the enrolled students have graduated.
 - b. The date of closure is the date on the degree, diploma or certificate of the last graduate.
 - c. The governing institution shall notify the board of the closing date.

2. The program shall close after the governing institution has assisted in the transfer of students to other approved programs.
 - a. The program shall continue to meet the standards required for approval until all students are transferred.
 - b. A list of the names of students who have been transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.
 - c. The date on which the last student was transferred shall be the closing date of the program.

B. When the board denies or withdraws approval of a program, the governing institution shall comply with the following procedures:

1. The program shall close after the institution has made a reasonable effort to assist in the transfer of students to other approved programs. A time frame for the transfer process shall be established by the board.
2. A list of the names of students who have transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.
3. The date on which the last student was transferred shall be the closing date of the program.

C. Provision shall be made for custody of records as follows:

Emergency Regulations

1. If the governing institution continues to function, it shall assume responsibility for the records of the students and the graduates. The institution shall inform the board of the arrangements made to safeguard the records.

2. If the governing institution ceases to exist, the academic transcript of each student and graduate shall be transferred by the institution to the board for safekeeping.

Article 4.

Clinical Nurse Specialist Education Program.

§ 2.15. Clinical nurse specialist education program.

An approved program shall be offered by:

1. A nationally accredited school of nursing within a college or university that offers a master's degree in nursing designed to prepare a registered nurse for advanced practice in a clinical specialty in nursing; or

2. A college or university that offers a master's degree consistent with the requirements of a national certifying organization as defined in § 1.1 of these regulations.

PART III.

LICENSURE AND PRACTICE.

§ 3.1. Licensure by examination.

A. The board shall authorize the administration of examinations for registered nurse licensure and examinations for practical nurse licensure.

B. A candidate shall be eligible to take the examination (i) upon receipt by the board of the completed application, fee and an official transcript from the nursing education program; and (ii) when a determination has been made that no grounds exist upon which the board may deny licensure pursuant to § 54.1-3007 of the Code of Virginia.

C. To establish eligibility for licensure by examination, an applicant for the licensing examination shall:

1. File the required application, any necessary documentation and fee no later than 60 days prior to the first day of the month in which the applicant expects to take the examination.

2. Arrange for the board to receive an official transcript from the nursing education program which shows either:

- a. That the degree or diploma has been awarded; or
- b. That all requirements for awarding the degree or diploma have been met and specifies the date of conferral.

3. File a new application and fee if:

- a. The examination is not taken within six months of the date that the board determines the applicant to be eligible; or
- b. Eligibility is not established within six months of the original filing date.

D. The minimum passing score on the examination for registered nurse licensure and practical nurse licensure shall be determined by the board.

E. Any applicant suspected of giving or receiving unauthorized assistance during the examination may be noticed for a hearing pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) to determine eligibility for licensure or reexamination.

F. The board shall not release examination results of a candidate to any individual or agency without written authorization from the applicant or licensee.

G. Practice of nursing pending receipt of examination results.

1. An eligible graduate who has filed an application for licensure in Virginia may practice nursing in Virginia for a period not to exceed 90 days between completion of the nursing education program and the receipt of the results of the candidate's first licensing examination.

2. Candidates who practice nursing as provided in § 3.1 G 1 of these regulations shall use the designation "R.N. Applicant" or "L.P.N. Applicant" when signing official records.

3. The designations "R.N. Applicant" and "L.P.N. Applicant" shall not be used by applicants who either do not take the examination within 90 days following completion of the nursing education program or who have failed the examination.

H. Applicants who fail the examination.

1. An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Virginia.

2. An applicant for licensure by reexamination shall file the required application and fee no later than 60 days prior to the first day of the month in which the applicant expects to take the examination in order to establish eligibility.

3. Applicants who have failed the examination for licensure in another U.S. jurisdiction but satisfy the qualifications for licensure in this jurisdiction may apply for licensure by examination in Virginia. Such applicants shall submit the required application and fee. Such applicants shall not, however, be permitted to practice nursing in Virginia until the requisite license has been issued.

§ 3.2. Licensure by endorsement.

A. A graduate of an approved nursing education program who has been licensed by examination in another U.S. jurisdiction and whose license is in good standing, or is eligible for reinstatement, if lapsed, shall be eligible for licensure by endorsement in Virginia, provided the applicant satisfies the requirements for registered nurse or practical nurse licensure.

B. An applicant for licensure by endorsement shall submit the required application and fee and submit the required form to the appropriate credentialing agency in the state of original

licensure for verification of licensure. Applicants will be notified by the board after 30 days, if the completed verification form has not been received.

C. If the application is not completed within one year of the initial filing date, the application shall be retained on file by the board as required for audit.

§ 3.3. Licensure of applicants from other countries.

A. Applicants whose basic nursing education was received in, and who are duly licensed under the laws of another country, shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in § 3.3 B and C of these regulations.

B. Such applicants for registered nurse licensure shall:

1. Submit evidence of a passing score on the Commission on Graduates of Foreign Nursing Schools Qualifying Examination; and
2. Submit the required application and fee for licensure by examination.

C. Such applicants for practical nurse licensure shall:

1. Request a transcript from the nursing education program to be submitted directly to the board office;
2. Provide evidence of secondary education to meet the statutory requirements;
3. Request that the credentialing agency, in the country where licensed, submit the verification of licensure form directly to the board office; and
4. Submit the required application and fee for licensure by examination.

§ 3.4. Renewal of licenses.

A. Licensees born in even-numbered years shall renew their licenses by the last day of the birth month in even-numbered years. Licensees born in odd-numbered years shall renew their licenses by the last day of the birth month in odd-numbered years.

B. No less than 30 days prior to the last day of the licensee's birth month, an application for renewal of license shall be mailed by the board to the last known address of each licensee, who is currently licensed.

C. The licensee shall complete the application and return it with the required fee.

D. Failure to receive the application for renewal shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

E. The license shall automatically lapse if the licensee fails to renew by the last day of the birth month.

F. Any person practicing nursing during the time a license has lapsed shall be considered an illegal practitioner and shall be subject to prosecution under the provisions of § 54.1-3008 of the Code of Virginia.

§ 3.5. Reinstatement of lapsed licenses.

A. A nurse whose license has lapsed shall file a reinstatement application and pay the current renewal fee and the reinstatement fee.

B. The board may request evidence that the nurse is prepared to resume practice in a competent manner.

§ 3.6. Duplicate license.

A duplicate license for the current renewal period shall be issued by the board upon receipt of the required information and fee.

§ 3.7. Evidence of change of name.

A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order evidencing the change. A duplicate license shall be issued by the board upon receipt of such evidence and the required fee.

§ 3.8. Requirements for current mailing address.

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

B. Each licensee shall maintain a record of his current mailing address with the board.

C. Any change of address by a licensee shall be submitted in writing to the board within 30 days of such change.

§ 3.9. Supervision.

Licensed practical nursing is performed under the direction or supervision of a licensed medical practitioner, a registered nurse or a licensed dentist within the context of § 54.1-3408 of the Code of Virginia.

§ 3.10. Clinical nurse specialist registration.

A. Initial registration. An applicant for initial registration as a clinical nurse specialist shall:

1. Be currently licensed as a registered nurse in Virginia;
2. Submit evidence of graduation from an approved program as defined in § 2.14 of these regulations;
3. Submit evidence of current specialty certification from a national certifying organization as defined in § 1.1 of these regulations; and
4. Submit the required application and fee.

B. Renewal of registration.

1. Registration as a clinical nurse specialist shall be renewed biennially at the same time the registered nurse license is renewed.
2. The clinical nurse specialist shall complete the renewal application and return it with the required fee and evidence of current specialty certification unless registered in accordance with an exception.
3. Registration as a clinical nurse specialist shall lapse if the registered nurse license is not renewed and may be reinstated as follows:

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- a. Reinstatement of R.N. license;
- b. Payment of reinstatement and current renewal fees; and
- c. Submission of evidence of continued specialty certification unless registered in accordance with an exception.

§ 3.11. Clinical nurse specialist practice.

A. The practice of clinical nurse specialists shall be consistent with the:

- 1. Education required in § 2.15 of these regulations, and
- 2. Experience required for specialist certification.

B. The clinical nurse specialist shall provide those advanced nursing services that are consistent with the standards of specialist practice as established by a national certifying organization for the designated specialty and in accordance with the provisions of Title 54.1 of the Code of Virginia.

C. Advanced practice as a clinical nurse specialist shall include but shall not be limited to performance as an expert clinician to:

- 1. Provide direct care and counsel to individuals and groups;
- 2. Plan, evaluate and direct care given by others; and
- 3. Improve care by consultation, collaboration, teaching and the conduct of research.

PART IV. DISCIPLINARY PROVISIONS.

§ 4.1. Disciplinary provisions.

A. The board has the authority to deny, revoke or suspend a license issued, or to otherwise discipline a licensee upon proof that the licensee has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

- 1. Fraud or deceit means, but shall not be limited to:
 - a. Filing false credentials;
 - b. Falsely representing facts on an application for initial license, reinstatement or renewal of a license; or
 - c. Giving or receiving assistance in writing the licensing examination.
- 2. Unprofessional conduct means, but shall not be limited to:
 - a. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;
 - b. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;

c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;

d. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;

e. Falsifying or otherwise altering patient or employer records;

f. Abusing, neglecting or abandoning patients or clients; or

g. Practice of a clinical nurse specialist beyond that defined in § 3.11 of these regulations.

h. Holding self out as or performing acts constituting the practice of a clinical nurse specialist unless so registered by the board.

B. Any sanction imposed on the registered nurse license of a clinical nurse specialist shall have the same effect on the clinical nurse specialist registration.

PART V. CERTIFIED NURSE AIDES.

§ 5.1. Definitions.

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

"Nurse aide education program" means a program designed to prepare nurse aides for certification.

"Nursing facility" means an entity which is certified for Medicare or Medicaid long term care reimbursement.

"Primary instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.

"Program coordinator" means a registered nurse who is administratively responsible and accountable for a nurse aide education program.

"Program provider" means an entity which conducts a nurse aide education program.

§ 5.2. Delegation of authority.

The executive director of the board shall issue a certificate as a certified nurse aide to each applicant who qualifies for such a certificate under §§ 54.1-3024, 54.1-3025, 54.1-3026 and 54.1-3028 of the Code of Virginia.

§ 5.3. Nurse aide education programs.

A. Establishing a nurse aide education program.

- 1. A program provider wishing to establish a nurse aide education program shall submit an application to the board at least 90 days in advance of the expected opening date.
- 2. The application shall provide evidence of the ability of the institution to comply with § 5.3 B of these regulations.
- 3. The Education Special Conference Committee (the "committee"), comprised of not less than three members

of the board, shall, in accordance with § 9-6.14:11 of the Code of Virginia, receive and review the application and shall make a recommendation to the board for grant or denial of approval.

4. If the committee's recommendation is to deny approval, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

B. Maintaining an approved nurse aide education program. To maintain approval, the nurse aide education program shall demonstrate evidence of compliance with the following essential elements:

1. Curriculum content and length as set forth in §§ 5.3 D and 5.3 G of these regulations.
2. Maintenance of qualified instructional personnel as set forth in § 5.3 C of these regulations.
3. Classroom facilities that meet requirements set forth in § 5.3 H of these regulations.
4. Maintenance of records as set forth in § 5.3 E of these regulations.
5. Skills training experience in a nursing facility which has not been subject to penalty or penalties as provided in 42 CFR § 483.151(b)(2) (Medicare and Medicaid Programs: Nurse Aide Training and Competency Evaluation Programs, effective April 1, 1992) in the past two years.
6. Agreement that board representatives may make unannounced visits to the program.
7. Impose no fee for any portion of the program on any nurse aide who, on the date on which the nurse aide begins the program, is either employed or has an offer of employment from a nursing facility.
8. Must report all substantive changes in subdivisions 1 through 7 of § 5.3 B of these regulations within 10 days of the change to the board.

C. Instructional personnel.

1. Program coordinator.

a. The program coordinator in a nursing facility based program may be the director of nursing services. The director of nursing may assume the administrative responsibility and accountability for the nurse aide education program but shall not engage in the actual classroom and clinical teaching.

b. The primary instructor may be the program coordinator in any nurse aide education program.

2. Primary instructor.

a. Qualifications. The primary instructor, who does the actual teaching of the students:

- (1) Shall hold a current Virginia license as a registered nurse; and

- (2) Shall have two years of experience as a registered nurse and at least one year of experience within the previous five years in the provision of long term care facility services. Such experience may include, but not be limited to, employment in a nurse aide education program or employment in or supervision of nursing students in a nursing facility or unit, geriatrics department, chronic care hospital, home care or other long-term care setting. Experience should include varied responsibilities, such as direct resident care, supervision and education.

b. Responsibilities. The primary instructor shall:

- (1) Participate in the planning of each learning experience;
- (2) Ensure that course objectives are accomplished;
- (3) Ensure that the provisions of § 5.3 C 6 of these regulations are maintained;
- (4) Maintain records as required by § 5.3 E of these regulations; and
- (5) Perform other activities necessary to comply with § 5.3 B of these regulations.
- (6) Ensure that students do not perform services for which they have not received instruction and been found proficient by the instructor.

3. Other instructional personnel.

a. Qualifications.

(1) A registered nurse shall:

- (a) Hold a current Virginia license as a registered nurse; and
- (b) Have had at least one year, within the preceding five years, of direct patient care experience as a registered nurse with the elderly or chronically ill, or both, of any age.

(2) A licensed practical nurse shall:

- (a) Hold a current Virginia license as a practical nurse;
- (b) Hold a high school diploma or equivalent;
- (c) Have been graduated from a state-approved practical nursing program; and
- (d) Have had at least two years, within the preceding five years, of direct patient care experience with the elderly or chronically ill, or both, of any age.

b. Responsibilities. Other personnel shall provide instruction under the general supervision of the primary instructor.

4. Prior to being assigned to teach the nurse aide education program, all instructional personnel shall demonstrate competence to teach adults by one of the following:

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a. Complete satisfactorily a "train-the-trainer" program approved by the board. Such a program shall be approved by the board for five years, at which time the sponsor must request reapproval of the program. The content of the program must include:

- (1) Basic principles of adult learning;
- (2) Teaching methods and tools for adult learners; and
- (3) Evaluation strategies and measurement tools for assessing the learning outcomes; or

b. Complete satisfactorily a credit or noncredit course or courses approved by the board. Such courses shall be evaluated for approval by the board upon request from the individual taking the course. The content of such credit or noncredit course shall be comparable to that described in § 5.3 C 4 a of these regulations; or

c. Provide evidence acceptable to the board of experience in teaching adult learners within the preceding five years.

5. The program may utilize resource personnel who have had at least one year of experience in their field to meet the planned program objectives for specific topics.

6. When students are giving direct care to clients in clinical areas, instructional personnel must be on site solely to supervise the students. The ratio of students to each instructor shall not exceed 10 students to one instructor.

D. Curriculum.

1. The graduate of the nurse aide education program shall be prepared to:

- a. Communicate and interact competently on a one-to-one basis with the clients;
- b. Demonstrate sensitivity to clients' emotional, social, and mental health needs through skillful directed interactions;
- c. Assist clients in attaining and maintaining functional independence;
- d. Exhibit behavior in support and promotion of clients' rights; and
- e. Demonstrate skills in observation and documentation needed to participate in the assessment of clients' health, physical condition and well-being.

2. Content. The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:

a. Initial core curriculum. Prior to the direct contact of a student with a nursing facility client, a total of at least 16 hours of instruction in the following areas must be presented:

- (1) Communication and interpersonal skills,
- (2) Infection control,

(3) Safety and emergency procedures, including the Heimlich Maneuver,

(4) Promoting client independence, and

(5) Respecting clients' rights.

b. Basic skills.

(1) Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor.

(2) Measuring and recording routine vital signs.

(3) Measuring and recording height and weight.

(4) Caring for the clients' environment.

(5) Measuring and recording fluid and food intake and output.

(6) Performing basic emergency measures.

(7) Caring for client when death is imminent.

c. Personal care skills.

(1) Bathing and oral hygiene.

(2) Grooming.

(3) Dressing.

(4) Toileting.

(5) Assisting with eating and hydration including proper feeding techniques.

(6) Caring for skin.

(7) Transfer, positioning and turning.

d. Individual client's needs including mental health and social service needs.

(1) Identifying the psychosocial characteristics of the populations who reside in nursing homes.

(2) Modifying the aide's behavior in response to behavior of clients.

(3) Identifying developmental tasks associated with the aging process.

(4) Providing training in and the opportunity for self care according to clients' capabilities.

(5) Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.

(6) Demonstrating skills supporting age-appropriate behavior by allowing the client to make personal choices, providing and reinforcing other behavior consistent with clients' dignity.

(7) Utilizing client's family or concerned others as a source of emotional support.

(8) Responding appropriately to client's behavior.

e. Care of the cognitively impaired client.

- (1) Using techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).
 - (2) Communicating with cognitively impaired residents.
 - (3) Demonstrating and understanding the behavior of cognitively impaired residents.
 - (4) Responding appropriately to the behavior of cognitively impaired residents.
 - (5) Using methods to reduce the effects of cognitive impairment.
- f. Skills for basic restorative services.
- (1) Using assistive devices in transferring, ambulation, eating and dressing.
 - (2) Maintaining range of motion.
 - (3) Turning and positioning, both in bed and chair.
 - (4) Bowel and bladder training.
 - (5) Caring for and using prosthetic and orthotic devices.
 - (6) Teaching the client in self-care according to the client's abilities as directed by a supervisor.
- g. Clients' rights.
- (1) Providing privacy and maintaining confidentiality.
 - (2) Promoting the client's right to make personal choices to accommodate individual needs.
 - (3) Giving assistance in resolving grievances and disputes.
 - (4) Providing assistance necessary to participate in client and family groups and other activities.
 - (5) Maintaining care and security of the client's personal possessions.
 - (6) Promoting the resident's rights to be free from abuse, mistreatment and neglect and the need to report any instances of such treatment to appropriate staff.
 - (7) Avoiding the need for restraints in accordance with current professional standards.
- h. Legal aspects of practice as a certified nurse aide.
3. Unit objectives.
- a. Objectives for each unit of instruction shall be stated in behavioral terms which are measurable.
 - b. Objectives shall be reviewed with the students at the beginning of each unit.
- E. Records.
1. Each nurse aide education program shall develop an individual record of major skills taught and the date of performance by the student. At the completion of the nurse aide education program, the nurse aide must receive a copy of this record.
 2. A record of the reports of graduates' performance on the approved competency evaluation program shall be maintained.
 3. A record that documents the disposition of complaints against the program shall be maintained.
- F. Student identification. The nurse aide students shall wear identification that is clearly recognizable to clients, visitors and staff.
- G. Length of program.
1. The program shall be at least 80 clock hours in length.
 2. The program shall provide for at least 16 hours of instruction prior to direct contact of a student with a nursing facility client.
 3. Skills training in clinical settings shall be at least 40 hours. Five of the clinical hours may be in a setting other than a nursing home.
 4. Employment orientation to facilities used in the education program must not be included in the 80 hours allotted for the program.
- H. Classroom facilities. The nurse aide education program shall provide facilities that meet federal and state requirements including:
1. Comfortable temperatures.
 2. Clean and safe conditions.
 3. Adequate lighting.
 4. Adequate space to accommodate all students.
 5. All equipment needed, including audio-visual equipment and that needed for simulating resident care.
- I. Program review.
1. Each nurse aide education program shall be reviewed on site by an agent of the board at least every two years following initial review.
 2. The committee, in accordance with § 9-6.14:11 of the Code of Virginia, shall receive and review the report of the site visit and shall make recommendations to the board to grant or deny continued approval.
 - a. A nurse aide education program shall continue to be approved provided the requirements set forth in § 5.3 B through H of these regulations are maintained.
 - b. If the committee determines that a nurse aide education program is not maintaining the requirements of § 5.3 B through H of these regulations, with the exception of § 5.3 B 5, the committee shall recommend to the board that the program be placed on conditional approval and the program provider shall be given a reasonable period of time to correct the identified deficiencies.

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(1) The committee shall receive and review reports of progress toward correcting identified deficiencies and, when a final report is received at the end of the specified time showing corrections of deficiencies, make a recommendation to the board for grant of continued approval.

(2) If the program provider fails to correct the identified deficiencies within the time specified by the committee or the board, the board or a panel thereof may withdraw approval following a hearing in accordance with § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

(3) The program provider may request a formal hearing before the board or a panel thereof pursuant to § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia if it objects to any action of the board relating to conditional approval.

3. The program coordinator shall prepare and submit a program evaluation report on a form provided by the board in the intervening year that an on site review is not conducted.

J. Curriculum changes. Changes in curriculum must be approved by the board prior to implementation and shall be submitted for approval at the time of a report of a site visit or the report submitted by the program coordinator in the intervening years.

K. Interruption of program.

1. When a program provider does not wish to admit students for a period not to exceed one year, the provider may request that the program be placed on inactive status and shall not be subject to compliance with § 5.3 B of the regulations for the specified time.

2. Unless the program provider notifies the board that it intends to admit students, the program will be considered closed at the end of the one-year period and be subject to the requirements of § 5.3 L of these regulations.

L. Closing of a nurse education program. When a nurse aide education program closes, the program provider shall:

1. Notify the board of the date of closing.

2. Submit to the board a list of all graduates with the date of graduation of each.

§ 5.4. Nurse aide competency evaluation.

A. The board may contract with a test service for the development and administration of a competency evaluation.

B. All individuals completing a nurse aide education program in Virginia shall successfully complete the competency evaluation required by the board prior to making application for certification and to using the title Certified Nurse Aide.

C. The board shall determine the minimum passing score on the competency evaluation.

§ 5.5. Nurse aide registry.

A. Initial certification by examination.

1. To be placed on the registry and certified, the nurse aide must:

a. Satisfactorily complete a nurse aide education program approved by the board; or

b. Be enrolled in a nursing education program preparing for registered nurse or practical nurse licensure, have completed at least one nursing course which includes clinical experience involving client care; or

c. Have completed a nursing education program preparing for registered nurse licensure or practical nurse licensure; and

d. Pass the competency evaluation required by the board; and

e. Submit the required application and fee to the board.

2. Initial certification by endorsement.

a. A graduate of a state approved nurse aide education program who has satisfactorily completed a competency evaluation program and is currently registered in another state may apply for certification in Virginia by endorsement.

b. An applicant for certification by endorsement shall submit the required application and fee and submit the required verification form to the credentialing agency in the state where registered, certified or licensed within the last two years.

3. Initial certification shall be for two years.

B. Renewal of certification.

1. No less than 30 days prior to the expiration date of the current certification, an application for renewal shall be mailed by the board to the last known address of each currently registered certified nurse aide.

2. The certified nurse aide shall return the completed application with the required fee of \$20 and verification of performance of nursing-related activities for compensation within the preceding two years.

3. Failure to receive the application for renewal shall not relieve the certificate holder of the responsibility for renewing the certification by the expiration date.

4. A certified nurse aide who has not performed nursing-related activities for compensation during the two years preceding the expiration date of the certification shall repeat and pass the nurse aide competency evaluation prior to applying for recertification.

C. Reinstatement of lapsed certification. An individual whose certification has lapsed shall file the required application and renewal fee and:

1. Verification of performance of nursing-related activities for compensation prior to the expiration date of the certificate and within the preceding two years; or

2. When nursing activities have not been performed during the preceding two years, evidence of having

repeated and passed the nurse aide competency evaluation.

D. Evidence of change of name. A certificate holder who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order authorizing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence and the required fee.

