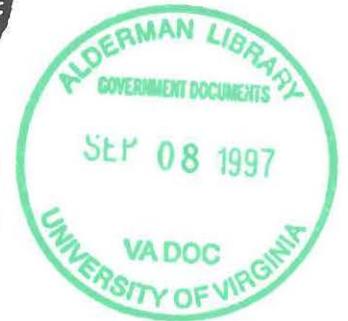
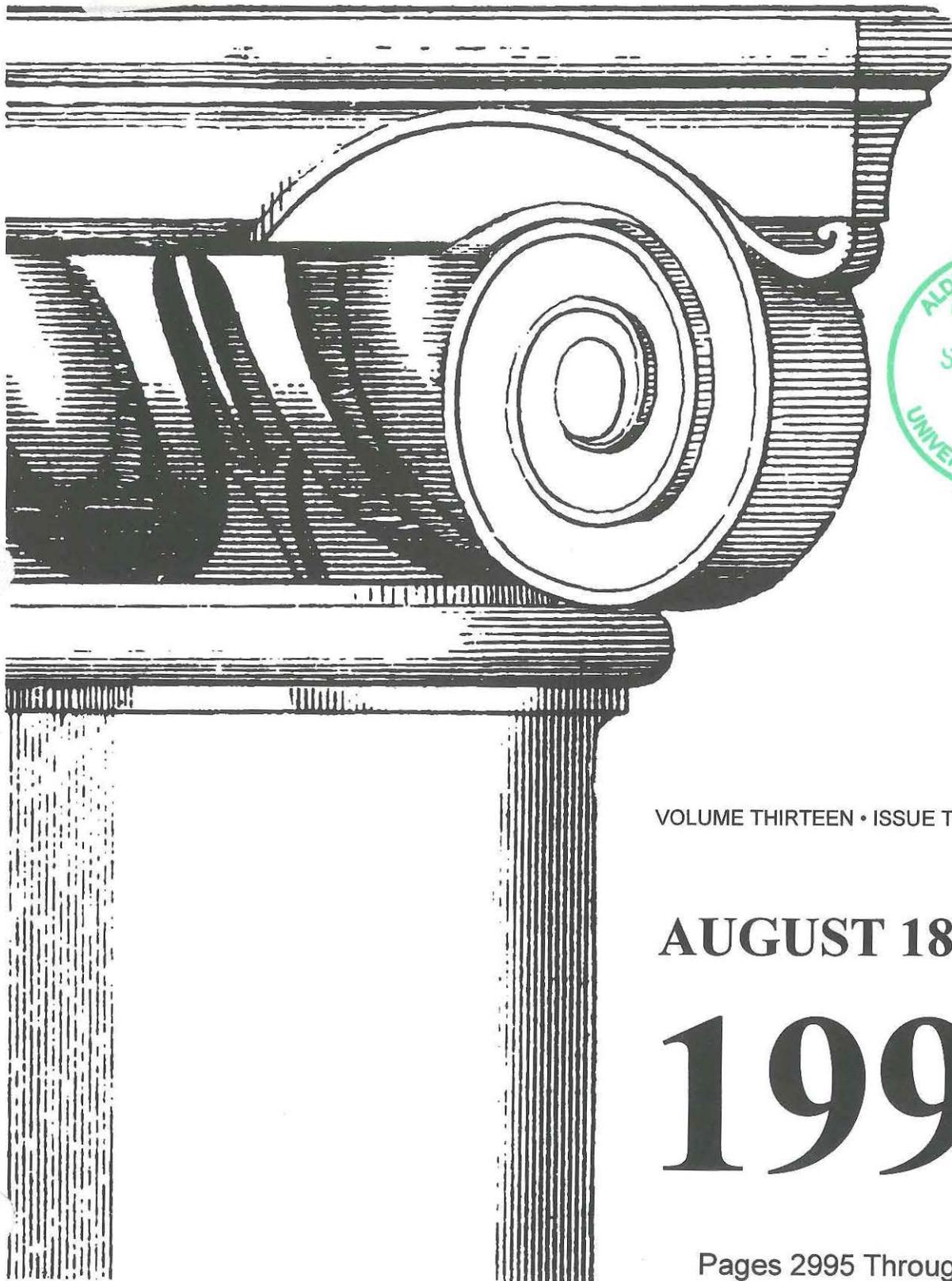


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AUGUST 18, 1997

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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 new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in **THE VIRGINIA REGISTER OF REGULATIONS**. In addition, **THE VIRGINIA REGISTER** is a source of other information about state government, including all emergency regulations and executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of 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 intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

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 21 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 agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate standing committees and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-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 21-day extension period; (ii) the Governor exercises his authority to require the agency to provide for 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 provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period.

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

EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt 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 to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation; and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not 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. 12:8 VA.R. 1096-1106 January 8, 1996, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

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BOARD OF AGRICULTURE AND CONSUMER SERVICES

† 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 Agriculture and Consumer Services intends to consider **amending** regulations entitled: **2 VAC 5-50-10 et seq. Rules and Regulations Governing the Prevention, Control, and Eradication of Brucellosis in Cattle in Virginia.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including but not limited to expanding the scope of the regulation to include cervidae (all species of deer, elk, and moose) and bison (all animals in the genus bison). The recommendation to expand the regulation to require brucellosis testing of cervidae and bison and subject them to certain other requirements of the regulation differs from the recommendation contained in the report on this regulation made as a part of the comprehensive review of existing regulations. The recommendation of that earlier document was that the regulation should not be amended. The reason for this recommendation is that it is important to assure that brucellosis from infected cervidae and bison do not infect Virginia's cattle. Also, the federal government is proposing that all states have cervidae brucellosis eradication programs in place by 1998. The agency intends to hold a public hearing on the proposed regulation after publication.

The agency invites comment on whether there should be an advisor appointed for the present regulatory action. An advisor is (i) a standing advisory panel, (ii) an ad-hoc advisory panel, (iii) consultation with groups, (iv) consultation with individuals, or (v) any combination thereof.

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

Public comments may be submitted until 8:30 a.m. on September 19, 1997, to Dr. W. M. Sims, Jr., Department of Agriculture and Consumer Services, Division of Animal Industry Services, P.O. Box 1163, Richmond, Virginia 23218-1163.

Contact: Thomas R. Lee, Program Supervisor, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218-1163, telephone (804) 786-2483.

VA.R. Doc. No. R97-653; Filed July 21, 1997, 4:49 p.m.

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider **amending** regulations entitled: **3 VAC 5-10-10 et seq. Procedural Rules for the Conduct of Hearings Before the Board and its Hearing Officers and the Adoption or Amendment of Regulations.** The purpose of the proposed action is to simplify procedural rules in cases arising under the Wine and Beer Franchise Act and eliminate required annual rulemaking. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until August 22, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23261-7491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R97-608; Filed July 2, 1997, 10:42 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider **amending** regulations entitled: **3 VAC 5-40-10 et seq. Requirements for Product Approval.** The purpose of the proposed action is to simplify the process for approving new alcoholic beverage products for sale in the Commonwealth. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until August 22, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23261-7491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R97-609; Filed July 2, 1997, 10:43 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider **amending** regulations entitled: **3 VAC 5-50-10 et seq. Retail Operations.** The purpose of the proposed action is to (i) clarify storage requirements for

Notices of Intended Regulatory Action

alcoholic beverages used for culinary purposes; (ii) eliminate certain reporting requirements for industrial and hospital permittees; (iii) increase the record retention period for licensees from two to three years; (iv) permit the use of electronic data interchange programs; (v) allow wholesalers to offer different prices to on-premise and off-premise retailers; (vi) allow manufacturers to make gifts of alcoholic beverages for certain public events; and (vii) provide a schedule of penalties for first violations of certain statutes or regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until August 22, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23261-7491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R97-610; Filed July 2, 1997, 10:43 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider **amending** regulations entitled: **3 VAC 5-70-10 et seq. Other Provisions**. The purpose of the proposed action is to (i) simplify regulations on nonmember use of club facilities; (ii) simplify regulations establishing food inventory and sale qualifications for retail licensees; (iii) provide a process for the approval of employees with certain criminal convictions; (iv) clarify rules relating to lewd conduct; and (v) allow an exception to Happy Hour regulations for educational testings. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until August 22, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23261-7491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R97-611; Filed July 2, 1997, 10:43 a.m.

BOARD OF DENTISTRY

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 Dentistry intends to consider **amending** regulations entitled: **18 VAC 60-20-10 et seq. Virginia Board of Dentistry Regulations**. The purpose of the proposed action is to simplify and clarify regulations according to the recommendations of the review conducted pursuant to Executive Order 15(94). The board

intends to eliminate sections of these regulations which are redundant or unnecessary and amend or reorganize sections of these regulations. In addition, the board will consider the following: a new fee to cover the administrative cost for returned checks; reducing the regulatory burden by allowing continuing education hours to be acquired over a two- or three-year period; reducing the regulatory burden by amending the current penalty of \$1,000 for noncompliance with continuing education as the regulation does not provide for the board to consider individual cases on their particular merits; requiring records to be kept for three rather than the current five years, as consistent with § 54.1-2719 of the Code of Virginia; and replacing the specific listing of procedures and services under advertising and the specific listing of specialties may be eliminated by incorporating by reference the guidelines from the American Dental Association. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until September 3, 1997.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or FAX (804) 662-9943.

VA.R. Doc. No. R97-615; Filed July 8, 1997, 9:21 a.m.

DEPARTMENT OF HEALTH (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 Health intends to consider **amending** regulations entitled: **12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control**. The purpose of the proposed action is to amend the regulations to comply with current disease control policies. These policies will facilitate efforts to capture, measure, and contain emerging diseases effectively. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 32.1-12 and 32.1-35 of the Code of Virginia.

Public comments may be submitted until September 19, 1997.

Contact: C. Diane Woolard, Ph.D., M.P.H., Director, Division of Surveillance and Investigation, Department of Health, Office of Epidemiology, P.O. Box 2448, Room 113, Richmond, VA 23218, telephone (804) 786-6261, FAX (804) 371-4050, or toll-free 1-800-828-1120/TDD ☎

VA.R. Doc. No. R97-685; Filed July 30, 1997, 9:44 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Board of Mineral Mining Examiners

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 Mineral Mining Examiners intends to consider **amending** regulations entitled: **4 VAC 25-35-10 et seq. Certification Requirements for Mineral Miners**. The purpose of the proposed action is to amend the section of the regulation on the general mineral miner certification to increase the time to submit training documents to the Department of Mines, Minerals and Energy (DMME). The time limit for DMME to return the general mineral miner certificate is also being considered for elimination. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 45.1-161.292:19 of the Code of Virginia.

Public comments may be submitted until August 20, 1997.

Contact: Conrad Spangler, Chairman, Board of Mineral Mining Examiners, Department of Mines, Minerals and Energy, 900 Natural Resources Dr., P.O. Box 3727, Charlottesville, VA 22903, telephone (804) 961-5000, FAX (804) 979-8544, or toll-free 1-800-828-1120 (VA Relay Center).

VA.R. Doc. No. R97-606; Filed July 2, 1997, 8:45 a.m.

BOARD OF SOCIAL WORK

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 Social Work intends to consider **amending** regulations entitled: **18 VAC 140-20-10 et seq. Regulations Governing the Practice of Social Work**. The purpose of the proposed action is to simplify and clarify regulations and to eliminate unnecessary or redundant regulations according to the recommendations of the review conducted pursuant to Executive Order 15(94). The board will also consider amending burdensome requirements for applicants with lengthy experience to become licensed by endorsement. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2400 and Chapter 37 (§ 54.1-3700 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until September 3, 1997.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9914 or FAX (804) 662-9943.

VA.R. Doc. No. R97-614; Filed July 8, 1997, 9:21 a.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.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

December 11, 1997 - 1:30 p.m. – Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

October 20, 1997 – Public comments may be submitted until 8:30 a.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-180-10 et seq. Rules and Regulations Governing Pseudorabies in Virginia.** Pseudorabies is a disease that exacts a high death toll among the animals it infects, many of which are domesticated animals. Among the animals that can be infected with pseudorabies are cattle, sheep, dogs, cats, and notably, swine. There is no known evidence that humans can contract pseudorabies. Most kinds of animals infected with pseudorabies die before they can infect other animals (death usually occurs within 72 hours after infection). Swine are a different matter. Although pseudorabies can kill swine (the younger the swine, the higher the rate of mortality), they also can recover from the disease and spread it to other swine and to other kinds of animals. Virginia's regulations to eradicate pseudorabies from swine are part of a national program designed to rid the nation of pseudorabies.

This regulation provides rules to govern the program for the eradication of pseudorabies from swine in Virginia. The purpose of this action is to revise the regulation and increase its effectiveness, including but not limited to amending the regulation to allow Virginia to participate in the national program to eradicate pseudorabies at whatever stage its circumstance at a particular time would allow--whether Stage I or Stage V, or any stage in between.

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

Public comments may be submitted until 8:30 a.m. on October 20, 1997, to Dr. W. M. Sims, Jr., Division of Animal Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218-1163.

Contact: Thomas R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or FAX (804) 371-2380.

December 11, 1997 - 1:30 p.m. – Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

October 20, 1997 – Public comments may be submitted until 8:30 a.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-205-10 et seq. Rules and Regulations Pertaining to Shooting Enclosures.** This regulation provides rules to govern shooting enclosures in Virginia. The purpose of this action is to promulgate regulations providing for licensing shooting enclosures, establishing a licensing fee, and establishing criteria for the operation and management of the enclosures to include the health status of the animals held in the enclosure. The regulation also establishes which animals can be held in the shooting enclosures: goats, sheep and swine.

Statutory Authority: § 3.1-763.5:5 of the Code of Virginia.

Public comments may be submitted until 8:30 a.m. on October 20, 1997, to Dr. W. M. Sims, Jr., Division of Animal Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218-1163.

Contact: Thomas R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, Washington Bldg.,

Public Comment Periods - Proposed Regulations

1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or FAX (804) 371-2380.

CHARITABLE GAMING COMMISSION

August 19, 1997 - 7 p.m. – Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, S.W., Roanoke, Virginia.

September 9, 1997 - 7 p.m. – Public Hearing
Old Dominion University, 5115 Hampton Boulevard, Webb Student Activity Center, Cafeteria, Norfolk, Virginia.

September 17, 1997 - 7 p.m. – Public Hearing
Northern Virginia Community College, Annandale Campus-Forum, 8333 Little River Turnpike, Annandale, Virginia.

September 23, 1997 - 7 p.m. – Public Hearing
John Tyler Community College, 13101 Jefferson Davis Highway, Nichols Center, Chester, Virginia.

October 17, 1997 - 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 Charitable Gaming Commission intends to adopt regulations entitled: **11 VAC 15-12-10 et seq. Public Participation Guidelines**. The purpose of the proposed action is to promulgate public participation guidelines for the formulation of charitable gaming regulations.

Statutory Authority: §§ 9-6.14:7.1 and 18.2-340.18 of the Code of Virginia.

Contact: James Ingraham, Administration Manager, Charitable Gaming Commission, P.O. Box 756, Richmond, VA 23218, telephone (804) 786-0238 or FAX (804) 786-1079.

August 19, 1997 - 7 p.m. – Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, S.W., Roanoke, Virginia.

September 9, 1997 - 7 p.m. – Public Hearing
Old Dominion University, 5115 Hampton Boulevard, Webb Student Activity Center, Cafeteria, Norfolk, Virginia.

September 17, 1997 - 7 p.m. – Public Hearing
Northern Virginia Community College, Annandale Campus-Forum, 8333 Little River Turnpike, Annandale, Virginia.

September 23, 1997 - 7 p.m. – Public Hearing
John Tyler Community College, 13101 Jefferson Davis Highway, Nichols Center, Chester, Virginia.

October 17, 1997 - 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 Charitable Gaming Commission intends to adopt regulations entitled: **11 VAC 15-22-10 et seq. Charitable Gaming**

Regulations. The purpose of the proposed action is to promulgate regulations for the operation of charitable gaming activities in Virginia.

Statutory Authority: §§ 18.2-340.15, 18.2-340.18, 18.2-340.19, and 18.2-340.30 of the Code of Virginia.

Contact: James Ingraham, Administration Manager, Charitable Gaming Commission, P.O. Box 756, Richmond, VA 23218, telephone (804) 786-0238 or FAX (804) 786-1079.

August 19, 1997 - 7 p.m. – Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, S.W., Roanoke, Virginia.

September 9, 1997 - 7 p.m. – Public Hearing
Old Dominion University, 5115 Hampton Boulevard, Webb Student Activity Center, Cafeteria, Norfolk, Virginia.

September 17, 1997 - 7 p.m. – Public Hearing
Northern Virginia Community College, Annandale Campus-Forum, 8333 Little River Turnpike, Annandale, Virginia.

September 23, 1997 - 7 p.m. – Public Hearing
John Tyler Community College, 13101 Jefferson Davis Highway, Nichols Center, Chester, Virginia.

October 17, 1997 - 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 Charitable Gaming Commission intends to adopt regulations entitled: **11 VAC 15-31-10 et seq. Supplier Regulations**. The purpose of the proposed action is to promulgate regulations for vendors selling charitable gaming equipment and supplies in Virginia.

Statutory Authority: §§ 18.2-340.15 and 18.2-340.18 of the Code of Virginia.

Contact: James Ingraham, Administration Manager, Charitable Gaming Commission, P.O. Box 756, Richmond, VA 23218, telephone (804) 786-0238 or FAX (804) 786-1079.

BOARD OF CONSERVATION AND RECREATION

September 4, 1997 - 7 p.m. – Public Hearing
Salem Civic Center Complex, 1001 Boulevard, Salem, Virginia. (Interpreter for the deaf provided upon request)

September 9, 1997 - 7 p.m. – Public Hearing
Hampton Roads Planning District Commission, Regional Building, 723 Woodlake Drive, Chesapeake, Virginia. (Interpreter for the deaf provided upon request)

September 10, 1997 - 7 p.m. – Public Hearing
Richmond War Memorial, 621 South Belvidere Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Public Comment Periods - Proposed Regulations

September 11, 1997 - 7 p.m. – Public Hearing
Prince William County Government Complex, One County Complex Court, James J. McCoart Administration Building, Prince William, Virginia. (Interpreter for the deaf provided upon request)

October 22, 1997 - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Conservation and Recreation intends to amend regulations entitled: **4 VAC 3-20-10 et seq. Stormwater Management Regulations.** The purpose of the proposed amendments is to protect life and property against the degradation of land and water resources in the form of water pollution, stream channel erosion, depletion of groundwater resources, and more frequent local flooding—impacts that adversely affect fish, aquatic life, recreation, shipping, property values and other uses of lands and waters. Amendments provide consistent criteria for state agency construction projects and greater flexibility for local government adoption of stormwater management ordinances.

Statutory Authority: § 10.1-603.4 of the Code of Virginia.

Contact: Leon E. App, Conservation and Development Programs Supervisor, 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

STATE BOARD OF HEALTH

October 20, 1997 - 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 Health intends to amend regulations entitled: **12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control.** The purpose of the proposed amendments is to mandate the testing of gamete donors for HIV and the rejection of donors who test HIV positive and to establish a standard protocol for HIV testing for gamete donors.

Statutory Authority: §§ 32.1-12, 32.1-45.3, and 54.1-297.1 of the Code of Virginia.

Contact: Casey W. Riley, Director, Division of STD/AIDS, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23218, telephone (804) 786-6267 or FAX (804) 225-3517.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

October 17, 1997 - 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 amend regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services and 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care.** The purpose of the proposed amendments is to make permanent the agency's temporary requirements regarding the prior authorization of all inpatient hospital services.

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

Public comments may be submitted until October 17, 1997, to Cindy Tyler, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

October 17, 1997 - 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 amend regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, 12 VAC 30-120-10 et seq. Waivered Services, and 12 VAC 30-130-10 et seq. Amount Duration and Scope of Selected Services.** The purpose of the proposed amendments is to recommend changes to the permanent regulations controlling rehabilitation services, specifically community mental retardation services. The expansion of these services creates a payment source for the local community service boards in support of a wider range of mental services to Medicaid eligible persons, which draws on federal funding.

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

Public comments may be submitted until October 17, 1997, to Ann Cook, Division of Policy and Budget, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Public Comment Periods - Proposed Regulations

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 371-4981.

October 17, 1997 - 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 amend regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, and 12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services.** The purpose of this proposal is to recommend changes to the permanent regulations controlling rehabilitation services, i.e., community mental health and mental retardation services. The expansion of these services creates a payment source for the local community services boards, in support of a wider range of mental health services to Medicaid eligible persons, which draws on federal funding thereby reducing the demand for General Fund and local dollars. The purpose of this proposed regulation is to make permanent the provisions of the emergency regulations while also addressing issues raised by the Health Care Financing Administration in response to DMAS' State Plan amendment. A description of the expansion services follows:

1. Mental Health Intensive Community Treatment provides outpatient mental health services outside the traditional clinic setting. It is designed to bring services to individuals who will not or cannot be served in the clinic setting.
2. Mental Health Crisis Stabilization Services provide direct mental health care to individuals experiencing acute crisis of a psychiatric nature that may jeopardize their current community living situation. It will provide less medical mental health services independently of or in conjunction with Intensive Community Treatment.
3. Mental Health Support Services provide training and support services to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment.

Used singly or as a package, these services will provide comprehensive treatment and support services to persons with serious and persistent mental illness.

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

Public comments may be submitted until October 17, 1997, to Ann Cook, Division of Policy and Budget, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 371-4981.

October 17, 1997 - 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 amend regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, and 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of the proposed amendments is to establish policies for Medicaid coverage of licensed clinical psychologists, licensed clinical social workers and licensed professional counselors.

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

Public comments may be submitted until October 17, 1997, to Sally Rice, Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

October 17, 1997 - 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 amend regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, and 12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services.** The purpose of the proposed amendments is to provide for substance abuse treatment for pregnant women.

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

Public comments may be submitted until October 17, 1997, to Ann Cook, Division of Policy and Budget, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Public Comment Periods - Proposed Regulations

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 371-4981.

DEPARTMENT OF MINES, MINERALS AND ENERGY

October 8, 1997 - 10 a.m. – Public Hearing
Department of Mines, Minerals and Energy, Keen Mountain Office, Route 460, Keen Mountain, Virginia.

October 24, 1997 - 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 Mines, Minerals and Energy intends to amend regulations entitled: **4 VAC 25-150-10 et seq. Virginia Gas and Oil Regulation**. The purpose of the proposed amendment is to oversee the permitting, operations, plugging, and site restoration of gas and oil exploration and development wells, gathering pipelines, and associated facilities.

Statutory Authority: §§ 45.1-361.27 and 45.1-161.3 of the Code of Virginia.

Contact: B. Thomas Fulmer, Division Director, Division of Gas and Oil, Department of Mines, Minerals and Energy, 230 Charwood Dr., P.O. Box 1416, Abingdon, VA 24212, telephone (540) 676-5423, FAX (540) 676-5459, or toll-free 1-800-828-1120 (VA Relay Center).

VIRGINIA RACING COMMISSION

September 17, 1997 - 9:30 a.m. – Public Hearing
Tyler Building, 1300 East Main Street, Richmond, Virginia.