E. Requirements for current mailing address.

1. All notices required by law and by these regulations to be mailed by the board to any certificate holder shall be validly given when mailed to the latest address on file with the board.
2. Each certificate holder shall maintain a record of his current mailing address with the board.
3. Any change of address by a certificate holder shall be submitted in writing to the board within 30 days of such change.

§ 5.6. Denial, revocation or suspension.

The board has the authority to deny, revoke or suspend a certificate issued, or to otherwise discipline a certificate holder upon proof that he has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit shall mean, but shall not be limited to:
 - a. Filing false credentials;
 - b. Falsely representing facts on an application for initial certification, reinstatement or renewal of a certificate; or
 - c. Giving or receiving assistance in taking the competency evaluation.
2. Unprofessional conduct shall mean, but shall not be limited to:
 - a. Performing acts beyond those authorized for practice as a nurse aide as defined in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia;
 - b. Assuming duties and responsibilities within the practice of a nurse aide without adequate training or when competency has not been maintained;
 - c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
 - d. Falsifying or otherwise altering client or employer records;
 - e. Abusing, neglecting or abandoning clients; or
 - f. Having been denied a license or having had a license issued by the board revoked or suspended.

PART VI.

MEDICATION ADMINISTRATION TRAINING PROGRAM.

§ 6.1. Establishing a medication administration training program.

A. A program provider wishing to establish a medication administration training program pursuant to § 54.1-3408 of the Code of Virginia shall submit an application to the board at least 90 days in advance of the expected beginning date.

B. The application shall be considered at a meeting of the board. The board shall, after review and consideration, either grant or deny approval.

C. If approval is denied, the program provider may request a hearing before the board, and the provisions of the Administrative Process Act shall apply (§ 9-6.14:1 et seq. of the Code of Virginia).

§ 6.2. Qualifications of instructional personnel.

Instructors shall be licensed health care professionals who, consistent with provisions of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), are authorized to administer, prescribe or dispense drugs and who have completed a program designed to prepare the instructor to teach the course as it applies to the clients in the specific setting in which those completing the course will administer medications.

§ 6.3. Content.

The curriculum shall include classroom instruction and practice in the following:

1. Preparing for safe administration of medications to clients in specific settings by:
 - a. Demonstrating an understanding of the client's rights regarding medications, treatment decisions and confidentiality.
 - b. Recognizing emergencies and other health-threatening conditions and responding accordingly.
 - c. Identifying medication terminology and abbreviations.
2. Maintaining aseptic conditions by:
 - a. Implementing universal precautions.
 - b. Insuring cleanliness and disinfection.
 - c. Disposing of infectious or hazardous waste.
3. Facilitating client self-administration or assisting with medication administration by:
 - a. Reviewing administration records and prescriber's orders.
 - b. Facilitating client's awareness of the purpose and effects of medication.
 - c. Assisting the client to interpret prescription labels.
 - d. Observing the five rights of medication administration and security requirements appropriate to the setting.

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- e. Following proper procedure for preparing medications.
 - f. Measuring and recording vital signs to assist the client in making medication administration decisions.
 - g. Assisting the client to administer oral medications.
 - h. Assisting the client with administration of prepared instillations and treatments of:
 - (1) Eye drops and ointments.
 - (2) Ear drops.
 - (3) Nasal drops and sprays.
 - (4) Topical preparations.
 - (5) Compresses and dressings.
 - (6) Vaginal and rectal products.
 - (7) Soaks and sitz baths.
 - (8) Inhalation therapy.
 - (9) Oral hygiene products.
 - i. Reporting and recording the client's refusal to take medication.
 - j. Documenting medication administration.
 - k. Documenting and reporting medication errors.
 - l. Maintaining client records according to facility policy.
 - m. Sharing information with other staff orally and by using documents.
 - n. Storing and securing medications.
 - o. Maintaining an inventory of medications.
 - p. Disposing of medications.
4. Facilitating client self-administration or assisting with the administration of insulin. Instruction and practice in the administration of insulin shall be included only in those settings where required by client needs and shall include:
- a. Cause and treatment of diabetes.
 - b. The side effects of insulin.
 - c. Preparation and administration of insulin.

VA.R. Doc. No. R95-626; Filed July 5, 1995, 11:38 a.m.

STATE CORPORATION COMMISSION

FINAL REGULATIONS

Bureau of Financial Institutions

Title of Regulation: VR 225-01-0601. Establishing Maximum Rates of Charge and Loan Ceilings (REPEALED).

Statutory Authority: §§ 6.1-271 and 12.1-13 of the Code of Virginia.

Effective Date: July 1, 1995.

Agency Contact: William F. Schutt, Senior Counsel, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23209, telephone (804) 371-9671.

AT RICHMOND, JUNE 26, 1995

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In the matter of CASE NO. BFI950172
repealing the regulation
establishing maximum rates
of charge and loan ceilings
under the Consumer Finance
Act

ORDER REPEALING A REGULATION

By Order herein dated May 10, 1995, the Commission directed that notice be given of its intention to repeal VR 225-01-0601, "Establishing Maximum Rates of Charge and Loan Ceilings." The regulation was based on §§ 6.1-271 and 6.1-271.1 of the Code of Virginia, which were repealed, effective July 1, 1995, by Chapter 2 of the 1995 Acts of the General Assembly.

Notice of the proposed repeal was published May 29, 1995, in the Virginia Register; notice was given by mail to all licensees under the Consumer Finance Act ("the Act"), and to the Virginia Financial Services Association, the Virginia Citizens Consumer Counsel, the Virginia Poverty Law Center, and the Office of the Attorney General, Division of Consumer Counsel. An opportunity was afforded until June 19, 1995, for comments or requests for a hearing on the proposed repeal to be filed. No comment or request for a hearing was received.

THEREFORE, IT IS ORDERED:

- (1) That VR 225-01-0601, "Establishing Maximum Rates of Charge and Loan Ceilings," be repealed, and said regulation hereby is repealed, effective July 1, 1995;
- (2) That this Order be sent for publication in the Virginia Register; and
- (3) That this case is dismissed. The papers herein shall be placed among the ended cases.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions, who shall send a copy to all licensees under the Act and the other interested parties listed above.

VA.R. Doc. No. R95-578; Filed June 28, 1995, 9:56 a.m.

Title of Regulation: VR 225-01-0607. Sale of Noncredit-Related Life Insurance in Consumer Finance Offices.

Statutory Authority: §§ 6.1-302 and 12.1-13 of the Code of Virginia.

Effective Date: July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from E. J. Face, Jr., Bureau of Financial Institutions, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23209, telephone (804) 371-9657. Copying charges are \$1.00 for the first two pages, and 50¢ for each page thereafter.

AT RICHMOND, JUNE 21, 1995

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In the matter of CASE NO. BFI950139
a proposed regulation to be
promulgated under the Consumer
Finance Act

ORDER ADOPTING A REGULATION

By order herein dated March 27, 1995, the Commission directed that notice of a proposed regulation entitled "Sale of Non-Credit-Related Life Insurance in Consumer Finance Offices" (VR 225-01-0607), which regulation was proposed by the Bureau of Financial Institutions ("the Bureau"), be given. Notice of the proposed amendment was duly published in the Virginia Register and also given to all licensees under the Consumer Finance Act ("the Act"). Interested parties were afforded an opportunity to file written comments in favor of or against the proposal, and written requests for a hearing, on or before May 15, 1995.

The proposed regulation would require observance of all applicable laws, prohibit conditioning any loan or extension of credit upon the purchase of life insurance, prohibit solicitation of the sale of life insurance until after any relevant credit transaction is consummated, prohibit the financing of life insurance premiums, provide a right to cancel purchases of life insurance and related disclosures, require compliance with insurance laws, and provide Bureau access to records. Several licensees filed written comments opposing the regulation, taking the position that the rules were unnecessarily burdensome and created competitive disparities in the sale of life insurance. Written comments were also filed by the Virginia Citizens Consumer Council, and by the Bureau. No request for a hearing was made.

The Commission, having considered the proposed regulation and all submissions made in this case, concludes that the regulation, with certain modifications, contains provisions that create an appropriate balance between the interests of borrowers and lenders, and tend to prevent evasions of the provisions and purposes of the Act. The Commission is, therefore, of the opinion that the regulation, as modified, should be adopted.

THEREFORE, IT IS ORDERED:

State Corporation Commission

(1) That the regulation entitled "Sale of Non-Credit-Related Life Insurance in Consumer Finance Offices," attached hereto, is adopted effective July 1, 1995;

(2) That the amended regulation shall be transmitted for publication in the Virginia Register; and

(3) That there being nothing further to be done in this matter, this case is dismissed and the papers herein shall be placed among the ended cases.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions who shall mail a copy of this order and the attached amended regulation (without editing marks) to all licensees under the Act and all other persons who filed written comments in this case.

VR 225-01-0607. Sale of Noncredit-Related Life Insurance in Consumer Finance Offices.

§ 1. Legal compliance.

All governing state and federal laws shall be observed.

§ 2. Separation of lending and insurance sales.

No loan or extension of credit by the consumer finance licensee, or any affiliate conducting business in the licensee's office, shall be conditioned upon the purchase of [noncredit-related] life insurance. If a person expresses an interest in obtaining a loan or extension of credit from the consumer finance licensee, or from any affiliate conducting business in the licensee's office, the sale of [noncredit-related] life insurance to such person shall not be solicited until [at least one day] after the loan or extension of credit transaction is consummated. Neither the consumer finance licensee, nor any affiliate conducting business in the licensee's office, shall make a loan or extension of credit in order to enable a person to purchase [noncredit-related] life insurance solicited or sold under this regulation.

§ 3. Purchaser's right to cancel insurance.

Any person who purchases [noncredit-related] life insurance solicited in a consumer finance office shall have a right to cancel such purchase and receive a full refund until midnight of the 20th day following consummation of the purchase or the effective date of coverage, whichever is later. The consumer finance licensee shall clearly and conspicuously disclose to the individual his right to cancel, and shall provide the individual at the time of consummation of the purchase with a form in duplicate by which the right to cancel may be exercised by mailing or delivering the form to the consumer finance licensee. Such form shall clearly and conspicuously set forth:

1. The cost of the insurance;
2. The name and address of the consumer finance licensee;
3. The actions necessary for the individual to cancel the insurance; and
4. The individual's right to receive a full refund of the insurance premium upon cancellation.

§ 4. Compliance with insurance laws.

Persons soliciting the sale of [noncredit-related] life insurance in licensed consumer finance offices shall be licensed to do so, as required under Virginia insurance laws. The underwriter and selling company of [noncredit-related] life insurance sold in licensed consumer finance offices shall be authorized to transact the insurance business, as required under Virginia insurance laws.

§ 5. Examination of records.

The Bureau of Financial Institutions shall be given access to the books and records of the consumer finance business and the insurance sales business and be furnished such information as it may need in order to ensure that these conditions are being observed.

[§ 6. Effect of regulation.

This regulation supersedes all prior authorizations and rules governing the sale of noncredit-related life insurance in consumer finance offices.]

VA.R. Doc. No. R95-579; Filed June 27, 1995, 10:45 a.m.

Bureau of Insurance

Title of Regulation: Insurance Regulation No. 24. Rules Governing Credit Life Insurance and Credit Accident and Sickness Insurance (REPEALED).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: June 27, 1995.

Agency Contact: Gerald A. Milsky, Bureau of Insurance, State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23209, telephone (804) 371-9741.

AT RICHMOND, JUNE 20, 1995

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter of CASE NO. INS950058
repealing the Commission's Rules
Governing Credit Life Insurance and
Credit Accident and Sickness Insurance

ORDER REPEALING REGULATION

WHEREAS, by order entered herein May 4, 1995, all interested persons were ordered to take notice that the Commission would enter an order subsequent to June 15, 1995, repealing the Commission's Rules Governing Credit Life and Credit Accident and Sickness Insurance unless on or before June 15, 1995, any person objecting to the repeal of the aforesaid regulation filed a request for a hearing with the Clerk of the Commission; and

WHEREAS, as of the date of this order, no interested person filed a request for a hearing;

THEREFORE, IT IS ORDERED:

(1) That the Commission's Rules Governing Credit Life and Credit Accident and Sickness Insurance adopted in Case No. INS820162 be, and they are hereby, REPEALED;

(2) That an attested copy of this Order be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky who shall give further notice of the repeal of the Commission's Rules Governing Credit Life Insurance and Credit Accident and Sickness Insurance by mailing a copy of this order to all insurance companies licensed to write credit life insurance and credit accident and sickness insurance in the Commonwealth of Virginia; and

(3) That the Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) above.

VA.R. Doc. No. R95-580; Filed June 27, 1995, 10:45 a.m.

ADMINISTRATIVE LETTER

Bureau of Insurance

June 20, 1995

ADMINISTRATIVE LETTER 1995-5

TO: All Insurers, Health Services Plans, and Health Maintenance Organizations Licensed to Write Accident and Sickness Insurance in Virginia

RE: Virginia Insurance Regulation No. 38: Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers - Coverage for Treatment of Breast Cancer by Dose Intensive Chemotherapy/Autologous Bone Marrow Transplants or Stem Cell Transplants, Section 38.2-3418.1:1 of the Code of Virginia.

Section 38.2-3418.1:1 of the Code of Virginia, enacted during the 1994 Session of the Virginia General Assembly, provides that coverage must be offered "for the treatment of breast cancer by dose-intensive chemotherapy/autologous bone marrow transplants or stem cell transplants." The requirement applies to any applicable policy, contract, or plan delivered, issued for delivery or renewed in Virginia on and after January 1, 1995.

Cost and utilization information will need to be reported to the Commission pursuant to the requirements contained in § 38.2-3419.1 and consistent with the requirements set forth in Regulation No. 38, as currently revised, as well as prior Administrative Letters on this subject. The first reporting period for this new benefit is calendar year 1995, and data must therefore be reported in the report due May 1, 1996.

Section 6 of Regulation No. 38 permits the Bureau of Insurance to modify the data requirements of the MB-1 reporting form on an annual basis through the use of an Administrative Letter. The reporting requirements and modified MB-1 Reporting form will be sent to each insurer as part of an Administrative Letter, most likely in January of 1996. To delay informing insurers of the attached information, however, would be counterproductive. In order to avoid unnecessary confusion, the Bureau of Insurance has

determined the appropriate CPT-4 and ICD-9-CM codes to be used by insurers in collecting this data, and a list thereof is attached to and made a part of this administrative letter.

Please refer any questions regarding this matter to:

Robert L. Wright, III, Principal Insurance Analyst
State Corporation Commission
Bureau of Insurance - Life and Health Division
Post Office Box 1157
Richmond, VA 23209
Telephone: (804) 371-9586 FAX: (804) 371-9944

/s/ Steven T. Foster
Commissioner of Insurance

Attachment

Section 38.2-3418.1:1 of the Code of Virginia
Breast Cancer Treatment by Dose Intensive
Chemotherapy/Autologous Bone Marrow Transplants or Stem
Cell Transplants

* The following codes should be used for purposes of reporting under § 38.2-3419.1 and Regulation No. 38:

ICD Codes	CPT Codes
174.0 through .9	36520
175.0 through .9	38241
	86950

* The Bureau is aware that because of the changing and unique nature of treatment involving this diagnosis and treatment procedures, reporting only those claim costs associated with these codes will lead to significant under reporting. Accordingly, if one of the ICD Codes and any of the CPT codes shown above are utilized, the insurer should report all claim costs incurred within thirty (30) days prior to the CPT Coded procedure as well as all claim costs incurred within ninety (90) days following the CPT Coded procedure.

VA.R. Doc. No. R95-585; Filed June 28, 1995, 2:05 p.m.

MARINE RESOURCES COMMISSION

MARINE RESOURCES COMMISSION

NOTE: Effective July 1, 1984, the Marine Resources Commission was exempted from the Administrative Process Act for the purposes of promulgating regulations. However, they are required to publish the full text of final regulations.

Title of Regulation: VR 450-01-0007. Regulations Pertaining to Crab Catch Limits.

Statutory Authority: §§ 28.2-201, 28.2-707 and 28.2-713 of the Code of Virginia.

Effective Date: June 29, 1995.

Preamble:

This regulation establishes a daily catch limit and maximum dredge size for the winter crab dredge fishery in Virginia tidal waters. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201, 28.2-707 and 28.2-713 of the Code of Virginia. This regulation amends VR 450-01-0007 that was promulgated by the Marine Resources Commission and made effective March 2, 1995. The effective date of this regulation is June 29, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P. O. Box 756, Newport News, VA 23607, telephone (804) 247-2247.

VR 450-01-0007. Regulations Pertaining to Crab Catch Limits.

§ 1. Purpose.

The purpose of this regulation is to provide for the long-term conservation of the blue crab resource.

§ 2. Catch limit.

During the lawful crab dredge season no one boat shall take or catch more than 20 barrels of crabs in any one day. Each barrel shall be a regular crab barrel not more than level full.

§ 3. Dredge size.

~~For the 1994-1995 season,~~ It shall be unlawful for any person to use any single crab dredge that exceeds eight feet in width across the inside mouth of the dredge.

§ 4. Penalty.

A. Possession of crabs in excess of the amounts provided by this regulation shall be prima facie evidence of violation provided, however, that the catch limit imposed by this regulation shall not apply to crab buy boats.

B. As provided by *in* § 28.2-713 of the Code of Virginia, any person violating the provisions of § 2 of this regulation shall be guilty of a Class 1 misdemeanor.

C. As provided in § 28.2-707 of the Code of Virginia, any person violating the provisions of § 3 of this regulation shall be guilty of a Class 3 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-587; Filed June 29, 1995, 5:45 p.m.

Title of Regulation: VR 450-01-0024. Pertaining to the Taking of Eels and Elvers (REPEALED).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 12, 1995.

Agency Contact: Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P. O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

Summary:

The provisions of this regulation have been amended and readopted in § 4 of VR 450-01-0064, Pertaining to the Catching of Eels.

VA.R. Doc. No. R95-632; Filed July 12, 1995, 10:25 a.m.

Title of Regulation: VR 450-01-0028. Pertaining to the Taking of Finfish by Gill Nets.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation prohibits encirclement gill netting and establishes maximum depth and minimum spacing requirements for gill nets.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0028, which was adopted January 28, 1992, and was effective February 1, 1992. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0028. Pertaining to the Taking of Finfish by Gill Nets.

~~§ 1. Authority, prior regulations, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. This regulation amends previous Regulation XXVIII, "Pertaining to the Taking of Finfish by Gill Nets," which was promulgated and made effective on April 1, 1983.~~

~~C. The effective date of this regulation is February 1, 1992.~~

§ 2- 1. Purpose.

The purpose of this regulation is to provide for the long-term conservation of stocks of food fish in Virginia's tidal waters, and to assure that there is an appropriate balance of harvests to for all user groups.

Marine Resources Commission

§ 3. 2. Gill nets.

A. Any gill net, whether floating or submerged, that is not assigned a fixed location shall be set in a straight line. In enforcing this provision, ~~inspectors~~ Marine Patrol Officers shall take into consideration the effect of wind and tide on any net. Nothing in this subsection shall pertain to mullet nets when used in a directed fishery for mullet.

B. Any gill net, whether floating or submerged, that is not assigned a fixed location shall have no greater depth than 330 inches total stretched mesh measurement. Measurement shall be vertically from top to bottom. Possession of any gill net, rigged with floats and weights, and in excess of the aforementioned depth shall be deemed a violation of this subsection except that any person, ~~firm, or corporation~~ transiting Virginia's waters with any gill net not meeting the requirements of this regulation shall first notify and obtain permission from the Commissioner of Marine Resources.

C. Any gill net, whether floating or submerged, that is not assigned a fixed location shall be fished no closer than 200 feet to any other such gill net. No part of any such gill net shall be closer than 200 feet to any part of any other such gill net. In enforcing this provision, ~~inspectors~~ Marine Patrol Officers shall take into consideration the effect of wind and tide on the nets in question.

D. The provisions of subsection C of this section shall not be applicable to those gill nets without an assigned fixed location which are set and fished in the tributaries of the Chesapeake Bay. However, no two or more such gill nets shall be fixed or tied end-to-end such that the maximum licensed length prescribed by law is exceeded.

§ 4. 3. Penalty.

~~A. As set forth in § 28.2-903 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.~~

B. The licensee or the master of the vessel tending such gill net shall be responsible for compliance with this regulation.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-589; Filed June 29, 1995, 5:43 p.m.

Title of Regulation: VR 450-01-0030. Pertaining to the Harvesting of Surf Clams.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation establishes a size limitation, inspection procedures and license for the harvesting of surf clams in Virginia waters. These provisions closely parallel the management and conservation strategy governing surf clams in federal waters. The intent of this regulation is to ensure that the surf clam resource is managed as a unit stock; therefore the size limitations and tolerances applicable to surf clams in the Exclusive Economic Zone (3-100 nautical miles offshore) are imposed in Virginia's portion of the Territorial Sea. Also, as provided in § 28.2-201 of the Code of Virginia, law-enforcement officers of the U.S. Department of Commerce, National Marine Fisheries Services, are authorized to enforce the provisions of this regulation.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0030, which was adopted was November 22, 1983, and was effective March 1, 1984. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0030. Pertaining to the Harvesting of Surf Clams.

~~§ 1. Authority, prior regulation, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. No prior regulations pertain to the harvesting of surf clams.~~

~~C. The effective date of this regulation is March 1, 1984.~~

§ 1. Purpose.

The purpose of this regulation is to conserve the surf clam resource in the waters of the Commonwealth and to ensure that the surf clam resource within the waters of the Commonwealth and within the jurisdiction of the federal government is managed as a unit stock under consistent management measures.

§ 2. Definitions.

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

A. ~~"Surf clams" shall mean clam~~ means the species *Spisula solidissima*.

B. ~~"Cage" shall mean~~ means a standard unit of measure presumed to hold 32 bushels of surf clams or ocean quahogs in the shell. The outside dimensions of a standard cage generally are three feet wide, four feet long, and five feet high.

§ 3. License.

A. Any person, ~~firm or corporation~~ desiring to harvest surf clams from the waters under the jurisdiction of the

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Commonwealth shall first obtain a license from the Marine Resources Commission for each boat so engaged. Such license shall be for one calendar year.

B. The fee for this license shall be \$100, and no amount of such fee shall be prorated or returnable in the event the vessel fishes for less than a full calendar year.

§ 4. Minimum length.

A. A minimum size limit for surf clams of ~~5-1/2~~ 4-3/4 inches in length is imposed on all surf clams coming from the waters of the Commonwealth ~~with the following exceptions~~, and it shall be unlawful for any person to possess clams less than the minimum size provided, however, that:

1. Ten percent of all full cages in possession, to the nearest whole cage (or at least one cage), can be withheld by the operator from inspection by the authorized officer, and

2. As many as 240 surf clams in any full cage inspected by the authorized officer may be less than ~~5-1/2~~ 4-3/4 inches in length. If any inspected cage is found to be in violation, all cages in possession and not withheld subject to subdivision A 1 of this section will be deemed in violation of the size limit.

3. *To maintain consistency of management measures between state and federal jurisdictions, and when it is deemed in the best interest of the surf clam industry to do so, the Marine Resources Commission may by notice suspend the provisions of this section. Such suspension shall be on an annual basis.*

B. Length is measured at *along* the longest dimension of the surf clam.

§ 5. Enforcement.

Any ~~inspector~~ *Marine Patrol Officer* of the Marine Resources Commission, and any U.S. Department of Commerce, National Marine Fisheries Service law-enforcement officer, shall have and ~~are~~ *is* hereby granted authority to enforce the provisions of this regulation.