October 17, 1997 - 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 Virginia Racing Commission intends to amend regulations entitled: **11 VAC 10-130-10 et seq. Virginia Breeders Fund**. The purpose of the amendment is to establish the operating procedures for the distribution of awards and incentives from the Virginia Breeders Fund to horse owners and breeders of racehorses.

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

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200.

STATE WATER CONTROL BOARD

September 23, 1997 - 7 p.m. – Public Hearing
Arcadia High School Auditorium, 8210 Lankford Highway, Oak Hall, Virginia.

October 17, 1997 - 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 Water Control Board intends to amend regulations entitled: **9 VAC 25-260-10 et seq. Water Quality Standards**. The purpose of the proposed amendment is to establish a site-specific ammonia standard for Sandy Bottom Branch.

Statutory Authority: §§ 62.1-44.15(3a) and 62.1-44.15(10) of the Code of Virginia.

Contact: Alex Barron, Environmental Program Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4119 or FAX (804) 698-4522.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Regulation: 2 VAC 5-50-10 et seq. (VR 115-02-03) **Rules and Regulations Governing the Prevention, Control and Eradication of Brucellosis of Cattle in Virginia (REPEALING).**

Title of Regulation: VR 115-02-03:1. **Rules and Regulations Governing the Prevention, Control and Eradication of Brucellosis of Bovidae in Virginia.**

Statutory Authority: §§ 3.1-724, 3.1-726, 3.1-730, and 3.1-737 of the Code of Virginia.

The Board of Agriculture and Consumer Services has **WITHDRAWN** the proposed repeal of 2 VAC 5-50-10 et seq. (VR 115-02-03), Rules and Regulations Governing the Prevention, Control and Eradication of Brucellosis of Cattle in Virginia and has **WITHDRAWN** proposed VR 115-02-03:1, Rules and Regulations Governing the Prevention, Control and Eradication of Brucellosis of Bovidae in Virginia, which were published in 8:20 VA.R. 3481-3494 June 29, 1992.

VA.R. Doc. No. R97-654; Filed July 21, 1997, 4:49 p.m.

Title of Regulation: 2 VAC 5-180-10 et seq. **Rules and Regulations Governing Pseudorabies in Virginia (amending 2 VAC 5-180-10, 2 VAC 5-180-20, 2 VAC 5-180-30, 2 VAC 5-180-50, 2 VAC 5-180-60, 2 VAC 5-180-80, 2 VAC 5-180-90 and 2 VAC 5-180-120).**

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

Public Hearing Date: December 11, 1997 - 1:30 p.m.
Public comments may be submitted until October 20, 1997.

(See Calendar of Events section for additional information)

Basis: Sections 3.1-724, 3.1-726 and 3.1-730 of the Code of Virginia authorizes the board to promulgate regulations to carry out the purpose and intent of Title 3.1.

Purpose: The purpose of the proposed amendment is to revise 2 VAC 5-180-10 et seq., Rules and Regulations Governing Pseudorabies in Virginia, and increase its effectiveness, including but not limited to amending it to allow Virginia to participate in the national program to eradicate pseudorabies at whatever stage its circumstance at a particular time would allow--whether Stage I or Stage V, or any stage in between. The regulation is necessary for the protection of the public welfare because it protects Virginia's

swine industry, worth upwards of half a billion dollars annually to Virginia's economy.

Substance: The contemplated amendments to the regulation will allow Virginia to participate in the national program to eradicate pseudorabies now that it has achieved Stage-V status (pseudorabies-free). Stage-V status (i) ensures that a state may ship its swine to out-of-state purchasers with the least encumbrance (and hence at reduced costs), and (ii) requires that the least number of swine be tested for pseudorabies when they are slaughtered, as a check against the re-occurrence of pseudorabies.

The current regulations do not sufficiently correspond to the national program. Specifically, the suggested amendments to the regulations would allow Virginia to participate in the national program at whatever stage its circumstance at a particular time would allow--whether Stage I or Stage V, or any stage in between. Each stage of the national pseudorabies-eradication program has specific requirements that a state must meet, but Virginia's regulations on pseudorabies do not sufficiently reflect those stage-specific requirements.¹

Issues: The primary advantages of the proposed amendments to the public are:

1. Virginia pork producers will be able to take advantage of Virginia's status as a pseudorabies-free state which will allow for less monitoring and testing than under the current regulation.
2. Removing the testing and monitoring requirement for shipments between disease-free locations will lower producer costs with little or no increase in the probability of infection spreading to Virginia.

The primary advantage of the proposed amendments to the agency are:

1. The current regulation requires that the agency monitor all swine herds that wish to sell at livestock markets. The proposed amendments eliminate this requirement; thus easing the regulatory burden on the producer and lowering the cost to the agency.

¹ For example, Virginia's current regulations are out of step with the national requirements for a state with a Stage-V designation because Virginia's regulations require that "monitored" herds within Virginia be tested for pseudorabies. ("Monitored" herds are herds that have attained a certain health status granted under the national program.) The national program does not require such testing by a Stage V state, and hence such testing with its associated veterinary-medical costs represents an unnecessary financial burden to Virginia's farmers.

Proposed Regulations

2. Costs to the agency for filed surveillance and laboratory testing will be less due to the fewer number of surveillance samples required of pseudorabies-free states.

There are no known disadvantages to the agency or the public resulting from the proposed amendments to this regulation.

Fiscal Impact Analysis: There are no costs to localities due to the proposed amendments to this regulation.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The changes proposed to 2 VAC 5-180-10 et seq. are primarily to make Virginia's pseudorabies regulations consistent with the federal anti-pseudorabies program: the Cooperative State-Federal-Industry Pseudorabies Eradication Program Standards as published by the U.S. Department of Agriculture (March 1997). Making these changes will allow Virginia pork producers to take advantage of Virginia's status as a pseudorabies-free state. Transportation of swine between Stage IV and Stage V states will be subject to less monitoring and testing than under the current regulations.

Estimated economic impact. Transport of swine between states that are classified as Stage IV or Stage V presents a very low risk of the spread of pseudorabies. Testing of animals from pseudorabies-free states thus provides minimal benefits to producers or consumers. Under these circumstances, it is cost effective to remove the testing and monitoring requirements for shipments between disease-free locations. Producer costs will be lowered with little or no increase in the probability of infection spreading to Virginia.

The exact amount of the saving that will occur depends on a number of things that are quite hard to predict. Chief among these is how many swine will be imported from disease-free states in the future. Although the magnitude is not known, this regulation should produce a net economic gain for Virginia.

Businesses and entities affected. Pork producers and slaughterhouses will be most affected by the proposed changes. They should expect a reduction in production costs.

Localities particularly affected. Those localities with significant pork production will gain the most from the regulation although some benefit to consumers throughout Virginia may be expected.

Projected impact on employment. We should expect a slight reduction in the use of veterinary services for monitoring herds. It is unlikely that this effect will be large enough to have any impact on employment in the industry. Reduced costs of production would tend to raise employment by producers and slaughterhouses. The net impact will be small, whatever its direction.

Effects on the use and value of private property. Profits from pork production may rise slightly which would tend to raise the value of land used for that purpose. The magnitude of this change will be much too small to measure if it occurs.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the Economic Impact Analysis submitted by the Department of Planning and Budget and the agency concurs with that analysis.

Summary:

Virginia's regulations to eradicate pseudorabies from swine are part of a national program designed to rid the nation of pseudorabies. This regulation provides rules to govern the program for the eradication of pseudorabies from swine in Virginia. The purpose of this action is to revise the regulation and increase its effectiveness, including but not limited to amending the regulation to allow Virginia to participate in the national program to eradicate pseudorabies at whatever stage its circumstance at a particular time would allow; whether Stage I or Stage V, or any stage in between.

2 VAC 5-180-10. Definitions.

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

"*Accredited veterinarian*" means a licensed veterinarian approved by the United States Department of Agriculture and the State Veterinarian to perform functions required by cooperative state-federal disease control and eradication programs.

"*Approved laboratory*" means a laboratory approved by the United States Department of Agriculture or the State Veterinarian to conduct official pseudorabies tests.

"*Approved slaughter market*" means a livestock market approved by the United States Department of Agriculture where shipments of slaughter swine only are permitted in accordance with applicable state and federal regulations and from which no swine may be released except directly to another approved slaughter market, or to a recognized slaughter establishment for immediate slaughter.

"*Boar*" means any male swine used for or intended to be used for producing offspring.

"Breeder swine" means any swine used or intended to be used for reproductive purposes.

"Direct shipment" means movement without unloading en route, without contact with swine of lesser pseudorabies status, and without contact with infected or exposed livestock.

"Farm of origin" means a farm where the swine were born, or on which they have resided for at least 90 consecutive days immediately prior to movement.

"Feeder pig" means any immature swine used for or intended to be used exclusively for feeding for slaughter.

"Licensed veterinarian" means a veterinarian who is licensed by the Virginia Board of Veterinary Medicine to practice veterinary medicine in Virginia.

"Official pseudorabies serologic test" means an official pseudorabies test conducted on swine serum to detect the presence or absence of pseudorabies antibodies.

"Official pseudorabies test" means any test for the diagnosis of pseudorabies approved by the United States Department of Agriculture and conducted in an approved laboratory.

"Official random sample test" means a test for pseudorabies that meets the requirements of 2 VAC 5-180-60 B 4 through 4.

"Permit" means an official document issued for and prior to the interstate shipment of pseudorabies-infected or -exposed swine by the United States Department of Agriculture, State Veterinarian or his representative, or accredited veterinarian which states: (i) the number of swine being shipped; (ii) the purpose for which they are shipped; (iii) the points of origin and destination; (iv) the names and addresses of the consignor and consignee; and (v) any additional information that may be required by applicable state and federal regulations.

"Pseudorabies" means the contagious, infectious, and communicable viral disease of livestock and other animals also known as Aujeszky's disease, mad itch or infectious bulbar paralysis.

"Pseudorabies monitored herd" means a feeder pig production herd that has been tested according to the provisions of 2 VAC 5-180-20 C 1.

"Qualified pseudorabies negative herd" means a swine herd that satisfies the provisions of 2 VAC 5 180-20 D 4-3.

"Quarantined feedlot" means a premises where pseudorabies-infected or -exposed swine of Virginia origin are fed under the supervision and control of the State Veterinarian and from which swine are moved directly to a recognized slaughter establishment.

"Recognized slaughter establishment" means a slaughter establishment operated under state or federal inspection.

"Sow" means any female swine used for or intended to be used for producing offspring.

"State Veterinarian" means a Virginia Department of Agriculture and Consumer Services veterinarian employed by the Commissioner of Agriculture and Consumer Services who is responsible for the animal-health programs in the Commonwealth of Virginia.

"Surveillance index" means the percentage of a population of sows and boars sampled multiplied by the percentage of positive swine traced to the farm of origin. When no positive swine are found, the surveillance index shall be the percentage of a population of sows and boars sampled.

"Swine dealer" means any person who routinely purchases, deals in, or sells swine, including commission representatives and brokers, or who operates and conducts an auction where swine are sold.

2 VAC 5-180-20. Feeder pigs.

A. Any person shipping, selling, lending, leasing or trading feeder pigs in Virginia; and any person shipping, offering to ship, sell, lend, lease, or trade feeder pigs in Virginia shall assure that they are a direct shipment and:

1. Originate from a farm in a Stage III, Stage IV or Stage V state/area as specified by the Cooperative State-Federal-Industry Pseudorabies Eradication Program Standards published by the U.S. Department of Agriculture (March 1997);

2. Originate from a market in a Stage IV or Stage V state/area as specified by the Cooperative State-Federal-Industry Pseudorabies Eradication Program Standards;

4- 3. Originate from a pseudorabies monitored herd; or

2- 4. Originate from a qualified pseudorabies negative herd; or

3- 5. Are individually tested and found negative for pseudorabies within 30 days prior to the shipment.

B. Identification of swine. 4- All producers of feeder pigs subject to this chapter shall have swine from their production herds tested for pseudorabies and such swine shall be individually identified by eartag, tattoo, standard ear notch that has been recorded in the book of record of a purebred registry association, or by any other method approved by the State Veterinarian.

2- All feeder pig producers shall individually identify their swine by metal eartag or by any other method approved by the State Veterinarian.

C. Pseudorabies monitored herd procedures.

1. To certify a feeder pig production herd as a pseudorabies monitored herd, a producer shall have the herd tested and found to be negative for pseudorabies, with the testing to be of a representative sample of the

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herd. In addition, the producer shall test all boars in the herd. The sample size shall be as follows:

- a. In herds of 10 sows or fewer, all sows shall be tested;
- b. In herds of 11 to 35 sows, 10 sows shall be tested; and
- c. In herds of 36 sows or more, 30% of sows or 30 sows, whichever is fewer, shall be tested.

2. To continue pseudorabies monitored herd status, a producer shall have each initially certified feeder pig production herd recertified annually by utilizing the sample size specified in subdivision C 1 of this section. The sample for recertification shall also include all boars and 30% of the sows added to the feeder pig production herd since the last certification test. The recertification date shall be no more than 30 days before and no more than 30 days after the anniversary date of the initial herd certification pursuant to subdivision C 1 of this section.

D. Qualified pseudorabies negative herd procedures.

1. To have a swine herd meet the requirements of a qualified pseudorabies negative herd, a producer shall subject all swine over six months of age in the herd to an official pseudorabies serologic test. All swine so tested must be found negative.

2. To maintain qualified pseudorabies negative herd status, a producer shall subject all swine over six months of age in the herd to an official pseudorabies serologic test at least once each year. The test shall be accomplished by testing 25% of swine over six months of age every 80-105 days and finding all swine so tested to be negative. No swine may be tested twice in one year to comply with the 25% requirement.

3. A producer may also obtain qualified pseudorabies negative herd status by any means authorized by ~~9-CFR~~ ~~§ 85.4~~ ~~9 CFR Part 85~~.

E. Proof of herd-health status. Proof of herd-health status for feeder pig production herds and feeder pigs shall be by one of the following methods:

1. A current Swine Herd Health Card for Pseudorabies (VDACS-03024) issued by the State Veterinarian or other proof, specified by the State Veterinarian, of being a pseudorabies negative herd; or
2. An official pseudorabies test chart identifying the individual feeder pigs offered in the transaction or shipment and indicating that they have been tested and found to be negative for pseudorabies within the past 30 days.

F. Exemptions to subsections C, D, and E of this section. Producers are exempt from the requirements of subsections C, D, and E of this section while Virginia is designated as a Stage IV or Stage V state as specified by the Cooperative

State-Federal-Industry Pseudorabies Eradication Program Standards.

2 VAC 5-180-30. Breeder swine.

A. Any person shipping, selling, lending, leasing, or trading breeder swine in Virginia; and any person ~~shipping~~, offering to *ship*, sell, lend, lease or trade breeder swine in Virginia shall assure that they:

1. *Originate directly from a Stage IV or Stage V state/area as specified by the Cooperative State-Federal-Industry Pseudorabies Eradication Program Standards;*

~~4- 2.~~ *Originate directly from a qualified pseudorabies negative herd; or*

~~2- 3.~~ *Are individually tested and found negative for pseudorabies within 30 days prior to the ~~transaction shipment~~, and are isolated and quarantined at destination, and retested in 30 to 60 days.*

B. Identification of breeder swine. All producers of breeder swine subject to this chapter shall have their swine individually identified by eartag, tattoo, standard ear notch that has been recorded in the book of record of a purebred registry association, or by any other method approved by the State Veterinarian.

2 VAC 5-180-50. Exhibition swine.

Any person exhibiting swine shall assure that they:

1. *(i) Originate directly from a farm in a Stage IV or Stage V state/area as specified by the Cooperative State-Federal-Industry Pseudorabies Eradication Program Standards; or 4- (ii) originate directly from a qualified pseudorabies negative herd; or 2- (iii) are individually tested and found negative for pseudorabies within 30 days prior to the exhibition; and*

~~3- 2.~~ *Are individually identified by eartag, tattoo, standard ear notch that has been recorded in the book of record of a purebred registry association, or by any other method approved by the State Veterinarian.*

2 VAC 5-180-60. Surveillance.

A. All slaughter establishments doing business in Virginia shall cooperate with the State Veterinarian in the annual testing ~~of 40%~~ *pursuant to the Cooperative State-Federal-Industry Pseudorabies Eradication Program Standards* of Virginia's breeder swine population for pseudorabies using an official pseudorabies serologic test with 80% successful traceback of seropositives to the farm of origin, or testing and traceback to achieve a surveillance index of ~~0.04% or greater~~ *0.08%*. The State Veterinarian shall use current statistics of the National Agricultural Statistics Service of the United States Department of Agriculture on breeding swine populations in calculating surveillance data. The surveillance program shall be random and shall be representative of all herds in the Commonwealth.

B. Every swine producer within a 1.5 mile radius of any pseudorabies-infected premises shall have his herd tested through the use of the official random sample test procedure as specified below.

1. In herds of fewer than 100 head, 25 shall be tested;
2. In herds of 100 to 200 head, 27 shall be tested;
3. In herds of 201 to 999 head, 28 shall be tested; and
4. In herds of 1,000 head or more, 29 shall be tested.

~~C. All slaughter establishments doing business in Virginia shall cooperate with the State Veterinarian in testing slaughter swine other than cull sows and boars. The State Veterinarian shall establish at slaughter establishments such a program in accordance with the provisions specified under State Federal Industry Program Standards for Pseudorabies Eradication.~~

2 VAC 5-180-80. Mandatory herd cleanup.

The State Veterinarian is authorized to quarantine pseudorabies-infected and exposed swine and take measures to eliminate pseudorabies from such swine in Virginia, utilizing a herd cleanup plan. Any person in whose swine herd pseudorabies is diagnosed shall cooperate with the State Veterinarian in instituting one of the following herd cleanup plans:

1. Test and removal of infected swine. A producer may remove from his herd all swine positive to an official test to either a quarantined area or an approved slaughter establishment. The remaining swine in the herd shall be quarantined and shall pass a negative official pseudorabies serologic test at least 30 days after the removal of the infected swine in order for the quarantine to be released.
2. Offspring segregation. A producer shall isolate progeny from a quarantined herd which shall be weaned, under the direction of the State Veterinarian, and they shall pass two negative official pseudorabies serologic tests at least 30 days apart in order for the quarantine to be released.
3. Depopulation - Repopulation. A producer may sell his entire swine herd for slaughter. The producer shall clean and disinfect the premises at least 30 days prior to repopulation.
4. Other herd cleanup plans. The Virginia Board of Agriculture and Consumer Services delegates to the State Veterinarian the authority to approve additional herd cleanup plans that meet the requirements of the *Cooperative State-Federal-Industry Pseudorabies Eradication Program Standards for Pseudorabies Eradication*.

2 VAC 5-180-90. Transportation and disposal of dead swine.

A. No person may dispose of dead swine except by:

1. Rendering ~~at registered facilities~~;
2. Burial in a manner consistent with law;
3. Incineration in a manner consistent with law; or
4. Any other method approved by the State Veterinarian that is consistent with law.

B. No person shall operate any vehicle or haul any container carrying dead swine or parts thereof in Virginia unless it is covered and leakproof.

2 VAC 5-180-120. Requirements for swine dealers; requirements for agents.

A. Registration. Every swine dealer doing business in Virginia and his agents shall be registered with the State Veterinarian; each shall make application for registration on forms provided by the State Veterinarian ~~no later than March 4, 1990~~; and each shall renew his registration no later than March 1 of each even-numbered year thereafter. The State Veterinarian will issue a registration card to each registered swine dealer and to each of his agents. Every swine dealer and every agent shall have the card in his possession while engaged in the business of dealing in swine, and show the card to the State Veterinarian or his representative when asked to do so.

B. Records requirement. Every registered swine dealer shall maintain a record of all swine that he purchases, sells, exchanges, or barter in the course of business.

C. Contents of records. The records required by subsection B of this section shall include the following information, which shall be recorded daily for each transaction of that day:

1. The date of the transaction;
2. The manmade identification affixed or applied to each swine;
3. The name and address of the seller, and in addition, if different, the name and address of the producer;
4. The name and address of the purchaser, and in addition, if different, the name and address of the ultimate purchaser;
5. The purpose of the swine involved in the transaction, using one or more of the following designations:
 - a. Feeder;
 - b. Breeder;
 - c. Slaughter; or
 - d. Exhibition.

D. Retention of records. The swine dealer shall keep in his possession for a period of two years after each transaction the records pertaining to that transaction required by subsections B and C of this section.

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E. Inspection of records. Every swine dealer doing business in Virginia shall, during all reasonable hours, permit the State Veterinarian or his representative to have access to and to copy any and all records maintained pursuant to this chapter.

F. Out-of-state swine. Any swine dealer importing swine into Virginia shall comply with the health requirements governing the admission of swine into Virginia contained in 2 VAC 5-140-10 et seq. The swine dealer shall deliver a copy of the official health certificate to the purchaser.

G. Denial, suspension, or cancellation of registration of dealer; agent.

1. The State Veterinarian may, after due notice and opportunity for hearing to the swine dealer involved, deny the dealer's application for registration, or suspend or cancel his registration, when the State Veterinarian has determined that the swine dealer has:

a. Violated state or federal statutes or regulations governing the interstate or intrastate movement, shipment or transportation of swine;

b. Made false or misleading statements in his application for registration;

c. Sold swine that he knew or should have known were sick or exposed to infectious or contagious disease;

d. Knowingly made false or misleading entries in the records required by this chapter;

e. Failed to comply with any provision of this chapter; or

f. Directed or authorized any agent to engage in any conduct described in subdivisions a through e, above, or knew or should have known that the agent is engaging in such conduct, but has failed to prohibit it.

2. The State Veterinarian may, after due notice and opportunity for hearing to the agent of a swine dealer, deny or suspend the agent's application for registration, when the State Veterinarian has determined that the agent has:

a. Violated state or federal statutes or regulations governing the interstate or intrastate movement, shipment, or transportation of swine;

b. Made false or misleading statements in his application for registration;

c. Sold swine that he knew or should have known were sick or exposed to infectious or contagious disease;

d. Knowingly made false or misleading entries in the records required by this chapter;

e. Failed to comply with any provision of this chapter; or

f. Ceased to be an agent of a registered swine dealer.

DOCUMENT INCORPORATED BY REFERENCE

State-Federal-Industry Pseudorabies Eradication Program Standards, effective January 1, 1997, issued March 1997 by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

VA.R. Doc. No. R97-647; Filed July 21, 1997, 4:50 p.m.

Title of Regulation: 2 VAC 5-205-10 et seq. Rules and Regulations Pertaining to Shooting Enclosures.

Statutory Authority: § 3.1-763.5:5 of the Code of Virginia.

Public Hearing Date: December 11, 1997 - 1:30 p.m.

Public comments may be submitted until October 20, 1997.

(See Calendar of Events section for additional information)

Basis: Section 3.1-763.5:5 of the Code of Virginia contains the authority to make regulations governing shooting enclosures. Most of this authority is mandating, but with regard to veterinary care the authority is permissive.

Purpose: The regulation is necessary to protect the welfare and health of citizens and the health of Virginia's livestock.

Substance: The contemplated regulation is entirely new. It will provide for (i) the licensing and operation of the enclosures; (ii) the fees for the application and license; (iii) the species of goats, sheep, and hogs that may be held; (iv) the minimum contiguous acreage necessary; (v) the humane care and humane killing of animals being held; (vi) the methods and procedures for disposal of animals; (vii) the reporting of the death of every animal being held in the shooting enclosure not killed by the clientele; (viii) the reasonable utilization of all animals killed by the clientele; and (ix) the basic veterinary care of the animals held in the enclosure.

Issues: Most of this regulation is mandated. However, the agency anticipates the possibility of great division of opinion as to the idea of a shooting enclosure.

With regard to health of all livestock, animals are continually threatened by diseases, the effects of which range from slight debilitation to decimation of flocks and herds. The livestock industry makes up 63% of the \$25 billion-plus agricultural businesses in Virginia.¹ Therefore, this animal-health-enhancing regulation is necessary in order to protect these businesses from economic losses that might otherwise occur if a diseased animal escaped from a shooting enclosure and mingled with neighboring livestock.

¹ Virginia Department of Agriculture and Consumer Services, News Release, For Release: March 19-25, 1995, "Profile of Virginia Agriculture."

With respect to public health, there are a number of diseases that humans can contract from other animals, such as those that may lawfully be kept in a shooting enclosure. Two of these diseases by way of example, tuberculosis and brucellosis, are quite harmful to human health.

Humans can become infected with tuberculosis, either by inhaling tuberculosis bacteria given off by infected animals (through breathing, sneezing, or coughing) or by consuming unpasteurized milk or uncooked meat from infected animals. The disease can lie dormant for years in the body of its host, only to become active later--then making it contagious to others and ultimately fatal to its host. In the final stages of the disease, the human sufferer typically asphyxiates on the fluids that accumulate in the lungs.

Tuberculosis has affected the health of humans and other animals for centuries. At one time known as "consumption," tuberculosis has been estimated to cause more than 3 million deaths in the world each year. In humans it has been described by medical writers as "the foremost infectious disease as the cause of chronic disability and death in most parts of the world,"² and a disease that "clearly heads the world list [of infectious diseases of more chronic nature]."³

Brucellosis in man, also known as undulant fever, can be a source of great misery to its victim. Its symptoms include intermittent fever along with aches, pains, chills, night sweats, appetite loss, weight loss, and fatigue bordering on exhaustion. Human brucellosis is usually contracted through contact with infected animals or their freshly killed carcasses or by consuming unpasteurized milk from infected animals.

The primary advantage of the proposed regulation to the public is that regulatory oversight of these operations allows the agency to control the health status of the animals inside the enclosures thereby protecting the public from possible transmissible diseases.

The primary advantage of the proposed regulation to the agency is that monitoring the health status of the animals imported into the shooting enclosures allows the agency to maintain Virginia's pseudorabies, tuberculosis, and brucellosis-free status.

There are no known disadvantages to the agency or the public resulting from this proposed regulation.

Fiscal Impact: The agency does not project that the regulation will have any fiscal impact on the localities as this regulation does not impose any responsibilities on local government entities.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the

Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. This regulation establishes rules for the licensing and operation of shooting enclosures. A shooting enclosure is a pen in which animals are placed so that customers can shoot the animals for a fee. It is like a trout farm except that the animals maintained in the enclosures are goats, sheep and swine. These rules are intended to ensure that the operation of these enclosures does not increase the probability of the spread of livestock-borne disease, that the animals do not suffer from neglect, that by-products of the pay to shoot businesses do not generate environmental problems off-site, and that the animals are effectively contained to avoid the introduction of exotic livestock into Virginia.

Estimated economic impact. The legislation mandating this rule specifically limits the licensing of shooting enclosures to those in existence as of January 1, 1995. Three such facilities were in operation in Virginia at that time.

These shooting enclosures are livestock holding facilities. As such, they could pose a significant cost on the public if they result in the spread of disease, the introduction of exotic species or an increase in water pollution. While the owner of such a facility will have some incentive to avoid the loss of livestock due to disease or escape, these incentives are generally less than they would be if the owner faced all of the costs associated with his or her business. Thus, there is substantial justification for regulating those aspects of facility operation that impose risks on the public.

This is the same justification used for regulating any livestock operation. The regulations proposed here impose requirements similar to those imposed on other livestock operations. They are generally consistent with good business practice and the protection of public health and safety. While the data does not allow an explicit dollar value to be placed on the impact of these regulations, they may be expected to have a small positive effect on the Virginia economy by reducing risks to public health and safety more than they increase the costs of shooting enclosure operations.

Businesses and entities affected. Only three shooting enclosures are allowed under Virginia law. Those are the only businesses affected by this proposed regulation.

Localities particularly affected. The impact of this regulation will be felt primarily in the localities where the shooting

² Kenneth F. Maxcy, *Rosenau Preventive Medicine and Public Health*, (Eighth edition; New York: Appleton-Century Crofts, Inc., 1956), p. 129.

³ Gordon Woistenholme and Maeve O'Connor, *Health of Mankind*, (Boston: Little, Brown and Company, 1967), p. 28.

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enclosures are in operation. These are: Allegheny, Cumberland and Patrick counties.

Projected impact on employment. These regulations will have no impact on employment.

Effects on the use and value of private property. These regulations could cause a small reduction in the value of the land used for shooting enclosures. However, this should be more than offset by increases in the value of neighboring land that is subject to less risk due to the safer operation of the enclosures.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis submitted by the Department of Planning and Budget and the agency concurs with that analysis.

Summary:

This regulation provides rules to govern shooting enclosures in Virginia. The purpose of the contemplated regulatory action is to promulgate regulations providing for licensing shooting enclosures, establishing a licensing fee, and establishing criteria for the operation and management of the enclosures to include the health status of the animals held in the enclosure. The regulation also establishes which animals can be held in the shooting enclosure: goats, sheep and swine.

CHAPTER 205.

RULES AND REGULATIONS PERTAINING TO SHOOTING ENCLOSURES.

2 VAC 5-205-10. Definitions.

"Accredited veterinarian" means a licensed veterinarian approved by the United States Department of Agriculture (USDA) and the State Veterinarian to perform functions required by cooperative state-federal disease control and eradication programs.

"Approved laboratory" means a laboratory approved by USDA or the State Veterinarian to conduct official brucellosis, tuberculosis and pseudorabies tests.

"Brucellosis" means the contagious disease of livestock and other animals caused by the bacteria of the genus *Brucella*, also known as Bang's Disease.

"Brucellosis test" means any official test for the diagnosis of brucellosis approved by USDA and conducted in an approved laboratory.

"Certificate of veterinary inspection" means a written record of an animal's health status meeting the requirements of this chapter, executed on a form approved by the chief animal health official of an animal's state of origin.

"Shooting enclosure" means a fenced area open commercially to the public where animals are held for the purpose of being shot.

"Pseudorabies test" means any official test for the diagnosis of pseudorabies approved by USDA conducted in an approved laboratory.

"Pseudorabies" means the contagious, infectious, and communicable viral disease of livestock and other animals, also known as "Aujeszky's disease," "mad itch," or "infectious bulbar paralysis."

"Tuberculosis" means the infectious disease caused by the pathogenic acid-fast bacilli *Mycobacterium bovis*.

"Tuberculin test" means any official test for the diagnosis of tuberculosis approved by USDA and performed by accredited veterinarians and approved laboratories.

2 VAC 5-205-20. Application for license.

A. Persons holding animals in Virginia for the purpose of recreational shooting must make application for and obtain an annual shooting enclosure license from the Virginia Department of Agriculture and Consumer Services (VDACS). A topographic map showing the boundaries of the fenced shooting enclosure and a contingency plan that they are capable of executing, specifying how they will eradicate and control any disease outbreak or recover escaped animals must accompany the application for a license.

B. Applicants must state on the application that the shooting enclosure complies with all county and city ordinances and statutes.

C. No license shall be issued without prior inspection and approval from a representative of VDACS. The applicant must contact the regional veterinary supervisor in the respective region to schedule an appointment for the inspection.

D. A one time application fee plus an annual license fee as set forth in § 3.1-763.5:4 of the Code of Virginia will be required of each licensee.

E. Operators of a shooting enclosure shall be liable for all costs incurred by any person, city, county, the Commonwealth of Virginia or federal government, resulting from escape of animals or disease eradication or control efforts resulting from animals confined to or escaped from the shooting enclosure.

F. Operators of shooting enclosures must notify VDACS Regional Veterinary Supervisor within 24 hours of first discovering a diseased, dead, or escaped animal, and the carcass must be submitted to the nearest VDACS regional laboratory for necropsy.

G. Animals allowed under an shooting enclosure permit are restricted to the following:

1. Goats: Ibex (*Capra ibex*), Iranian Ibex (*C. hircus*), Angora (*C. hircus*);

2. Sheep: Four-horned or Jacob's (*Ovis aries*), Black Hawaiian (*O. musimon*), Corsican (*O. corsican*), Merino (*O. aries*), Mouflon (*O. musimon*); and

3. Swine: Domestic swine (*Sus scrofa domestica*).

H. A shooting enclosure shall have a minimum of 100 adjoining acres. The applicant shall own or have the area under written lease. Shooting enclosures not contiguous with each other shall be operated under separate licenses.

2 VAC 5-205-30. Weapons.

Weapons used to take animals on shooting enclosures shall comply with ordinances of the county in which the shooting enclosure is located.

2 VAC 5-205-40. Inspection requirements relating to shooting enclosures.

A. Operators of shooting enclosures must allow inspection of their facilities, animals, and records by the State Veterinarian or his designated representative at any reasonable time.

B. Upon observing or having reason to believe that shooting enclosure animals are diseased or have been exposed to an infectious disease, the State Veterinarian or his designated representative may require inspection of the affected animals by an accredited veterinarian licensed in Virginia. Such inspections will be at the licensee's expense. A report by said veterinarian, regarding health and welfare of animals inspected under this provision, will be submitted to the State Veterinarian's office.

2 VAC 5-205-50. Fencing.

The shooting enclosure shall be enclosed with a fence around the entire perimeter of the facility. The fence shall be maintained in good condition at all times and be so constructed to prevent the escape of animals being held inside the enclosure.

2 VAC 5-205-60. Shelter and humane care.

A. The shooting enclosure operator shall provide adequate shelter for all animals within the facility so as to provide protection from sunlight and inclement weather. The shelter provided may be artificial or natural, and shall cover at least 15% of the surface acreage of the enclosure.

B. Each animal within the enclosure shall be provided at all times with adequate food and water, in sufficient quantity and quality, so as to maintain good health.

2 VAC 5-205-70. Health requirements.

A. The animals shipped to a shooting enclosure must be accompanied by a certificate of veterinary inspection, which shall:

1. Be issued by (i) an accredited veterinarian; (ii) a veterinarian in the employ of the Veterinary Services Division, Animal and Plant Health Inspection Service, USDA; or (iii) other veterinarian approved by the State Veterinarian;
2. Contain (i) the name and complete address of the consignor; (ii) the name and complete address of the consignee; (iii) the complete address of the animal's

destination; (iv) the results of every veterinary-medical test and every observation as to the animal's health required by this chapter of the animal to be shipped, the date the test was performed and results of the test; and

3. Be attached to the shipment's waybill or be in the possession of the person carrying the animal.

The licensee is responsible for keeping certificates of veterinary inspection, records of dates and types of disease testing, cause of death, and disposition for each animal. Records will be identified by animal ear or belly tag number. All records shall be retained for the period of ownership of the animal and for three years after disposition.

Unless otherwise provided in this regulation, no certificate of veterinary inspection shall have effect more than 30 days after it is issued. No person may use an expired certificate of veterinary inspection to ship an animal.

B. In addition to any penalties authorized by law or the violation of this chapter, any person shipping an animal in violation of this chapter shall be subject to having the animal quarantined by the State Veterinarian or his designated representative and, at the owner's expense:

1. Returned to the state of origin under permit;
2. Sent under permit directly to slaughter;
3. Destroyed;
4. Tested until the animal complies with requirements of this chapter for shipment; or
5. Disposed of by means necessary or appropriate, in the State Veterinarian's judgment, to protect the health of livestock the State Veterinarian is charged with protecting.

2 VAC 5-205-80. Shooting enclosure operations.

A. All shooting enclosures must have adequate capture and holding facilities suitable for handling and restraining the species on site.

B. All shooting enclosures must dispose of carcasses and offal resulting from the normal operation of the preserve in accordance with state and local ordinances. Carcasses and offal cannot be used as feed or feed supplements for animals held by the enclosure.

C. In cases of disease outbreaks, testing, depopulation, cleaning and disinfecting costs associated with the disease eradication will be borne by the shooting enclosure operator.

2 VAC 5-205-90. Common carriers; trucks.

Any person who is a common carrier or who owns any conveyance carrying any animal governed by this chapter shall keep the vehicle in a sanitary condition, and shall, when required by the State Veterinarian or his designated representative, clean and disinfect his vehicle as required.

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2 VAC 5-205-100. Health requirements of animals to be held.

A. Sheep. No shooting enclosure may receive any sheep unless the sheep originates directly from a state officially designated scabies-free by the United States Department of Agriculture and has been tested negative to malignant catarrhal fever test (wildebeest type) conducted in a state or federal laboratory within 30 days prior to entering the Commonwealth.

B. Goats. No shooting enclosure may receive any goat unless the goat:

1. Originates directly from a herd in which all goats were negative to a tuberculin test no more than 12 months before the goat enters the Commonwealth, or is individually tested and found negative to a tuberculin test no more than 30 days prior to entering the Commonwealth;
2. Originates directly from a herd in which all goats were negative to a brucellosis test within 12 months prior to the goat's entering the Commonwealth, or is individually tested and found negative to a brucellosis test within 30 days prior to entering the Commonwealth; and
3. The goat is free of clinical signs of caseous lymphadenitis. "Clinical signs," with reference to caseous lymphadenitis, means abscesses of the lymph nodes, whether draining or not.

C. Swine. No shooting enclosure may receive any swine unless the swine meet the following requirements:

1. Brucellosis.
 - a. No shooting enclosure may receive any swine over four months of age unless the swine:
 - (1) Originates from an officially validated brucellosis-free herd;
 - (2) Originates from a herd in which all swine over four months of age were negative to a brucellosis test conducted in a state or federal laboratory within 12 months prior to the date of entering Virginia; or
 - (3) Has been individually tested and found negative to a brucellosis test conducted in a state or federal laboratory within 30 days prior to entering the Commonwealth.
 - b. The certificate of veterinary inspection on the swine shall indicate the official herd status or the negative test.
2. Pseudorabies.
 - a. No shooting enclosure may receive any swine that have been vaccinated against pseudorabies.
 - b. No shooting enclosure may receive any swine unless the swine are identified by ear tag and:

(1) Originate directly from a pseudorabies monitored herd;

(2) Originate directly from a qualified pseudorabies negative herd; or

(3) Have been individually tested and found negative to a test for pseudorabies within 30 days prior to entering Virginia.

2 VAC 5-205-110. Suspension or revocation of license.

The department may revoke or suspend a license for failure to comply with provisions of the license or this chapter.

VA.R. Doc. No. R97-648; Filed July 21, 1997, 4:57 p.m.

CHARITABLE GAMING COMMISSION

Title of Regulation: 11 VAC 15-12-10 et seq. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 18.2-340.18 of the Code of Virginia.

Public Hearing Dates:

August 19, 1997 - 7 p.m. (Roanoke)

September 9, 1997 - 7 p.m. (Norfolk)

September 17, 1997 - 7 p.m. (Annandale)

September 23, 1997 - 7 p.m. (Chester)

Public comments may be submitted until October 17, 1997.

(See Calendar of Events section for additional information)

Basis: Section 18.2-340.18 of the Code of Virginia requires the commission to promulgate regulations under which charitable gaming shall be conducted and all such other regulations that it deems necessary and appropriate to effect the purposes of Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia. Section 9-6.14:7.1 of the Code of Virginia requires each agency to promulgate public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations.

Purpose: These regulations are being promulgated to satisfy the mandate of the Administrative Process Act which requires the development of public participation guidelines for soliciting the input of interested parties in the formation and development of regulations. The guidelines will assist in ensuring the general health, safety and welfare of the public by providing a mechanism for the public to use to participate in the regulatory process.

Substance: The regulations establish procedures for soliciting public input in the regulatory process by (i) establishing methods for identification and notification of persons interested in the regulation under consideration and methods of seeking input; (ii) adopting a general policy for using advisory committees and consulting with interested persons; and (iii) incorporating provisions for offering

interested persons an opportunity to submit comments, either orally or in writing.

Issues: The guidelines are advantageous to the agency and the public by allowing for the constructive participation of gaming operators and other knowledgeable participants in the gaming industry in the process of promulgating regulations. There are no known disadvantages to the agency or the public.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulations provide procedures for soliciting public input in the formulation, development, amendment, or repeal of regulations in accordance with the Administrative Process Act (APA).

Estimated economic impact. This regulation establishes procedures for soliciting public input in the decision making process by:

- Establishing methods for identification and notification of persons interested in the regulation under consideration and methods of seeking input;
- Adopting a general policy for using advisory committees and consulting with interested persons; and
- Incorporating provisions for offering interested persons an opportunity to submit comments, either orally or in writing.

The economic value of such participation from the public is difficult to measure. There is definitely added benefit to the decision making process if individuals, especially those who will be affected by the decision are allowed to have input. In this regard, the benefit from regulation though small is tangible and should outweigh the cost of providing the forum for public participation.

Businesses and entities affected. The commission, game operators and the general public will all be affected by this regulation.

Localities particularly affected. No particular locality will be uniquely affected by this regulation.

Projected impact on employment. There will be no measurable impact on employment as a result of this regulation.

Effects on the use and value of private property. Any effect on the use or value of private property will be too small to measure.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Commission staff believe that the Department of Planning and Budget's economic impact analysis will be borne out as more time is spent under state regulation of this activity.

Summary:

These regulations are intended to replace the current interim public participation guidelines which expire December 31, 1997. These regulations lay out the procedures to be used for soliciting public input in the formulation, amendment or repeal of regulations in accordance with the Administrative Process Act (APA).

CHAPTER 12.

PUBLIC PARTICIPATION GUIDELINES.

11 VAC 15-12-10. Definitions.

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

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

"Approving authority" means the collegial body of the Virginia Charitable Gaming Commission consisting of seven members each being duly appointed by the Governor of Virginia.

"Charitable Gaming Law" means the provisions found in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia.

"Executive Secretary" means the Executive Secretary of the Virginia Charitable Gaming Commission or his designee.

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

11 VAC 15-12-20. Soliciting input.

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

B. The failure of any person to receive any notice or copies of any documents provided under this chapter shall not affect the validity of any regulation.

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C. In developing any regulation governing charitable gaming, the commission is committed to obtaining comments from interested persons. These comments may be forwarded to the executive secretary at the commission's main business office.

D. The public participation procedures shall apply to regulations administered by the commission that are subject to the Administrative Process Act. These procedures shall not apply to regulations adopted on an emergency basis.

E. Any person may petition the commission concerning the adoption or amendment of regulations. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended action with respect to regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact of the proposed action on the petitioner and other affected persons; and
7. Supporting documents, if applicable.

The commission shall provide a written response to such petition within 180 days from the date the petition was received. The commission's decision to initiate or not initiate rule making in response to petitions is not subject to judicial review. The commission, at its discretion, may consider any regulation request or change.

F. The commission shall maintain a list of persons who provide written comments or petitions to the commission and mail to everyone on the list a copy of the Notice of Intended Regulatory Action.

G. The commission shall place on its agenda, whenever appropriate, a period for public participation during its regular meetings.

H. The commission shall identify persons who either would be interested in or affected by proposed regulations. The methods for identifying interested parties shall include, but not be limited to, the following:

1. Using a list, compiled by the commission, of organizations which have been issued a permit or exempt authorization to conduct charitable gaming activities and of suppliers with a Certificate of Registration.
2. Using commission mailing lists to identify people who have raised questions or expressed an interest in the regulations.
3. Obtaining from the Secretary of the Commonwealth a list of persons who have registered as lobbyists for the most recent General Assembly session. The list shall be

used to identify groups which may be interested in the subject matter of the proposed regulations.

I. The commission shall use, as necessary, advisory committees and interested individuals for developing proposed regulations. The commission shall use individuals with special expertise for professional input as required. Situations that may warrant the use of advisory committees may include, but are not limited to, analyzing electronic and mechanical gaming equipment, conducting special studies of charitable gaming as requested by the commission or the legislature and commenting on current or proposed statutes, regulations or operating rules and procedures.

J. Except for those regulations exempted by § 9-6.14:4.1 of the Code of Virginia, the commission shall provide the Registrar of Regulations with a Notice of Intended Regulatory Action (NOIRA) which describes the subject matter and intent of the planned regulation. At least 30 days shall be provided for public comment after publication of the NOIRA. The commission shall not file proposed regulations with the Registrar of Regulations until the public comment period on the NOIRA has closed.

K. The methods of notifying interested persons shall include publishing a notice in the Virginia Register of Regulations (Virginia Register) and may also include the following:

1. Sending the notice to all persons identified as interested parties through the methods described in subsection H of this section; and
2. Requesting that groups, associations and organizations to whom the notice is sent, publish the notice in newsletters or journals or use other means available to them to inform their members.

L. After interested parties have had reasonable opportunity to respond to the notice, the commission shall determine the level of interest in the proposed regulations.

1. If sufficient interest exists, the commission may schedule informal meetings before development of the proposed regulations. The purpose of the meetings shall be to determine specific areas of interest and concern and gather factual information on the subject of the proposed regulations.
2. Instead of or in addition to informal meetings, the commission may ask for additional written comments, concerns or suggestions on the development of regulations from those who respond to the notice.
3. The commission may forego an informal meeting, provided sufficient information to develop regulations was acquired as a result of the notice.

M. After initial public input on the intended regulatory action, the commission shall develop proposed regulations for review, revision and adoption.

N. After the drafting process, the commission-approved regulations shall be submitted to the Registrar of Regulations

in accordance with the Administrative Process Act. Commission-approved regulations shall be published as proposed regulations in the Virginia Register.

O. The commission shall furnish a copy of the regulations published in the Virginia Register to persons who make such a request. A copy of the "Notice of Comment Period" form may be sent with the copy of the regulations.

P. The commission shall indicate in the NOIRA whether it intends to hold a public hearing on the proposed regulations after it is published. The commission shall hold such public hearings if required by law. If the commission states an intent to hold a public hearing on the proposed regulations in the NOIRA, then it shall hold the hearing.

Q. The commission shall adopt all final regulations. The final regulations shall be submitted for publication in the Virginia Register.

R. The commission shall order the printing of all adopted final regulations.

VA.R. Doc. No. R97-689; Filed July 30, 1997, 11:46 a.m.

Title of Regulation: 11 VAC 15-22-10 et seq. Charitable Gaming Regulations.

Statutory Authority: §§ 18.2-340.15, 18.2-340.18, 18.2-340.19 and 18.2-340.30 of the Code of Virginia.