§ 6. Penalty.

As set forth in § 28.2-903 of the Code of Virginia any person, ~~firm or corporation~~ violating any provisions of this regulation shall be guilty of a Class 4 3 misdemeanor, and a ~~second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.~~

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-590; Filed June 29, 1995, 5:43 p.m.

Title of Regulation: VR 450-01-0033. Pertaining to the Tangier Island Crab Scrape Sanctuary.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation prohibits the setting of crab pots and the taking of hard crabs by any gear in a small area north of Tangier Island.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0033, which was adopted October 4, 1988, and was effective October 10, 1988. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0033. Pertaining to the Tangier Island Crab Scrape Sanctuary.

~~§ 1. Authority, prior regulations, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. This regulation amends VR 450-01-0033 which was promulgated on May 1, 1985.~~

~~C. The effective date of this regulation is October 10, 1988.~~

§ 2. 1. Purpose.

The purpose of this regulation is to minimize gear conflicts existing between crab pot fishermen and crab scrape fishermen in an area of Chesapeake Bay north of Tangier Island.

§ 3. 2. Gear limitation, closed area.

~~A. No crab pot shall be set or fished in the designated closed area.~~

~~B. The harvesting of hard crabs by any gear shall be prohibited in the designated closed area.~~

~~C. The closed area is defined as follows:~~

It shall be unlawful for any person to place, set or fish a crab pot or to harvest hard crabs by any gear in the following area:

Beginning at the northernmost point of Fishbone Island, 37°-53'-10" North/76°-00'-10" West; thence in a northerly direction approximately 0.90 miles to a point on the Eastern shore of Herring Island, 37°-54'-03" North/76°-00'-29" West; thence in a northerly direction approximately 1.68 miles to a point on South Point Marsh known as Peach Orchard Point, 37°-55'-41" North/76°-00'-55" West; thence following the shoreline of South Point Marsh to South Point, 37°-55'-19" North/76°-01'-32" West; thence due West approximately 0.75 miles to the overhead power cable at the westernmost point of Shanks Island, 37°-55'-20" North/76°-02'-32" West; thence in southeasterly direction, along the overhead powerline approximately 2.85 miles to Upper Tump, 37°-52'-50" North/76°-00'-47" West; thence in a northeasterly

direction approximately 0.60 miles to the northernmost point of Fishbone Island, the point of beginning.

§ 4. 3. Penalty.

~~As set forth in § 28.2-903 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.~~

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-588; Filed June 29, 1995, 5:44 p.m.

Title of Regulation: VR 450-01-0042. Pertaining to ~~Containerized~~ the Relaying of Shellfish.

Statutory Authority: §§ 28.2-201 and 28.2-801 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation establishes the procedures for the containerized relaying of hard clams and oysters from polluted waters. Required specifications for cage construction, loading and deployment, and harvesting are described.

This regulation is promulgated pursuant to authority contained in §§ 28.2-201 and 28.2-801 of the Code of Virginia. This regulation amends and readopts VR 450-01-0042, which was adopted July 24, 1990, and was effective August 1, 1990. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0042. Pertaining to the Relaying of Shellfish.

~~§ 1. Authority, prior regulation, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-801 of the Code of Virginia.~~

~~B. This regulation amends VR 450-01-0042 which was promulgated by the Marine Resources Commission and made effective April 1, 1987.~~

~~C. The effective date of this regulation is August 1, 1990.~~

§ 1. Purpose.

The purpose of this regulation is to protect the public health and to ensure that Virginia complies with the National Shellfish Sanitation Program.

§ 2. General provisions.

A. It shall be unlawful for any person to relay molluscan shellfish by use of any container or cage except in compliance with the requirements of this regulation.

~~A. B.~~ Shellfish to be relayed within containers or cages shall be limited to the hard clam, *Mercenaria mercenaria*, and the American oyster, *Crassostrea virginica*.

~~B. C.~~ Any person, firm or corporation wishing to use containers for shellfish relaying shall petition the Marine Resources Commission demonstrating their ability to handle containers, describing the area where containers will be deployed and providing a description of the containers to be used.

~~C. D.~~ Permission to use containers shall be determined on a case-by-case basis by the VMRC *Marine Resources Commission* and the Virginia Department of Health. Permit issuance shall be controlled so as to ~~insure~~ ensure proper monitoring and enforcement as required by the National Shellfish Sanitation Program Manual of Operations (1993) , Part I.

~~D. E.~~ Any person, firm or corporation wishing to use containers for relaying shellfish shall meet the criteria set forth in ~~§§ 28.2-810 through 28.2-820 Chapter 8 of Title 28.2~~ of the Code of Virginia and applicable portions of the National Shellfish Sanitation Program Manual of Operations (1993), Part I, ~~Section D, 1989 Revision.~~ In addition, any dealer utilizing a vehicle, vessel, property, or premises where shellfish are transported, held, stored, processed, packed, or repacked in preparation for marketing shall meet the applicable criteria set forth in the National Shellfish Sanitation Program Manual of Operations (1993), Part II, ~~1989 Revision,~~ as determined by the Virginia Department of Health.

~~E. F.~~ Any person, firm or corporation harvesting shellfish from polluted waters for containerized relaying to approved areas shall land at designated VMRC *Marine Resources Commission* condemned shellfish landing areas, or make arrangements with the VMRC Marine Patrol Officer to meet at approved relaying grounds so that the relaying operation is carried out under VMRC appropriate supervision.

§ 3. Container construction.

A. Container size shall not exceed four feet by four feet by one foot.

B. Containers shall not be solid-walled, but shall be constructed of a mesh material of sufficient size not to restrict water flow.

1. Mesh size shall not be less than one inch measured diagonally across the longest axis of square, rectangular, or diamond shaped mesh nor less than one inch diameter for circular mesh.

2. Construction material shall be nontoxic and not retard shellfish pumping rates.

3. Containers shall be frequently cleaned and maintained in such a manner that fouling does not accumulate to the degree that water flow through the container is impeded or fill line markers are obscured.

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C. Container height (excluding any legs or skids) shall be no greater than 12 inches. The container shall be marked permanently on the inside surface supporting the shellfish at the six-inch level (measured from the bottom) around the entire circumference of the cage in such manner as to be clearly visible.

D. Each container shall be fitted with skids or legs to hold the container off-bottom and constructed in a manner that will not restrict water flow under the container.

1. Skids shall be no smaller than four inches by four inches; legs shall be no shorter than four inches.

2. Skids or legs may be larger to assure that the container does not rest on-bottom, but cannot be so large as to place the container at a depth that could constitute a hazard to navigation.

E. Access to each container shall be designed so that it can be secured with a standard VMRC *Marine Resources Commission* seal and so that the container cannot be opened without breaking the seal.

§ 4. Loading and deployment.

A. Areas where containers are to be relayed shall be clearly marked and easily identified as required in § 28.2-818 of the Code of Virginia.

B. Landing of polluted shellfish, loading of vehicles and containers, and container deployment and harvest shall be conducted under VMRC *Marine Resources Commission* supervision. Scheduling of loading and unloading of vehicles and containers shall be determined by VMRC Marine Patrol Area Supervisors.

C. Containers shall be deployed in such a manner and spacing so that different lots are separated and easily identified.

1. Spacing between adjacent groups of containers shall be a minimum of 25 feet.

2. Individual containers shall be no closer than six feet to any other container within the group.

D. The maximum height of shellfish loaded into any one container shall not exceed six inches, measured from the bottom of the container, excluding skids or legs.

E. Each container deployed shall be sealed with a VMRC *Marine Resources Commission* standard seal and the seal number recorded. Shellfish harvested from polluted waters for containerized relaying shall be under VMRC *Marine Resources Commission* seal before sunset. VMRC Marine Patrol Officers are the only persons authorized to seal vehicles and containers and break the seals on vehicles and containers used in the transporting and relaying of shellfish from polluted areas.

§ 5. Harvest.

A. All containers shall remain in the relaying area for a minimum of 15 days in water temperatures above 50°F and in salinities sufficient to assure effective cleansing through active pumping. In the event a relay area is closed due to a

pollution event during the relay process, the 15-day relay period shall start over when the area is reopened.

B. Requests to harvest specific containers shall be made in the same manner as on-bottom relaying with the inclusion on the request form of the VMRC *Marine Resources Commission* seal numbers to be released for harvest.

C. No shellfish shall be reharvested until a Permit to Remove Shellfish is received from the Virginia Department of Health. Upon reharvesting, the seal on each container shall not be broken by anyone except a Virginia Marine Resources Commission Marine Patrol Officer. ~~Violation of this regulation shall be grounds for immediate revocation of the permit to cage relay shellfish.~~

D. After the seal is broken, the reharvested shellfish shall be moved into the certified shellstock storage facility (if provided) for washing, grading, bagging, tagging, and storage prior to shipment. Shellfish packed on boats, monitors or barges shall be immediately transferred to a certified shellstock storage facility or an enclosed vehicle for shipment to market or other certified dealers. No shellfish shall be washed, graded, bagged, or stored onshore or on a dock unless protected facilities are provided and approved by the Virginia Department of Health.

§ 6. Penalty.

~~As set forth in § 28.2-821 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.~~

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor. In addition, violation of any provisions of this regulation shall be grounds for immediate revocation of the permit to relay shellfish.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-591; Filed June 29, 1995, 5:42 p.m.

Title of Regulation: VR 450-01-0044. Pertaining to the Taking of Shellfish from Condemned Areas.

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

Effective Date: July 1, 1995.

Preamble:

This regulation establishes time-of-day restrictions for the harvesting of shellfish from condemned grounds.

This regulation is promulgated pursuant to authority contained in § 28.2-801 of the Code of Virginia. This regulation amends and readopts VR 450-01-0044, which was adopted May 5, 1987, and was effective May 6, 1987. The effective date of this regulation is July 1, 1995.

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Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0044. Pertaining to the Taking of Shellfish from Condemned Areas.

~~§ 1. Authority and effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201, 28.2-801, 28.2-810 through 28.2-820 of the Code of Virginia.~~

~~B. The effective date of this regulation is May 6, 1987.~~

§ 2. 1. Purpose.

The purpose of this regulation is to conserve Virginia's shellfish resources and to protect public health.

§ 3. 2. Harvesting restrictions.

As required under § 28.2-810 of the Code of Virginia, the Commissioner of Marine Resources shall issue special permits to applicants to take and catch shellfish from condemned areas. ~~Such harvesting shall occur~~ *It shall be unlawful for harvesting to occur, except* under the following conditions:

A. 1. Each boat used for harvesting condemned shellfish shall not leave the dock with the gear used for harvesting on board until one hour before sunrise and shall return to the dock before sunset. When said boat is used for other purposes between the hours of sunset and one hour before sunrise only patent tongs may remain on the boat, provided the hoist line shall be disconnected and the bolt removed, separating and disassembling the patent tong gear during said period of time.

B. 2. Shellfish shall be taken and caught from condemned areas only during the lawful season, Monday through Friday, and only between the hours of sunrise and 5 p.m.

C. 3. The culling board of each boat used for harvesting of condemned shellfish shall be clean before sunrise and by 5 p.m. The presence of shellfish on the culling board before sunrise and after 5 p.m. shall be prima facie evidence of a violation of this regulation.

§ 4. 3. Penalty.

~~As set forth in § 28.2-821 of the Code of Virginia, any person, firm, or corporation violating any provisions of this regulation shall be guilty of a Class 1 misdemeanor. The commission further establishes as a policy that in the event any person is convicted in court of violation of Code § 28.2-810, of any part of this regulation, or when in the commissioner's judgment, it will be to the best interest of the industry, the commissioner may revoke the special permit. Any person having said permit revoked may demand a hearing before the commission at the next scheduled meeting of the commission.~~

A. *As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent*

violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. Pursuant to § 28.2-822 of the Code of Virginia, in the event any person is convicted in court of a violation of any provision of Chapter 8 of Title 28.2 of the Code of Virginia, or any part of this regulation, or when in the judgment of the Commissioner of Marine Resources it is in the best interest of the industry, the commissioner may revoke the special permit. Any person having said permit revoked shall be entitled to a hearing before the Marine Resources Commission at its next scheduled meeting.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-592; Filed June 29, 1995, 5:42 p.m.

Title of Regulation: VR 450-01-0046. Pertaining to Prohibiting the Sale of Billfish.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation prohibits the sale of billfish in Virginia.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0046, which was adopted November 5, 1987, and was effective November 5, 1987. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0046. Pertaining to Prohibiting the Sale of Bluefish.

~~§ 1. Authority, prior regulation, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.3-201 of the Code of Virginia.~~

~~B. No prior regulations pertain to billfish.~~

~~C. The effective date of this regulation is November 5, 1987.~~

§ 2. Definitions.

~~Billfish. Any fish of the species Istiophorus platypterus (sailfish), Tetrapterus albidus (white marlin), Makaira nigricans (blue marlin), Tetrapterus pfeugeri (longbill spearfish).~~

§ 3. 1. Purpose.

The purpose of this regulation is to provide for the conservation of the billfish resource off of the coast of Virginia by preventing the development of a commercial fishery

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through a prohibition of sale of billfish. The regulation supports the objectives of the ~~draft fishery management plan for the Atlantic billfishes prepared by the South Atlantic Fisheries Management Council with the cooperation of New England, Mid Atlantic, Gulf of Mexico, and Caribbean Councils federal and interstate management measures for the Atlantic billfishes.~~ The primary intent of ~~the plan is to~~ these management measures is to optimize use of billfish by allowing harvest for recreational purposes only. ~~Assessment of the fishery by the councils indicates~~ Assessments indicate that the billfish resource will not support added fishing pressure without causing stock declines.

§ 2. Definitions.

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

"Billfish" means any fish of the species *Istiophorus platypterus* (sailfish), *Tetrapturus albidus* (white marlin), *Makaira nigricans* (blue marlin), and *Tetrapturus pfluegeri* (longbill spearfish).

§ 4. 3. Prohibition of sale.

It shall be unlawful for any person, ~~firm, or corporation~~ to buy, sell, offer for sale, possess with intent to sell, barter, or exchange, ~~any of the four species of billfish defined by this regulation.~~

§ 5. 4. Penalty.

~~As set forth in § 28.2-903 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.~~

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-593; Filed June 29, 1995, 5:42 p.m.

Title of Regulation: VR 450-01-0049. Pertaining to the Culling of Crabs.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation describes the procedures that must be followed to cull harvested crabs to the legal limits.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0049, which was adopted March 24, 1992, and was effective April 1,

1992. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0049. Pertaining to the Culling of Crabs.

~~§ 1. Authority, prior regulations, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. Other restrictions on crabbing can be found in Title 28.1, Chapter 6 of the Code of Virginia and in VR 450-01-0007, VR 450-01-0012, VR 450-01-0036, and VR 450-01-0041.~~

~~C. The effective date of this regulation is April 1, 1992.~~

§ 1. Purpose.

The purpose of this regulation is to aid in enforcing the provisions of § 28.2-708 of the Code of Virginia.

§ 2. Culling requirements.

A. All crabs taken from the tidal waters of Virginia shall be culled to the legal size and possession limits by the catcher during the harvesting process.

B. The catcher shall use culling containers (other than bushel baskets and barrels normally used for crabs) for the purpose of culling crabs during the harvesting process. Crabs placed loose in any boat are subject to be culled at any time. The provisions of this paragraph section shall not apply to the harvesting of crabs from a licensed crab trap (crab pound).

C. During culling, all undersize crabs shall be immediately returned to the water as required by § 28.2-708 of the Code of Virginia. Upon arrival at the dock or landing point all crabs shall have been culled.

§ 3. Penalty.

As set forth in § 28.2-708 of the Code of Virginia, any person, ~~firm, or corporation~~ violating any provision of this regulation shall be guilty of a Class 4 3 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-594; Filed June 29, 1995, 5:41 p.m.

Title of Regulation: VR 450-01-0054. Pertaining to the Use of Patent Tongs.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation prohibits the use of patent tongs on public oyster grounds within the James River.

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This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0054, which was adopted April 4, 1989, and was effective April 5, 1989. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0054. Pertaining to the Use of Patent Tongs.

~~§ 1. Authority, prior regulations, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. No prior regulations pertain to the use of patent tongs on Baylor Survey grounds in the James River.~~

~~C. The effective date of this regulation is April 5, 1989.~~

§ 2. 1. Purpose.

The purpose of this regulation is to conserve and protect the ~~Baylor Survey public oyster grounds~~ in the James River.

§ 3. 2. Description of area.

This regulation shall include all of the ~~Baylor Survey public oyster grounds~~ in the James River ~~above the James River bridge, west upstream~~ of the James River bridge.

§ 4. 3. Violations.

It shall be unlawful for any person, ~~firm or corporation~~ to use or operate patent tongs in any manner on any ~~Baylor Survey public oyster grounds~~ in the James River, ~~above the James River bridge, west upstream~~ of the James River bridge.

§ 5. 4. Penalty.

~~As set forth in § 28.2-903 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.~~

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-595; Filed June 29, 1995, 5:41 p.m.

Title of Regulation: VR 450-01-0057. Pertaining to the Marking and Minimum Mesh Size of Gill Nets.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation establishes marking requirements for gill nets to increase their visibility and identification and establishes a minimum mesh size for gill nets to aid in the conservation of fish stocks.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0057, which was adopted January 28, 1992, and was effective February 1, 1992. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0057. Pertaining to the Marking and Minimum Mesh Size of Gill Nets.

~~§ 1. Authority, prior regulations, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. This regulation amends VR 450-01-0057, "Pertaining to the Marking and Minimum Mesh Size of Gill Nets," which was promulgated and made effective on January 23, 1991.~~

~~C. The effective date of § 4 of this regulation shall be March 1, 1992. All other provisions of this regulation become effective on February 1, 1992.~~

§ 2. 1. Purpose.

The purpose of this regulation is to minimize gear conflicts between gill net fishermen and conflicts with recreational boaters caused by poor visibility of gill nets, and to conserve stocks of fish by establishing a minimum mesh size for gill nets.

§ 3. 2. Marking procedures for drift and anchored gill nets.

Except as provided in §§ 5 4 and 6 5 of this regulation, it shall be unlawful for any person, ~~firm, or corporation~~ to place, set or fish any gill net, except *when* licensed as a fixed fishing devices *device*, that is not marked in the following manner:

1. One end of each gill net shall be marked by a flag of square dimensions, which shall measure at least 144 square inches.
2. The end of each gill net opposite the square flag marker, shall be marked by either a triangular flag of at least 144 square inches or a floating ball of at least 50 inches circumference.
3. Each flag described in subdivisions 1 and 2 of this section shall be supported on a staff sufficient to maintain the bottom of the flag at least three feet above the surface of the water.
4. The end-marker flags on the same net, or flag and floating ball on the same net shall be of identical color.
5. An easily visible number or symbol shall be attached to end-marker flags and floating balls, and the same

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number or symbol shall be used for both ends of the same net.

6. Each fisherman shall not use the same number or symbol for identification on more than one of the gill nets licensed by that fisherman.

7. All flag staffs shall be marked with two stripes of two-inch wide reflective material that shall be visible from all sides; all end-marker floating balls shall be marked on three sides with patches of approximately ~~2-inch~~ *two-inch* by ~~2-inch~~ *two-inch* reflective material that shall be visible from all sides above the water line.

§ 4-3. Marking procedures for staked gill nets.

A staked gill net is a licensed fixed fishing device that is assigned a fixed location. It shall be unlawful for any person, ~~firm, or corporation~~ to hang any staked gill net on its poles, to drop such net into the fishing position or to fish such net that is not marked in the following manner:

1. Both ends of each staked gill net shall be marked by a flag of square dimensions, which shall measure at least 144 square inches.

2. Each end-marker flag described in subdivision 1 of this section shall be suspended on a pole or stake at least two feet above the surface of the water.

3. All end-marker flags shall be of blaze-orange color.

4. Each pole or stake in a gill net stand shall be marked at least two feet above the surface of the water, and visible from all sides, with either reflectors (at least two inches in diameter) or reflective tape (at least two inches wide).

§ 6-4. Upriver white perch fishery exemption.

During the period December 1 to the last day of February, inclusive, it shall be unlawful for any person, ~~firm, or corporation~~ to place, set or fish any gill net, used for the taking of white perch, ~~in the areas defined below, in the areas designated below~~ and that is not marked in the following manner:

1. Both ends of each gill net shall be marked by a floating buoy of at least 3-1/2 inches in diameter.

2. Both end-marker buoys shall be of blaze-orange color.

3. Areas ~~defined~~ *designated*.

a. James River. Upstream from a line connecting College Creek and Hog Point.

b. York River. Upstream from a line connecting the southernmost point of the northern headland of Popopotank Bay and Croaker Landing.

c. Rappahannock River. Upstream from a line connecting Greenvale Creek and Weeks Creek.

§ 6-5. Shad Drift gill net fishery exemption.

During the period February 15 through April 30, ~~both dates~~ inclusive, it shall be unlawful for any person to place, set, or fish any drift gill net ~~used for the taking of shad~~ in the areas

~~defined~~ *designated* below, that is not marked in the following manner:

~~1. Both ends of each drift gill net shall be marked by a floating bullet-shaped buoy of at least 5 inches in diameter and 11 inches in length.~~

~~2. 1. Both end-marker buoys and all floats or buoys between the ends shall be of blaze orange or fluorescent paint color.~~

~~2. 2. Areas defined~~ *designated*.

a. James River. Upstream of the Jamestown Ferry Docking Station.

b. Mattaponi and Pamunkey Rivers. Upstream of the Route 33 bridges at West Point.

c. Rappahannock River. Upstream of the Route 360 bridge at Tappahannock.

§ 7-6. Minimum mesh size.

A. It shall be unlawful for any person, ~~firm, or corporation~~ to place, set or fish any gill net with a stretched mesh of less than 2-7/8 inches, except as provided in subsection C ~~below of this section~~.

B. Mesh measurement is defined as the inside stretched distance between two knots on opposite sides of the same mesh.

C. As provided in § 28.2-305 of the Code of Virginia, mullet *gill nets may less than 200 yards long shall consist of a stretched mesh no not less than two inches stretched measure after having been tarred*. Any person utilizing a mullet *gill net may not take or possess quantities of species other than mullet which comprise more than 15% of their total daily catch, in pounds*.

§ 8-7. Enforcement provisions.

In the enforcement of this regulation the Marine Patrol Officer shall consider the following:

1. If only one end of a gill net is found to be marked as required by this regulation, then a warning shall be issued by a Marine Patrol Officer, and the net owner shall have 24 hours to mark ~~said the~~ net as provided in this regulation.

2. If both ends of a gill net are found in violation, a Marine Patrol Officer shall confiscate ~~said the~~ net immediately.

§ 9-8. Penalties.

~~As set forth in § 28.2-903 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.~~

A. *As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation, other than § 6 C, shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation, other than § 6 C, committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.*

B. As set forth in § 28.2-305 of the Code of Virginia, any person violating any provision of § 6 C of this regulation shall be guilty of a Class 3 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-596; Filed June 29, 1995, 5:40 p.m.

Title of Regulation: VR 450-01-0061. Pertaining to Hampton Roads Management Area.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation establishes a Hampton Roads Management Area and prohibits the use of gill nets in that area between 7 a.m. and 5 p.m. from the Friday preceding Memorial Day through Labor Day.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0061, which was adopted July 24, 1990, and was effective August 1, 1990. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0061. Pertaining to Hampton Roads Management Area.

~~§ 1. Authority, prior regulations, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. Regulation 450-01-0062, Pertaining to Eastern Shore Bayside Management Areas, establishes a prohibition on the use of gill nets in four Eastern Shore Bayside Creek Management Areas, between June 1 and November 1.~~

~~C. The effective date of this regulation is August 1, 1990.~~

§ 2- 1. Purpose.

The purpose of this regulation is to reduce conflict between charter boats, recreational fishermen and gill net fishermen in the Hampton Roads area.

§ 3- 2. Hampton Roads Management Area established.

The Hampton Roads Management Area is established as that area defined as follows:

Beginning at the mean low water line of Newport News Point at its intersection with the northbound lanes of I-664; thence following the mean low water line of Hampton Roads and its tributaries and Chesapeake Bay in an easterly direction to the Fort Monroe Officers' Club Pier; thence in an easterly direction to the white and

~~orange buoy "G"; thence in an easterly direction to the black and white buoy in "B4"; thence in an easterly direction to Thimble Shoal Light; thence in a southerly direction to buoy G "17"; thence in a southwesterly direction to the black and white buoy N "C17"; thence in a southwesterly direction to the trestle of the westbound lanes of I-64 Hampton Roads Bridge-Tunnel at its intersection with the south island; thence following the westbound lanes of Hampton Roads Bridge-Tunnel to its intersection at the mean low water line of Willoughby Spit; thence following the mean low water line of Willoughby Spit in a southerly direction to the flashing light "11"; thence in a southwesterly direction approximately 2800 feet to the bulkhead corner of the U. S. Naval Reservation Heliport; thence following the mean low water line of Hampton Roads in a westerly and southerly direction to a point opposite of the grain elevator south of Pier A of the municipal terminal; thence in a westerly direction to buoy G "11"; thence in a westerly direction to buoy R "12"; thence in a southwesterly direction to the black and white buoy N "H4"; thence in a southwesterly direction to the mean low water line at the northeastern corner of Craney Island Disposal Area; thence in a westerly direction along the mean low water line to the northwest corner of Craney Island Disposal Area; thence in a northwesterly direction to the black and white buoy N "H5"; thence in a northwesterly direction to the black and white buoy N "H7"; thence following the buoy line in a northwesterly direction to the intersection with of the northbound lanes of I-664 and the south island of the Monitor-Merrimac Memorial Bridge-Tunnel; thence in a northwesterly direction along the northbound lanes of I-664 to its intersection with the mean low water line at Newport News Point, being the point of beginning.~~

§ 4- 3. Gill net prohibition.

From the Friday immediately preceding Memorial Day to Labor Day, both days inclusive, and during the hours of 7 a.m. to 5 p.m., it shall be unlawful for any person, firm or corporation to place, set, or fish any gill net, including licensed staked gill nets within the Hampton Roads Management Area.

§ 5- 4. Penalty.

~~As set forth in § 28.2-903 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.~~

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-597; Filed June 29, 1995, 5:40 p.m.

Marine Resources Commission

Title of Regulation: VR 450-01-0062. Pertaining to Eastern Shore Bayside Management Areas.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation establishes four Eastern Shore Bayside Creek Management Areas and prohibits the use of gill nets from June 1 through October 31 in these areas.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0062, which was adopted June 26, 1990, and was effective July 1, 1990. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0062. Pertaining to Eastern Shore Bayside Management Areas.

~~§ 1. Authority, prior regulations, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. No prior regulations pertain to this gill net management area.~~

~~C. The effective date of this regulation is July 1, 1990.~~

§ 2. 1. Purpose.

The purpose of this regulation is to minimize gear conflicts existing between gill net fishermen and hook and line fishermen in the mouths of four Eastern Shore Bayside Creeks.

§ 3. 2. Prohibition.

During the period June 1 to October 31, inclusive, it shall be unlawful for any person, ~~firm or corporation~~ to place, set or fish any gill net, including licensed fixed fishing devices, in the management areas defined below.

A. 1. The Gulf. Beginning at mean low water at the northernmost point of Smith Beach Road (State Route 666); thence in a southwesterly direction along the mean low water line, for approximately one mile, to a point opposite where State Route 666 turns inland; thence due west 500 yards to a point offshore; thence in a northeasterly direction to a point being 500 yards west of mean low water at the end of State Route 630; thence in an easterly direction 500 yards to the mean low water line at the end of State Route 630; thence in a southerly direction across the mouth of the Gulf to the mean low water line at the northernmost point of Smith Beach Road (State Route 666), being the point of beginning.

B. 2. Hungars Creek. Beginning at mean low water at the northernmost point of Hungars Beach; thence in a

southerly direction along the mean low water line to the end of State Route 630; thence in a westerly direction 500 yards to a point offshore; thence in a northeasterly direction to a point 500 yards west of mean low water at the southernmost point of Great Neck; thence in an easterly direction to mean low water at the southernmost point of Great Neck; thence in a southwesterly direction to mean low water at the northernmost point of Hungars Beach, being the point of beginning.

~~C.~~ 3. Nassawadox Creek. Beginning at mean low water at Shooting Point, in a westerly direction for 250 yards; thence in a northwesterly direction to a point 250 yards west of mean low water at Nassawadox Point; thence in an easterly direction to mean low water at Nassawadox Point; thence in a southeasterly direction to the northernmost point of Horse Island; thence in a southwesterly direction to mean low water at Shooting Point, being the point of beginning.

~~D.~~ 4. Occohannock Creek. Beginning at mean low water at Sparrow Point, in a westerly direction for 500 yards; thence in a northeasterly direction to a point 500 yards west of mean low water at Powell's Bluff; thence in an easterly direction to mean low water at Powell's Bluff; thence in a southeasterly direction to a point on the eastern headland of Killmon Cove (Old Neck); thence in a southwesterly direction to Sparrow Point, being the point of beginning.

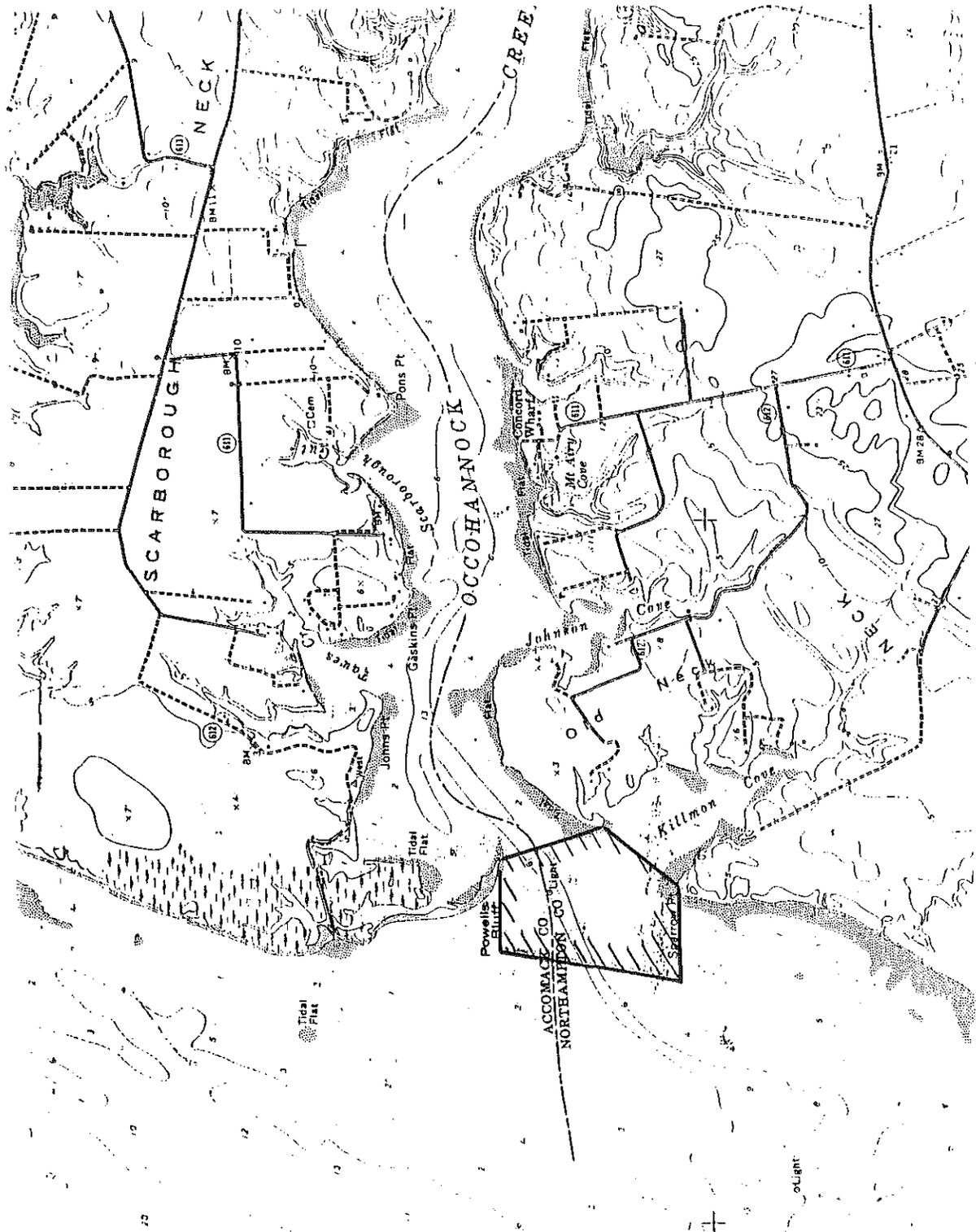
§ 4. 3. Penalty.

~~As set forth in § 28.2-903 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.~~

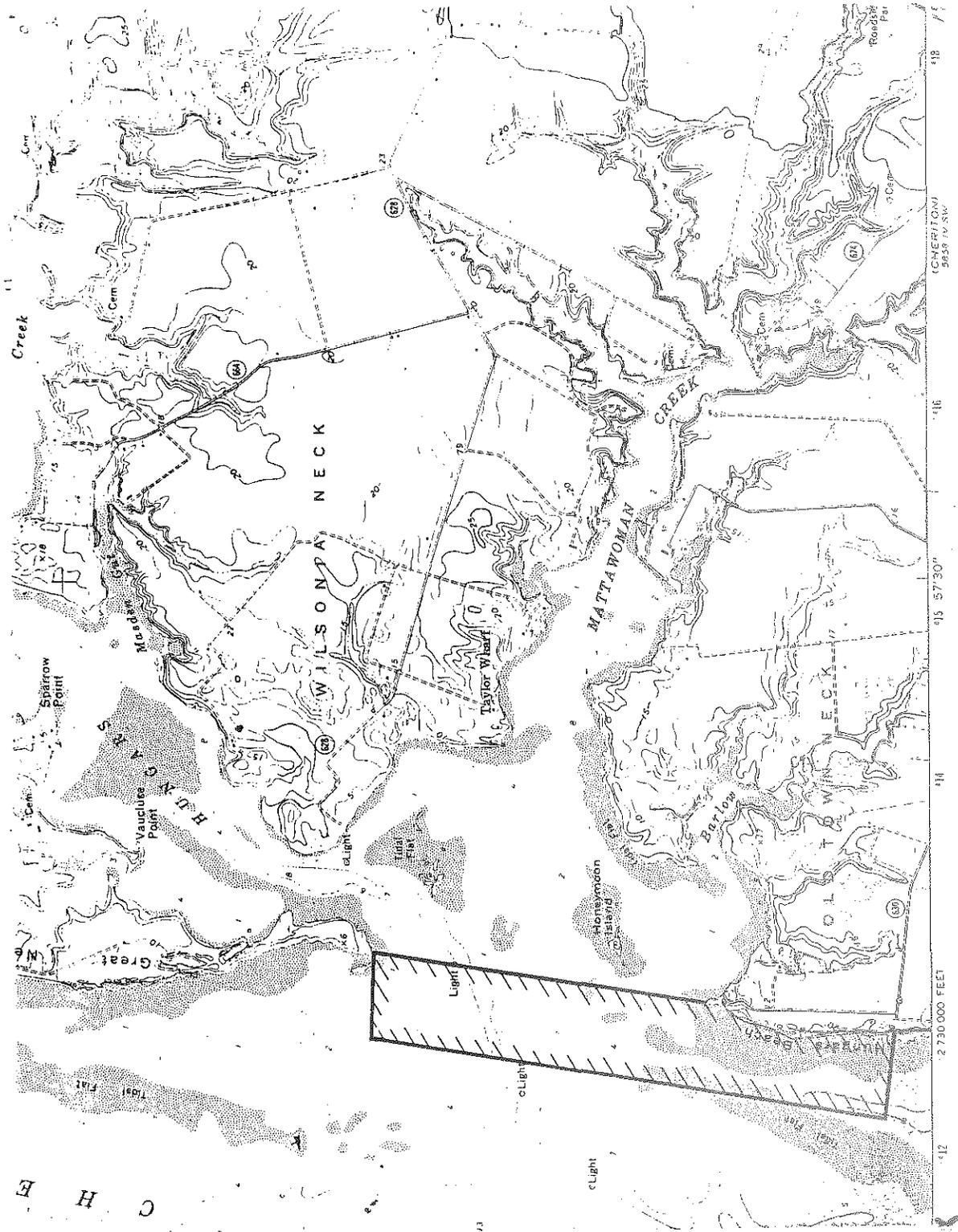
As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

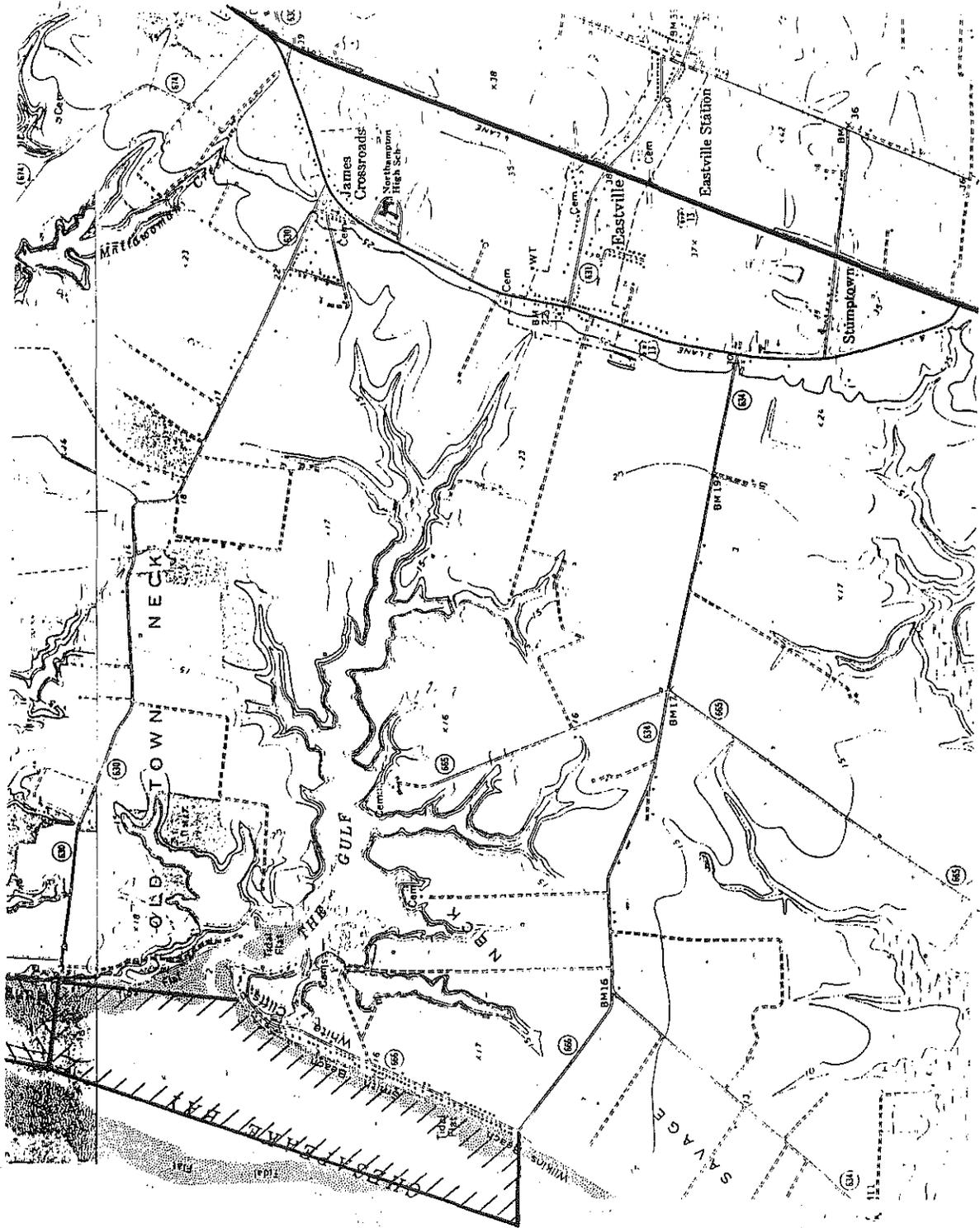
/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-598; Filed June 29, 1995, 5:39 p.m.









Title of Regulation: VR 450-01-0063. Pertaining to Sharks.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation establishes gear restrictions, a possession limit, and catch limitations on the taking and landing of sharks.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0063, which was adopted August 28, 1990, and was effective September 15, 1990. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0063. Pertaining to Sharks.

~~§ 1. Authority, prior regulations, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. No prior regulations pertain to sharks.~~

~~C. The effective date of this regulation is September 15, 1990.~~

§ 1. Purpose.

The purpose of this regulation is to ensure the conservation of shark resources by preventing overfishing by commercial and recreational fisheries and to control the practice of finning.

§ 2. Definitions.

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

"Finning" means removing the fins and returning the remainder of the shark to the sea.

"Longline" means any fishing gear composed of a line in excess of 1,000 feet in length that has multiple hooks and is either anchored, floating or attached to a vessel.

~~A. Shark. "Shark" means any fish of the following species:~~

~~Sevengill shark, *Heptranchias perlo*~~

~~Sixgill shark, *Hexanchus griseus*~~

~~Bigeye sixgill shark, *Hexanchus vitulus*~~

~~Atlantic angel shark, *Squatina dumerili*~~

~~Nurse shark, *Ginglymostoma cirratum*~~

~~Whale shark, *Rhincodon typus*~~

Ragged-tooth shark, *Odontaspis ferox*

Sand tiger shark, *Odontaspis taurus*

Bigeye thresher, *Alopias superciliosus*

Thresher shark, *Alopias vulpinus*

Basking shark, *Cetorhinus maximus*

White shark, *Carcharodon carcharias*

Shortfin mako, *Isurus oxyrinchus*

Longfin mako, *Isurus paucus*

Porbeagle shark, *Lamna nasus*

Tiger shark, *Galeocerdo cuvieri*

Lemon Shark, *Negaprion brevirostris*

Blue shark, *Prionace glauca*

Blacknose shark, *Carcharhinus acronotus*

Bignose shark, *Carcharhinus altimus*

Narrowtooth shark, *Carcharhinus brachyurus*

Spinner shark, *Carcharhinus brevipinna*

Silky shark, *Carcharhinus falciformis*

Galapagos shark, *Carcharhinus galapagensis*

Finetooth shark, *Carcharhinus isodon*

Bull shark, *Carcharhinus leucas*

Blacktip shark, *Carcharhinus limbatus*

Oceanic whitetip shark, *Carcharhinus longimanus*

Dusky shark, *Carcharhinus obscurus*

Caribbean reef shark, *Carcharhinus perezi*

Sandbar shark, *Carcharhinus plumbeus*

Night shark, *Carcharhinus signatus*

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*

Caribbean sharpnose shark, *Rhizoprionodon porosus*

Scalloped hammerhead, *Sphyrna lewini*

Great hammerhead, *Sphyrna mokarran*

Bonnethead, *Sphyrna tiburo*

Smooth hammerhead, *Sphyrna zygaena*

~~Nothing in this regulation shall pertain to the taking of the spiny dogfish, *Squalus acanthias* and the smooth dogfish, *Mustelus canis*.~~

~~B. Longline.~~

~~Any fishing gear composed of a line in excess of 1000 feet in length that has multiple hooks and is either anchored, floating, or attached to a vessel.~~

~~C. Trotline.~~

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~~Any fishing gear licensed under § 28.2-301(8) of the Code of Virginia composed of a line less than 1000 feet in length that has multiple hooks and is either anchored, floating, or attached to a vessel.~~

§ 3. Gear restrictions.

~~It shall be unlawful for any person to place, set, or fish any longline in Virginia Virginia's tidal waters.~~

§ 4. Catch limitations.

A. ~~It shall be unlawful for any person to take or catch by hook-and-line, rod-and-reel, or spear and retain possession of more than one shark per-day at any time.~~

1. ~~Any shark taken after the daily possession limit has been reached shall be returned to the water immediately.~~

2. ~~When fishing from any boat or vessel where the entire catch is held in a common hold or container, the daily possession limit shall be for the boat or vessel and shall be equal to the number of persons on board the vessel legally eligible to fish. Retention of the legal number of sharks is the responsibility of the vessel captain or operator. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.~~

B. ~~It shall be unlawful to possess aboard any commercial fishing vessel for any commercial fishing vessel to have on board or to land more than 7,500 pounds of shark carcasses per day. The vessel captain or operator is responsible for compliance with the provisions of this subsection.~~

C. ~~The practice is "finning," that is, removing only the fins and returning the remainder of the shark to the sea, is prohibited. Fins may be removed at sea but must be landed in proper proportion to the number of carcasses landed.~~

1. ~~It shall be unlawful for any person to possess aboard any vessel or to land shark fins which constitute more than 10% by weight of any catch of shark.~~

2. ~~It shall be unlawful to possess shark fins without carcasses aboard any vessel.~~

3. ~~It shall be unlawful to possess aboard any vessel or to land dried shark fins.~~

§ 5. Finning.

A. ~~It shall be unlawful for any person to engage in finning.~~

B. ~~It shall be unlawful for any person to possess fins provided, however, that fins may be removed at sea provided the carcass of the shark is retained and counted as part of any possession or landing limit. The possession of any fins without possession of a comparable number of shark carcasses with fins removed shall be prima facie evidence of a violation of this regulation. The boat or vessel captain or operator is responsible for compliance with the provisions of this section.~~

§ 6. Exceptions.

~~Nothing in § 4 or § 5 of this regulation shall pertain to the taking or possession of the spiny dogfish, *Squalus acanthias* and the smooth dogfish, *Mustelus canis*.~~

§ 5. 7. Penalty.

~~As established in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor.~~

~~As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.~~

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-599; Filed June 29, 1995, 5:39 p.m.

Title of Regulation: VR 450-01-0064. Pertaining to the Catching of Eels.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation establishes a minimum mesh size and escape panels for eel pots, and prohibits the taking of elvers except for research purposes.

This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0064, which was adopted August 28, 1990, and was effective September 1, 1990; and rescinds VR 450-01-0024, which was adopted August 23, 1977, and was effective October 1, 1977, and amends and readopts its provisions in this regulation. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0064. Pertaining to the Catching of Eels.

~~§ 1. Authority, prior regulations, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. VR 450-01-0024, Pertaining to the taking of eels and elvers, establishes a prohibition on the taking of elvers.~~

~~C. The effective date of this regulation is September 1, 1990.~~

~~§ 2- 1. Purpose.~~

~~The purpose of this regulation is to conserve Virginia's American eel stock provide for appropriate conservation of eels, to reduce the possibility of growth overfishing, and to prevent the wastage of undersized fish waste of small eels.~~

§ 2. Definitions.