Public Hearing Dates:

August 19, 1997 - 7 p.m. (Roanoke)
September 9, 1997 - 7 p.m. (Norfolk)
September 17, 1997 - 7 p.m. (Annandale)
September 23, 1997 - 7 p.m. (Chester)
Public comments may be submitted until October 17, 1997.

(See Calendar of Events section for additional information)

Basis: Section 18.2-340.15 A of the Code of Virginia states that "The Charitable Gaming Commission is vested with control of all charitable gaming in the Commonwealth, with plenary power to prescribe regulations and conditions under which such gaming shall be conducted to ensure that it is conducted in a manner consistent with the purpose for which it is permitted."

Section 18.2-340.18 (4) of the Code of Virginia states that "The Commission shall promulgate regulations under which charitable gaming shall be conducted in the Commonwealth and all such other regulations that it deems necessary and appropriate to effect the purposes of this article. Such regulations may include penalties for violations."

Section 18.2-340.19 of the Code of Virginia states that "The Commission shall adopt regulations...." which address nine specific areas of charitable gambling.

Section 18.2-340.30 (A) of the Code of Virginia states that "...each qualified organization shall file at least annually, on a

form prescribed by the Commission, a report of all such receipts and disbursements..." The section also states "In addition, the Commission, by regulation, may require any qualified organization whose receipts exceed a specified amount during any three-month period to file a report of its receipts and disbursements for such period.

Purpose: The proposed regulations have been developed to ensure, in part, that conduct in violation of § 18.2-340.33 (prohibited practices) does not occur. Regulations establishing a required minimum percentage of gross proceeds be contributed to charitable causes are required by § 18.2-340.19 (1). The regulations seek to ensure that proceeds from charitable gaming are used for lawful religious, charitable, community or educational purposes.

The health and safety of the public is safeguarded through regulations governing the activities of organizations involved in gambling enterprises.

Substance: The following areas were identified as ones which make changes to the current status of the law:

Use of proceeds: These regulations seek to maximize the amount of gaming proceeds going to the charities by establishing set minimum percentages of charitable gaming gross receipts that must be contributed to charitable causes. These percentages must be met in order for an organization to be eligible for a permit and to continue its charitable gaming activity. The regulations provide a 3-tiered, graduated schedule, establishing minimum percentages for a three-year period. The percentages in the third year equate to the existing national average. In addition, the regulations seek to maximize expenditures for benevolent purposes and provide an understanding of the repercussions if the minimum use of proceeds percentages are not met.

Conduct of game and rules of play: These regulations place age restrictions on those who can play or participate in the management, operation or conduct of charitable gaming. They also set a time interval between sessions conducted by separate organizations at the same location.

Issues: The advantages for the public in implementing these regulations would be threefold. First, the regulations create a "level playing field" for all charitable gaming operators. The regulations replace the previous patchwork of local regulations which were not uniformly enforced, thus placing many worthy organizations at a competitive disadvantage with organizations who were able to operate with little or no oversight.

Secondly, the regulations provide an element of consistency in regulatory requirements and enforcement that local jurisdictions did not have the resources to provide. Finally, the regulations serve to provide accountability for funds raised through charitable gambling for the benefit of charitable organizations and those that they serve.

The commission staff does not believe that the public will suffer any disadvantages from the implementation of these regulations.

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Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to; the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulations establish uniform guidelines for the operation of charitable games in the Commonwealth. The regulations lay the foundation for audit trails that might be necessary for the Charitable Gaming Commission to track the flow of cash funds from the point of sale to the disposition of proceeds to legitimate charitable activities. It also establishes control over an industry that is otherwise susceptible to the misuse of funds.

Estimated economic impact. The substantive elements of this regulation include the following:

1. A three year plan that will bring contributions from games going to charitable activities up to the national average as follows;

Operations with gross receipts less than \$150,000	5%
Operations with gross receipts between \$150,000 and \$500,000	10%
Operations with gross receipts over \$500,000	12%

2. An annual permit fee of \$200 for game operators;
3. An annual permit fee of \$500 to distribute game supplies;
4. Background checks on operators and suppliers;
5. Provisions allowing individual operators to establish own house rules so long as it does not violate any state or federal laws;
6. Provisions that children under 18 years of age may play only under the supervision of an accompanying adult;
7. The requirement that children 11-18 years old can work games with written consent of parent or guardian, which must be kept on file;
8. Provisions allowing game workers to play;
9. Restrictions on the sale of instant bingo tickets;
10. Each organization must file an annual report; and

11. If gross receipts for a quarter exceeds \$500,000, the organization must file a report for that period.

One significant economic issue here is the minimum percentage of gross receipts that have to go to charitable causes as set by the commission for the various classes of operations. These percentages will keep Virginia below the national average. To bring Virginia to par with the national average would require an increase in the percentages returned to charity. As set up, operations with higher gross receipts will end up paying more both in absolute terms and in percentages than the operations with lower gross receipts. However, most of these small operators are community based usually run by churches or other nonprofit organizations while the larger operators are run in commercial houses. The larger operations are able to offer better and higher jackpots than the smaller operations. This system as set up will allow the smaller operations to compete more effectively with the larger commercial operators who have more resources at their disposal.

It is not possible to measure the net economic impact of the changes in these percentages. If the larger operations are more efficient at raising money for charity it could be true that requiring these operations to have a higher rate of return to charity than smaller operations would actually reduce the aggregate amount of funds available to charity in Virginia. It is certainly true that the distribution of charitable earnings will be changed, with some charities gaining and some losing. It is well-known that some charities are more efficient than others in providing their services. Thus, changing the distribution of charity earnings is not just an issue of redistributing income but may also determine the ultimate level of services available. The net economic impact of this redistribution would be extremely difficult to measure.

The provisions of the proposal allowing operators to set their own house rules provides a lot of flexibility for gaming operations. This could substantially reduce operation costs and may result in increased profits and charitable earnings. However, the commission realizes that this could lead to an increase in the number of complaints from players regarding unfair practices. Given the lack of data on the magnitude of the problem associated with rule flexibility, it is important that the commission gather the relevant data during the first few years of this regulation in order to be able to access whether the benefits of such flexibility justify the cost from increased complaints.

The other proposed regulations are designed to protect the integrity of games and raffles. Without this protection, the market for gaming services could be adversely affected, since consumers lack the ability to obtain and verify information about the integrity of games. This could greatly reduce the demand for the games and hence reduce charitable income. These rules may be expected to produce a net gain for the Virginia economy. Again, it is important that appropriate and relevant data be collected for a more complete analysis of the impact of these regulations to be done in the future.

Businesses and entities affected. Operators who organize charitable games and suppliers of game merchandise will be affected by this regulation. Each will have to bear the cost of new annual permit fees. Operators should have some cost reduction in their operations, since they do not have to comply with more restrictive rules of operation. Operations with higher gross receipts will pay more to charitable causes than operations with lower gross receipts.

Localities particularly affected. No particular localities will be uniquely affected by this regulation.

Projected impact on employment. These regulations bring some much needed integrity to the charitable gaming industry. This could potentially attract individuals who would otherwise not have been involved in the industry. The proposed regulation could have a positive impact on employment.

Effects on the use and value of private property. Any effect on the use and value of private property would be too small to measure.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Commission staff believe that the Department of Planning and Budget's economic impact analysis will be borne out as more time is spent under state regulation of this activity.

Summary:

These regulations are intended to replace the current charitable gaming regulations which expire December 31, 1997. These regulations prescribe the conditions under which charitable gaming shall be conducted in the Commonwealth to ensure that it is conducted in a manner consistent with the purpose for which it is permitted.

CHAPTER 22.

CHARITABLE GAMING RULES AND REGULATIONS.

PART I. DEFINITIONS.

11 VAC 15-22-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Address of record" means an address provided to the commission on a permit application or exempt notification form or the most recent address on the commission's files.

"Bingo equipment and video systems" shall include equipment which facilitates the conduct of charitable gaming such as ball blowers, flashboards, TV monitors, cameras, smoke eaters, P.A. systems, tables and chairs, electronic verifiers and replacement parts for such equipment.

"Board of directors" means the board of directors, managing committee or other supervisory body of a qualified organization.

"Building" means a structure enclosed by continuous exterior walls regardless of the configuration of the interior walls.

"Bundled pull-tabs" means certain pull-tabs, commonly referred to as "jar tickets," "guppies," etc., which are taped or stapled together and sold as one unit.

"Calendar day" means the period of 24 consecutive hours commencing at 12:01 a.m. and concluding at midnight.

"Calendar week" means the period of seven consecutive calendar days commencing at 12:01 a.m. on Sunday and ending at midnight the following Saturday.

"Cash" means United States currency or coinage.

"CGC number" means a unique identification number issued by the commission.

"Commission" means the Virginia Charitable Gaming Commission.

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names such as "Tear-open," "Bonanza Bingo," "Bullseye" and "Fortune Card."

"Daubing" means covering a square containing a number called with indelible ink or otherwise concealing the number on a card or an electronic facsimile of a card.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tab raffle or seal cards with the same serial number.

"Designator" means an object used in the number selection process, such as a ping pong ball, upon which bingo letters and numbers are imprinted.

"Discount" means any reduction in cost of admission or game packs via use of coupons, free packs or other similar methods.

"Disposable paper card" means a nonreusable, paper bingo card manufactured with preprinted numbers.

"Door prize" means any prize awarded by the random drawing or random selection of a name or number taken from any entry or admission ticket.

"Electronic bingo device" means an electronic device which displays facsimiles of bingo cards and allows a player to daub such cards.

"Electronic verification" means the verification of bingo by entering the free space number of the winning bingo card into computer equipment which contains preprogrammed software for this purpose.

"Fiscal year" or "annual reporting period" means the 12-month period beginning October 1 of any given year and ending September 30 of the following year.

"501(c) organization" means any organization that is tax exempt under 26 USC § 501(c) (3), (4), (8), (10) or (19).

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"Flare" means a piece of paper, cardboard or similar material which bears printed information relating to name of manufacturer or logo, name of the game, card count, cost per play, the number of prizes to be awarded and the specific prize amounts in a deal of instant bingo, pull-tab or seal cards.

"Free space number," "perm number," "center number" or "card or face number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

"Game program" means a written list of all games to be played and prize amounts to be paid during a session for each game, where prize amounts are fixed or are based on attendance.

"Immediate family" means one's spouse, mother, father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law, father-in-law and stepchild.

"Interested parties" means the president, an officer or bingo manager of any qualified organization which is exempt or is a permit applicant or holds a permit or exempt authorization to conduct charitable gaming or the owner, director, officer or partner of an entity engaged in supplying charitable gaming supplies to organizations.

"Management, operation or conduct" means the provision of oversight and supervision, check writing or approval authority for charitable gaming funds, purchase authority for charitable gaming supplies, service as a volunteer worker or assistant or negotiation of contracts or leases.

"Manufacturer" means a person who assembles from raw materials or subparts a completed piece of bingo or other charitable gaming equipment or supplies. "Manufacturer" also means a person who modifies, converts, adds to or removes parts from bingo or other charitable gaming equipment or supplies to further its promotion or sale for the conduct of charitable gaming.

"Operating costs" means charitable gaming fund disbursements for reasonable and proper expenses incurred in the conduct of charitable gaming including, but not limited to, costs of publicizing the time, date and location of charitable gaming, utilities, rent, prizes, professional fees, audit and administration or permit fees and gaming supplies.

"Owner" means any individual with financial interest of 10% or more in a supplier.

"Packet" means sheets of bingo paper assembled in the order of games to be played. This may or may not include specials, winner-take-alls and jackpots.

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

"Prize" means cash, merchandise, certificate or other item of value awarded to a winning player.

"Progressive seal card game" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Pull-tabs" means individually prepackaged cards made completely of paper or paper products with winners being determined by the appearance of preprinted concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses.

"Random selection" or "randomly selected" means a process of selecting number designators to produce random numbers during a bingo game in which each designator or number in the remaining population has an equal chance or probability of being selected.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number which contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter or symbol located on that board or placard.

"Selection device" means a device that is operated manually or mechanically to randomly select bingo numbers.

"Serial number" means a unique number printed by the manufacturer on each bingo card in a set or each instant bingo or pull-tab card in a deal.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper or bingo hard cards. A 9000 series, for example, has 9000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted by a single qualified organization, or when approval for joint operation is obtained, by two or more qualified organizations that begins with the selection of the first ball for the first game and ends with the selection of the last ball for the last game.

"Set" means the bingo cards contained within each series number.

"Special permit" means a permit granted to a qualified organization to allow the organization to conduct more frequent operation of bingo games during carnivals, fairs or other similar public amusement events of limited duration.

"Use of proceeds" means the use of funds derived by an organization from its charitable gaming activities which are disbursed for those lawful religious, charitable, community or educational purposes. This includes expenses relating to the acquisition, construction, maintenance or repair of any interest in the real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes.

PART II.
PERMITS, EXEMPT NOTIFICATIONS, REGISTRATION
CERTIFICATES.

11 VAC 15-22-20. Eligibility for permit; when valid; permit requirements.

A. The conduct of charitable gaming is a privilege which may be granted or denied by the commission. Except as provided in § 18.2-340.23 of the Code of Virginia, every organization and volunteer fire department and rescue squad with anticipated gross receipts of \$25,000 or more annually shall obtain a permit or exempt authorization number from the commission prior to the commencement of authorized charitable gaming activities.

B. Upon the organization's request and pursuant to § 18.2-340.24 B of the Code of Virginia, the commission shall review a tax exempt request submitted to the IRS for a tax exempt status determination. A nonrefundable fee of \$250 shall be charged for this review.

C. A permit or exempt authorization shall be valid only for locations, days, dates and times as listed on the permit or exempt authorization.

D. In accordance with subdivision 1 of § 18.2-340.19 of the Code of Virginia, as a condition of receiving a permit or exempt authorization, the following minimum percentage of charitable gaming gross receipts shall be used for (i) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized or (ii) those expenses relating to the acquisition, construction, maintenance or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes:

For the fiscal year beginning October 1, 1996:

For organizations with annual gross receipts less than \$150,000	3%
For organizations with annual gross receipts between \$150,000 and \$500,000	4%
For organizations with annual gross receipts over \$500,000	6%

For the fiscal year beginning October 1, 1997:

For organizations with annual gross receipts less than \$150,000	4%
For organizations with annual gross receipts between \$150,000 and \$500,000	6%
For organizations with annual gross receipts over \$500,000	9%

For the fiscal year beginning October 1, 1998, and later fiscal years:

For organizations with annual gross receipts less than \$150,000	5%
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For organizations with annual gross receipts between \$150,000 and \$500,000 10%

For organizations with annual gross receipts over \$500,000 12%

E. Organizations not formed exclusively for religious, charitable, community or educational purposes shall expend at least the following percentage of the use of proceeds requirement for charitable gaming funds towards expenses other than those relating to the acquisition, construction, maintenance or repair of any interest in real property:

For the fiscal year beginning October 1, 1998 25%

For the fiscal year beginning October 1, 1999 50%

For the fiscal year beginning October 1, 2000 75%

Nothing in this subsection shall prevent an organization from using general fund moneys for expenses relating to the acquisition, construction, maintenance or repair of any interest in real property.

F. If an organization fails to meet the minimum use of proceeds percentage based on financial reports, its permit shall be suspended for a period of 30 days. If an organization has previously failed to meet the minimum use of proceeds requirement in any of the three previous fiscal years, its permit shall be revoked.

G. An organization whose permit is revoked for failure to comply with provisions set forth in subsections D and E of this section shall be eligible to reapply for a permit at the end of one year from the date of revocation of the permit. The commission, at its discretion, may issue the permit if it is satisfied that the organization has made substantial changes to its management or operations or both and may achieve its minimum use of proceeds percentages.

11 VAC 15-22-30. Permit application and exempt notification process.

A. Organizations anticipating gross receipts of \$25,000 or more (except volunteer fire departments and rescue squads) shall complete a commission-prescribed application to request issuance or renewal of an annual permit to conduct charitable gaming. The application shall be accompanied by a nonrefundable fee payable to the Treasurer of Virginia in the amount of \$200. The commission may issue permits for periods of less than one year. Fees for such permits shall be prorated and rounded off to the nearest \$50 per quarter.

B. Volunteer fire departments and rescue squads anticipating gross receipts of \$25,000 or more shall file a commission-prescribed exempt notification form to request an authorization to conduct charitable gaming.

C. The commission may initiate action against any organization exempt from permit requirements when it reasonably believes the organization is not in compliance with the provisions of charitable gaming laws or applicable regulations, or both, of the commission. The commission may decline to issue an exempt notification number to

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volunteer fire departments and rescue squads failing to meet the requirements of § 18.2-340.23 of the Code of Virginia.

D. Permit holders requiring a special permit shall convey their request in the form of a letter to the commission. There shall be a \$50 fee for special permits.

E. Permits and exempt authorizations shall be valid for a period of one year from the date of issuance or for a period specified on the permit or authorization.

F. Permits shall be granted only after a background investigation to ensure public safety and welfare as required by § 18.2-340.25 of the Code of Virginia. Investigations shall consider the nature, the age and severity and the potential harm to public safety and welfare of any criminal offenses. The investigation may include, but shall not be limited to, the following:

1. A search of Virginia criminal history records for all officers of the organization and members who serve as game managers. Information and authorization to conduct these records checks shall be provided in the permit application. Applications may be denied if any game manager or officer has been convicted within 10 years preceding the date of application for any of the following:

- a. Any felony involving fraud, theft or financial crimes; or

- b. Any misdemeanor crimes involving moral turpitude.

In addition, any felony conviction involving fraud, theft or financial crimes, regardless of age, may result in denial of application.

2. An inquiry as to whether the organization has been investigated or examined by the Internal Revenue Service in connection with charitable gaming activities during the previous three years.

3. An inquiry as to whether the organization has entered into any contract with, or has otherwise employed for compensation, any persons for the purpose of organizing or managing, operating or conducting any charitable gaming activity.

4. Inquiries into the finances and activities of an organization and the sources and uses of funds.

5. Inquiries into the level of community or financial support to the organization and the level of community involvement in the membership and management of the organization.

G. The initial permit application shall include:

1. A list of members participating in the conduct of charitable gaming;

2. A copy of the articles of incorporation, bylaws, charter, constitution or other similar organizing document. Religious organizations with churches or

other houses of worship may submit other appropriate organizing documents;

3. A copy of the determination letter issued by the IRS under § 501(c) of the Internal Revenue Code, if appropriate, or a letter from the national office of an organization indicating the applicant organization is in good standing and is currently covered by a group exemption ruling;

4. A copy of the organization's most recent annual financial statement and balance sheet;

5. A copy of the written lease or proposed written lease agreement and all other agreements if the organization rents or intends to rent the facility where bingo is or will be conducted. Information on the lease shall include name, address, phone number of the landlord, square footage and maximum occupancy of the building and the rental amount by each category of equipment or property rented; and

6. An authorization by an officer or other appropriate official of an organization to permit the commission to determine whether the organization has been investigated or examined by the Internal Revenue Service in connection with charitable gaming activities during the previous three years. This authorization will allow appropriate tax authorities to provide information relating to open or closed criminal investigations, civil examinations or other enforcement activity regarding the organization's involvement in charitable gaming, revocation of tax exempt status or other matters that may impact the issuance of a charitable gaming permit.

H. Copies of minutes of meetings of an organization and any contracts with landlords or suppliers to which the organization is, or may be a party, may be requested by the commission prior to rendering a permitting decision.

I. Copies of amendments to an organization's articles of incorporation, bylaws, charter, constitution or other organizing document, as they occur, shall be submitted to the commission.

J. Organizations applying to renew a permit previously issued by the commission shall submit articles of incorporation, bylaws, charter, constitution or other organizing document and IRS determination letter if there are any amendments or changes to these documents. The most recent financial statements, information on officers and an IRS tax waiver form shall also be filed with a renewal application.

K. Organizations may request permits to conduct joint bingo games as provided in § 18.2-340.29 of the Code of Virginia and special permits as provided in § 18.2-340.27 of the Code of Virginia:

1. In the case of a joint game between a volunteer fire department or rescue squad and an organization not exempt from permit requirements, both shall file the exempt notification form and permit application

respectively. Benefits extended by regulation or the Code of Virginia to a volunteer fire department or rescue squad shall not extend to a nonexempt organization solely due to operation of a joint game.

2. The nonrefundable permit fee for joint games shall be a total of \$200.

3. A single permit shall be issued in the names of both organizations conducting a joint game. All restrictions and prohibitions applying to single organizations shall apply to qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 of the Code of Virginia.

4. No charitable gaming shall be conducted prior to the issuance of a joint permit or joint exemption number.

5. Applications for joint games shall include an explanation of the division of manpower, costs and proceeds for the joint game.

L. An organization wishing to permanently change dates, times or locations of its charitable gaming shall request a change in the permit.

M. No more than six temporary changes in dates or times due to inclement weather, special events or holidays may be made in a permit year without a permanent change in the permit.

N. Change requests shall be made in writing at least 30 days in advance of the proposed effective date.

O. A nonrefundable fee of \$50, payable to the Treasurer of Virginia, shall be submitted with a request for a permanent permit change. The fee shall not be charged for temporary changes as described in subsection M of this section or to changes in permits due to an addition or removal of a charitable gaming activity.

P. An organization located in the Northern Virginia Planning District may sell raffle tickets for a drawing to be held in another state in the United States provided:

1. The raffle is conducted by the organization in conjunction with a meeting outside the Commonwealth of Virginia or with another organization which is licensed to conduct raffles outside the Commonwealth of Virginia.

2. The raffle is conducted in accordance with the laws of the state where the drawing is to be held.

3. The portion of the proceeds derived from the sale of raffle tickets in the Commonwealth is reported to the commission.

PART III.

CONDUCT OF GAMES, RULES OF PLAY, ELECTRONIC BINGO.

11 VAC 15-22-40. Conduct of bingo, instant bingo and raffles.

A. Organizations subject to these regulations shall post their permit or exempt authorization at all times on the premises where charitable gaming is conducted.

B. No individual shall provide any information or engage in any conduct that alters or is intended to alter the outcome of any charitable game.

C. Individuals under 18 years of age may play bingo provided such persons are accompanied by a parent or legal guardian. It shall be the responsibility of the organization to ensure that such individuals are eligible to play. At its option, an organization may adopt a house rule to limit the play of bingo to individuals age 18 or older.

D. Individuals under the age of 18 may sell raffle tickets for a qualified organization raising funds for activities in which they are active participants.

E. No individual under the age of 11 may participate in the management, operation or conduct of bingo games.

F. Individuals between the ages of 11 and 18 may participate in the conduct or operation of a bingo game provided the organization conducting such bingo games obtains and keeps on file written parental consent from the parent or legal guardian and verifies the date of birth of such youth.

G. Family members and surviving spouses of deceased bona fide members may participate as volunteer game workers.

H. All volunteer workers, including nonmember spouses, shall have in their possession a picture identification, such as a driver's license, while participating in the management, operation or conduct of a bingo game.