The following word and term, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise.

"Elver" means any eel of less than six inches in total length.

§ 3. Rescission.

VR 450-01-0024 is rescinded, and its provisions are amended and readopted in § 4 of this regulation.

§ 4. Elvers.

It shall be unlawful for any person to take, catch, or possess elvers from any of the waters of Virginia; provided however, that elvers may be taken for research only by (i) duly appointed representatives of any institution of higher education in Virginia, or (ii) other parties when specifically authorized in writing by the Commissioner of Marine Resources.

§ 5. Minimum mesh size.

A. It shall be unlawful for any person, firm or corporation to place, set or fish any eel pot in Virginia tidal waters which has a mesh less than 1/2-inch by 1/2-inch.

B. After January 1, 1991, it shall be unlawful for any person, firm, or corporation to place, set or fish any 1/2-inch by 1/2-inch mesh rectangular or square eel pots pot unless such pots contain pot contains at least two unrestricted 4-inch square 4-inch by 4-inch escape panels consisting of 1/2-inch by 1-inch mesh, one panel located in the lower side and one panel in the upper portion of the pot; in addition, it shall be unlawful for any person, firm, or corporation to place, set or fish any 1/2-inch by 1/2-inch mesh cylindrical eel pots pot unless such pots contain pot contains at least one unrestricted 4-inch square escape panel of 1/2-inch by 1-inch mesh located in the rear portion of the pot.

§ 6. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 4 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-600; Filed June 29, 1995, 5:38 p.m.

Title of Regulation: VR 450-01-0065. Pertaining to Amberjack and Cobia.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation establishes possession limits and minimum size limits for cobia and amberjack in Virginia waters.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0065, which was adopted August 28, 1990, and was effective September 1, 1990. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0065. Pertaining to Amberjack and Cobia.

§ 1. Authority, prior regulations, effective date.

A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.

B. No prior regulations pertain to amberjack.

C. The effective date of this regulation is September 1, 1990.

§ 2. 1. Purpose.

The purpose of this regulation is to control the harvest, protect the spawning stocks, minimize the possibility of recruitment failure and to increase yield in the amberjack and cobia fisheries. This regulation is designed to ensure that Virginia is consistent with federal and interstate management measures pertaining to these species.

§ 3. 2. Daily-bag Possession limits.

A. It shall be unlawful for any harvester (commercial or recreational) to catch and retain person fishing commercially or recreationally to possess more than two amberjack per day or more than two cobia per day at any time. Any amberjack or cobia caught after the daily-bag possession limit has been reached shall be returned to the water immediately.

When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by two. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

B. When fishing from any vessel, the daily bag limit shall be equal to the number of persons on board the vessel multiplied by two. Retention of the legal number of amberjack or cobia is the responsibility of the vessel captain or operator.

C. B. Nothing in this section shall effect affect the possession of amberjack or cobia by licensed seafood buyers or wholesale and retail seafood establishments when operating in their capacity as a buyer or wholesaler or retailer.

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§ 4. 3. Minimum size limits.

A. It shall be unlawful for any person to take, catch or have in possession any amberjack less than 32 inches in length.

B. It shall be unlawful for any person to take, catch or have in possession any cobia less than 37 inches in length.

C. Length is measured in a straight line from tip of nose to tip of tail.

§ 5. 4. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 4 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-601; Filed June 29, 1995, 5:38 p.m.

Title of Regulation: VR 450-01-0067. Pertaining to the Use of Patent Tongs.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation prohibits the use of patent tongs in the vicinity of the electrical cables supporting the George P. Coleman Memorial Bridge.

This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0067, which was adopted October 23, 1990, and was effective November 1, 1990. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0067. Pertaining to the Use of Patent Tongs.

§ 1. Authority, effective date.

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. The effective date of this regulation is November 1, 1990.~~

§ 2. 1. Purpose.

In the last 15 years past there have been numerous incidents of patent tongs used by clam fishermen disrupting electrical service to the George P. Coleman Memorial Bridge by severing or damaging submerged electrical cabling adjacent to the bridge. The purpose of this regulation is to prohibit patent tonging adjacent to damage to the bridge

cables and fishermen and their gear and thereby to maintain the general public welfare and safety of individuals in the seafood industry.

§ 3. 2. Area closed to patent tonging.

A. It shall be unlawful for any person to operate a patent tong under any portion of the George P. Coleman Memorial Bridge.

B. It shall be unlawful for any person to operate a patent tong within 300 feet of the eastern or downstream side of the George P. Coleman Memorial Bridge.

C. It shall be unlawful for any person to operate a patent tong on the western or upstream side of the George P. Coleman Memorial Bridge within a 400-foot radius of the two center caissons, numbered 1S and 1N.

§ 4. 3. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 4 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-602; Filed June 29, 1995, 5:36 p.m.

Title of Regulation: VR 450-01-0072. Pertaining to the Removal of Gill Nets and Other Nonfixed Finfishing Gear.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation establishes procedures for the confiscation of gill nets and other moveable fishing devices which are abandoned or improperly fished.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0072 that was adopted by the Marine Resources Commission on May 28, 1991, and was effective June 8, 1991. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0072. Pertaining to the Removal of Gill Nets and Other Nonfixed Finfishing Gear.

§ 1. Authority and effective date.

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. The effective date of this regulation is June 8, 1991.~~

§ 2. 1. Purpose.

The purpose of this regulation is to ensure that gill nets and other nonfixed finfishing gear are properly fished and to establish procedures for the removal of those nets which are abandoned or improperly fished.

§ 3. 2. Fishing requirement; notification procedures.

A. It shall be unlawful for any person, firm, or corporation to set any gill net or nonfixed finfishing device and let said net or device remain unfished.

B. If, upon visual observation, any Marine Patrol Officer determines on reasonable evidence that any gill net or nonfixed finfishing device has not been fished, he shall notify the licensee as established in subsection C of this section, and if the licensee fails to fish or remove said gill net or nonfixed finfishing device within 24 hours after notification, the licensee shall be guilty of a violation of this regulation and the Marine Patrol Officer is authorized to confiscate said gill net or nonfixed finfishing device.

C. A verbal warning by a Marine Patrol Officer to the licensee by telephone or in person, or the placement of a warning tag on the gill net or nonfixed device adjacent to the license tag shall constitute notification to the licensee of a potential violation. Warning tags shall explain that the gear must be fished or removed from the water within 24 hours or the gear will be confiscated.

§ 4. 3. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 4 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-603; Filed June 29, 1995, 5:36 p.m.

Title of Regulation: VR 450-01-0074. Pertaining to the Use of Firearms to Take Fish.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation prohibits the taking or killing of any fish by use of a firearm. It further prohibits the possession and sale of any fish taken by firearm.

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0074, which was adopted by the Marine Resources Commission on September 24, 1991, and was effective October 1, 1991. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0074. Pertaining to the Use of Firearms to Take Fish.

~~§ 1. Authority, effective date, termination date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. The effective date of this regulation is October 1, 1991.~~

~~C. This regulation replaces Emergency Regulation VR 450-01-0074 which was promulgated and made effective August 27, 1991.~~

§ 2. 1. Purpose.

The purpose of this regulation is to prohibit the taking, catching, or killing of fish by use of firearms conserve the stocks of finfish, eliminate a dangerous method of harvest, and confine harvest methods to traditional fishing gears.

§ 3. 2. Use of firearms and sale of fish prohibited; exceptions.

A. It shall be unlawful for any person to take, catch, or kill any fish with the use of a firearm.

B. It shall be unlawful for any person to possess or sell any fish taken or killed by the use of a firearm.

C. Nothing in this section shall prohibit the killing by firearm of a shark which has been brought to boatside by legal fishing methods.

D. Nothing in this section shall prohibit the use of underwater fishing devices, known as "bang sticks," which are attached to spears or are hand held and discharge a blank charge or projectile.

§ 4. 3. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 4 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-604; Filed June 29, 1995, 5:33 p.m.

Title of Regulation: VR 450-01-0075. Pertaining to the Alteration of Finfish.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1995.

Preamble:

This regulation establishes controls on the handling of finfish when fishing from a vessel or pier.

Marine Resources Commission

This regulation is promulgated pursuant to authority contained in § 28.2-201 of the Code of Virginia. This regulation amends and readopts VR 450-01-0075, which was adopted by the Marine Resources Commission on September 24, 1991, and was effective October 1, 1991. The effective date of this regulation is July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0075. Pertaining to the Alteration of Finfish.

~~§ 1. Authority, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.~~

~~B. The effective date of this regulation is October 1, 1991.~~

~~§ 2. 1. Purpose.~~

~~The purpose of this regulation is to establish controls on the handling of fish when fishing from a vessel or pier to enhance compliance with minimum size limits, catch limits, and quotas.~~

~~§ 3. 2. Alteration of finfish to obscure species identification or size prohibited.~~

~~A. It shall be unlawful for any person to alter any finfish, or to possess altered finfish, aboard any boat or vessel, or on a public fishing pier (except at the fish cleaning station of the pier), such that the species of the fish cannot be determined.~~

~~B. It shall be unlawful for any person to alter any finfish regulated by a minimum or maximum size limit, or to possess such altered finfish, aboard any boat or vessel, or on a public fishing pier (except at the fish cleaning station of the pier), such that its total length cannot be measured.~~

~~§ 4. 3. Allowances for filleting or cleaning.~~

~~A. For finfish regulated by a minimum or maximum size limit, filleting at sea will be allowed if the carcass is retained to ensure proper species identification and compliance with size limitations.~~

~~B. For finfish regulated by a minimum size, cleaning and/or filleting at sea will be allowed if the fillet or cleaned fish exceeds the minimum length for the species and at least one square inch of skin is left intact to assist in identification of the species.~~

~~C. For finfish not regulated by a size limit, filleting at sea will be allowed if a minimum of one square inch of skin is left on the fillet to assist in identification of the species.~~

~~§ 5. 4. Penalty.~~

~~As set forth in § 28.2-903 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 4 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.~~

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-605; Filed June 29, 1995, 5:32 p.m.

Virginia Tax Bulletin

Virginia Department of Taxation

JUNE 21, 1995

95-4

INTEREST RATES THIRD QUARTER 1995

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 1995 will be 9% for tax underpayments (assessments), 8% for tax overpayments (refunds), and 11% for "large corporate underpayments" as defined in I.R.C. § 6621(c). Code of Virginia § 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 1995 will be 11% for tax underpayments, 8% for tax overpayments, and 13% for "large corporate underpayments."

Rate for Addition to Tax for Underpayments of Estimated Tax

Taxpayers whose taxable year ends on March 31, 1995: 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 12% underpayment rate will apply through the due date of the return, July 17, 1995.

Taxpayers whose taxable year ends on June 30, 1995: 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 third quarter 11% underpayment rate will apply through the due date of the return, October 16, 1995.

Local Tax

Assessments: Localities assessing interest on delinquent taxes pursuant to Code of Virginia § 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 1995, the federal underpayment rate is 9%.

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%
1-Oct-94	31-Mar-95	8%	11%	13%
1-Apr-95	30-Jun-95	9%	12%	14%
1-Jul-95	30-Sep-95	8%	11%	13%

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) 367-8037
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

Virginia Tax Bulletin

Virginia Department of Taxation

June 23, 1995

95-5

Major Sales Tax Legislation Passed By The 1995 General Assembly

Several bills were passed by the 1995 General Assembly which changed the application of the retail sales and use tax to various industries. This bulletin summarizes some of the major changes, all of which become effective July 1, 1995. Other changes are summarized in the Department's Legislative Summary. This bulletin supersedes Tax Bulletins 93-7 and 94-7.

Printing/Advertising Industries

Senate Bill 648 (Chapter 171, 1995 Acts of Assembly) extends the exemption provided in Code of Virginia § 58.1-609.6(4) for printed materials (other than administrative supplies) stored for 12 months or less in Virginia for distribution in other states to Virginia advertising agencies. In 1994, the exemption was made available only to out-of-state advertising agencies. Also exempted by the legislation are newspaper supplements, when purchased by advertising agencies for placement in instate or out-of-state publications.

In applying the printing exemption, advertising agencies and printers should follow the guidelines set out in Virginia Regulation (VR) 630-10-86.

Virginia Certificate of Exemption, Form ST-10A, has been revised to reflect the printing and advertising supplement exemptions now available to Virginia agencies.

Retailers - Gift Transactions

House Bill 2286 (Chapter 96, 1995 Acts of Assembly) exempts from the retail sales and use tax third party gift transactions in which a nonresident, by mail or telephone purchase order, directs a Virginia business to deliver the personal property as a gift to another nonresident.

The exemption is limited to gifts purchased by out-of-state residents by telephone or mail-order when delivered to out-of-state recipients. Gifts delivered to Virginia residents at the direction of out-of-state purchasers and gifts purchased by Virginia residents for delivery to out-of-state recipients remain taxable.

Audiovisual Tapes/Film Production

Senate Bill 721 and House Bill 1512 (Chapters 101 and 719, respectively, 1995 Acts of Assembly) created a comprehensive exemption for entities engaged in the production, use, purchase, sale or lease of audiovisual tapes for licensure, distribution, broadcast, commercial exhibition, or reproduction or use in producing another exempt audiovisual work. Examples of such entities include, but are not limited to, program producers, (i.e., radio, television and cable television companies), film and audiovisual tape production companies, advertisers, and others. In addition, to the extent their works, services, or products are used in

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exempt audiovisual works, other entities may qualify for the exemption. These include, but are not limited to, on services providers (i.e., script writers), contractors (i.e., those who construct sets used in the production of exempt works); photographers; animal trainers, lighting service companies, etc.

Tax Status of Various Types of Audiovisual Works

Examples of **exempt** works include: made-for-TV movies and programs, feature films, documentaries for commercial exhibition, broadcast, distribution, etc., commercials for public viewing, radio programs, other works made for reproduction/use in another production .

Examples of **taxable** audiovisual works include: in-house training films; films of weddings, corporate meetings, or other special events; and films for purposes other than distribution, broadcast, commercial exhibition, etc.

Production Services and Incidental Tangible Personal Property

Production services or fabrication in connection with the production of any portion of an exempt audiovisual work, and the transfer or use of tangible personal property incidental to such services or fabrication, are also exempt from the tax. Exempt production services include, but are not limited to, photography, sound, music, special effects, animation, adaptation, computer graphics; dubbing, mixing, editing, or cutting services; wardrobe, performing, composing, directing; designing, engineering, construction, alteration, repair, and maintenance of real or personal property such as stages, props, and models; and film processing.

Exempt tangible personal property, includes, but is not limited to: scripts, musical scores, storyboards, artwork, film, tapes; writing instruments, design and artistic supplies; wardrobes/costumes (and appliances used to maintain such), hairpieces, shoes, makeup; sets and the materials used to construction such, props (i.e., plants, trees); and special effects (i.e., fire, explosives, fire extinguishers, fog).

Taxable tangible personal property includes, but is not limited to: office equipment and supplies; cages used by animal handlers to keep animals in while not being filmed; chairs, etc., not used in the actual production services (for convenience purposes); locations - tents, trash receptacles, toilets; polaroids for head shots.

Equipment, Parts, and Accessories

An exemption also extends to the equipment, parts, and accessories used or to be used in the production of exempt audiovisual works. Exempt equipment includes, but is not limited to: cameras and related equipment; computers for graphics, animation, images; lighting equipment, bulbs, lamps; air conditioning/heating for use on set; cranes and booms; dubbing, editing, and sound recording equipment.

Taxable equipment includes, but is not limited to: air conditioning/heating to maintain the integrity of equipment; computers and other equipment used for administrative purposes.

The tax on equipment used in both taxable and exempt activities will be prorated.

A new Certificate of Exemption, Form ST-20A, has been developed for use with this exemption.

For additional information: Contact the Office of Taxpayer Services, Virginia Department of Taxation, P. O. Box 1115, Richmond, Virginia 23208-1115, (804)367-8037.

GOVERNOR

EXECUTIVE ORDER NUMBER FORTY-EIGHT (95)

CONTINUING THE GOVERNOR'S COMMISSION ON CHAMPION SCHOOLS

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to § 2.1-51.36 of the *Code of Virginia*, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Governor's Commission on Champion Schools.

The Commission was created under Executive Order Number Nine (94) (Revised), and classified as a gubernatorial advisory commission in accordance with § 2.1-51.35 and § 9-6.25 of the *Code of Virginia*.

The Commission shall have the responsibility to advise the Governor on all matters related to the development and implementation of the Champion Schools initiative for education reform. The Commission shall examine Virginia's public schools in their broadest context, identify deficiencies in Virginia's educational programs, and develop strategies to correct those deficiencies. The Commission shall develop specific recommendations for achieving the following goals:

1. Establishing higher standards of academic excellence.
2. Instituting achievement testing for accountability.
3. Involving parents in the educational experience of their children.
4. Creating excellence through the encouragement of competition and cooperation.
5. Enhancing the learning environment by curbing school violence and drug abuse.
6. Increasing student learning through the use of innovative technology.
7. Empowering parents and students as consumers of education by providing greater choice in education.
8. Evaluating funding sources and allocation to ensure access to high-quality education throughout Virginia.
9. Calling on local communities to develop new approaches to raise the level of student achievement.

The Commission shall conduct public meetings and discussions throughout the Commonwealth of Virginia for the purpose of receiving the views of citizens and engaging them in the Champion Schools education reform initiative and its implementation.

The Commission shall be composed of no more than sixty members appointed by the Governor and serving at his pleasure. The Commission shall be chaired by the Secretary of Education, and the Superintendent of Public Instruction shall serve as vice chair. The Chair shall appoint an executive committee to guide the reform effort and shall designate advisory members as appropriate.

Such staff support as is necessary for the conduct of the Commission's work during the term of its existence shall be furnished by the Office of the Governor, the Office of the Secretary of Education, the Department of Planning and Budget, the Department of Education, and such other Executive agencies, with closely and definitely related purposes, as the Governor may designate. An estimated 9600 hours of staff support will be required to support the Commission during the two years of its existence. Funding necessary for the term of the Commission's existence shall be provided from sources, both state funds appropriated for the same purposes as the Commission and private contributions, as authorized by § 2.1-51.37(2) of the *Code of Virginia*. Direct expenditures for the Commission's work are estimated to be \$280,000.

Members of the Commission shall serve without compensation and shall receive expenses incurred in the discharge of their official duties only upon the approval of the Secretary of Education.

The Commission shall issue such reports and recommendations as it deems necessary or upon the request of the Governor. The Commission shall make a final report by a date to be determined by the Governor.

This Executive Order rescinds Executive Order Number Nine (94) (Revised), creating the Governor's Commission on Champion Schools, issued by me on October 25, 1994.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until May 24, 1996, unless amended or rescinded by further executive order.

Given under my hand and under the seal of the Commonwealth of Virginia this 24th day of May, 1995.

/s/ George Allen
Governor

VA.R. Doc. No. R95-608; Filed June 30, 1995, 9:15 a.m.

EXECUTIVE ORDER NUMBER FORTY-NINE (95)

PROVIDING ASSISTANCE BY THE VIRGINIA ARMY NATIONAL GUARD TO THE COMMONWEALTH OF KENTUCKY IN FIGHTING FOREST FIRES FROM APRIL 6 TO APRIL 13, 1995

The Governor of the Commonwealth of Kentucky, the Honorable Brereton G. Jones, called out the Kentucky National Guard to assist the Kentucky Division of Forestry and the United States Forest Service in fighting forest fires in Kentucky during the period from April 6-13, 1995. The Commonwealth of Kentucky lacked sufficient helicopters to carry all of the helicopter water buckets which were available and necessary to suppress the forest fires raging within Kentucky on and about April 6, 1995.

By letter dated April 6, 1995, Governor Jones requested that the Commonwealth of Virginia come to the aid of the Commonwealth of Kentucky pursuant to the Southern Regional Emergency Management Assistance Compact by sending four Army National Guard UH-60 Blackhawk

helicopters with crews and maintenance support to assist the Commonwealth of Kentucky in fighting those forest fires. In his letter requesting assistance, Governor Jones committed the Commonwealth of Kentucky to pay all expenses associated with the effort and to abide by all provisions of the Southern Regional Emergency Management Assistance Compact which has been signed by the Governors of Virginia and Kentucky, and enacted into law in Virginia on March 16, 1995.

Due to the emergency nature of the request and the lack of time available prior to departure of the requested helicopters and personnel for Kentucky, I verbally issued orders to the Adjutant General of Virginia to dispatch the requested assistance to Kentucky as soon as flying conditions permitted under the terms set forth herein.

Accordingly, by virtue of the authority vested in me under Article V, Section 7 of the Constitution of Virginia, the provisions of Sections 44-75.1 (4) and 44-146.17(5) of the *Code of Virginia*, and consistent with the principle of interstate cooperation found in the Southern Regional Emergency Management Assistance Compact signed by the Governors of Virginia and Kentucky, I do hereby confirm, ratify, and memorialize in writing my verbal orders issued on April 6, 1995, wherein I directed the Adjutant General of Virginia to deploy four Army National Guard UH-60 Blackhawk helicopters, other ancillary National Guard equipment and National Guard flight crews and maintenance personnel to the Commonwealth of Kentucky, there to assist the Commonwealth of Kentucky in fighting forest fires for so long as needed or until recalled to Virginia, all pursuant to and in accordance with Section 44-146.17(5) of the *Code of Virginia* and the Southern Regional Emergency Management Assistance Compact.

In addition to the provisions of the Southern Regional Emergency Management Assistance Compact, the following conditions did and do continue to apply to this deployment of the Virginia National Guard:

1. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. In the event of such injury or death as a result of service under this executive order, termination of this executive order is not intended terminate entitlements to benefits as provided herein. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and

his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to Section 44-14 of the *Code of Virginia*, and subject to the concurrence of the Board of Military Affairs, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

2. The cost incurred by the Virginia Department of Military Affairs in performing this mission shall be paid out of the sum sufficient appropriation for Disaster Planning and Operations contained in Item 593 of Chapter 966 of the 1994 Acts of the General Assembly. The reimbursement of such costs by the Commonwealth of Kentucky shall be paid into the Treasury of the Commonwealth of Virginia to defray said sum sufficient expenditures when received.

This Executive Order shall be retroactively effective to April 6, 1995, upon its signing, and, except for that portion providing for benefits for members of the National Guard in the event of injury or death, retroactively ceased to be in effect on midnight, April 13, 1995, when all helicopters and personnel had returned from duty in the Commonwealth of Kentucky.

Given under my hand and under the Seal of the Commonwealth of Virginia this 1st day of June, 1995.

/s/ George Allen
Governor

VA.R. Doc. No. R95-609; Filed June 30, 1995, 9:15 a.m.

EXECUTIVE ORDER NUMBER FIFTY (95)

DECLARATION OF A STATE OF EMERGENCY ARISING FROM FOREST FIRES OR THE POTENTIAL THEREOF THROUGHOUT THE COMMONWEALTH OF VIRGINIA

On April 9, 1995, at 11:25 a.m., I verbally declared a state of emergency due to the existence of, and potential for, forest fires resulting from extreme dry conditions throughout Virginia and the potential for widespread and devastating effects of forest fires on public health and safety. I specifically authorized placement of assets of the Virginia National Guard to state duty for possible deployment to assist the Virginia Department of Forestry at its request in fighting fires and to help mitigate the effects of such fires. Other state agencies were directed to provide assistance in dealing with this emergency to the extent required by the Coordinator of Emergency Services in consultation with the Secretary of Public Safety, the Adjutant General and the State Forester.

The health and general welfare of the citizens of the affected jurisdictions required that state action be taken to help alleviate the conditions that were, or could have become, a result of these forest fire conditions. I found that these fires and the potential for future such occurrences constituted a disaster wherein human life was imperiled, personal injuries were threatened, and there was potential for significant damage to public and private property, as contemplated by Section 44-146.16 of the *Code of Virginia*.

Therefore, by virtue of the authority vested in me by Section 44-146.17 of the *Code of Virginia*, as Governor and as Director of Emergency Services, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by Section 44-75.1 of the *Code of Virginia*, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I do hereby confirm, ratify, and memorialize in writing my verbal orders issued April 9, 1995, wherein I proclaimed that a state of emergency existed in the Commonwealth and directed that appropriate assistance be rendered by agencies of the state government to prevent and alleviate these conditions. Pursuant to Section 44-75.1 (4) of the *Code of Virginia*, I also directed that the Virginia National Guard be called forth to assist in providing such aid, to the extent required by the Coordinator of the Department of Emergency Services, in coordination with the Secretary of Public Safety, the Adjutant General of Virginia, and the State Forester.

The following conditions did and do apply to said deployment of the Virginia National Guard:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Services and with the approval of the Secretary of Public Safety, shall make available on state active duty such units and members of the Virginia National Guard and such equipment as may be desirable to assist in alleviating both the potential and actual human suffering and damage to property as a result of the effects caused by forest fires.

2. In all instances, members of the Virginia National Guard shall remain subject to military command as prescribed by Section 44-78.1 of the *Code of Virginia* and not subject to the civilian authorities of the state or local governments.

3. Should service under this executive order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. In the event of such injury or death as a result of service

under this executive order, termination of this executive order is not intended to terminate entitlement to benefits as provided herein. Any such federal-type benefits due to a member and his/her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his/her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to Section 44-14 of the *Code of Virginia*, and subject to the concurrence of the Board of Military Affairs, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

4. The cost incurred by the Virginia Department of Military Affairs in performing this mission shall be paid out of the sum sufficient appropriation for Disaster Planning and Operations contained in Item 593 of Chapter 853 of the 1995 Acts of Assembly, with any reimbursement thereof from nonstate agencies for partial or full reimbursement of this cost to be paid to the general fund of the state treasury to defray said sum sufficient expenditures.

This executive order shall be retroactively effective to April 9, 1995, upon its signing, and shall remain in full force and effect until June 30, 1995, unless sooner amended or rescinded by further executive order. That portion providing for benefits for members of the National Guard in the event of injury or death shall continue to remain in effect after termination of this executive order as a whole.

Given under my hand and under the seal of the Commonwealth of Virginia, this 1st day of June, 1995.

/s/ George Allen
Governor

VA.R. Doc. No. R95-610; Filed June 30, 1995, 9:16 a.m.

EXECUTIVE ORDER NUMBER FIFTY-ONE (95)

**CONTINUING CERTAIN EMERGENCY
DECLARATIONS DUE TO NATURAL DISASTERS IN
THE COMMONWEALTH**

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 44-146.17 of the *Code of Virginia*, and subject always to my continuing and ultimate authority and responsibility to act in such matters, and to reserve powers, I hereby continue the

Governor

states of emergency declared in the following executive orders:

Executive Order Number Sixty-five (85), Declaration of a State of Emergency for Flash Flooding and Mudslides Occurring Throughout the Commonwealth of Virginia as continued by Executive Orders Number Fifteen (86), Forty-six (87), Sixty (88), Sixty-nine (89), Ten (90), Thirty-four (91), Fifty-one (92), Seventy (93), and Eighteen (94);

Executive Order Number Seventy-six (89), Declaration of State of Emergency Arising From Flooding in Buchanan County, Virginia as continued by Executive Orders Number Ten (90), Thirty-four (91), Fifty-one (92), Seventy (93), and Eighteen (94);

Executive Order Number Forty-five (92), Declaration of State of Emergency Arising From Flash Flooding in the Western Region of Virginia as continued by Executive Orders Number Fifty-one (92), Seventy (93), and Eighteen (94);

Executive Order Number Sixty-five (93), Declaration of a State of Emergency Arising From Heavy Snowfall, High Winds and Extremely Low Temperatures in All Parts of Virginia and the Need to Operate Shelters as continued by Executive Orders Number Seventy (93), and Eighteen (94);

Executive Order Number Seventy-six (93), Declaration of a State of Emergency Arising From Tornadoes in the Southcentral, Southeastern and Eastern Parts of Virginia as continued by Executive Order Number Eighteen (94);

Executive Order Number Six (94), Declaration of a State of Emergency Arising From a Severe Winter Storm Which Impacted the Commonwealth as continued by Executive Order Number Eighteen (94);

Executive Order Number Seven (94), Declaration of a State of Emergency Arising From Heavy Snowfall, Torrential Rains, and Icy Conditions Throughout the Commonwealth as continued by Executive Order Number Eighteen (94); and

Executive Order Number Forty-one (95), Declaration of a State of Emergency Arising From An Explosion in the Town of Appalachia, Wise County.

This Executive Order shall be effective July 1, 1995, and will remain in full force and effect until June 30, 1996, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 1st day of June, 1995.

/s/ George Allen
Governor

VA.R. Doc. No. R95-611; Filed June 30, 1995, 9:16 a.m.

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision FF).

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. It is needed to implement a federal mandate and to improve efficiency in government. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor

Date: June 6, 1995

VA.R. Doc. No. R95-623; Filed July 5, 1995, 10:47 a.m.

Title of Regulation: VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision RR).

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. The regulation is needed to comply with federal mandates. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor

Date: June 6, 1995

VA.R. Doc. No. R95-624; Filed July 5, 1995, 10:47 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: VR 460-01-66.2. Medicaid Reimbursement for Administration of Vaccines under the Pediatric Immunization Program.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. The regulation is mandated by federal law. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor

Date: June 6, 1995

VA.R. Doc. No. R95-607; Filed June 30, 1995, 9:16 a.m.

BOARD OF MEDICINE

Title of Regulation: VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. The regulation is primarily designed to reflect a legislative requirement, and to provide regulatory relief to the chiropractic profession while still maintaining public protection. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: June 14, 1995

VA.R. Doc. No. R95-583; Filed June 27, 1995, 10:45 a.m.

**BOARD OF PROFESSIONAL COUNSELORS AND
MARRIAGE AND FAMILY THERAPISTS**

Title of Regulation: VR 560-01-04. Regulations Governing the Certification of Rehabilitation Providers.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. The regulation is primarily designed to comply with a legislative mandate that rehabilitation providers in Virginia be certified. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: May 16, 1995

VA.R. Doc. No. R95-625; Filed July 5, 1995, 10:47 a.m.

BOARD OF SOCIAL WORK

Title of Regulation: VR 620-01-2. Regulations Governing the Practice of Social Work.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: June 22, 1995

VA.R. Doc. No. R95-584; Filed June 27, 1995, 10:45 a.m.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Title of Regulation: VR 670-01-1. Public Participation Guidelines (REPEAL).
VR 670-01-100. Public Participation Guidelines.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. It is mandated by state law. The agency's public participation guidelines must conform with the Administrative Process Act (APA). While I reserve the right to take action authorized by the APA during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: June 6, 1995

VA.R. Doc. No. R95-606; Filed June 30, 1995, 9:16 a.m.

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

Governor George Allen issued and made effective Executive Order Number Fifteen (94) on June 21, 1994. This Executive Order was published in *The Virginia Register of Regulations* on July 11, 1994 (10:21 VA.R. 5457-5461 July 11, 1994). The Executive Order directs state agencies to conduct a comprehensive review of all existing regulations to be completed by January 1, 1997, and requires a schedule for the review of regulations to be developed by the agency and published in *The Virginia Register of Regulations*. This section of the *Virginia Register* has been reserved for the publication of agencies' review schedules. Agencies will receive public comment on the following regulations listed for review.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

In conformance to Executive Order Fifteen (94), the Department of Medical Assistance Services hereby notifies the public of its intention to review all of its existing regulations according to the following schedule:

The agency intends to review all of its regulations having '01' as the middle two digits of the VR number by July 1, 1995. The agency previously requested public comment on these regulations to be submitted no later than December 1, 1994.

The agency intends to review all of its regulations having '02,' '03,' '04,' '05,' and '10' as the middle two digits of the VR number by July 1, 1996. Those regulations are specified in the following list. The agency hereby requests public comment on these regulations to be submitted no later than October 1, 1995.

Regulations and Policies to be Reviewed

Regulation Number	Regulation Name	Attachment
VR 460-02-1.1100	Attachment 1.1 A - Attorney General's Certification	VR 460-02-2.6100:1 Attachment 2.6 A - Eligibility Conditions and Requirements
VR 460-02-1.2100	Attachment 1.2 A - Organization and Function of State Agency	VR 460-03-2.6101 Attachment 2.6 A Supplement 1 - Income Eligibility Levels
VR 460-02-1.2200	Attachment 1.2 B - Single State Agency Organizational Chart	VR 460-03-2.6102 Attachment 2.6 A Supplement 2 - Resource Levels for the Medically Needy
VR 460-02-1.2300	Attachment 1.2 C - Single State Agency Professional Medical and Supporting Staff	VR 460-03-2.6105 Attachment 2.6 A Supplement 5 - Methodologies for Treatment of Income and Resources that Differ from those of the SSI Program
VR 460-02-1.2400	Attachment 1.2 D - State Department of Social Services Responsibilities and Organization	VR 460-03-2.6106 Attachment 2.6 A Supplement 6 - Standards for Optional State Supplementary Payments
VR 460-02-2.1100	Attachment 2.1 A - Definition of Medicaid Health Maintenance Organizations - ER	VR 460-03-2.6107 Attachment 2.6 A Supplement 7 - Income Levels for 1902(f) States - Categorically Needy Who Are Covered under Requirements More Restrictive than SSI
VR 460-02-2.2100:1	Attachment 2.2 A - Groups Covered and Agencies Responsible for Eligibility Determination	VR 460-03-2.6108 Attachment 2.6 A Supplement 8 - Resource Standards for 1902(f) States - Categorically Needy
VR 460-03-2.2101	Attachment 2.2 A Supplement 1 - Reasonable Classifications of Individuals Under the Age of 21, 20, 19, and 18	VR 460-03-2.6181 Attachment 2.6 A Supplement 8a - More Liberal Methods of Treating Income
VR 460-03-2.2102	Attachment 2.2 A Supplement 2 - More Restrictive Categorical Eligibility Criteria	VR 460-03-2.6182 Attachment 2.6 A Supplement 8b - More Liberal Methods of Treating Resources
		VR 460-03-2.6109 Attachment 2.6 A Supplement 9 - Transfer of Resources
		VR 460-03-2.6110 Attachment 2.6 A Supplement 10 - Consideration of Medicaid Qualifying Trusts
		VR 460-03-2.6112 Attachment 2.6 A Supplement 12 - More Liberal Methods Under Social Security Act Sec. 1902(r)(2)
		VR 460-03-2.6113 Attachment 2.6 A Supplement 13 - Section 1924 Provisions
		VR 460-02-2.6200 Attachment 2.6 B - Standards for Optional State Supplementary Payments
		VR 460-02-2.8100 Attachment 2.8 A - Requirements for Advance Directives

Schedules for Comprehensive Review of Regulations

VR 460-02-3.1100	Attachment 3.1 A - Amount, Duration, and Scope of Services Provided to the Categorically Needy	VR 460-02-4.1830	Attachment 4.18 C - Charges for Medically Needy and QMBs for Services Other Than Under 42 CFR 447.53
VR 460-03-3.1100	Attachment 3.1 A & B Supplement 1 - Amount, Duration and Scope of Services	VR 460-02-4.1910	Attachment 4.19 A - Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care
VR 460-03-3.1102	Attachment 3.1 A Supplement 2 - Case Management Services	VR 460-03-4.1911	Attachment 4.19 A Supplement 1 - Final Regulations for Hospital Appeals of Reimbursement Rates
VR 460-03-3.1103	Attachment 3.1 A & B Supplement 3 - Requirements and Limits Applicable to Specific Services - Expanded Prenatal Care Services	VR 460-03-4.1912	Attachment 4.19 A Supplement 2 - Dispute Resolution for State-Operated Providers
VR 460-03-3.1105	Attachment 3.1 A & B Supplement 5 - Drugs or Drug Categories Which Are Not Covered	VR 460-02-4.1920	Attachment 4.19 B - Methods and Standards for Establishing Payment Rates - Other Types of Care
VR 460-02-3.1200	Attachment 3.1 B - Amount, Duration and Scope of Services Provided to Medically Needy Groups	VR 460-03-4.1921	Attachment 4.19 B Supplement 1 - Pediatric Services
VR 460-02-3.1300	Attachment 3.1 C - Standards Established and Methods Used to Assure High Quality of Care	VR 460-03-4.1922	Attachment 4.19 B Supplement 2 - Payment of Medicare Part A and Part B Deductible/Coinsurance
VR 460-03-3.1301	Attachment 3.1 C Supplement 1 - Nursing Facility Criteria	VR 460-03-4.1923	Attachment 4.19 B Supplement 3 - Establishment of Rate Per Visit
VR 460-02-3.1400	Attachment 3.1 D - Methods of Providing Transportation	VR 460-03-4.1924	Attachment 4.19 C Supplement 4 - State Agency Fee Schedule
VR 460-02-3.1500	Attachment 3.1 E - Standards for the Coverage of Organ Transplant Services	VR 460-02-4.1930	Attachment 4.19 C - Basis of Payment for Reserving Beds During a Recipient's Absence from an Inpatient Facility
VR 460-02-3.2100	Attachment 3.2 A - Coordination of Title XIX with Part A and Part B of Title XVIII	VR 460-02-4.1940	Attachment 4.19 D - Methods and Standards for Establishing Payment Rates - Long-Term Care
VR 460-02-4.3100	Attachment 4.3 A - Confidentiality and Disclosure of Information Concerning Medicaid Applicants and Recipients	VR 460-03-4.1940:1	Nursing Home Payment System
VR 460-02-4.1110	Attachment 4.11 A - Standards Governing General and Special Hospitals and Convalescent and Nursing Homes	VR 460-03-4.1941	Uniform Expense Classification (NHPS, Appendix I)
VR 460-02-4.1470	Attachment 4.14 G - Nursing Facility Resident Drug Utilization Review	VR 460-03-4.1942	Leasing Of Facilities (NHPS, Appendix II)
VR 460-02-4.1610	Attachment 4.16 A - Cooperative Arrangements with the State Vocational Rehabilitation Agency and with Title V Programs and Grantees	VR 460-03-4.1943	Cost Reimbursement Limitations (NHPS, Appendix III)
VR 460-02-4.1810	Attachment 4.18 A - Charges for Categorically Needy and QMBs for Services Other Than Under 42 CFR 447.53	VR 460-03-4.1944	Service Intensity Index (NHPS, Appendix IV)
		VR 460-02-4.1950	Attachment 4.19 E - Definition of a Claim by Service
		VR 460-02-4.2210	Attachment 4.22 A - Requirements for Third Party - Liability Identifying Liable Resources
		VR 460-02-4.2220	Attachment 4.22 B - Requirements for Third Party Liability - Payment of Claims

Schedules for Comprehensive Review of Regulations

VR 460-02-4.2230	Attachment 4.22 C - State Method on Cost Effectiveness of Employer-Based Group Health Plans	VR 460-04-8.11	Home and Community-based Care Services for Individuals with AIDS/ARC
VR 460-02-4.3210	Attachment 4.32 A - Income and Eligibility Verification System Procedures; Requests to Other State Agencies	VR 460-04-8.12	Home and Community-based Care Services for Individuals with Mental Retardation
VR 460-02-4.3310	Attachment 4.33 A - Method for Issuance of Medicaid Eligibility Cards to Homeless Individuals	VR 460-04-8.14	MEDALLION
VR 460-02-4.3410	Attachment 4.34 A - Requirements for Advance Directives Under State Plans for Medical Assistance	VR 460-04-8.1500	Community Mental Health/Mental Retardation Services
VR 460-02-4.3510	Attachment 4.35 A - Medicaid Nursing Facility Remedies	VR 460-04-8.16	DMAS-122 Adjustment Process
VR 460-02-4.3900	Attachment 4.39 - Definition of Specialized Services	VR 460-05-1000.000	State/Local Hospitalization Program
VR 460-02-4.3910	Attachment 4.39 A - Categorical Determinations	VR 460-05-3000	Drug Utilization Review for Nursing Facilities
VR 460-02-7.2100	Attachment 7.2 A - Methods of Administration - Civil Rights	VR 460-10-8.2600	Deduction of Incurred Medical Expenses in Determining Countable Income (Spendedown)
VR 460-04-2.6105	Related Cash Assistance Property Rules	<u>Policy Documents</u>	
VR 460-04-2.6108:8	Related More Liberal Methods of Treating Resources	Administrative Procedure for Processing Requests for Direct Reimbursement to Recipients	
VR 460-04-2.6109	Transfer of Resources	Beneficiary Data Exchange	
VR 460-04-3.1300	Outpatient Physical Rehabilitative Services	Criteria for Cochlear Implants	
VR 460-04-4.2230	Health Insurance Premium Payment Program	CS&A 92-05 Guidelines for Home Office Compensation	
VR 460-04-4.2600	Drug Utilization Review	CS&A 93-01 Balloon Loan Reimbursement Policy	
VR 460-04-4.3910	Preadmission Screening and Annual Resident Review	CS&A 94-01 Application of Caps to Plant Costs	
VR 460-04-8.2	Criteria for Intermediate Care for Mentally Retarded Persons	Durable Medical Equipment (DME) and Supplies Policy	
VR 460-04-8.3	Client Medical Management	Guidelines/Definitions for Experimental Treatments	
VR 460-04-8.4	Home and Community-based Waiver Services for Elderly and Disabled Individuals	HCFA R-3 Letter DMD (15)	
VR 460-04-8.5	Home and Community-based Care Services for Technology Assisted Individuals	HCFA Release No. 19 - Medicaid Drug Rebate Program	
VR 460-04-8.6	Spousal Impoverishment	HCFA Release No. 29 - Medicaid Drug Rebate Program	
VR 460-04-8.7	Client Appeals	HCFA Release No. 7 - Medicaid Drug Rebate Program	
VR 460-04-8.8	Hospice Services	Health Regulatory Boards Licensure Data	
VR 460-04-8.9	Public Participation Guidelines	Hospital and Health Care Report	
VR 460-04-8.10	Long Stay Acute Care Hospitals	Internal Coverage Criteria for Penile Implant	
		Internal Criteria for Morbid Obesity	
		Internal Criteria for Reduction Mammoplasty	
		Internal Criteria for Use of Statistical Sampling as a Basis for Determining Amount of Overpayments	
		Medicare/Medicaid Sanction/Reinstatement Report	
		PR-89-01 Administrator/Owner Compensation, Rehabilitation Agencies	
		PR-89-02 Rate Setting Procedure for Intermediate Care Facilities for the Mentally Retarded (ICF/MRs)	
		State Data Exchange	

Schedules for Comprehensive Review of Regulations

Top Management Report
Uniform Billing Manual (UB-92)
Utilization Review Procedures for Inpatient Hospital Services,
Emergency Services, and State & Local Hospitalization
Services
Validation Survey Policy
Virginia Department of Health Acute Care Services Directory
Virginia Department of Health Long-Term Care Directory
Virginia Medicaid Hospital Pediatric Utilization Review
Guidelines
Virginia Medicaid Hospital Utilization Review Guidelines

DEPARTMENT OF SOCIAL SERVICES

Notice of Review of Existing Regulations in the Food Stamp Program

Pursuant to Executive Order Number Fifteen (94), the Department of Social Services is publishing this notice to inform the public that the Food Stamp Program regulations listed below will be reviewed to determine if they should be continued, amended, or repealed.

Regulation

VR 615-01-33. Allowance of Telephone Costs in the Food Stamp Program.

VR 615-01-39. Food Stamp Program - Administrative Disqualification Hearings.

VR 615-01-50. Food Stamp Program - Income Conversion Method.

VR 615-01-52. Food Stamp Program - Resource Exclusion.

Procedures for Submitting Comments

Written comments on the above regulations must be received no later than August 23, 1995, to be considered in the regulation review. The regulation about which comments are being made should begin by identifying the regulation by VR number and regulation title.

Please mail comments to the Food Stamp Program Manager, Division of Benefit Program, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849. Comments may also be submitted by facsimile transmission (FAX number: 804-692-1704).

The department contact for any questions about this notice is Burton Richman, Food Stamp Program Manager, Division of Benefit Programs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849. Telephone (804) 692-1710.

GENERAL NOTICES/ERRATA

Symbol Key

† Indicates entries since last publication of the *Virginia Register*

DEPARTMENT OF HEALTH

Thirty-Day Comment Period Notice for Certain Provisions Contained in the Biosolids Use Regulations (VR 355-17-200)

In accordance with Sections 9-6.14:7.1 J and 9-6.14:18 of the Code of Virginia, comments are being sought on selected provisions of the Biosolids Use Regulations (VR 355-17-200).

The Board of Health through the Acting Commissioner of Health suspends the following provisions for an additional 30-day public comment period:

- metals concentrations for selenium, cadmium, and molybdenum, found in Tables 8A and 8B; and
- the limitations of Class I biosolids use and recordkeeping requirements for Class I biosolids use set forth in § 3.11 C and D.

The suspension of these provisions of the regulations shall expire upon action by the board to readopt or modify them.

Following the public comment period, a summary of public comments, together with comments and recommendations of staff, shall be presented to the Board of Health for consideration and such action as the board deems appropriate in accordance with applicable requirements of the Administrative Process Act, §§ 9-6.14:1 through 9-6.14:25 of the Code of Virginia.

Comments may be submitted until August 9, 1995, to C. M. Sawyer, Division Director, Department of Health, Division of Wastewater Engineering, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

DEPARTMENT OF MOTOR VEHICLES

Motor Vehicle Dealer Board

The 1995 General Assembly adopted legislation which will transfer most of the administrative and regulatory responsibilities related to franchise (new) and independent (used) automobile dealers from the Department of Motor Vehicles (DMV) to a board composed mostly of business professionals. This rewrite of the Dealer Act (Chapter 15 of Title 46.2) establishes the composition of the 19-member, Governor-appointed, Motor Vehicle Dealer Board as follows:

- Nine Franchised Dealers.
- Seven Independent Dealers of which one must be engaged primarily in renting vehicles and another primarily engaged in the vehicle salvage business.
- One consumer.
- The Commissioner of the Department of Agriculture and Consumer Services.

- The Commissioner of the Department of Motor Vehicles, who shall serve as the chairman of the board.

The legislation adopted by the General Assembly provides for a six-month transition period. During this transition period, which will run from July through December of 1995, DMV and the board will develop and implement a transition plan. In order to ensure a smooth transition, the board and DMV staff will be meeting regularly throughout the summer and the fall. These meetings will be open to the public, and every effort will be made to publish in the *Virginia Register* the date, time and place of each of these meetings.

Any individual or organization wishing to be contacted concerning meetings should call, write or send a FAX as follows:

Gail Morykon
Department of Motor Vehicles
P.O. Box 27412
Room 625A
Richmond, VA 23269-0001
(804) 367-6002
FAX (804) 367-2936

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 FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

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 OBJECTIONS - RR08

CALENDAR OF EVENTS

Symbol 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

ADVISORY COMMITTEE ON AGING, DISABILITY AND LONG-TERM CARE SERVICES

† August 4, 1995 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Lower Level, Rooms 1 and 2, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to continue the work of the committee on the development of a plan to enhance service delivery at the local level.