I. There shall be a game manager or person in charge present any time a bingo game is conducted.

J. Any organization selling instant bingo, pull-tab raffles or seal cards shall:

1. Maintain a supplier's invoice or a legible copy thereof on premises where gaming is conducted which reflects all deals in play, in storage or used at the location where instant bingo cards, pull-tab or seal card raffles are sold; and

2. Pay for instant bingo, pull-tab or seal card supplies only by a check drawn on the charitable gaming account of the organization.

K. A volunteer working a bingo session may receive complimentary food and nonalcoholic beverages for consumption on premises, provided the retail value of such food and beverages does not exceed \$5.00 for each session.

L. Individuals who are not members of an organization or are members who do not participate in any charitable gaming activities may be paid reasonable fees for preparation of financial reports.

M. Except for individuals identified in subsections K and L of this section and individuals allowed by law to be compensated for providing assistance to organizations for the deaf and blind, no free packs, discounts or remuneration in any other form shall be provided directly or indirectly to

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volunteers, members of their family or individuals residing in their household.

N. Individuals providing security for an organization's charitable gaming activity shall not participate in the charitable gaming activity as a player and shall not be compensated with charitable gaming supplies or with rentals of electronic bingo devices.

O. No organization shall award any prize money or any merchandise valued in excess of the following amounts:

1. No bingo door prize shall exceed \$25.
2. No regular bingo or special bingo game prize shall exceed \$100.
3. No instant bingo prize for a single card shall exceed \$500.
4. No bingo jackpot of any nature whatsoever shall exceed \$1,000 nor shall the total amount of bingo jackpot prizes awarded in any one calendar day exceed \$1,000.
5. No pull-tab card, when played as permitted in § 18.2-340.26 of the Code of Virginia, shall have a prize exceeding \$500.

The provisions of this subsection shall not apply to any bingo game in which all the gross receipts from players for that game up to \$1,000 are paid as prize money back to the players, provided there is no more than one such game per calendar day of play and the prize money from any such game does not exceed \$1,000, such games being commonly referred to as "winner-take-all" games.

P. Multiple bingo sessions shall be permitted in a single premises as long as the sessions are distinct from one another and are not used to advertise or do not result in the awarding of more in prizes than is permitted for a single qualified organization. All leases for organizations to conduct charitable gaming in a single premises shall be for sessions separated by an interval of at least one hour during which no instant bingo sales shall take place.

Q. Separate sessions at the same location shall require separate admission fees.

R. All bingo and instant bingo sales must occur within the time specified on the charitable gaming permit. In addition, instant bingo sales may occur as provided in subsection S of this section provided no such sales take place in the required one hour break between sessions.

S. Instant bingo cards shall only be sold in conjunction with a regular bingo session. No instant bingo sales shall take place for more than two hours before or after a session. If multiple sessions are held at the same location, no instant bingo sales shall be conducted during the required one hour break between sessions. The commission may take action if it believes that a regular bingo session is not legitimate or is being conducted in a manner such that instant bingo cards

are not being sold in conjunction with a normal, regular bingo session.

T. No charitable gaming shall be conducted by any organization on days, premises or at times other than those which are specified on the organization's permit or exempt authorization approved by the commission.

U. Only bona fide volunteers of qualified organizations may rent, exchange or otherwise provide electronic bingo devices to players.

V. A qualified organization shall conduct only bingo games listed on a game program for that session. The program shall list all games and prize amounts. If the prize amounts are determined by attendance or at the end of a game, the game program shall list the attendance required for the prize amount or the fact that prizes shall be determined at the end of a game.

W. A qualified organization selling instant bingo or pull-tab cards shall post a flare provided by the manufacturer at the location where such cards are sold.

X. Only qualified organizations shall advertise a bingo game. Providing players with information about bingo games through printed advertising is permitted, provided the name of the qualified organization shall be in a type size equal to or larger than the name of the premises, hall or the word "bingo." Printed advertisements shall identify the use of proceeds percentage reported in the past quarter or fiscal year.

Y. Raffles which award prizes based on a percentage of gross receipts shall use prenumbered tickets.

Z. The following rules shall apply to pull-tab dispensing devices:

1. A dispenser shall only be used at a location owned or leased by a qualified organization which holds a permit to conduct charitable gaming at that location. Only cards purchased by an organization to be used during the organization's charitable gaming activity shall be in the dispenser.
2. Keys to the dispensing area and coin/cash box shall be in the possession and control of the game manager or designee of the organization's board of directors at all times. Keys shall at all times be available at the location where the dispensing device is being used.
3. The game manager or designee shall provide keys to a commission representative for inspection upon request.
4. Only a volunteer game worker of an organization may stock the device, remove cash or pay winners' prizes.

11 VAC 15-22-50. Rules of play.

A. An organization may adopt "house rules" regarding conduct of the game, provided such rules are consistent with the provisions of the law and this chapter. "House rules"

shall be conspicuously posted or at an organization's option, printed on the game program.

B. The following rules of play govern the conduct of bingo games:

1. All players shall be physically present at the location where the balls for a bingo game are drawn to play the game or to claim a prize. Seal card prizes that can only be determined after a seal is removed or opened must be claimed within 30 days of the close of a deal. All other prizes must be claimed on the game date.
2. No random number generators shall be used in the conduct of bingo games.

C. The following rules of play shall govern the sale of instant bingo and pull-tab cards:

1. Cards shall not be sold to the public from the original packing box or container. Cards from the original packing box or container shall be mixed thoroughly before being sold by volunteers, dispensing machines or from other containers.
2. No cards which have been marked, defaced, altered, tampered with or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing shall be placed into play.
3. Winning cards shall have the winning symbol or number defaced or punched immediately after redemption by the organization's authorized representative.
4. An organization may commingle unsold cards with no more than one additional deal. The practice of commingling deals shall be disclosed to the public via house rules or in a similar manner.
5. If a deal is not played to completion and unsold cards remain, the remaining cards shall be sold on the next date the same type of ticket is scheduled to be sold. If no future date is anticipated, the organization shall, after making diligent efforts to sell the entire deal, consider the deal closed or completed. The unsold cards shall be retained in accordance with 11 VAC 15-22-70.

D. Individuals involved in the management, operation or conduct of charitable gaming may play bingo for any session they have worked provided they do not work a game after they have played in a given session. Such individuals may not purchase instant bingo, pull-tab or seal card products.

E. Electronic bingo.

1. Electronic bingo devices may be used by bingo players in the following manner:
 - a. Players must input into the device each number called;
 - b. Players must notify the game operator or caller of a winning pattern of bingo by a means other than use of the electronic device;

c. Players are limited to playing a maximum of 72 cardfaces per game on each device;

d. Electronic bingo devices shall not be reserved for players. Each player shall have an equal opportunity to use the available devices on a first come, first served basis;

e. Each player using an electronic bingo device shall possess a printed representation of all faces played or to be played by the device or a receipt with the organization name, date, time, number of cards played and device identification number. Images of cards or faces stored in an electronic device must be exact duplicates of the printed faces if faces are printed;

f. Commission representatives may examine and inspect any electronic bingo device and related system. Such examination and inspection shall include immediate access to the device and unlimited inspection of all parts and associated systems and may involve the removal of equipment from the game premises for further testing;

g. All electronic bingo devices must be programmed or enabled for play on the premises where the game will be played;

h. All electronic bingo devices shall be rented or otherwise provided to a player only by an organization and no part of the proceeds of the rental of such devices shall be paid to a landlord, his employee, agent or member of his immediate family; and

i. If a player's call of a bingo is disputed by another player or if a commission representative makes a request, one or more cards stored on an electronic bingo device shall be printed by an organization.

2. Players may exchange a defective electronic bingo device for another device provided the exchange does not take place while a game is in progress.

F. The following rules of play shall govern the conduct of raffles:

1. Before a prize drawing, each stub or other detachable section of each ticket sold shall be placed into a receptacle from which the winning tickets shall be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

2. All prizes shall be valued at fair market value.

PART IV.

BANK ACCOUNTS, RECORDKEEPING, FINANCIAL REPORTING, AUDITS, FEES.

11 VAC 15-22-60. Bank accounts.

A. Qualified organizations shall maintain a separate bank account for charitable gaming receipts.

B. All disbursements shall be made by check directly from a charitable gaming account or from a general fund account

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of the organization if charitable gaming funds are transferred to such an account.

C. Monthly bank statements and reconciliations shall be maintained for three years following the close of a fiscal year (September 30).

D. All receipts from each session of bingo games and instant bingo shall be deposited by the second business day following the session at which they were received.

E. Pull-tab and raffle proceeds shall be deposited at least once every calendar week.

11 VAC 15-22-70. Recordkeeping.

A. In addition to the records required by § 18.2-340.30 D of the Code of Virginia, qualified organizations conducting bingo shall maintain a system of records that documents and identifies:

1. Charitable gaming supplies purchased;
2. Charitable gaming supplies used;
3. Discounts provided;
4. Daily bingo reconciliation and instant bingo reconciliation;
5. Number of electronic bingo devices rented, unique serial numbers of such devices, number of faces sold by each unit and a summary report for each session to include date, time, location and detailed information on income and expenses;
6. Unused charitable gaming supplies that were destroyed. Destruction must be witnessed by two officers of the organization who shall sign and date the itemized list if the retail face value of supplies destroyed exceeds \$1,000 in a fiscal year; and
7. All operating expenses including rent, advertising and security. Copies of invoices for all such expenses shall be maintained.

B. Qualified organizations conducting raffles shall have a recordkeeping system to account for cash receipts, cash disbursements and raffle tickets purchased or sold and prizes awarded. All records shall be maintained for three years from the close of the fiscal year. The recordkeeping system shall include:

1. Invoices for the purchase of pull-tab raffle cards which shall reflect the following information:
 - a. Name and address of supplier;
 - b. Name of purchaser;
 - c. Date of purchase;
 - d. Invoice price for each deal;
 - e. Form number and name of card;
 - f. Serial numbers;

g. Quantity purchased; and

h. Sales price of cards.

2. A record of cash receipts from raffle ticket sales (other than pull-tabs) by tracking the total number of tickets available for sale, the number issued to sellers, the number returned, the number sold and reconciliation of all raffle sales to receipts;

3. Sequentially numbered tickets which shall state the name, address and telephone number of the organization, the prize or prizes to be awarded, the date of the prize drawing or selection, the selling price of the raffle ticket and the charitable gaming permit or exempt authorization number;

4. Receipts for all raffle prizes valued at \$500 or more on which prize winners must provide printed name, residence address and the amount and description of the prize received; and

5. Deposit records of the required weekly deposits of pull-tab raffle receipts.

C. All raffle tickets (except for pull-tab raffles) shall state the name and address of the organization, the prize or prizes to be awarded, the date of the prize drawing, the selling price of the ticket and the charitable gaming permit or exemption number. All such tickets shall be sequentially numbered. Winning tickets for prizes of \$500 and over and unsold tickets shall be maintained for three years from the close of the fiscal year.

D. Organizations shall maintain a complete set of records for each deal of pull-tab cards sold and a reconciliation of cash to determine gross receipts and prizes paid. The reconciliation must be performed at the close of each deal unless all pull-tabs are sold for the same price. In this event, a reconciliation shall be performed at least once every week.

E. Each organization shall prepare and maintain the following records for each session:

1. A Session Reconciliation Form and an instant bingo reconciliation completed and signed within 48 hours of the end of the session by the bingo manager;
2. An admissions control system that provides a cross-check on the number of players in attendance and admission sales. This may include a ticket control system, cash register or any similar system;
3. A reconciliation to account for cash received from floor workers for the sale of extra bingo sheets for any game; and
4. A record of all discounts exceeding \$2.00 per person given to customers may be required from organizations whose discounts for the previous fiscal year exceeded 1.0% of that fiscal year's gross receipts.

11 VAC 15-22-80. Financial reporting, penalties, inspections and audits.

A. Each charitable gaming permit holder shall file an annual report of receipts and disbursements by December 15 of each year on a form prescribed by the commission. The annual report shall cover the activity for the fiscal year. Volunteer fire departments and rescue squads shall file a commission-prescribed resolution of their board of directors by December 15 each year in lieu of the financial report.

B. The annual report shall be accompanied by the audit and administration fee as established by the commission for the fiscal year unless the fee has been remitted with quarterly reports.

C. An organization requesting an extension to file annual reports for good cause shall pay the audit and administration fee by December 15.

D. Qualified organizations realizing gross receipts in excess of \$50,000 in any calendar quarter shall file, in addition to its annual report, a quarterly report of receipts and disbursements on a form prescribed by the commission as follows:

<u>Quarter Ending</u>	<u>Date Due</u>
December 31	March 1
March 31	June 1
June 30	September 1
September 30	December 1

Quarterly reports shall be accompanied by the appropriate audit and administration fee. An annual financial report may not substitute for a quarterly report.

E. Organizations failing to file required reports, request an extension or make fee payments when due shall be charged a penalty of \$25 per day from the due date up to a maximum of \$750.

F. Any other qualified organization in possession of funds derived from charitable gaming (including those who have ceased operations) as of September 30 of any year, regardless of when such funds may have been received or whether it has a valid permit from the commission shall file an annual financial report on or before December 15 of each year until such funds are depleted. If an organization ceases the conduct of charitable gaming, it shall provide the commission with the name of an individual who shall be responsible for filing financial reports. If no such information is provided, the president of an organization shall be responsible for filing reports until all charitable gaming proceeds are depleted.

G. If an organization has been identified through inspection, audit or other means as having deficiencies in complying with statutory or regulatory requirements or having ineffective internal controls, the commission may impose restrictions or additional recordkeeping and financial reporting requirements.

H. The commission, at its option, may impose a penalty on any organization which fails to comply with provisions of the law or this chapter.

I. Any records deemed necessary to complete an inspection, audit or investigation may be removed by the commission, its employees or agents from the premises of an organization or any location where charitable gaming is conducted. The commission shall provide a written receipt of such records at the time of removal.

11 VAC 15-22-90. Use of proceeds.

A. All payments by an organization intended as use of proceeds:

1. Must be made by check written from the organization's charitable gaming account or the organization's general fund account; and
2. Must be for the future acquisition, construction, remodeling or improvement of real property or the acquisition of other equipment or vehicles to be used for religious, charitable, educational or community purposes.

Transfers to a special fund account may be included as a use of proceeds if the payment is made into a special fund account authorized by the board of directors or an irrevocable trust fund.

No payments made to the special fund account shall be withdrawn for other than the specified purpose unless prior notification is made to the commission.

B. Use of proceeds payments by an organization:

1. Shall not be made directly for the benefit of any individual member or shareholder of an organization or a person residing in the member's or shareholder's household. If any benefit derived by any officer, director, game manager or other member engaged in the management, operation or conduct of charitable gaming is greater than benefit available to any other individual, regardless of whether they are involved in the management, operation or conduct of charitable gaming, such benefit shall not qualify as a use of proceeds. The reduction of tuition, dues or any fees or payments as a result of a member or shareholder, or anyone in their household, working bingo games or raffles is prohibited.
2. Shall not be made for any activity which is not permitted by federal, state or local laws or for any activity which attempts to influence or finance directly or indirectly political parties or committees or the election or reelection of any person who is or has been a candidate for public office.

C. Organizations shall provide details of use of proceeds with the annual financial report.

D. Expenditures of charitable gaming funds for events, activities or programs which are open primarily to an organization's members and their families shall not qualify as

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use of proceeds unless substantial benefit to the community is demonstrated by an organization.

E. The commission or its employees may disallow a use of proceeds payment to be counted against the minimum percentage referred to in 11 VAC 15-22-20 D.

If any payment claimed as use of proceeds is subsequently disallowed, an organization may be allowed additional time as specified by the commission to meet minimum use of proceeds requirements.

PART V. RENT.

11 VAC 15-22-100. Requirements regarding renting premises, agreements and landlord participation.

A. No organization shall rent or use any leased premises to conduct charitable gaming unless all terms for rental or use are set forth in a written agreement and signed by the parties thereto prior to the issuance of a permit to conduct charitable gaming.

B. Organizations shall not make payments to a landlord except by check drawn on the organization's general fund or charitable gaming account.

C. No landlord, his agent or employee, member of his immediate family or person residing in his household shall make directly or indirectly a loan to any officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming of an organization in Virginia which leases its charitable gaming facility from the landlord.

D. No landlord, his agent or employee, a member of his immediate family or person residing in his household shall make any direct or indirect payment to any officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming conducted at a facility rented from the landlord in Virginia unless the payment is authorized by the lease agreement and is in accordance with the law.

E. No landlord, his agent or employee, person residing in the same household or member of his immediate family shall, at charitable games conducted on the landlord's premises:

1. Participate in the management, operation or conduct of any charitable games;
2. Sell, lease or otherwise provide any bingo supplies including, but not limited to, bingo cards, pull-tab cards, markers or other game pieces; or
3. Require as a condition of the lease or contract that a particular manufacturer, distributor or supplier of bingo supplies be used by the organization.

"Bingo supplies" as used in this chapter shall not include glue and tape sold from concession stands or from a location physically separated from the location where bingo supplies are normally sold.

F. If equipment or services are included by a landlord in any lease or contract, the lease or contract shall itemize the amount attributable to the rent of the premises, equipment and each service to be provided by the landlord.

G. No member of an organization involved in the management, operation or conduct of charitable gaming shall provide any services to a landlord or be remunerated in any manner by the landlord of the facility where an organization is conducting its charitable gaming.

PART VI. FACT-FINDING CONFERENCES, HEARINGS, APPEALS.

11 VAC 15-22-110. Procedural rules for the conduct of fact-finding conferences, hearings, appeals.

A. Fact-finding conference; notification, appearance, conduct.

1. Unless automatic revocation or immediate suspension is required by law, no authorization or permit to conduct charitable gaming shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for a fact-finding conference, as set forth in § 9-6.14:11 of the Administrative Process Act.

2. If a basis exists for a refusal to renew, suspend or revoke a permit or authorization, the commission shall notify, by certified mail or by hand delivery, the interested parties at the address of record maintained by the commission.

3. Notification shall include the basis for the proposed action and afford interested parties the opportunity to present written and oral information to the commission which may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations or suppliers who wish to waive their right to a conference shall notify the commission at least 14 days before the scheduled conference.

4. After consideration of evidence presented during an informal fact-finding conference, if a basis for action still exists, the interested parties shall be notified in writing within 60 days of the fact-finding conference, via certified or hand delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

B. Hearing; notification, appearance, conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend or revoke a permit or authorization, interested parties shall be notified by certified mail or hand delivery of the proposed action and of the opportunity for a hearing on the proposed action. If an organization desires to request a hearing, it shall

notify the commission within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to, or subsequent to, an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. *Hearing location.* Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the organization is located. Hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference or similar technology, in order to expedite the hearing process.

D. *Administrative Process Act.* The provisions of the Virginia Administrative Process Act shall apply.

E. *Hearing decisions.*

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.

2. The commission's executive secretary or his designee shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

F. *Agency representation.* The executive secretary's designee may represent the commission in an informal conference or at a hearing.

PART VII. REPORTING VIOLATIONS.

11 VAC 15-22-120. *Reporting violations.*

A. Unless otherwise required by law, the identity of any individual who provides information to the commission or its employees regarding alleged violations shall be held in strict confidence.

B. Any officer, director or game manager of a qualified organization shall immediately report to the commission any information pertaining to the suspected misappropriation or theft of funds or any other violations of the law.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension or revocation of a charitable gaming permit or authorization.

D. Any officer, director or game manager of a qualified organization involved in the management, operation or conduct of charitable gaming shall immediately notify the commission upon conviction of a felony or a crime of moral turpitude.

E. Failure to report information required by subsection D of this section by any officer, director or game manager of a qualified organization or supplier may result in the denial, suspension or revocation of a permit or authorization.

F. Any officer, director or game manager of a qualified organization involved in charitable gaming shall immediately report to the commission any change the Internal Revenue Service makes in the tax status of the organization, or if it is a chapter of a national organization covered by a group tax exempt determination, the tax status of the national organization.

NOTICE: The forms used in administering 11 VAC 15-22-10 et seq., Charitable Gaming Regulations, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Charitable Gaming Commission, 1030 Ninth Street Office Building, 200-202 North Ninth Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

Bingo/Raffle Application, CGC Form #201, eff. 6/97.

Exempt Organization - Notification, CGC Form #202, eff. 8/96.

Supplier Registration Certificate Application to Distribute Authorized Gambling Paraphernalia and Supplies, CGC Form #203, eff. 4/97.

Report of Sales to Charitable Gaming Organizations, CGC Form #103, rev. 4/97.

Financial Report for Year Ending 9/30/___, Form 101.

Financial Report for the Quarter Ending 6/30/97.

Financial Report for the Quarter Ending 9/30/97.

Financial Report for the Quarter Ending 12/31/97.

Financial Report for the Quarter Ending 3/31/98.

Suggested Bingo Daily Reconciliation Form, CGC Form #104, rev. 4/97.

Sample Instant Bingo/Seal Ticket Reconciliation Report, CGC Form #105, rev. 7/96.

Sample Instant Bingo/Seal Card Reconciliation Report, CGC Form #106, eff. 4/97.

Request for Extension for Filing the Annual Financial Report, CGC Form #117, eff. 10/97.

VA.R. Doc. No. R97-690; Filed July 30, 1997, 11:47 a.m.

Proposed Regulations

Title of Regulation: 11 VAC 15-31-10 et seq. **Supplier Regulations.**

Statutory Authority: §§ 18.2-340.15 and 18.2-340.18 of the Code of Virginia.

Public Hearing Dates:

August 19, 1997 - 7 p.m. (Roanoke)

September 9, 1997 - 7 p.m. (Norfolk)

September 17, 1997 - 7 p.m. (Annandale)

September 23, 1997 - 7 p.m. (Chester)

Public comments may be submitted until October 17, 1997.

(See Calendar of Events section for additional information)

Basis: Section 18.2-340.15 A of the Code of Virginia states that "The Charitable Gaming Commission is vested with control of all charitable gaming in the Commonwealth, with plenary power to prescribe regulations and conditions under which such gaming shall be conducted to ensure that it is conducted in a manner consistent with the purpose for which it is permitted."

Section 18.2-340.18 (4) of the Code of Virginia states that "The Commission shall promulgate regulations under which charitable gaming shall be conducted in the Commonwealth and all such other regulations that it deems necessary and appropriate to effect the purposes of this article. Such regulations may include penalties for violations."

Purpose: The proposed supplier regulations have been developed to ensure, in part, that conduct in violation of § 18.2-340.33 (prohibited practices) does not occur. Regulations establishing standards for the construction of paper bingo products, electronic devices and mechanical dispensing machines is a responsible use of the commission's plenary powers granted by § 18.2-340.15 of the Code of Virginia. The regulations seek to ensure that only products that conform to statutory definitions and requirements are used for gaming purposes in the Commonwealth.

The health and safety of the public is safeguarded through a regulatory program governing the activities of not only organizations involved in gambling enterprises, but those vendors providing the gaming supplies and equipment. Because of the vulnerability of charitable gaming funds and the potential abuses inherent in gambling operations, regulatory oversight of gambling operations and its related paraphernalia is a necessary governmental function. The supplier regulations will serve to standardize and control products used for gambling purposes as well as to provide oversight of those vendors providing these products.

Substance:

These supplier regulations were contained in the original interim regulations which were the subject of the Notice of Intended Regulatory Action (NOIRA) submitted to the Registrar on September 25, 1996. In the interest of clarity,

they have been separated from the charitable gaming regulations. The proposed supplier regulations will be effective January 1, 1998, and replace interim regulations now in effect.

The following areas were identified as ones which make changes to the current status of the law:

1. Registration certificates. Regulations concerning registration certificates are the result of changes to §§ 18.2-340.23, 18.2-340.24 and 18.2-340.25 of the Code of Virginia which, since July 1, 1996, govern permitting requirements for companies selling charitable gaming supplies. The regulations set forth a process for applications for supplier registration certificates.

Regulations concerning registration certificates also set forth a process for the commission to follow in conducting a reasonable investigation prior to the issuance of a certificate as required in § 18.2-340.25 B of the Code of Virginia.

The regulations propose an investigation of a supplier to determine whether any owner, officer, manager, employee or person owning 10% or greater interest in the organization has ever been convicted of, pled guilty or nolo contendere to any felony or gambling crime or if they have ever had a permit or certificate suspended or revoked in another jurisdiction.

Additionally, no supplier can be issued a certificate if the supplier is delinquent for more than one year in the payment of taxes to the Commonwealth. This conforms with the statutory requirement of § 18.2-340.34 B of the Code of Virginia.

2. Electronic devices. Electronic bingo devices are new to Virginia as a result of the Charitable Gaming law enacted by the 1997 session of the General Assembly. These electronic devices are small keypads and monitors that display a facsimile of bingo cards. They can be programmed to hold and play as many as 300 bingo cards at a time. Specific rules for playing with an electronic device are needed to prevent players who are using them to gain an overwhelming advantage over regular bingo players. Unregulated use of the devices could adversely skew the prize opportunities to the electronic player. The regulations also seek to prevent abuses in the use of these systems by limiting the number of cards to be played to 72 and to establish regulations controlling the distribution of these units to players.

The commission is directed by § 18.2-340.19 of the Code of Virginia to define electronic devices. These electronic device standards are established in the regulations for suppliers. Since these devices are new to Virginia, it is difficult to determine what protections should be in place to deter the misuse of these units. The enumerated standards address basic controls for the use of these units.

Basic concerns include ensuring that the suppliers provide equipment that prevents players from creating their own cards, that requires players to manually input the called numbers (to prevent the card from being played electronically), that each unit has a permanent serial number, that each system have sequential audit tracking numbers and that a system produces a detailed transaction log. The regulations also reserve the right of the commission to have the machines inspected and tested at random to ensure compliance. The cost of this testing will be born by the manufacturer of the device.

3. Pull-tab dispensers. Pull-tab dispensing machines are coin-operated units that dispense instant bingo or pull-tab tickets. The units are similar to dispensing machines the Lottery uses to sell instant lottery tickets in some locations. The commission is directed by § 18.2-340.19 of the Code of Virginia to define pull-tab dispensers.

These dispenser standards are established in the regulations for suppliers. The objective of the regulations is to establish parameters under which it would be extremely difficult to tamper with their operation of the unit. The regulations also seek to minimize the resemblance of the operation of the instant pull-tab device from the operations of slot machines. The regulations also reserve the right of the commission to have the machines inspected and tested at random to ensure compliance.

4. Construction and randomization standards. Construction and randomization standards for bingo, instant bingo and pull-tab cards are provisions in these regulations that are not codified in the current statute. In order to enhance integrity, accountability and control over supplies used in charitable gaming, the regulations follow guidelines developed by other states and the North American Gaming Regulators Association (NAGRA) and are considered to be existing industry standards.

Issues: The advantages for the public in implementing these regulations would be threefold. First, the regulations create a "level playing field" for all suppliers by standardizing the products that may be used in charitable gaming activities. Suppliers and suppliers were not subject to regulation under previous versions of the statute.

Secondly, the regulations provide an element of consistency in regulatory requirements and enforcement that local jurisdictions did not have the resources to provide. Finally, these regulations help restore the integrity of charitable gambling to the public by allowing game operators to deal only with reputable vendors who have been issued a certificate to operate by the commission and to purchase only gaming supplies that conform to Virginia statutory requirements.

The commission does not believe that the public will suffer any disadvantages from the implementation of these regulations.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation adopts standards for the supply of gaming products as developed by the North American Gaming Regulators Association (NAGRA). These standards will ensure the quality and consistency of gaming products. It sets forth procedures for fact-finding conferences, hearings, appeals, and for reporting violations.

Estimated economic impact. The substantive amendments in this regulation include:

1. Establishing a process for applying for supplier registration certificates;
2. Instituting a background check to determine if any person with more than 10% ownership has a prior criminal record;
3. Establishing construction and randomization standards for gaming equipment;
4. Establishing procedures for fact-finding conferences, hearings, appeals, and reporting violations.

The regulations seek to provide uniform standards for various products used in charitable games such as bingo and raffles. Compared to the old system of no standards, this regulation should bring some uniformity and integrity to the gaming industry. It would be extremely difficult for operators and especially consumers to assess accurately the randomization of a piece of gaming equipment. A lack of confidence in the "fairness" of gaming equipment could greatly reduce demand for gaming services. Under the proposed regulations, operators and consumers will be in a better position to evaluate the quality of gaming services purchased. This increased consumer confidence should increase demand for gaming services and increase the charitable income. However, the full economic impact of these rules cannot be accurately accessed until more data is available. For example, it is not known whether these new rules will increase the costs of gaming equipment. If so, then the gain from these rules would be reduced accordingly. It would be advantageous for the commission to collect the information needed to facilitate a more detailed economic analysis of the impact of these in the future.

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Businesses and entities affected. Game operators, suppliers, and charities will be affected by this regulation. This proposal should increase the demand for gaming services which will increase the profits to operators and the charitable income. The magnitude of this change cannot be accurately forecast on the basis of the information now available.

Localities particularly affected. No particular localities will be uniquely affected by this regulation.

Projected impact on employment. There will be no measurable impact on employment as a result of this regulation.

Effects on the use and value of private property. Any effect on the use or value of private property will be too small to measure.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Commission staff believe that the Department of Planning and Budget's economic impact analysis will be borne out as more time is spent under state regulation of this activity.

Summary:

These regulations are intended to replace the current supplier interim regulations which expire December 31, 1997. These regulations prescribe construction and other standards for charitable gaming supplies and products and state the rules relating to conduct of business by suppliers in the Commonwealth of Virginia.

CHAPTER 31. SUPPLIER REGULATIONS.

11 VAC 15-31-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Address of record" means an address provided to the commission on a registration certificate application or the most recent address on the commission files.

"Bingo equipment and video systems" includes equipment which facilitates the conduct of charitable gaming such as ball blowers, flashboards, TV monitors, cameras, smoke eaters, P.A. systems, tables and chairs, electronic verifiers and replacement parts for such equipment.

"Board of directors" means the board of directors, managing committee or other supervisory body of a qualified organization.

"Bundled pull-tabs" means certain pull-tabs, commonly referred to as "jar tickets," "guppies," etc., which are taped or stapled together and sold as one unit.

"Calendar day" means the period of 24 consecutive hours commencing at 12:01 a.m. and concluding at midnight.

"Calendar week" means the period of seven consecutive calendar days commencing at 12:01 a.m. on Sunday and ending at midnight the following Saturday.

"Cash" means United States currency or coinage.

"CGC number" means a unique identification number issued by the commission.

"Commission" means the Virginia Charitable Gaming Commission.

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names such as "Tear-open," "Bonanza Bingo," "Bullseye" and "Fortune Card."

"Daubing" means covering a square containing a number called with indelible ink or otherwise concealing the number on a card or an electronic facsimile of a card.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tab raffle or seal cards with the same serial number.

"Designator" means an object used in the number selection process, such as a ping-pong ball, upon which bingo letters and numbers are imprinted.

"Disposable paper card" means a nonreusable paper bingo card manufactured with preprinted numbers.

"Electronic bingo device" means an electronic device which displays facsimiles of bingo cards and allows a player to daub such cards.

"Electronic verification" means the verification of bingo by entering the free space number of the winning bingo card into computer equipment which contains preprogrammed software for this purpose.

"Fiscal year" or "annual reporting period" means the 12-month period beginning October 1 of any given year and ending September 30 of the following year.

"Flare" means a piece of paper, cardboard or similar material which bears printed information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, the number of prizes to be awarded and the specific prize amounts in a deal of instant bingo, pull-tab or seal cards.

"Free space number," "perm number," "center number," "card number" or "face number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

"Game program" means a written list of all games to be played and prize amounts to be paid during a session for each game, where prize amounts are fixed or are based on attendance.

"Immediate family" means one's spouse, mother, father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law, father-in-law or stepchild.

"Interested parties" means the owner, director, officer or partner of an entity engaged in supplying charitable gaming supplies to organizations.

"Management," "operation" or "conduct" means the provision of oversight and supervision, check writing or approval authority for charitable gaming funds, purchase authority for charitable gaming supplies, service as a volunteer worker or assistant or negotiation of contracts or leases.

"Manufacturer" means a person who assembles from raw materials or subparts a completed piece of bingo or other charitable gaming equipment or supplies. "Manufacturer" also means a person who modifies, converts, adds or removes parts to or from bingo or other charitable gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

"Owner" means any individual with financial interest of 10% or more in a supplier.

"Packet" means sheets of bingo paper assembled in the order of games to be played. This may or may not include specials, winner-take-alls and jackpots.

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

"Prize" means cash, merchandise, certificate or other item of value awarded to a winning player.

"Progressive seal card game" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Pull-tabs" means individually prepackaged cards made completely of paper or paper products with winners being determined by the appearance of preprinted concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses.

"Random selection" or "randomly selected" means a process of selecting number designators to produce random numbers during a bingo game in which each designator or number in the remaining population has an equal chance or probability of being selected.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number which contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter or symbol located on that board or placard.

"Selection device" means a manually or mechanically operated device to randomly select bingo numbers.

"Serial number" means a unique number printed by the manufacturer on each bingo card in a set or each instant bingo or pull-tab card in a deal.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards or bingo hard cards. A 9000 series, for example, has 9000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted by a single qualified organization, or when approval for joint operation is obtained, by two or more qualified organizations, that begins with the selection of the first ball for the first game and ends with the selection of the last ball for the last game.

"Set" means the bingo cards contained within each series number.

11 VAC 15-31-20. Suppliers of charitable gaming supplies: application, qualifications, suspension, revocation or refusal to renew certificate; maintenance and production of records.

A. Prior to providing any charitable gaming supplies, a supplier shall submit an application on a form prescribed by the commission and receive a registration certificate. A \$500 application fee payable to Treasurer of Virginia is required. Provisional registration certificates valid for no more than 180 days may be issued by the commission if the background investigation is not completed. The actual cost of background investigations for a registration certificate may be billed by the commission to an applicant. The commission shall act on an application within 90 days of the date of the application.

B. The commission may refuse to register a supplier or may suspend or revoke a registration certificate if an officer, director, employee, agent or owner:

1. Is operating without a valid license, permit or certificate as a supplier or manufacturer in any state in the United States;
2. Fails or refuses to recall a product as directed by the commission;
3. Conducts business with unauthorized entities in the Commonwealth of Virginia;
4. Has been convicted of a crime of moral turpitude or has violated the gambling laws of any state or province in the United States or Canada. As this provision relates to employees or agents, it shall only apply to individuals involved in sales to or solicitations of customers in the Commonwealth of Virginia; or
5. Has been engaged in conduct that would compromise the commission's objective of maintaining the highest level of integrity in charitable gaming.

C. A supplier shall not sell, offer to sell or otherwise provide charitable gaming supplies for use by anyone in the Commonwealth other than to an organization with a permit or exemption number from the commission or another registered supplier. However, a supplier may:

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1. Sell charitable gaming supplies to an organization which expects to gross less than \$25,000 in a fiscal year.

For each such organization, the supplier shall maintain the name, address and telephone number. The supplier shall also obtain a written statement from an officer or game manager of such organization confirming that gross receipts are expected to be less than \$25,000. Such statement shall be dated and kept on file for three years from the end of a fiscal year.

2. Sell bingo cards, paper and related supplies such as daubers to persons or entities other than qualified organizations provided such supplies shall not be sold or otherwise provided for use in charitable gaming activities regulated by the commission or in unlawful gambling activities. Payment for such sales in excess of \$50 shall be accepted in the form of a check. Suppliers shall maintain records of these sales and provide them to the commission upon request.

This provision shall not apply to the sale to landlords of bingo equipment and video systems as defined in this chapter. Bingo equipment shall not include dispensing devices and electronic bingo devices.

D. A supplier shall not sell, offer to sell or otherwise provide charitable gaming supplies to any individual or organization in the Commonwealth unless the charitable gaming supplies are purchased or obtained from a manufacturer or another registered supplier. No supplier shall accept payment for the sale of charitable gaming supplies in the Commonwealth except by a check drawn on the charitable gaming account. This requirement shall not apply to sales of \$50 or less made under subdivision C 2 and to sales by one registered supplier to another. Suppliers may take back for credit and resell supplies received from an organization with a permit or exempt authorization which has ceased charitable gaming or is returning supplies not needed.

E. No supplier, supplier's agent, employee, member of the supplier's immediate family or person residing in the same household as a supplier may be involved in the management, operation or conduct of charitable gaming of any customer of the supplier in the Commonwealth.

F. The commission shall conduct a background investigation prior to the issuance of a certificate to any supplier. The investigation may include, but shall not be limited to, the following:

1. A search of the Virginia Central Criminal Records Exchange (CCRE) on all officers, directors and owners; and
2. Verification of current compliance with Commonwealth of Virginia state tax laws.

G. Appropriate information and authorizations shall be provided to the commission to verify information cited in subsection F of this section.

H. Suppliers shall document each sale of charitable gaming supplies to an organization in the Commonwealth on an invoice which reflects the following:

1. Name and address of the organization;
2. Date of sale and location where bingo supplies are shipped if different from the billing address;
3. Name, form number and serial number of each deal of instant bingo or pull-tab raffle cards or bundles and the number of cards in each deal;
4. Quantity of deals sold, the organization's cost per deal and selling price per card;
5. Serial number of the top sheet in each packet of disposable bingo paper, the number of sheets in each packet or pad, the cut and color and the number of pads sold;
6. Serial number for each series of uncollated bingo paper and the number of sheets sold;
7. Detailed information concerning the type, quantity and individual price of any other charitable gaming supplies or related items including, but not limited to, concealed face bingo cards, hard cards, markers or daubers and refills. For concealed face bingo cards, the number of sets, price per set and the serial number of each set shall be included; and
8. Any type of equipment, device or product manufactured for or intended to be used in the conduct of charitable games including, but not limited to, designators, designator receptacles, number display boards, selection devices, dispensing machines and verification devices.

I. Suppliers shall ensure that two copies of the detailed invoice are provided to the customer for each sale of charitable gaming supplies.

J. Each supplier shall provide a report to the commission by January 1 of each year on sales of charitable gaming supplies for the fiscal year ending September 30 of the previous year to each organization in the Commonwealth. Reports shall include the name and address of each organization; its CGC number; the sales (in dollars) of bingo paper, instant bingo cards, pull-tabs, seal cards, daubers, tape and other supplies; and rental fees and sales of electronic bingo devices. For sales of instant bingo cards, pull-tabs and seal cards, the records shall also indicate the name, form number, selling price per ticket and serial number of each deal or box of instant bingo or pull-tab raffle cards and the number of tickets in each deal. This report may be provided to the commission on paper, computer disk or other commission-approved media.

K. The commission shall have the right to set manufacturing and testing criteria for all electronic and mechanical equipment used in the conduct of charitable gaming. If any such equipment does not meet the criteria, it

shall be recalled. The cost of testing shall be borne by the manufacturer of such equipment.

L. Commission employees or agents shall have the right to inspect all electronic and mechanical equipment used in the conduct of charitable gaming.

M. Suppliers, their agents and employees, members of the supplier's immediate family or persons residing in their household shall not make any loan directly or indirectly to any organization or officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming of a supplier's customer located in the Commonwealth.

N. No supplier or supplier's agent or employee shall directly or indirectly provide a rebate, discount or refund to any person other than an organization which purchases supplies or leases or purchases equipment from the supplier. All such transactions shall be recorded on the supplier's account books.

O. A supplier shall not rent, sell or otherwise provide electronic bingo devices unless he possesses a valid registration certificate in the Commonwealth.

P. A written agreement specifying the terms of lease or rental shall be required for any electronic bingo devices provided an organization.

11 VAC 15-31-30. Construction and other standards for bingo, instant bingo, pull-tabs, raffles; electronic bingo devices and pull-tab dispensers.

A. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use bingo supplies unless they conform to the following construction standards:

1. Disposable paper sold shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading, bleeding or otherwise obscuring other numbers or cards.
2. Each sheet of disposable bingo paper shall be comprised of cards bearing a serial number. No serial number shall be repeated on or in the same style, series and color of cards within a one-year period.
3. Disposable bingo paper assembled in books or packets shall not be separated except for single-sheet specials. This provision does not apply to two-part cards on which numbers are filled by players and one part is separated and provided to an organization for verification purposes.
4. Each carton of disposable bingo paper shall have an exterior label listing the following information:
 - a. Type of product;
 - b. Number of booklets or loose sheets;
 - c. Series numbers;
 - d. Serial number of the top sheet;

- e. Number of cases;
- f. Cut of paper; and
- g. Color of paper.

B. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use instant bingo, pull-tab or seal cards unless they conform to the following construction standards:

1. Cards shall be constructed so that concealed numbers, symbols or winner protection features cannot be viewed or determined from the outside of the card by using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.
2. Deals shall be designed, constructed, glued and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.
3. Each card in a deal shall bear the same serial number. Only one serial number shall be used in a deal. No serial number used in a deal shall be repeated by the same manufacturer on that same manufacturer's form within a three-year period. The flare of each deal shall accompany the deal and shall have affixed to it the same serial number as the tickets in such deal.
4. Numbers or symbols on cards shall be fully visible in the window and shall be placed so that no part of a number or symbol remains covered when the tab is removed.
5. Window slits on each card shall be perforated on the three cut sides. Cards shall be glued on all four edges and between each window. Glue shall be of sufficient strength and type to prevent the undetectable separation or delamination of the card.
6. The following minimum information shall be printed on a card:
 - a. Break open pull-tab, instant bingo cards:
 - (1) Name of the manufacturer or its distinctive logo;
 - (2) Name of the game;
 - (3) Manufacturer's form number;
 - (4) Price per individual card or bundle, unless accompanied by a flare with that information;
 - (5) Unique minimum five-digit game serial number printed on the game information side of the card; and
 - (6) Number of winners and respective winning number or symbols and specific prize amounts, unless accompanied by a publicly posted flare with that information.
 - b. Banded pull-tabs:

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- (1) Manufacturer;
- (2) Serial number; and
- (3) Number of winners and respective winning numbers or symbols and prize amounts, or a publicly posted flare giving that information.

C. No organization shall use raffle tickets (other than pull-tab cards) independent of a bingo game unless they conform to the following construction standards:

- 1. Each ticket shall have a detachable section and shall be consecutively numbered.
- 2. Each section of a ticket shall bear the same number. The section retained by the organization shall provide space for the purchaser's name, complete address and telephone number.
- 3. The following information shall be printed on the purchaser's section of each ticket:
 - a. Dates and times of drawings;
 - b. Locations of the drawings;
 - c. Name of the charitable organization conducting the raffle;
 - d. Price of the ticket;
 - e. Charitable Gaming Commission permit or exemption number; and
 - f. Prizes.

D. Electronic bingo.

- 1. At any time, the commission, at its discretion, may require testing at the manufacturer's expense of electronic bingo devices as a condition of use.
- 2. All electronic bingo devices shall be programmed or enabled for play on the premises where the game is to be played.
- 3. Each electronic bingo device shall have a unique identification number permanently coded into the software of such device.
- 4. Electronic bingo devices shall not allow a player to create a card by the input of specific numbers on each card.
- 5. Electronic bingo devices shall not accept cash, currency or tokens for play.
- 6. Electronic bingo devices shall require the manual entry of numbers as they are called.
- 7. A device shall not allow the play of more than 72 cards per game.
- 8. The electronic bingo device system shall record a sequential transaction number or audit tracking number for each transaction. The system shall not allow the manual resetting or changing of this number.

9. The system shall produce a receipt and a transaction log containing the following:

- a. Organization name;
- b. Location of bingo game;
- c. Sequential transaction or receipt number;
- d. Number of electronic bingo cards loaded;
- e. Cost of electronic bingo cards loaded;
- f. Electronic device number issued to a player; and
- g. Date and time of the transaction.

In addition, the system shall produce a summary report identifying the date and time of the report, voided transactions and total gross receipts for each session.

10. Each device shall be programmed to automatically erase all stored electronic cards at the end of the last game of a session or within a set time from their rental to a player.

11. All devices shall be reloaded with another set of cards at the beginning of each session if the devices are to be reused at the same location.

E. In instances where a defect in packaging or in the construction of deals or electronic devices is discovered by or reported to the commission, the commission shall notify the manufacturer of the deals or devices containing the alleged defect. Should the commission, in consultation with the manufacturer, determine that a defect exists, and should the commission determine the defect affects game security or otherwise threatens public confidence in the game, the commission may, with respect to deals or electronic devices for use still located within the Commonwealth, require the supplier to:

- 1. Recall the deals or electronic devices affected that have not been sold or otherwise provided; or
- 2. Issue a total recall of all affected deals or electronic devices.

F. No pull-tab dispenser may be sold, leased or otherwise furnished to any person or organization in the Commonwealth or used in the conduct of charitable gaming unless the device meets standards approved by the commission. In addition, suppliers and manufacturers of such dispensers shall comply with the requirements of The Gambling Devices Act of 1962 (15 USC §§ 1171-1178).

G. All pull-tab dispensing devices must meet the following standards:

- 1. Each dispenser shall be manufactured in a manner that ensures a pull-tab ticket is dispensed only after insertion of United States currency or coinage into the dispenser. Such ticket and any change due shall be the only items dispensed from the machine.

2. Each dispenser shall be manufactured in a manner that ensures the device neither displays nor has the capability of displaying or otherwise identifying a pull-tab as a winning or nonwinning ticket.

3. Each dispenser shall be manufactured in such a manner that any visual animation does not simulate or display rolling or spinning reels or produce audible music or enhanced sound effects.

4. Each dispenser shall be equipped with separate locks for the pull-tab supply modules and money boxes. Locks shall be configured so that no one key will operate both the supply modules and money boxes.

H. No dispensing devices shall be linked to other such devices so as to permit the play of progressive games.

I. The commission may test a dispensing device at any time to ensure that it meets construction standards and allows for fair play. Such tests shall be conducted at the cost of the manufacturer of such devices.

J. The face value of cards being dispensed shall match the amount deposited in the currency/coin acceptor less change provided.