Contact: Cathy Saunders, Director, Long-Term Care Policy and Development, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2912, FAX (804) 225-4512 or toll-free 1-800-343-0634/TDD☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Aquaculture Advisory Board

† August 11, 1995 - 10:30 a.m. -- Open Meeting
Department of Agriculture and Consumer Services, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.♿

The board will meet in regular session to discuss issues related to the Virginia Aquaculture Society. 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 accommodations in order to participate at the meeting should contact T. Robins Buck at least five days before the meeting date so that suitable arrangements can be made.

Contact: T. Robins Buck, Secretary, Virginia Aquaculture Advisory Board, P.O. Box 1163, Richmond, VA 23209, telephone (804) 371-6094.

August 15, 1995 - 10 a.m. -- Open Meeting
Virginia Cooperative Extension, Charlottesville-Albemarle Unit, 168 Spotnap Road, Lower Level Meeting Room, Charlottesville, Virginia.♿

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 accommodations in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist, Department of Agriculture and Consumer Services, 1100 Bank St., #906, Richmond, VA 23219, telephone (804) 786-5842 or (804) 371-6344/TDD☎

Virginia Winegrowers Advisory Board

August 8, 1995 - 10 a.m. -- Open Meeting
State Capitol, 11th Street at Capitol Square, House Room 1, Richmond, Virginia.♿

The board will hold elections of the chairman, vice-chairman and treasurer, hear project reports and conduct new business. Public comment will be heard following the conclusion of board business. Any person who needs any accommodations in order to participate at the meeting should contact Mary Davis-Barton at least 14 days before the meeting date so that suitable arrangements can be made.

Contact: Mary Davis-Barton, Secretary, Virginia Winegrowers Advisory Board, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-0481.

STATE AIR POLLUTION CONTROL BOARD

July 26, 1995 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

Calendar of Events

July 27, 1995 - 11 a.m. -- Public Hearing
James McCort Administration Building, One County Complex
Court, Board Chamber Room, Prince William, Virginia.

**August 28, 1995 -- Public comments may be submitted until
4:30 p.m. on this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision FF -- Rule 4-4, Emission Standards for Open Burning)**. The proposed regulation amendments provide for the deregulation of certain control measures at the state level while providing an administrative mechanism to assist local governments in developing their own control programs. The proposed amendments also require a summertime ban on open burning in order to reduce emissions of volatile organic compounds in Virginia's ozone nonattainment areas.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: Although any person conducting open burning will be affected by the proposed regulation, the jurisdictions within Virginia's three Volatile Organic Compound Emissions Control Areas (identified below) will experience more impact during June, July and August than jurisdictions outside these areas.

1. The Northern Virginia area: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

2. The Richmond area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.

3. The Hampton Roads area: James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg.

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

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

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

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

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

Piedmont Regional Office
Department of Environmental Quality
Innsbrook Corporate Center
4900 Cox Road
Glen Allen, Virginia
Ph: (804) 527-5300

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

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

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

Public comments may be submitted until 4:30 p.m., August 28, 1995, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4413.

July 26, 1995 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Innsbrook Corporate
Center, 4900 Cox Road, Glen Allen, Virginia.

July 27, 1995 - 11 a.m. -- Public Hearing
James McCort Administration Building, One County Complex
Court, Prince William, Virginia.

August 28, 1995 -- Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision RR -- Volatile Organic Compounds)**. The standards require owners to reduce emissions of volatile organic compounds from specific sources, and to limit those emissions to a level resulting from the use of reasonably available control technology. The following types of sources are affected: otherwise unregulated facilities; surface cleaning and degreasing operations using nonhalogenated solvents; rotogravure/flexographic printing facilities emitting 25-100 tons per year; sanitary landfill operations; and lithographic printing operations.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: The localities affected by the proposed regulation are as follows:

1. The Northern Virginia area: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.
2. The Richmond area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.

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

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

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

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

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

Piedmont Regional Office
Department of Environmental Quality
Innsbrook Corporate Center
4900 Cox Road
Glen Allen, Virginia
Ph: (804) 527-5300

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

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

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

Public comments may be submitted until 4:30 p.m., August 28, 1995, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski or Dr. Kathleen Sands, Policy Analysts, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4000.

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

Board for Professional Engineers

July 28, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct review of regulations under the provisions of Executive Order 15 (94). Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Calendar of Events

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD☎

BOARD FOR BARBERS

August 7, 1995 - 9 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 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, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2745 or (804) 367-9753/TDD☎

BOARD FOR BRANCH PILOTS

† **July 28, 1995 - 9 a.m. -- Open Meeting**
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ☎

A meeting to review applications for licensure. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD☎

CHILD DAY-CARE COUNCIL

† **August 10, 1995 - 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)

A meeting to discuss issues and concerns that impact child day centers, camps, school-age programs, and preschool/nursery schools. Public comment period will be at noon. Please call ahead of time for possible changes in meeting time.

Contact: Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 7th Floor, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775.

COMPENSATION BOARD

July 27, 1995 - 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 meeting to conduct board business.

Contact: Bruce W. Haynes, Executive Secretary, Compensation Board, P.O. Box 710, Richmond, VA 23206-0686, telephone (804) 786-3886, FAX (804) 371-0235 or (804) 786-3886/TDD☎

DEPARTMENT OF CONSERVATION AND RECREATION

August 17, 1995 - Noon -- Open Meeting
City Hall, Planning Commission Conference Room, 5th Floor, Richmond, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD☎

† **August 23, 1995 - 1 p.m. -- Open Meeting**
Department of Conservation and Recreation, 203 Governor Street, Room 200, Richmond, Virginia. ☎

A meeting of the ad hoc committee formed to assist the department in the regulatory review of the Virginia Soil and Water Conservation Board's "VR 625-02-00, Erosion and Sediment Control Regulations," under Governor Allen's Executive Order 15(94).

Contact: Leon E. App, Agency Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141 or (804) 786-2121/TDD ☎

† **August 23, 1995 - 7 p.m. -- Open Meeting**
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia. ☎

A meeting to provide opportunity for public comment concerning the Virginia Soil and Water Conservation Board's "VR 625-02-00, Erosion and Sediment Control Regulations," under Governor Allen's Executive Order 15(94).

Contact: Leon E. App, Agency Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

August 1, 1995 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A public hearing to receive public comment on the Board for Contractors regulations and public participation guidelines in accordance with Executive Order 15(94). The comment period will end on August 28, 1995. Persons desiring to participate in the meetings and requiring special accommodations or interpreter services should contact the board office at (804) 367-2785 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Geralde W. Morgan, Senior Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23220-4917, telephone (804) 367-2785.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

August 8, 1995 - 10 a.m. -- Public Hearing
Board of Corrections, Board Room, 6900 Atmore Drive, Richmond, Virginia.

September 8, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to adopt regulations entitled: **VR 230-01-006. Regulations for Private Management and Operation of Prison Facilities.** Section 53.1-266 of the Code of Virginia directs the Board of Corrections to promulgate regulations governing certain aspects of private management and operation of prison facilities. In compliance with the statute this regulation establishes minimum standards governing administration and operational issues within private prisons.

Contact: Amy Miller, Regulatory Coordinator, P.O. Box 26963, Richmond, Virginia 23261, telephone (804) 674-3119.

† August 9, 1995 - 10 a.m. -- Open Meeting
Powhatan Correctional Center, Administrative Building, Conference Room, State Farm, Virginia. ☎

A meeting to discuss matters as they may be presented to the board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

Administration Committee

† August 9, 1995 - 8:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☎

A meeting to discuss administrative matters as they may be presented to the full board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

Correctional Services Committee

† August 9, 1995 - 10:45 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss correctional services matters as they may be presented to the full board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

August 14, 1995 - 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 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, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Advisory Board

† August 2, 1995 - 10 a.m. -- Open Meeting
Department for the Deaf and Hard-of-Hearing, Washington Building, 1100 Bank Street, 12th Floor, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A regular quarterly business meeting. Public comment will be received with advance notice.

Contact: Gloria L. Cathcart, Human Service Program Specialist, Department for the Deaf and Hard-of-Hearing, Washington Bldg., 1100 Bank St., 12th Floor, Richmond, VA 23219, telephone (804) 371-7892 (V/TTY), toll-free 1-800-552-7917, or (804) 371-7882/TDD ☎

BOARD OF DENTISTRY

July 28, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

Informal conferences.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA

Calendar of Events

23230-1717, telephone (804) 662-9902 or (804) 662-7197/TDD☎

BOARD OF EDUCATION

July 27, 1995 - 8:30 a.m. -- Open Meeting

September 28, 1995 - 8:30 a.m. -- Open Meeting
General Assembly Building, Ninth and Broad Streets, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: James E. Laws, Jr., Administrative Assistant for Board Relations, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2924 or toll-free 1-800-292-3820.

August 8, 1995 - 7 p.m. -- Public Hearing
Thomas Edison High School, 5801 Franconia Road, Alexandria, Virginia.

August 8, 1995 - 7 p.m. -- Public Hearing
E. C. Glass High School, 2111 Memorial Avenue, Lynchburg, Virginia.

August 8, 1995 - 7 p.m. -- Public Hearing
Godwin High School, 2102 Pump Road, Richmond, Virginia.

August 8, 1995 - 7 p.m. -- Public Hearing
Marion High School, 848 Stage Street, Marion, Virginia.

† **August 8, 1995 - 7 p.m. -- Public Hearing**
Lake Taylor High School, 1384 Kempsville Road, Norfolk, Virginia. ☎ (Interpreter for the deaf provided upon request)

September 15, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Education intends to adopt regulations entitled: **VR 270-01-0064, Regulations Governing Guidance and Counseling Programs in the Public Schools of Virginia.** The regulations address requirements for parental notification about the programs and the conditions under which parental consent must be obtained for students to participate. The purpose of these hearings is to receive comments from the public on these proposed regulations. Registration will begin at 6:30 p.m.

Public comments may be submitted until September 15, 1995, to H. Douglas Cox, Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23216-2120.

Contact: James E. Laws, Jr., Administrative Assistant for Board Relations, P.O. Box 2120, Richmond, Virginia 23216-2120, telephone (804) 225-2540 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

July 26, 1995 - 6:30 p.m. -- Open Meeting
County Administration Office, Conference Room, Gloucester, Virginia. ☎ (Interpreter for the deaf provided upon request)

A quarterly meeting of the committee to address agenda matters of orientation of new committee members, annual update of County Hazardous Materials Plan, and follow-up action from the spring emergency services exercise.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042 or (804) 693-1476/TDD☎

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **July 27, 1995 - 7:15 p.m. -- Public Hearing**
Aurora Hills Community Center, 735 18th Street South, Arlington, Virginia.

A public hearing to consider an application from the Arlington County Water Pollution Control Plant to modify and operate a wastewater treatment plant located at 3401 South Glebe Road. The modification consists of increasing the capacity of the two existing sewage sludge incinerators from 45 to 60 dry tons of sludge per day.

Contact: Douglas Taylor, Department of Environmental Quality, 6225 Brandon Ave., Suite 310, Springfield, VA, telephone (703) 644-0311.

Cost-Benefit Analysis Work Group

August 2, 1995 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, 10th Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to continue assisting the agency in developing a process for conducting cost benefit analyses for each of its regulations.

Contact: Michael P. Murphy, Director, Grants Management, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4003, FAX (804) 762-4019, toll-free 1-800-592-5482 or (804) 762-4021/TDD☎

BOARD OF GAME AND INLAND FISHERIES

August 24, 1995 - 9 a.m. -- Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board will meet and intends to adopt regulations governing the 1995-96 migratory waterfowl seasons based on the framework provided by the U.S. Fish and

Wildlife Service. The board may also propose fish and nongame wildlife regulation changes. In addition, general and administrative matters will be discussed. The board may hold an executive session.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

BOARD OF HEALTH PROFESSIONS

Regulatory Research Committee

† **August 15, 1995 - 8 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A public hearing on the need to regulate pharmacy technicians. The board invites testimony, written comments or both, related to this issue. Testimony must be received at the time and location listed. Written comments must be received no later than August 30, 1995. Individuals, agencies or organizations wishing to present testimony may reserve time by contacting the Department of Health Professions in advance.

Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9915 or (804) 662-7197/TDD ☎

† **August 15 1995 - 9:30 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A public hearing on the need to regulate massage therapy. The board seeks evidence that the unregulated practice of massage therapy poses a threat to public health or safety or that the current status of Virginia law is a barrier to safe and effective delivery of health care services. The board invites testimony, written comments or both, related to this issue. Testimony must be received at the time and location listed. Written comments must be received no later than August 30, 1995. Individuals, agencies or organizations wishing to present testimony may reserve time by contacting the Department of Health Professions in advance.

Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9915 or (804) 662-7197/TDD ☎

† **August 15, 1995 - 11 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A public hearing on the need to further regulate respiratory therapists. The board is conducting a study to determine the need to change the level of regulation

for respiratory therapists from certification to licensure. Currently, respiratory therapists are regulated by the Board of Medicine. The level of regulation is limited to certification and title protection. The law does not limit practice to certified individuals, but rather any person may render the services of a respiratory therapist provided restricted titles are not assumed. The board invites testimony, written comments or both, related to this issue. Testimony must be received at the time and location listed. Written comments must be received no later than August 30, 1995. Individuals, agencies or organizations wishing to present testimony may reserve time by contacting the Department of Health Professions in advance.

Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9915 or (804) 662-7197/TDD ☎

† **August 15, 1995 - 2 p.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A public hearing on alternative and complementary medicine. The Board of Health Professions is authorized to advise the Governor, General Assembly, Secretary of Health and Human Resources, and the Director of the Department of Health Professions on matters related to the regulation of health care providers in Virginia. Recent studies have indicated that many citizens avail themselves of alternative and complementary medicine, and the National Institutes of Health has organized the Office of Alternative Medicine in response to Congressional mandate. The board has undertaken a study to review the practice of alternative and complementary medicine and its relationship to the laws governing the delivery of health care services in the Commonwealth. The board has set aside time to receive testimony at the location and time listed. Oral testimony may be limited based on the number of individuals testifying. Written comments may be of any length and be received until March 15, 1996. Individuals, agencies, or organizations wishing to present oral testimony may reserve time by contacting the Department of Health Professions in advance.

Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9915 or (804) 662-7197/TDD ☎

† **August 15, 1995 - 4 p.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A public hearing on art therapy. The board is conducting a study to determine the need to regulate the practice of art therapy. The board seeks evidence that the unregulated practice of art therapy poses a threat to public health or safety or that the current status of Virginia law is a barrier to safe and effective delivery of health care services. The board invites testimony,

Calendar of Events

written comments or both, related to this issue. Testimony must be received at the time and location listed. Written comments must be received no later than August 30, 1995. Individuals, agencies or organizations wishing to present testimony may reserve time by contacting the Department of Health Professions in advance.

Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9915 or (804) 662-7197/TDD☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

July 25, 1995 - 9:30 a.m. -- Open Meeting
Trigon Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia. ☎

A monthly meeting of council.

Contact: Barbara Ryder, Director of Administration, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

August 1, 1995 - 9 a.m. -- Open Meeting
September 5, 1995 - 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 Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

STATE LAND EVALUATION ADVISORY COUNCIL

† **August 9, 1995 - 10 a.m. -- Open Meeting**
Department of Taxation, 2220 West Broad Street, 3rd Floor Conference Room, Richmond, Virginia. ☎

A meeting to introduce suggested ranges of value for agricultural, horticultural, forest and open-space land use and the use-value assessment program for 1996.

Contact: Farley Beaton, Executive Assistant, Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8028.

COMMISSION ON LOCAL GOVERNMENT

† **August 21, 1995 - 11 a.m. -- Open Meeting**
Pearisburg Community Center, 1410 Wenonah Avenue, Pearisburg, Virginia.

Oral presentations regarding the Town of Pearisburg-Giles County Voluntary Settlement Agreement. Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Building, Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

† **August 21, 1995 - 7 p.m. -- Public Hearing**
Pearisburg Community Center, 1410 Wenonah Avenue, Pearisburg, Virginia.

Public hearing regarding the Town of Pearisburg-Giles County Voluntary Settlement Agreement. Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Building, Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

LONGWOOD COLLEGE

Board of Visitors

July 28, 1995 - 9 a.m. -- Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ☎

A meeting of the Executive Committee, Finance/Facilities and Services Committee, and Academic/Student Affairs Committee to conduct routine business of the Board of Visitors.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2001.

July 29, 1995 - 9 a.m. -- Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ☎

A meeting to conduct routine business of the Board of Visitors.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2001.

STATE LOTTERY BOARD

July 26, 1995 - 9:30 a.m. -- Open Meeting
State Lottery Department, 900 East Main Street, 8th Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting of the board. Business will be conducted according to items listed on the agenda, which has not yet been determined. One period for public comment is scheduled.

Contact: Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774 or FAX (804) 692-7775.

MARINE RESOURCES COMMISSION

July 25, 1995 - 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; policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Sandra S. Schmidt, Secretary to the Commission, 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☎

MATERNAL AND CHILD HEALTH COUNCIL

† July 26, 1995 - 10 a.m. -- Open Meeting

State Corporation Commission, Tyler Building, 1300 East Main Street, Third Floor Training Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to focus on improving the health of the Commonwealth's mothers and children by promoting and improving programs and service delivery systems related to maternal and child health, including prenatal care, school health, and teenage pregnancy.

Contact: Patricia Avery, Executive Secretary Senior, Department of Health, Office of Family Health Services, 1500 E. Main St., Room 104-B, Richmond, VA 23219, telephone (804) 371-0478.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

August 11, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical

Assistance Services intends to adopt regulations entitled: **VR 460-01-66.2. Medicaid Reimbursement for Administration of Vaccines under the Pediatric Immunization Program (§ 4.19m)**. The purpose of this proposal is to promulgate permanent regulations for the payment of a fee for the administration of vaccines to children under the Vaccines for Children Program. The vaccines which are covered under this program are routine childhood immunizations which are given to prevent such childhood diseases as whooping cough, diphtheria, tetanus, polio, measles, mumps, and German measles.

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103-66, created the Pediatric Immunization Distribution Program (more commonly known and hereafter referred to as the Vaccines for Children (VFC) Program), which took effect on October 1, 1994. Section 13631 of OBRA '93 added § 1902 (A)(62) to the Social Security Act (the Act) to require that states provide for a program for the purpose and distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with § 1928 of the Act. Section 1928 required each state to establish a VFC Program (which may be administered by the State Department of Health) under which certain specified groups of children are entitled to receive qualified pediatric immunizations without charge for the costs of the vaccine. The Department of Medical Assistance Services (DMAS) has complied with this requirement with the exception of the final component, the vaccine administration fee, which is needed to complete all the necessary program elements.

The establishment of a vaccine administration fee is essential to comply with OBRA '93's Vaccines for Children (VFC) Program, which ensures that certain specified groups of children receive qualified pediatric immunizations free of charge. This vaccine administration fee is mandated in the law and is intended to provide an incentive to providers to participate in the VFC program and provide immunizations to Medicaid children. Medicaid proposes to establish a fee of \$11 for the administration of such fees. The primary advantage to the Commonwealth and to providers of this regulatory action is that the federal government will provide these routine childhood vaccines free of charge. Since Medicaid recipients do not pay for such immunizations, such a change in drug distribution and payment policies is expected to be transparent to them. Actual expenditures will depend on the number of Medicaid providers who enroll in this vaccines program, the number of recipients who receive immunizations, and the number of administration fees that are actually paid to providers.

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

Public comments may be submitted until August 11, 1995, to Sally Rice, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Calendar of Events

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

BOARD OF MEDICAL ASSISTANCE SERVICES

† **August 15, 1995 - 9 a.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia. ☎

A meeting to discuss medical assistance services and to take action on issues pertinent to the board.

Contact: Cynthia Klisz, Executive Assistant, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA, telephone (804) 786-8099.

BOARD OF MEDICINE

July 26, 1995 - 9:30 a.m. -- Open Meeting
Sheraton Resort and Conference Center, I-95 and Virginia Route 3, Fredericksburg, Virginia. ☎

The informal conference committee composed of three members of the board will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Credentials Committee

August 12, 1995 - 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, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Executive Committee

August 11, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 2 and 3, 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, and act upon certain issues as presented. 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, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Occupational Therapy

† **August 17, 1995 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review public comments and make recommendations to the Board of Medicine regarding the regulatory review of VR 465-08-01, Regulations for Certification of Occupational Therapists, and such other issues which may be presented.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or FAX (804) 662-9943.

Advisory Board on Physical Therapy

† **August 18, 1995 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to elect new officers, review public comments and make recommendations to the Board of Medicine regarding the regulatory review of VR 465-04-01, Regulations Governing the Practice of Physical Therapy, and such other issues which may be presented.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or FAX (804) 662-9943.

Advisory Committee on Physician Assistants

† **August 23, 1995 - Noon** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will meet to review public comments and make recommendations to the Board of Medicine regarding the regulatory review of VR 465-05-01, Regulations Governing the Practice of Physician Assistants, and such other issues which may be presented.

Contact: Eugenia K. Dorson, Deputy Executive Director, 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 Respiratory Therapy

† August 17, 1995 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to elect officers, review public comments and make recommendations to the Board of Medicine regarding the regulatory review of VR 465-04-01, Regulations Governing the Practice of Respiratory Therapy Practitioners, and such other issues which may be presented.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, 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

August 16, 1995 - 10 a.m. -- Public Hearing
James Madison Building, Main Floor Conference Room, 109 Governor Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the Virginia Substance Abuse Prevention Treatment and Community Mental Health Services Block Grant applications for federal fiscal year 1996. Copies of this application will be available for review beginning August 4, 1995, at the Office of the Director of Planning and Policy, 8th Floor, James Madison Building in Richmond and at each community services board office. Comments may be made at the hearing or in writing by no later than August 23, 1995, to the Office of Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214. Persons wishing to make a presentation may contact Sterling Deal. Copies of oral statements should be filed at the time of the hearing.

Contact: Sterling Deal, Planning Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3906 or (804) 371-8977/TDD

VIRGINIA MILITARY INSTITUTE

Board of Visitors

August 26, 1995 - 8:30 a.m. -- Open Meeting
Smith Hall, Virginia Military Institute, Lexington, Virginia.

A regular meeting of the Board of Visitors to elect president, make committee appointments, and receive committee reports. The board will provide an opportunity for public comment immediately after the Superintendent's comments at approximately 9 a.m.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206 or FAX (703) 464-7600.

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

† August 9, 1995 - 1 p.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia.

A regular business meeting.

Contact: Karen Ruby, Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA, telephone (804) 367-2240.

VIRGINIA MUSEUM OF FINE ARTS

Board of Trustees

† August 1, 1995 - 8 a.m. -- Open Meeting
† September 5, 1995 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, Director's Office, 2800 Grove Avenue, Richmond, Virginia.

A monthly update meeting of board officers and the director. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

† August 3, 1995 - 10 a.m. -- Open Meeting
† September 13, 1995 - 10 a.m. -- Open Meeting
Virginia Museum of Fine Arts, Library Reading Room, 2800 Grove Avenue, Richmond, Virginia.

One of four workshops to develop a long-range strategic plan for the Virginia Museum. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

† August 4, 1995 - 9:30 a.m. -- Open Meeting
† September 14, 1995 - 9:30 a.m. -- Open Meeting
Virginia Museum of Fine Arts, Library Reading Room, 2800 Grove Avenue, Richmond, Virginia.