11 VAC 15-31-40. Instant bingo and pull-tab randomization standards.

All instant bingo and pull-tab cards shall meet the following randomization standards:

1. Deals shall be assembled so that winning tickets are placed throughout each deal.

2. Deals shall be assembled and packaged in a manner that prevents isolation of winning cards due to variations in printing, graphics, colors, sizes, appearances of cut edges or other markings of cards.

3. Winning cards shall be distributed and mixed among all other cards in a deal so as to eliminate any pattern between deals or portions of deals from which the location or approximate location of any winning card may be determined.

11 VAC 15-31-50. Procedural rules for the conduct of fact-finding conferences, hearings, appeals.

A. Fact-finding conference; notification, appearance, conduct.

1. Unless automatic revocation or immediate suspension is required by law, no certificate to sell charitable gaming supplies shall be denied, suspended or revoked except upon notice stating the basis for such proposed action and the time and place for a fact-finding conference, as set forth in § 9-6.14:11 of the Administrative Process Act.

2. If a basis exists for a refusal to renew, suspend or revoke a certificate, the commission shall notify, by certified mail or by hand delivery, the interested parties at the address of record maintained by the commission.

3. Notification shall include the basis for the proposed action and afford interested parties the opportunity to present written and oral information to the commission which may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations or suppliers who wish to waive their right to a conference shall notify the commission at least 14 days before the scheduled conference.

4. After consideration of evidence presented during an informal fact-finding conference, and if a basis for action still exists, the interested parties shall be notified in writing within 60 days of the fact-finding conference, via certified or hand-delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

B. Hearing; notification, appearance, conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend or revoke a certificate, interested parties shall be notified by certified or hand-delivered mail of the proposed action and of the opportunity for a hearing on the proposed action. If a supplier desires to request a hearing, it shall notify the commission within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to or subsequent to an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the supplier is located. Hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference or similar technology, in order to expedite the hearing process.

D. Administrative Process Act. The provisions of the Virginia Administrative Process Act shall apply.

E. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or bases for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.

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2. The commission's executive secretary or his designee shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

F. Agency representation. The executive secretary's designee may represent the commission in an informal conference or at a hearing.

11 VAC 15-31-60. Reporting violations.

A. Unless otherwise required by law, the identity of any individual who provides information to the commission or its employees regarding alleged violations shall be held in strict confidence.

B. Any officer or director of a supplier, or his agent or employee, shall immediately report to the commission any information pertaining to the suspected misappropriation or theft of funds or any other violations of the law.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension or revocation of a certificate of registration.

D. Any officer, director, partner or owner of a supplier shall immediately notify the commission upon conviction or plea of nolo contendere to a felony or a crime involving gambling or an action against any license or certificate held by the supplier in any state in the United States.

E. Failure to report information required by subsection D of this section by any supplier may result in the denial, suspension or revocation of a registration certificate.

VA.R. Doc. No. R97-691; Filed July 30, 1997, 11:47 a.m.

BOARD OF CONSERVATION AND RECREATION

Title of Regulation: 4 VAC 3-20-10 et seq. Stormwater Management Regulations (amending 4 VAC 3-20-10, 4 VAC 3-20-30 through 4 VAC 3-20-60, 4 VAC 3-20-90, 4 VAC 3-20-120 and 4 VAC 3-20-210 through 4 VAC 3-20-250; adding 4 VAC 3-20-71, 4 VAC 3-20-81, 4 VAC 3-20-85, 4 VAC 3-20-86, 4 VAC 3-20-101, 4 VAC 3-20-111, 4 VAC 3-20-121, 4 VAC 3-20-131, 4 VAC 3-20-141, 4 VAC 3-20-241 and 4 VAC 3-20-245; repealing 4 VAC 3-20-20, 4 VAC 3-20-70, 4 VAC 3-20-80, 4 VAC 3-20-100, 4 VAC 3-20-110, 4 VAC 3-20-120, 4 VAC 3-20-130 through 4 VAC 3-20-200, and 4 VAC 3-20-240).

Statutory Authority: § 10.1-603.4 of the Code of Virginia.

Public Hearing Dates: September 4, 1997 - 7 p.m.
September 9, 1997 - 7 p.m.
September 10, 1997 - 7 p.m.
September 11, 1997 - 7 p.m.

Public comments may be submitted until 5 p.m. on October 22, 1997.

(See Calendar of Events section for additional information)

Basis: Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia provides the basis for these regulations. Specifically, § 10.1-603.4 of the Code of Virginia directs the Board of Conservation and Recreation to promulgate regulations which specify technical criteria and administrative procedures for stormwater management programs in Virginia.

Purpose: The purpose of the proposed amendments is to provide flexibility for local government adoption of stormwater management technical criteria in order to better meet the specific needs of the locality, and to provide consistent stormwater runoff quality criteria among the three state agencies involved in the management of stormwater. The regulations protect life and property against the degradation of land and water resources in the form of water pollution, stream channel erosion, depletion of groundwater resources, and more frequent local flooding--impacts that adversely affect fish, aquatic life, recreation, shipping, property values and other uses of lands and waters.

Substance: These proposed amendments to the Virginia Stormwater Management Regulations provide flexibility for local governments to choose to adopt individual technical components of a stormwater management program, as allowed by the Virginia Stormwater Management Act, while still requiring certain minimum administrative procedures and long-term maintenance of stormwater control devices.

The proposed amendments add a performance-based stormwater quality enhancement criteria to the existing technology-based criteria. The addition of a performance-based criteria allows for innovation in design solutions when complying with the regulations. These dual criteria allow for the consolidation of the stormwater runoff quality related technical requirements of the Department of Conservation and Recreation, the Department of Environmental Quality, and the Chesapeake Bay Local Assistance Department.

Issues: There are two significant advantages which will result from this regulatory action. First is the increased flexibility for local government adoption of a comprehensive stormwater management program pursuant to the Virginia Stormwater Management Act. This will result in more administrative and technical consistency among local stormwater management programs across the Commonwealth, as well as provide a simpler and more comprehensive umbrella of enabling authority under which to operate all of the components of a local stormwater program rather than the fragmented enabling legislation (subdivision, zoning, public health, etc.) under which many local stormwater programs currently operate.

Second is the consolidation of stormwater runoff quality technical criteria among the three state agencies involved in the regulation of stormwater quality. This will help eliminate the potential for duplicative and possibly conflicting reviews and approvals required of certain land development projects by more than one state agency, as well as eliminate conflicting stormwater quality technical criteria being

mandated by the Commonwealth to local governments for the approval of certain private land development projects.

There are no known disadvantages to the general public, localities, or the Commonwealth arising from these proposed regulation amendments.

Impacts: The impact of this regulatory action will not result in increased costs or manpower requirements for implementation or compliance. Compliance with the existing regulation is optional for local governments and mandatory for state agencies. These amendments do not change this status, nor do they increase mandatory technical or administrative requirements for compliance over current levels.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. This proposal has three main elements:

1. To consolidate the stormwater runoff quality technical criteria among the three state agencies involved in the regulation of stormwater quality, and
2. To increase the flexibility of local governments in adopting a comprehensive Stormwater Management Program (SMP) pursuant to the Virginia Stormwater Management Act,
3. To add a performance-based stormwater quality enhancement criteria to the existing technology-based criteria.

Estimated economic impact. Consolidation of technical criteria among state agencies: Under the current rules, the technical requirements for the management of stormwater runoff quality has been the responsibility of three separate state agencies: the Department of Conservation and Recreation (DCR), the Department of Environmental Quality (DEQ), and the Chesapeake Bay Local Assistance Department (CBLAD). The CBLAD standards are directed at controlling the impact of runoff on water quality in the Chesapeake Bay watershed. All localities in the Chesapeake Bay Local Assistance Area are required to meet these standards. DCR stormwater regulations also address water quality impacts of runoff but also address runoff quantity and flood control problems. DEQ's current regulations are based

on the Virginia Pollution Discharge Elimination System (VPDES) permits. VPDES stormwater permits provide water quality monitoring information for DEQ, and there are pollution prevention requirements in the DEQ regulations.

Inconsistencies between the DCR and CBLAD standards may have led to increased costs of compliance for both localities and for state agencies. In the case of localities, these inconsistencies may have given rise to a reluctance to implement DCR's voluntary stormwater management program. For example, a locality in the bay watershed may wish to implement a SMP that satisfies the DCR regulations. That locality is required to meet the CBLAD standards. Differences between the DCR and CBLAD standards could make it difficult or costly to meet the requirements of both agencies. One distinct benefit of having the responsible agencies agree on a single standard is that localities will only have to evaluate the impact of the single technical standard. Previously, a locality might have to evaluate different technical criteria and choose the set with the most stringent controls.

The previous discussion implies that there may be some reduction in the average stringency of stormwater quality standards actually applied by localities. If, under the current regulations, localities had to comply with the most stringent applicable rule, then unless the proposed standards are the most stringent of those previously applied, there could be a reduction in average stringency.

The economic value of this change cannot be reliably estimated at this time. Much will depend on how much of the damage to water quality is felt by the community where the runoff occurs and how much of the damage, if any, occurs downstream. Where the damages occur locally, the local community has substantial incentive to control runoff quality. Where the damages occur downstream, a community has incentive to underregulate local runoff since the damages are not felt locally. Since, under most circumstances, much of the damage from low quality stormwater runoff will occur downstream, it is likely that most communities will select the least stringent control standard available. Thus, we would expect this proposed change in the regulations would result in a tradeoff between administrative costs and stormwater quality, quantity and flooding. The magnitude of this tradeoff cannot be reliably estimated at this time.

There is a potential difficulty with the consolidation of the DCR and CBLAD stormwater quality standards. It is somewhat unclear what would happen when a locality required to have a SMP under CBLAD rules promulgates a comprehensive SMP under the DCR rules. DCR has indicated that it would have a responsibility for evaluating and periodic monitoring of the locality's compliance with its SMP but that CBLAD will also have enforcement responsibilities concerning the SMP in that locality. Thus, a locality in the bay watershed that chooses to implement an SMP that satisfies DCR regulations would find itself subject to enforcement of the same program by two different agencies.

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The DCR and CBLAD programs have somewhat different purposes and different consequences for localities even after the technical criteria have been standardized. We would recommend that these rules from DCR and the regulations expected from CBLAD implementing the uniform technical standards clearly delineate the responsibilities of the two agencies. It is important to eliminate the possibility that localities could “shop around” for the agency that will give them the most favorable interpretation of the new performance standards. The performance standards will be discussed in somewhat more detail later in this report. The failure to clearly delineate authority in advance as between DCR and CBLAD could have unexpected, and potentially deleterious, consequences on the stormwater management program.

Increased flexibility of localities in adopting a comprehensive stormwater management plan. While some localities are required to manage stormwater quality under CBLAD and DEQ regulations, localities in Virginia are not required to have a DCR stormwater management plan that satisfies DCR regulations. For those localities not otherwise required to have a SMP, there are incentives for developing a SMP, this is especially true where low quality runoff has a significant local impact. However, under the current regulations, in order to have a SMP that satisfies the DCR regulations, a locality would have to implement all of the standards in the DCR regulation, even those that would not logically apply to the locality.

The proposed regulations are structured in a way that allows localities to choose only those portions of the rules that apply to that particular locality. This, along with the consolidation of DCR and CBLAD quality standards, should reduce the cost and complexity of implementing a SMP. The lower costs of implementing a SMP should encourage more localities to choose to implement them. Localities in the Chesapeake Bay watershed are already required to have a SMP. However, since the functions of the two regulations are somewhat different, there may be localities that would choose to satisfy the DCR regulations even though they are required to meet the CBLAD requirements. DCR did not, at this writing, have an estimate of how many localities would choose to implement SMPs under the new rules.

It is also not known how much economic benefit localities will receive from promulgating a SMP. What we can infer is that, since the program is voluntary, for those communities that decide to establish a SMP, it is their judgment that the benefits outweigh the costs. Thus, we can presume that there is a net economic benefit for all localities that choose to join the program under the new regulations. It would be prohibitive to measure the magnitude of this benefit, but the conclusion that it is positive remains.

Performance-based stormwater quality enhancement criteria: One of the key aspects of this proposal is that DCR is adopting performance-based criteria for SMPs as an alternative to the already available technology-based standards used in the current version of the regulations. The performance criteria are those already in use at CBLAD.

These rules, in a nutshell, specify that the level of runoff after a project must be no greater than that expected before the development. The existing technology standards list a set of accepted best management practices (BMPs) and the assumed runoff reduction associated with each properly installed BMP. A developer or locality can choose from among the list of approved BMPs but may not, in general, choose other methods of controlling runoff.

These performance criteria are added as a voluntary option. From this, we infer that the addition of the new criteria will not make localities worse off since it is still an option to use the technology standards. In fact, it has been CBLAD's experience that many localities frequently use the best management practices (BMPs) listed in the technology criteria since this avoids the cost of the additional analysis that would be required in order to use the performance criteria. In the short run, the listed BMPs may remain the controls of choice for developers, agencies, and localities since it avoids the costs of additional engineering studies and justifications for new techniques. In the longer run, experience suggests that the pace of innovation will increase.

Other things being equal, performance standards can offer significant benefits over technology standards by allowing localities and developers to develop innovative and less costly alternatives to the BMPs listed in the technology standards. There is substantial evidence that compliance costs are lower under performance standards in a number of areas of environmental regulation. CBLAD indicates that there has been a significant amount of innovation under their performance rules.

The move to performance standards does carry with it a cost. One of the great advantages of technology standards is that they tend to minimize the costs of enforcing a regulation. All the enforcement agency needs to do is to confirm that the necessary BMPs are in place and in good repair. With performance standards, something more is generally required. An innovative new approach to controlling runoff will generally be associated with greater uncertainty about its actual performance. For this reason, regulation by performance standards usually requires monitoring to determine whether the requirements of the rules, in terms of the actual quality and quantity of runoff, are actually being met.

The proposal, as written, does not require any monitoring of the actual performance of stormwater management projects. This includes projects that are authorized under the new performance standards. The only assurance that the project will function to control stormwater at the level required of the regulations will be the ex ante analysis of project engineers subject to the oversight of stormwater engineers chosen by the localities. For new and innovative designs, actual performance could vary greatly from that expected based on engineering analysis. Only the monitoring of actual performance can determine whether the project is meeting design expectations.

For projects undertaken by state agencies, the proposed regulations state that DCR will conduct periodic inspections of the project to ensure compliance with the plan. This language only refers to making sure that the project is implemented as designed, not to making sure that the design works. DCR does have the authority to require monitoring of state agency projects, but such monitoring is not required. It is not clear how DCR intends to use this authority.

The move to performance standards for stormwater management plans has the potential to reduce significantly the cost of the program, especially in the long run as innovations accelerate. Unfortunately, as written, these regulations may achieve these cost savings at the expense of program effectiveness. According to CBLAD, local governments vary widely in the level of enforcement that they apply to performance-based designs. It should not be expected that the move to the more efficient performance standards can come without some increase in enforcement or monitoring activities. This proposal could be improved by paying more careful attention to the problem of ensuring that the design goals of innovative techniques in stormwater management are actually met in practice.

One suggestion might be to establish a procedure for allowing developers, localities or state agencies to pilot new techniques at a limited number of sites. Permission to build these pilot structures could be tied to monitoring requirements. Once the actual performance is demonstrated to meet the actual design expectation, the monitoring requirements for that type of technique could be relaxed as is appropriate.

DPB suggests that DCR consider ways in which the potential cost savings of performance standards can be achieved while, at the same time, minimizing any increased risk of damage from stormwater runoff. There are significant potential gains from reducing costs while maintaining protections for natural resources.

Businesses and entities affected. By offering the option of performance standards rather than technology standards, this proposal should reduce the cost of complying with stormwater management requirements. As noted earlier, however, due to possibly insufficient monitoring of the actual performance of some SMPs, this proposal could lead to an increased impact of stormwater runoff on downstream business and communities. To estimate the dollar value of these two effects would be a purely speculative exercise at this time.

Localities particularly affected. Localities in the Chesapeake Bay watershed are already subject to a requirement that they have in place a SMP. This regulation will have its greatest impact on localities outside of the bay watershed.

Projected impact on employment. It is not expected that this proposal will have any significant impact on employment in Virginia.

Effects on the use and value of private property. One of the key reasons for regulating stormwater runoff is to protect

downstream property values from damage by the actions of upstream landowners. Insofar as this proposal accomplishes this goal, it should increase the aggregate value of real property by ensuring that upstream property owners take account of the damage they do to downstream owners.

Summary of analysis. In some ways this proposal represents a solid, even dramatic improvement over the current regulations by consolidating disparate state requirements and standards, by allowing localities to choose only those aspects of SMPs that apply to that particular locality, and by giving developers and localities the increased flexibility of performance rather than technology standards. However, the consolidation of disparate requirements may give rise to unexpected consequences unless the enforcement and administration responsibilities of DCR and CBLAD are clearly delineated in advance. Also, without more careful attention to the question of monitoring the actual performance of new stormwater management techniques, there is some chance that the lower compliance costs associated with performance standards will come at the expense of greater damage from stormwater runoff. Both of these defects are readily repairable. Their repair would result in a regulation that would offer significant net benefits to the Virginia economy.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: On behalf of the Board of Conservation and Recreation, the Department of Conservation and Recreation concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the proposed regulations concerning Stormwater Management.

Summary:

The Department of Conservation and Recreation is amending its stormwater regulations as part of an attempt to make stormwater programs of the Department of Conservation and Recreation, the Department of Environmental Quality and the Chesapeake Bay Local Assistance Department consistent. Amendments provide flexibility for local governments to choose to adopt individual technical components of a stormwater management program while still requiring certain minimum administrative procedures and long term maintenance of stormwater control devices. Proposed amendments add an option of performance-based stormwater enhancement criteria to the existing technology-based criteria. Amendments provide consistent criteria for state agency construction projects.

CHAPTER 20.

STORMWATER MANAGEMENT REGULATIONS.

PART I. GENERAL.

4 VAC 3-20-10. Definitions.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise.

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"Act" means Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel banks nor causing erosive damage to the channel bed or banks.

"Applicant" means any person submitting a stormwater management plan for approval.

"Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. Note that a locality may opt to calculate actual watershed-specific values for the average land cover condition based upon 4 VAC 3-20-100.

"Best management practice (BMP)" means a structural or nonstructural practice which is designed to minimize the impacts of development on surface and groundwater systems.

"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in-situ material.

"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.

"Board" means the Board of Conservation and Recreation.

"Channel" means a natural stream or manmade waterway.

"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

"Department" means the Department of Conservation and Recreation.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

"Director" means the Director of the Department of Conservation and Recreation.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, causing or threatening damage.

~~"Floodplain" means those areas adjoining a river, stream, channel, ocean, bay or lake which are likely to be covered by flooding.~~

"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

"Infiltration facility" means a stormwater management facility which temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

"Inspection" means an on-site review of the project's compliance with the approved plan, the local stormwater management program, and any applicable design criteria.

"Land development" or "land development project" means a manmade change to, or construction on, the land surface, except as exempted in the Stormwater Management Act, § 10.1-603.8 B of the Code of Virginia, that potentially changes its runoff characteristics.

"Linear development project" means a land development project that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines; and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

"Local stormwater management program" or "local program" means a statement of the various methods employed adopted pursuant to the Act and implemented by a locality to manage the runoff from land development projects and may shall include such items as local ordinances, policies and guidelines, technical materials, inspections, enforcement and evaluation an ordinance with provisions to require the control of after-development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures consistent with this chapter.

"Locality" means a county, city, or town.

"Nonpoint source pollution" means pollution contaminants such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather is are washed from the land surface in a diffuse manner by stormwater runoff.

"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff. The contaminant phosphorous (P) shall be used for the purposes of calculating the pollutant discharge in compliance with 4 VAC 3-20-70.

"Onsite stormwater management facilities" means facilities which are designed to control stormwater runoff emanating from a specific site.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any interstate body or any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Pre-development" refers to the ~~land use conditions~~ that exist at the time that plans for the land development are submitted to the locality of a tract of land are approved by the plan approval authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing ~~land use conditions~~ at the time prior to the first item is submitted being approved or permitted shall establish pre-development conditions.

"Regional (watershed-wide) stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a ~~large contributing area specific watershed~~, although only portions of the watershed may experience land development.

"Regional (watershed-wide) stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Sand filter" means a contained bed of sand which acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area, to maintain the desired water surface elevations to support emergent vegetation.

"Site" means the parcel of land being developed, or a designated planning area in which the land development project is located.

"State project" means ~~the construction of any facility or expansion of an existing facility including, but not limited to land clearing, soil movement, or land development, any land development project~~ which is undertaken by any state agency, board, commission, authority or any branch of state government, including state supported institutions of higher learning, ~~which disturbs more than one acre of land area.~~

"Stormwater detention basin" or "detention basin" means a stormwater management facility which temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility which temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" or "plan" means a document containing material for describing how existing runoff characteristics will be ~~maintained~~ affected by a land development project and ~~empty~~ methods for complying with the requirements of the local program or this chapter.

"Stormwater retention basin" or "retention basin" means a stormwater management facility which, similar to a detention basin, temporarily impounds runoff and discharges its outflow

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~~through a hydraulic outlet structure to a downstream conveyance system. Unlike a detention basin, however, a retention basin also includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows are may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.~~

~~"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.~~

~~"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.~~

~~"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.~~

~~"Subdivision" unless otherwise defined in a local ordinance adopted pursuant to § 15.1-465 of the Code of Virginia, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.~~

~~"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.~~

~~"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the total area impervious surface of the land development project.~~

~~"Watershed" means the total drainage area contributing runoff to a single point a defined land area drained by a river, stream or drainage ways or system of connecting rivers, streams, or drainage ways such that all surface water within the area flows through a single outlet.~~

4 VAC 3-20-20. Authority. (Repealed.)

~~Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia authorizes the department to promulgate this chapter.~~

4 VAC 3-20-30. Purposes.

The purposes of this chapter are to: *provide a framework for the administration, implementation and enforcement of the Act, while at the same time providing flexibility for innovative solutions to stormwater management issues.*

~~A. Inhibit the deterioration of existing waters and waterways of the Commonwealth by requiring that state agency and local stormwater management programs maintain post-development runoff characteristics, including both water quantity and quality, as nearly as practicable, equal to or better than the pre-development runoff characteristics;~~

~~B. Control nonpoint source pollution, localized flooding and stream channel erosion, by establishing minimum acceptable technical criteria that must be met by state agencies and all stormwater management programs implemented by localities;~~

~~C. Establish minimum acceptable administrative procedures that must be met by all local stormwater management programs implemented by localities;~~

~~D. Require the provision of long term responsibility for, and maintenance of, stormwater management facilities and other techniques specified to manage the quality and quantity of runoff;~~

~~E. Provide for the integration of stormwater management programs with erosion and sediment control, site plan review, flood insurance, floodplain management and other land development related programs and laws and regulations requiring compliance prior to authorizing construction; and~~

~~F. Provide for the periodic review and evaluation of local stormwater management programs and state agency compliance and for annual reporting to the General Assembly of the extent to which the state stormwater management program has reduced nonpoint source pollution and mitigated the detrimental effects of localized flooding.~~

4 VAC 3-20-40. Applicability.

A. This chapter is applicable to:

1. Every locality that establishes a local stormwater management program; and
2. Every state agency that, after January 1, 1991, undertakes any land clearing, soil movement, or construction activity involving soil movement or land development project.