A briefing meeting of the Planning Committee following the Strategic Plan Steering Committee Workshop held

Calendar of Events

on the previous day. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

† **September 18, 1995 - 1 p.m.** -- Open Meeting

† **September 19, 1995 - 9 a.m.** -- Open Meeting

Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ☎

A two-day retreat for the Board of Trustees. Planning issues and future direction of the Museum will be discussed. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

† **August 12, 1995 - 9 a.m.** -- Open Meeting

Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, Virginia. ☎

A meeting to include reports from the executive, finance, legislative, marketing, outreach, personnel, planning/facilities, research and collections, and director search committees. Public comment will be received following approval of the minutes of the April meeting.

Contact: Rhonda J. Knighton, Executive Secretary Sr., Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (703) 666-8616 or (703) 666-8638/TDD ☎

STATE NETWORKING USERS ADVISORY BOARD

August 9, 1995 - 10 a.m. -- Open Meeting

Jefferson-Madison Regional Library, Madison Room, 201 East Market Street, Charlottesville, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss administrative matters.

Contact: Jean Taylor, Secretary to the State Librarian, The Library of Virginia, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

BOARD OF NURSING

July 24, 1995 - 9 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Two special conference committees will conduct informal conferences in the morning. A panel of the board will conduct formal hearings in the afternoon. Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

July 25, 1995 - 9 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting to consider matters relating to education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. Public comment will be received during an open forum beginning at 11 a.m. At 1 p.m. the board will consider recommendations from the Committee of the Joint Boards of Nursing and Medicine in response to comments and act on proposed amendments to VR 495-02-01 and VR 465-07-1, Regulations Governing the Licensure of Nurse Practitioners.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

July 26, 1995 - 9 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Two panels of the board will conduct formal hearings.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

† **August 7, 1995 - 9 a.m.** -- Open Meeting

† **August 9, 1995 - 9 a.m.** -- Open Meeting

† **August 10, 1995 - 9 a.m.** -- Open Meeting

† **August 15, 1995 - 9 a.m.** -- Open Meeting

† **August 16, 1995 - 9 a.m.** -- Open Meeting

† **August 17, 1995 - 9 a.m.** -- Open Meeting

† **August 21, 1995 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A special conference committee comprised of two members of the Board of Nursing will conduct informal conferences with licensees to determine what, if any, action should be recommended to the board. Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD FOR OPTICIANS

August 11, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

An open meeting for regulatory review and other matters which may require board action. A public comment period will be scheduled at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

BOARD OF OPTOMETRY

July 26, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
4th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

Informal conference meetings. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

August 30, 1995 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
4th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

A general board meeting. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

August 30, 1995 - 1:30 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
4th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

Formal hearings. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

BOARD OF PHARMACY

† July 25, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia.

A board meeting to discuss issues arising from regulations proposed by the board on June 14, 1995. Public comments will be received from 9 a.m. to 9:30 a.m. Immediately following adjournment, the Regulation Committee and Ad Hoc Committee will meet to work on the comprehensive review of VR 530-01-1, Regulations of the Board of Pharmacy. No public comments will be received during this working session.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

July 28, 1995 -- Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to adopt regulations entitled: **VR 560-01-04. Regulations Governing the Certification of Rehabilitation Providers.** New regulations governing the certification of rehabilitation providers are proposed by the Board of Professional Counselors and Marriage and Family Therapists to provide for (i) fees to cover the application processing (\$100) and annual certification review (\$50); and (ii) standards of practice that establish guidelines for professional conduct, grounds for disciplinary action for misconduct, and reinstatement procedures following denial of certification or disciplinary action.

Statutory Authority: §§ 54.1-2400 and 54.1-3514 of the Code of Virginia.

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

† August 18, 1995 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
Conference Room 1, Richmond, Virginia. ☎ (Interpreter for
the deaf provided upon request)

An informal conference regarding credentials will begin at 8:30 a.m. At 9:30 a.m. there will be a regular meeting of the board to conduct general board business, and to consider committee reports, correspondence and any other matters under the jurisdiction of the board. Regulatory review will be conducted. This is a public meeting and there will be a half-hour general public comment period from 9:45 a.m. to 10:15 a.m.

Calendar of Events

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

REAL ESTATE BOARD

† **August 3, 1995 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, Conference Room 4, 3600 West Broad Street, Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

A regular business meeting of the board to include review of investigative matters, consideration of applications, various requests to the board for information, etc.

Contact: Emily O. Wingfield, Acting Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552 or (804) 367-9753/TDD ☎

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

July 27, 1995 - 4 p.m. -- Open Meeting
Richmond Nursing Home, 1900 Cool Lane, 2nd Floor, Classroom, Richmond, Virginia. ☎

A monthly board meeting to discuss nursing home operations and related matters.

Contact: Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, Richmond, VA 23204-0548, telephone (804) 782-1938.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

August 9, 1995 - 10 a.m. -- Open Meeting
August 10, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, Senate Room A, Capitol Square, Ninth and Broad Streets, Richmond, Virginia. ☎

The board will 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: Beth B. Dubis, Secretary to the Board, Sewage Handling and Disposal Appeals Review Board, 1500 E. Main St., Suite 117, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

STATE BOARD OF SOCIAL SERVICES

† **August 16, 1995 - 1:30 p.m.** -- Open Meeting
† **August 17, 1995 - 9 a.m. (if necessary)** -- Open Meeting
Wythe Building, Koger Executive Center West, 1604 Santa Rosa Road, Richmond, Virginia. ☎

A work session and formal business meeting of the board.

Contact: Phyllis Sisk, Special Assistant to the Commissioner, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, (804) 692-1900, toll-free 1-800-552-7096, 1-800-552-3431/TDD ☎, or FAX (804) 692-1949.

BOARD OF SOCIAL WORK

August 4, 1995 - 11 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

August 11, 1995 -- Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Work intends to amend regulations entitled: **VR 620-01-2. Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to clarify the responsibilities of a supervisor, allow candidates to be examined prior to completing experience requirements, and address problems with standards of practice.

Contact: Evelyn Brown, Executive Director, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9914.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

July 25, 1995 - 10 a.m. -- Public Hearing
Virginia Highlands Airport, 18521 Lee Highway (Off Interstate 81, between Exits 13 and 14), Abingdon, Virginia.

July 26, 1995 - 10 a.m. -- Public Hearing
Virginia Department of Transportation - Salem District Office, 731 Harrison Avenue, Salem, Virginia.

July 31, 1995 - 10 a.m. -- Public Hearing
Virginia Department of Transportation - Central Office, 1221 East Broad Street, Auditorium, Richmond, Virginia.

September 8, 1995 -- Public 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 Commonwealth Transportation Board intends to amend regulations entitled: **VR 385-01-8. Subdivision Street Requirements.** The Subdivision Street Requirements were originally adopted in 1949 to establish the requirements and administrative procedures for the addition of subdivision streets into the secondary system of Virginia's highways. The geometric standards and

specifications listed or referenced in the manual are consistent with the department's criteria for the design and construction of roadway facilities which are adequate to serve the traffic projected to travel over the streets involved. The regulation does make allowances to recognize unique situations concerning street development which arise during the process of subdividing land.

The proposed amendments to the Subdivision Street Requirements reflect the findings of the department documented in response to Senate Joint Resolution 61, enacted by the 1994 General Assembly. This resolution directed the department to study the need for establishing more flexible design standards to ensure these standards reflect the special needs of historical districts, and to address the need for conservation and protection of environmentally sensitive areas. As a result of this effort, the department solicited comments from municipalities, developers, and other stakeholders before securing formal permission to revise the Subdivision Street Requirements.

The proposed amendments provide a number of benefits for participants in the subdivision/development processes: updated nomenclature, references, and titles; additional definitions to reflect new conditions or design specifications; the establishment of new or expanded responsibilities of the participants; and clarifying language to resolve procedural issues. These amendments are intended to produce a document which (i) is easier to understand; (ii) provides additional flexibility to the overall addition process; and (iii) addresses economic and environmental concerns fairly.

Public comments may be submitted until September 8, 1995, to James S. Givens, Secondary Roads Engineer, Department of Transportation, 1401 E. Broad Street, Richmond, Virginia 23219.

Contact: H. Charles Rasnick, Assistant Secondary Roads Engineer, Virginia Department of Transportation, 1401 E. Broad Street, Richmond, Virginia 23219, telephone (804) 786-7314.

July 31, 1995 -- Public 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 Commonwealth Transportation Board intends to **repeal** regulations entitled **VR 385-01-05, Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities**, and **adopt** regulations entitled **VR 385-01-05:1, Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities**. The purpose of the proposed amendment is to change the existing Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities from a regulation based on a listing of hazardous materials to a regulation based on hazard class. All hazardous material transportation restrictions are to be lifted from the two rural interstate 77 tunnels.

Statutory Authority: §§ 33.1-12(3) and 33.1-49 of the Code of Virginia.

Contact: Perry Cogburn, Environmental Program Planner, Department of Transportation Maintenance Division, Emergency Operations Center, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 786-6824, toll-free 1-800-367-7623 or (804) 371-8498/TDD

VIRGINIA RESOURCES AUTHORITY

August 8, 1995 - 9:30 a.m. -- Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to approve minutes of the prior monthly meeting; to review the authority's operations for the prior months; and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., The Mutual Bldg., 909 E. Main St., Suite 607, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

July 28, 1995 -- 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 for the Visually Handicapped intends to **repeal** regulations entitled **VR 670-01-1, Regulation Guidelines for Public Participation** and **adopt** regulations entitled: **VR 670-01-100, Public Participation Guidelines**. VR 670-01-1 is being repealed so that the department can adopt new public participation regulations that meet the requirements of the Administrative Process Act, as amended in 1993. VR 670-01-100 provides guidelines for involving the public in the development and promulgation of regulations of the Department for the Visually Handicapped. With it, the department will comply with the public participation requirements of the Administrative Process Act, as amended in 1993. These guidelines do not apply to regulations that are exempt or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

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

Contact: Glen R. Slonneger, Program Director, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

Calendar of Events

Vocational Rehabilitation Advisory Council

September 16, 1995 - 10 a.m. -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request. Request must be received no later than 9/5/95 at 5 p.m.)

Council meets quarterly to advise the Virginia Department for the Visually Handicapped on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation Program Specialist, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, (804) 371-3140/TDD☎, or toll-free 1-800-622-2155.

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

† **August 8, 1995 - Noon -- Open Meeting**
† **August 9, 1995 - 8:30 a.m. -- Open Meeting**
Hotel Roanoke, Roanoke, Virginia.

Opening session (August 8). Business session (August 9).

Contact: Jerry Hicks, Executive Director, Virginia Council on Vocational Education, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218.

VIRGINIA VOLUNTARY FORMULARY BOARD

August 17, 1995 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Bureau of Pharmacy Services, Department of Health, Madison Bldg., 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

July 27, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4 A and B, Richmond, Virginia. ☎

There will be a general board meeting beginning at 10 a.m., followed by a public hearing at 11 a.m. in compliance with Executive Order 15(94).

Contact: David E. Dick, Assistant Director, Board for Waste Management Facility Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475 or (804) 367-9753/TDD☎

STATE WATER CONTROL BOARD

† **July 25, 1995 - 9 a.m. -- Open Meeting**
Department of Environmental Quality, 4900 Cox Road, Board Room, Glen Allen, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting of the board.

Contact: Cindy M. Berndt, Policy and Planning Supervisor, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4378, (804) 762-4021/TDD☎, or FAX (804) 762-4346.

† **August 28, 1995 - 7 p.m. -- Public Hearing**
Prince William County Administration Center, 1 County Complex, McCoart Building, Board Chambers, 4850 Davis Ford Road, Prince William, Virginia.

† **August 29, 1995 - 7 p.m. -- Public Hearing**
James City County Board of Supervisors Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

† **August 31, 1995 - 7 p.m. -- Public Hearing**
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors Room, Roanoke, Virginia.

† **September 25, 1995 --** 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 Water Control Board intends to repeal regulations entitled: **VR 680-14-01, Permit Regulation**. The purpose of the proposed regulatory action is to repeal the permit regulation in order to eliminate confusion and duplication from the concurrent adoption of a VPDES permit regulation and a VPA permit regulation.

Question and Answer Period: A question and answer period will be held one-half hour prior to the beginning of each public hearing at the same location. The Department of Environmental Quality staff will be present to answer questions regarding the proposed action.

Accessibility to Persons with Disabilities: The meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Zelda Hardy, Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4377 or (804) 762-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Hardy no later than 4 p.m. on Monday, August 14, 1995.

Other Pertinent Information: The department has conducted analyses on the proposed action related to basis, purpose, substance, issues and estimated impacts. These are available upon request from Richard Ayers at the Department of Environmental Quality.

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

Written comments may be submitted until 4 p.m., Monday, September 25, 1995, to Zelda Hardy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 527-5059 or (804) 762-4261/TDD☎.

† **August 28, 1995 - 7 p.m.** -- Public Hearing
Prince William County Administration Center, 1 County Complex, McCoart Building, Board Chambers, 4850 Davis Ford Road, Prince William, Virginia.

† **August 29, 1995 - 7 p.m.** -- Public Hearing
James City County Board of Supervisors Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

† **August 31, 1995 - 7 p.m.** -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors Room, Roanoke, Virginia.

† **September 25, 1995** -- 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 Water Control Board intends to adopt regulations entitled: **VR 680-14-01:1. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.** The purpose of the proposed regulation is to adopt a VPDES permit regulation which will administer the VPDES program which controls the point source discharge of pollutants to surface waters of the state.

Question and Answer Period: A question and answer period will be held one-half hour prior to the beginning of each public hearing at the same location. The Department of Environmental Quality staff will be present to answer questions regarding the proposed action.

Accessibility to Persons with Disabilities: The meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Zelda Hardy, Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4377 or (804) 762-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Hardy no later than 4 p.m. on Monday, August 14, 1995.

Other Pertinent Information: The department has conducted analyses on the proposed action related to basis, purpose, substance, issues and estimated impacts. These are available upon request from Richard Ayers at the Department of Environmental Quality.

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

Written comments may be submitted until 4 p.m., Monday, September 25, 1995, to Zelda Hardy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 527-5059 or (804) 762-4261/TDD☎.

† **August 28, 1995 - 7 p.m.** -- Public Hearing
Prince William County Administration Center, 1 County Complex, McCoart Building, Board Chambers, 4850 Davis Ford Road, Prince William, Virginia.

† **August 29, 1995 - 7 p.m.** -- Public Hearing
James City County Board of Supervisors Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

† **August 31, 1995 - 7 p.m.** -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors Room, Roanoke, Virginia.

† **September 25, 1995** -- 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 Water Control Board intends to repeal regulations entitled: **VR 680-14-03. Toxics Management Regulation.** The purpose of the proposed regulatory action is to repeal the Toxics Management Regulation to avoid duplication and confusion with the adoption of a VPDES permit regulation.

Question and Answer Period: A question and answer period will be held one-half hour prior to the beginning of each public hearing at the same location. The Department of Environmental Quality staff will be present to answer questions regarding the proposed action.

Accessibility to Persons with Disabilities: The meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Zelda Hardy, Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4377 or (804) 762-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Hardy no later than 4 p.m. on Monday, August 14, 1995.

Other Pertinent Information: The department has conducted analyses on the proposed action related to basis, purpose, substance, issues and estimated impacts. These are available upon request from Richard Ayers at the Department of Environmental Quality.

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

Written comments may be submitted until 4 p.m., Monday, September 25, 1995, to Zelda Hardy, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 527-5059 or (804) 762-4261/TDD☎.

Calendar of Events

† **August 28, 1995 - 7 p.m.** -- Public Hearing
Prince William County Administration Center, 1 County
Complex, McCoart Building, Board Chambers, 4850 Davis
Ford Road, Prince William, Virginia.

† **August 29, 1995 - 7 p.m.** -- Public Hearing
James City County Board of Supervisors Room, 101 C
Mounts Bay Road, Building C, Williamsburg, Virginia.

† **August 31, 1995 - 7 p.m.** -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive,
Board of Supervisors Room, Roanoke, Virginia.

† **September 25, 1995** -- 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 Water Control Board
intends to adopt regulations entitled: **VR 680-14-21.
Virginia Pollution Abatement (VPA) Permit
Regulation.** The purpose of the proposed regulation is
to adopt a VPA permit regulation which will administer
the VPA permit program which controls activities that do
not result in a point source discharge to surface waters
of the state.

Question and Answer Period: A question and answer
period will be held one-half hour prior to the beginning of
each public hearing at the same location. The
Department of Environmental Quality staff will be present
to answer questions regarding the proposed action.

Accessibility to Persons with Disabilities: The meetings
will be held at public facilities believed to be accessible
to persons with disabilities. Any person with questions
on the accessibility of the facilities should contact Zelda
Hardy, Office of Regulatory Services, Department of
Environmental Quality, P.O. Box 10009, Richmond, VA
23240, telephone (804) 762-4377 or (804) 762-
4261/TDD. Persons needing interpreter services for the
deaf must notify Ms. Hardy no later than 4 p.m. on
Monday, August 14, 1995.

Other Pertinent Information: The department has
conducted analyses on the proposed action related to
basis, purpose, substance, issues and estimated
impacts. These are available upon request from Richard
Ayers at the Department of Environmental Quality.

Statutory Authority: §§ 62.1-44.15, 62.1-44.16, 62.1-44.17,
62.1-44.18, 62.1-44.19, 62.1-44.20 and 62.1-44.21.

Written comments may be submitted until 4 p.m., Monday,
September 25, 1995, to Zelda Hardy, Department of
Environmental Quality, P.O. Box 10009, Richmond, VA
23240.

Contact: Richard Ayers, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 527-5059 or (804) 762-4261/TDD.

LEGISLATIVE

VIRGINIA HOUSING STUDY COMMISSION

† **August 10, 1995 - 1 p.m.** -- Open Meeting
General Assembly Building, House Room C, Richmond,
Virginia.

† **August 17, 1995 - 10 a.m.** -- Open Meeting
Southwest Virginia Community College, King Hall Auditorium,
Richlands, Virginia.

Re: HJR 438 (Community Land Trusts), HJR 590
(Shrink-Swell Soil), SJR 347 (Tenant Organizations in
Public Housing), HB 2223 (1995 - DHCD Board
Membership), Virginia Mortgage Lender and Broker Act
(as to licensing lenders to act in a brokerage capacity);
other issues related to affordable housing in Virginia.
Persons wishing to speak should contact Nancy D.
Ambler, Esquire, Executive Director, Virginia Housing
Study Commission, 601 South Belvidere Street,
Richmond, Virginia 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. 5565.

TITLE 15.1 RECODIFICATION TASK FORCE

July 27, 1995 - 10 a.m. -- Open Meeting

August 24, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor,
Speakers Conference Room, Richmond, Virginia. ☎

A meeting to review working documents for Title 15.1
recodification.

Contact: Michelle Browning, Senior Operations Staff
Assistant, Division of Legislative Services, 910 Capitol St.,
2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA CODE COMMISSION

August 16, 1995 - 10 a.m. -- Open Meeting

August 17, 1995 - 10 a.m. -- Open Meeting
Fort Magruder Inn, Route 60 East, Williamsburg, Virginia.

A meeting to continue with the revision of Title 15.1 of
the Code of Virginia and to discuss other matters as may
be presented.

Contact: Joan W. Smith, Registrar of Regulations, General
Assembly Building, 2nd Floor, 910 Capitol St., Richmond, VA
23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

- July 24**
Nursing, Board of
- July 25**
Health Services Cost Review Council, Virginia
Marine Resources Commission
Nursing, Board of
† Pharmacy, Board of
† Water Control Board, State
- July 26**
Emergency Planning Committee - Local, Gloucester
Lottery Board, State
† Maternal and Child Health Council
Medicine, Board of
Nursing, Board of
Optometry, Board of
- July 27**
Compensation Board
Education, Board of
Richmond Hospital Authority
- Board of Commissioners
Title 15.1 Recodification Task Force
Waste Management Facility Operators, Board for
- July 28**
† Branch Pilots, Board for
Dentistry, Board of
Longwood College
- Board of Visitors
Professional Engineers, Board for
- July 29**
Longwood College
- Board of Visitors
- August 1**
Hopewell Industrial Safety Council
† Museum of Fine Arts, Virginia
- Board of Trustees
- August 2**
† Deaf and Hard-of-Hearing, Department for the
- Advisory Board
Environmental Quality, Department of
- Cost-Benefit Analysis Work Group
- August 3**
† Museum of Fine Arts, Virginia
- Board of Trustees
† Real Estate Board
- August 4**
† Aging, Disability and Long-Term Care Services
- Advisory Committee
† Museum of Fine Arts, Virginia
- Board of Trustees
- August 7**
Barbers, Board for

† Nursing, Board of

- August 8**
Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
† Education, Board of
Virginia Resources Authority
† Vocational Education, Virginia Council on
- August 9**
† Corrections, Board of
- Administration Committee
- Correctional Services Committee
† Land Evaluation Advisory Council, State
† Motor Vehicles, Department of
- Medical Advisory Board
Networking Users Advisory Board, State
† Nursing, Board of
Sewage Handling and Disposal Appeals Review Board
† Vocational Education, Virginia Council on
- August 10**
† Child Day-Care Council
† Housing Study Commission, Virginia
† Nursing, Board of
Sewage Handling and Disposal Appeals Review Board
- August 11**
† Agriculture and Consumer Services, Department of
- Virginia Aquaculture Advisory Board
Medicine, Board of
- Executive Committee
Opticians, Board for
- August 12**
Medicine, Board of
- Credentials Committee
† Museum of Natural History, Virginia
- Board of Trustees
- August 14**
Cosmetology, Board for
- August 15**
Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
† Medical Assistance Services, Board of
† Nursing, Board of
- August 16**
† Nursing, Board of
† Social Services, State Board of
Virginia Code Commission
- August 17**
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
† Housing Study Commission, Virginia
† Medicine, Board of
- Advisory Board on Occupational Therapy
- Advisory Board on Respiratory Therapy
† Nursing, Board of
† Social Services, State Board of
Virginia Code Commission
Voluntary Formulary Board, Virginia

Calendar of Events

August 18

- † Medicine, Board of
 - Advisory Board on Physical Therapy
- † Professional Counselors and Marriage and Family Therapists, Board of

August 21

- † Local Government, Commission on
- † Nursing, Board of

August 23

- † Conservation and Recreation, Department of
- † Medicine, Board of
 - Advisory Committee on Physician Assistants

August 24

- Game and Inland Fisheries, Board of
- Title 15.1 Recodification Task Force

August 26

- Military Institute, Virginia
 - Board of Visitors

August 30

- Optometry, Board of

September 5

- Hopewell Industrial Safety Council
- † Museum of Fine Arts, Virginia
 - Board of Trustees

September 13

- † Museum of Fine Arts, Virginia
 - Board of Trustees

September 14

- † Museum of Fine Arts, Virginia
 - Board of Trustees

September 16

- Visually Handicapped, Department for the
 - Vocational Rehabilitation Advisory Council

September 18

- † Museum of Fine Arts, Virginia
 - Board of Trustees

September 19

- † Museum of Fine Arts, Virginia
 - Board of Trustees

September 28

- Education, Board of

July 31

- Transportation Board, Commonwealth

August 1

- Professional and Occupational Regulation, Department of

August 4

- Social Work, Board of

August 8

- Corrections, Board of
- Education, Board of

August 15

- † Health Professions, Board of
 - Regulatory Research Committee

August 16

- Mental Health, Mental Retardation and Substance Abuse Services, Department of

August 21

- † Local Government, Commission on

PUBLIC HEARINGS

July 25

- Transportation Board, Commonwealth

July 26

- Air Pollution Control Board, State
- Transportation Board, Commonwealth

July 27

- Air Pollution Control Board, State
- † Environmental Quality, Department of