B. The following activities are exempt from this chapter:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia.
2. Tilling, planting or harvesting of agricultural, horticultural, or forest crops.
3. Single-family residences separately built and not part of a subdivision, including additions or modifications to existing single-family detached residential structures.
4. Land development projects that disturb less than one acre of land area, except that the governing body of a locality that has adopted a local stormwater management

~~program may exempt a smaller area of disturbed land or may qualify the conditions under which this exemption shall apply.~~

PART II.
TECHNICAL CRITERIA.

4 VAC 3-20-50. Applicability.

~~Except as provided for in 4 VAC 5-50-40 B of this chapter, all local stormwater management programs and state projects must comply with the general requirements and water quality requirements in this part.~~

This part specifies technical criteria for localities that establish a local stormwater management program and for state projects.

4 VAC 3-20-60. General requirements.

A. ~~A stormwater management plan for a land development project shall be developed so that from the site, the post-development peak runoff rate from a two year storm and a 10-year storm, considered individually, shall not exceed their respective pre-development rates. Determination of flooding and channel erosion impacts to receiving streams due to land development projects shall be measured at each point of discharge from the development project and such determination shall include any runoff from the balance of the watershed which also contributes to that point of discharge.~~

B. ~~These~~ The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service when using U.S. Soil Conservation Service methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.

C. For purposes of computing runoff, all *pervious* lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.

D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented.

E. ~~Localities shall require~~ Impounding structures that are not covered by the Virginia Dam Safety Impounding Structure Regulations to (4 VAC 50-20-10 et seq.) shall be checked engineered for structural integrity and floodplain impacts for during the 100-year storm event.

F. Pre-development and post-development runoff rates shall be verified by calculations that are consistent with good engineering practices and are acceptable to the locality.

G. Outflows from a stormwater management facility shall be discharged to an adequate channel, ~~or~~ and velocity dissipators shall be placed at the outfall of all detention and

~~retention basins~~ stormwater management facilities and along the length of any outfall channel as necessary to provide a nonerosive velocity of flow from the basin to a channel.

H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land development as a whole. Individual lots in new subdivisions shall not be considered separate land development projects, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land development and shall be used in all engineering calculations.

I. ~~New construction, including construction of stormwater management facilities, should be avoided in floodplains. When this is unavoidable, a special examination to determine adequacy of proposed stormwater management facilities during the 10 year flood shall be required. The purpose of this analysis is to ensure that the stormwater management facility will operate effectively. All stormwater management facilities shall have a maintenance plan which identifies the owner and the responsible party for carrying out the maintenance plan.~~

J. ~~In addition, such~~ Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain should be avoided. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 42 USC § 4001 et seq. 44 CFR Part 59.

K. ~~To prevent flooding or stream erosion downstream of the development site, it may be necessary to increase the detention storage requirements and reduce peak outflow rates to levels that exceed the requirements of 4 VAC 5-50-60 A of this chapter. This requirement can be imposed only if a watershed analysis has been made by the locality. Natural channel characteristics shall be preserved to the maximum extent practicable.~~

L. Land development projects must shall comply with the Virginia Erosion and Sediment Control Act and attendant regulations.

4 VAC 3-20-70. Water quality requirements. (Repealed.)

~~The water quality volume shall be treated by one of the following methods.~~

A. ~~For a detention basin, the water quality volume shall be detained and released over 30 hours.~~

- ~~1. The detention time is a brim drawdown time and, therefore, shall begin at the time of peak storage of the water quality volume in the detention basin.~~
- ~~2. If the above requirement would result in an outlet opening smaller than three inches in diameter or the equivalent cross sectional area, the period of detention shall be waived so that three inches will be the minimum outlet opening used.~~

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~~B. For a retention basin, the volume of the permanent pool must be at least three times greater than the water quality volume.~~

~~C. For an infiltration facility, the water quality volume must be completely infiltrated within 48 hours.~~

~~1. The invert of the infiltration facility must be at least four feet above the seasonal high groundwater elevation.~~

~~2. A detailed soils analysis and report shall be required.~~

~~3. Approvals will be on a case-by-case basis after technical review by the designated authority. The object of this review will be to avoid groundwater contamination.~~

~~D. Design calculations verifying compliance with the water quality requirements shall be submitted.~~

4 VAC 3-20-71. Water quality.

A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.

B. Performance-based criteria. For land development, the calculated post-development nonpoint source pollutant runoff load shall be compared to the calculated pre-development load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land development where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover which is less than the average land cover condition.

Requirement: No reduction in the after development pollutant discharge is required.

2. Situation 2 consists of land development where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover which is greater than the average land cover condition.

Requirement: The pollutant discharge after development shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land development where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after development shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant

discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land development where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after development shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.

C. Technology-based criteria. For land development, the post-developed stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the post-developed condition percent impervious cover as specified in Table 1. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1. Design standards and specifications for the BMPs in Table 1 which meet the required target pollutant removal efficiency will be available at the department.

Table 1

Water Quality BMP*	Target Pollutant Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed swale	15%	
Constructed wetlands	30%	22 -37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38 -66%
Bioretention filter	50%	
Extended detention-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	67 -100%
Infiltration (2 x WQ Vol)	65%	
Retention basin III (4 x WQ Vol with aquatic bench)	65%	

* Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department

4 VAC 3-20-80. Nonstructural measures. (Repealed.)

~~It is not necessary that basic requirements for water quality and quantity control be satisfied by means of structural methods. Nonstructural practices including, but not limited to, cluster land use development, minimization of impervious surface and curbing requirements, open space acquisition, floodplain management, and protection of wetlands, steep slopes and vegetation should be coordinated with structural requirements. Such changes in land use often decrease the runoff coefficients, thus reducing the scope and cost of structural practices.~~

4 VAC 3-20-81. Stream channel erosion.

A. Properties and receiving waterways downstream of any land development project shall be protected from erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The plan approving authority shall require compliance with subdivision 19 of 4 VAC 50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

C. The plan approving authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions brought on by land development projects. Therefore, in lieu of the reduction of the 2-year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the 1-year, 24-hour duration storm.

D. In addition to subsections B and C of this section, localities may, by ordinance, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land development projects. These criteria may include, but are not limited to, the following:

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.
3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.
4. Criteria for the selection of proposed natural or man-made channel linings.

4 VAC 3-20-85. Flooding.

A. Downstream properties and waterways shall be protected from damages from localized flooding due to increases in volume, velocity and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section

B. The 10-year post-developed peak rate of runoff from the development site shall not exceed the 10-year pre-developed peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance, adopt more stringent design criteria based upon geographic, land use, topographic, geologic or other factors as appropriate.

D. Linear development projects shall not be required to control post-developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

4 VAC 3-20-86. Regional (watershed-wide) stormwater management plans.

This section enables localities to develop regional stormwater management plans. State agencies intending to develop large tracts of land such as campuses or prison compounds are encouraged to develop regional plans where practical.

The objective of a regional stormwater management plan is to address the stormwater management concerns in a given watershed with greater economy and efficiency by installing regional stormwater management facilities versus individual, site-specific facilities. The result will be fewer stormwater management facilities to design, build and maintain in the affected watershed. It is also anticipated that regional stormwater management facilities will not only help mitigate the impacts of new development, but may also provide for the remediation of erosion, flooding or water quality problems caused by existing development within the given watershed.

If developed, a regional plan shall, at a minimum, address the following:

1. The specific stormwater management issues within the targeted watersheds.
2. The technical criteria in 4 VAC 3-20-50 through 4 VAC 3-20-85 as needed based on subdivision 1 of this section.
3. The implications of any local comprehensive plans, zoning requirements and other planning documents.
4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities, implementation of regional stormwater utility fees, etc.
5. Maintenance of the selected stormwater management facilities.
6. Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level.

Proposed Regulations

PART III.

LOCAL STORMWATER MANAGEMENT PROGRAMS.

4 VAC 3-20-90. Applicability.

A. This part specifies *technical criteria, minimum ordinance requirements, and* administrative procedures for all localities operating local stormwater management programs.

B. ~~Except for regulations related to plan approval, which are set forth in 4 VAC 5-50-130 and 4 VAC 5-50-140 of this chapter, a locality may adopt regulations that are more stringent than those necessary to ensure compliance with this chapter, provided that the more stringent regulations are based upon the findings of local comprehensive watershed management studies and that prior to adopting more stringent regulations a public hearing is held after giving due notice.~~

C. ~~The department and a locality operating a stormwater management program are authorized to cooperate and enter into agreements with any federal or state agency in connection with stormwater management plans.~~

1. ~~A locality that has adopted more stringent requirements or regional stormwater management plans may request, in writing, that the department consider these requirements in its review of state agency projects within that locality.~~

2. ~~To the maximum extent practicable, the state agencies shall comply with these local program requirements.~~

3. ~~Nothing in this Part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.~~

D. ~~Localities with existing stormwater management programs shall have one year from the effective date of this chapter to modify their programs to comply with the minimum requirements of this chapter.~~

4 VAC 3-20-100. Requirements for local program and ordinance. (Repealed.)

A. ~~At a minimum, the local stormwater management program and implementing ordinance shall require compliance with the stormwater management technical criteria established in Part II of this chapter.~~

B. ~~Each locality shall submit its stormwater management program, implementing ordinance, and amendments to the department for review. The department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the locality of its findings within 60 days.~~

C. ~~Each stormwater management program shall consider the unique character and limitations of the environment in the planning area.~~

D. ~~Stormwater management programs shall refer to and be in compliance with requirements for the control of soil erosion. The stormwater management program and~~

~~ordinance shall also be consistent with relevant federal and state laws, rules and regulations concerning stormwater management, dam safety, floodplain management and flood control. Additionally, such programs should be coordinated with any stormwater management plans prepared by any other locality in the watershed.~~

E. ~~The local stormwater management program and ordinance shall be included in the periodic reexamination of the locality's comprehensive land use plan.~~

F. ~~Except as provided for in 4 VAC 5-50-40 B of this chapter, no grading, building, or other permit shall be issued for land development unless a stormwater management plan has been submitted to the locality and approved.~~

G. ~~Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter standards or other requirements as allowed by law.~~

4 VAC 3-20-101. Technical criteria for local programs.

A. ~~All local stormwater management programs shall comply with the general technical criteria as outlined in 4 VAC 3-20-60.~~

B. ~~All local stormwater management programs which contain provisions for stormwater runoff quality shall comply with 4 VAC 3-20-70. A locality may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria. A locality may opt to calculate actual watershed specific values for the average land cover condition based upon:~~

1. ~~Existing land use data at time of local program adoption,~~

2. ~~Watershed size, and~~

3. ~~Determination of equivalent values of impervious cover for nonurban land uses which contribute nonpoint source pollution, such as agriculture, forest, etc.~~

C. ~~All local stormwater management programs which contain provisions for stream channel erosion shall comply with 4 VAC 3-20-81.~~

D. ~~All local stormwater management programs must contain provisions for flooding and shall comply with 4 VAC 3-20-85.~~

E. ~~All local stormwater management programs which contain provisions for watershed or regional stormwater management plans shall comply with 4 VAC 3-20-101.~~

F. ~~A locality that has adopted more stringent requirements or implemented a regional (watershed-wide) stormwater management plan may request, in writing, that the department consider these requirements in its review of state projects within that locality.~~

G. ~~Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.~~

4 VAC 3-20-110. ~~Watershed planning encouraged. (Repealed.)~~

~~A. In developing a local stormwater management program, a locality should consider regional planning for the appropriate watershed. The objective of regional stormwater management planning is the achievement of greater economy and efficiency through the use of regional stormwater management facilities that can serve several land development projects, as opposed to the use of a multitude of facilities that are intended solely for individual land development projects. In addition to mitigating the impacts of new development, regional stormwater management facilities may also provide an opportunity to remediate flooding or water quality problems caused by uncontrolled existing development. Because watershed boundaries typically transcend political boundaries, localities are encouraged to develop cooperative regional stormwater management plans.~~

~~B. Regional stormwater management planning should include the following, as a minimum:~~

- ~~1. Consideration of the locality's comprehensive plan, zoning, government facility plans and similar planning tools.~~
- ~~2. An analysis of the impacts of development on the watershed based on hydrologic and hydraulic modeling. At a minimum, the 2-year, 10-year, and 100-year storms shall be studied. Ultimate development of the watershed shall be assumed.~~
- ~~3. Recommendations for locations, specified release rates, and required storage capacities of needed regional stormwater management facilities based on the modeling.~~
- ~~4. Consideration of future expansion of regional stormwater management facilities based on the possibility that development might exceed the anticipated level.~~
- ~~5. Requirements for necessary onsite stormwater management facilities and release rates.~~
- ~~6. An implementation schedule and financing requirements.~~

4 VAC 3-20-111. ~~Requirements for local program and ordinance.~~

~~A. At a minimum, the local stormwater management program and implementing ordinance shall meet the following:~~

- ~~1. The ordinance shall identify the plan-approving authority and other positions of authority within the program, and shall include the regulations and technical criteria to be used in the program.~~
- ~~2. The ordinance shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land development projects. The party responsible for conducting inspections shall be~~

~~identified. The local program authority shall maintain, either on-site or in local program files, a copy of the approved plan and a record of all inspections for each land development project.~~

~~B. The department shall periodically review each locality's stormwater management program, implementing ordinance, and amendments. Subsequent to this review, the department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the locality of its findings. To the maximum extent practicable the department will coordinate the reviews with other local government program reviews to avoid redundancy. The review of a local program shall consist of the following:~~

- ~~1. A personal interview between department staff and the local program administrator or his designee;~~
- ~~2. A review of the local ordinance and other applicable documents;~~
- ~~3. A review of plans approved by the locality and consistency of application;~~
- ~~4. An inspection of regulated activities; and~~
- ~~5. A review of enforcement actions.~~

~~C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.~~

4 VAC 3-20-120. ~~Administrative procedures: stormwater management plans. (Repealed.)~~

~~A. A local stormwater management program and ordinance shall require a person who intends to initiate a land development project to submit a stormwater management plan and obtain the locality's approval of the plan prior to beginning the land development project.~~

~~B. The local stormwater management program and ordinance shall establish stormwater management plan submittal requirements. The stormwater management plan may include the appropriate maps, calculations, detail drawings, reports and a listing of the status of all major permit decisions to assure that the land development project achieves the objectives of the local program. Maps, plans, and designs shall be certified by a professional engineer or Class III B surveyor.~~

~~C. A locality may charge applicants a reasonable fee to defray the costs of program administration, including costs associated with plan review, issuance of permits, periodic inspection for compliance with approved plans and necessary enforcement, provided that charges for such costs are not made under any other law, ordinance or program. The fee shall not exceed an amount commensurate with the services rendered and expenses incurred or the amount established in § 10.1-603.10 of the Code of Virginia, whichever is less.~~

~~D. Prior to issuance of any permit, the locality may also require an applicant to submit a reasonable performance~~

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~~bond in accordance with § 10.1-603.8 A of the Code of the Virginia.~~

4 VAC 3-20-121. Administrative procedures: stormwater management plans.

A. Localities shall approve or disapprove stormwater management plans according to the following:

1. A maximum of 60 calendar days from the day a complete stormwater management plan is accepted for review will be allowed for the review of the plan. During the 60-day review period, the locality shall either approve or disapprove the plan and communicate its decision to the applicant in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.

2. A disapproval of a plan shall contain the reasons for disapproval.

B. Each plan approved by a locality shall be subject to the following conditions:

1. The applicant shall comply with all applicable requirements of the approved plan, the local program, this chapter and the Act, and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.

2. The land development project shall be conducted only within the area specified in the approved plan.

3. The locality shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project.

4. The person responsible for implementing the approved plan shall conduct monitoring and submit reports as the locality may require to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.

5. No changes may be made to an approved plan without review and written approval by the locality.

4 VAC 3-20-130. Administrative procedures: approval and disapproval of plans. (Repealed.)

~~A. A maximum of 30 calendar days from the receipt of an application will be allowed for preliminary review of the application for completeness. During this period, the locality will either accept the application for review, which will begin the 60 day review period, or reject the application for incompleteness and inform the applicant in writing of the information necessary to complete the application.~~

~~B. The 60 day review period begins on the day the complete stormwater management plan is accepted for review. At this time, an acknowledgement letter is sent to the applicant. During the 60 day review period, the locality shall either approve or disapprove the plan and communicate its decision to the applicant in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.~~

~~C. A disapproval of a plan shall contain the reasons for disapproval.~~

~~D. The applicant or any aggrieved party authorized by law may appeal a locality's decision of approval or disapproval of a stormwater management plan application within 30 days after the rendering of such a decision of the locality, to the circuit court of the jurisdiction in which the land development project is located.~~

~~E. Judicial review shall be on the record previously established and shall otherwise be in accordance with the provisions of the Administrative Process Act (§ 9-6-14:1 et seq.).~~

4 VAC 3-20-131. Administrative procedures: exceptions.

A. A request for an exception shall be submitted, in writing, to the locality. An exception from the stormwater management regulations may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved.

B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.

4 VAC 3-20-140. Administrative procedures: conditions of approval. (Repealed.)

~~Each plan approved by a locality shall be subject to the following conditions:~~

~~A. The applicant shall comply with all applicable requirements of the approved plan, the local program, this chapter and the Act, and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.~~

~~B. The land development project shall be conducted only within the area specified in the approved plan.~~

~~C. The locality shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project.~~

~~D. The person responsible for implementing the approved plan shall conduct monitoring and submit reports as the locality may require to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.~~

~~E. No transfer, assignment or sale of the rights granted by virtue of an approved plan shall be made unless a written notice of transfer is filed with the locality and the transferee certifies agreement to comply with all obligations and conditions of the approved plan.~~

4 VAC 3-20-141. Administrative procedures: maintenance and inspections.

A. Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by a governmental agency, shall remain with the property owner

and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the locality shall be made to ensure continued performance of this chapter.

C. A schedule of maintenance inspections shall be incorporated into the local ordinance. Ordinances shall provide that in cases where maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the locality has the authority to perform the work and to recover the costs from the owner.

D. Localities may require right-of-entry agreements or easements from the applicant for purposes of inspection and maintenance.

E. Periodic inspections are required for all stormwater management facilities. Localities shall either:

1. Provide for inspection of stormwater management facilities on an annual basis; or
2. Establish an alternative inspection program which ensures that stormwater management facilities are functioning as intended. Any alternative inspection program shall be:
 - a. Established in writing;
 - b. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and
 - c. Documented by inspection records.

F. During construction of the stormwater management facilities, localities shall make inspections on a regular basis.

G. Inspection reports shall be maintained as part of a land development project file.

4 VAC 3-20-150. Administrative procedures: changes to an approved plan. (Repealed.)

~~No changes may be made to an approved plan without review and written approval by the locality.~~

4 VAC 3-20-160. Administrative procedures: exceptions. (Repealed.)

~~A. A request for an exception shall be submitted, in writing, to the locality. An exception from the stormwater management regulations may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief, and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the purpose and intent of the Act is preserved.~~

~~B. Economic hardship is not sufficient reason to grant an exception from the requirements of this regulation.~~

4 VAC 3-20-170. Administrative procedures: maintenance and inspections. (Repealed.)

~~A. Maintenance of stormwater management facilities is an integral aspect of a stormwater management program. Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.~~

~~B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the approving agency shall be made to insure continued performance of these obligations.~~

~~C. A schedule of maintenance inspections shall be incorporated into the local ordinance. Ordinances shall also provide that in cases where maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the locality has the authority to perform the work and to recover the costs from the owner.~~

~~D. Localities may require right of entry agreements or easements from the applicant for purposes of inspection and maintenance.~~

~~E. At a minimum, stormwater management facilities shall be inspected on a semi annual basis and after any storm which causes the capacity of the facility to be exceeded.~~

~~F. During construction of the stormwater management facilities, localities shall make inspections on a regular basis.~~

~~G. Inspection reports shall be maintained as part of the land development project file.~~

4 VAC 3-20-180. Compliance. (Repealed.)

~~If the locality determines that there is a failure to comply with the plan, notice shall be served upon the applicant or person responsible for implementing the plan by registered or certified mail to the address specified in the application or plan certification, or by delivery at the site of development activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the applicant or person responsible for implementing the plan shall be deemed to be in violation of the Act and upon conviction shall be subject to the penalties provided in § 10.1-603.14 of the Code of Virginia.~~

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~~4 VAC 3-20-190. Review of plans by the department. (Repealed.)~~

~~The department will review any stormwater management plan with real or potential interjurisdictional impacts, upon the request of one of the involved localities, to determine whether the plan is consistent with the provisions of the Act and this chapter. Any such review shall be completed and a report submitted to each locality involved within 90 days of such request.~~

PART IV. STATE AGENCY PROJECTS.

~~4 VAC 3-20-200. Stormwater management plans or standards required. (Repealed.)~~

~~A. After January 1, 1991, a state agency shall not undertake any land clearing, soil movement or construction activity involving soil movement or land development unless the state agency has:~~

- ~~1. Submitted to the department a stormwater management plan for the state project and has obtained approval of the plan from the department; or~~
- ~~2. Submitted annually to the department stormwater management standards and specifications and has obtained approval of those standards and specifications.~~

~~B. Stormwater management plans prepared for state projects shall comply with the technical criteria established in Part II of this chapter and, to the maximum extent practicable, any local stormwater management requirements in accordance with 4 VAC 5-50-90 C of this chapter.~~

~~C. The following schedule for compliance with the state stormwater management regulations shall be applied to state projects:~~

~~1. As of January 1, 1991, state projects subject to the capital outlay process described in the Department of General Services, Division of Engineering and Buildings' Capital Outlay Manual that have received approval of preplanning studies or schematic drawings by the Art and Architectural Review Board, and those capital outlay projects not subject to the capital outlay manual that have completed 50% or more of final construction plans, shall make every effort to retrofit their projects with the appropriate measures. However, substantial redesign of the project or additional land acquisition will not be required. At a minimum, these projects must comply with the stormwater management criteria established in the state Erosion and Sediment Control Act, § 10.1-560 of the Code of Virginia, and attendant regulations.~~

~~2. All other state projects must comply fully with this chapter as of January 1, 1991.~~

~~4 VAC 3-20-210. Minimum requirements for stormwater management plans. Technical criteria and plan requirements for state projects.~~

~~A. Stormwater management plans prepared for state projects shall comply with the technical criteria outlined in Part II (4 VAC 3-20-50 et seq.) of this chapter and, to the maximum extent practicable, any local stormwater management program technical requirements adopted pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the local program technical requirements are not practical for the project under consideration.~~

~~B. The department may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria.~~

~~C. As a minimum, a stormwater management plan plans and computations shall contain the following:~~

- ~~1. The location and the design of the proposed stormwater management facilities.~~
- ~~2. Overall site plan with pre-developed and post-developed condition drainage area maps.~~
- ~~3. Comprehensive hydrologic and hydraulic computations for of the pre-development and post-development two-year and 10-year storm events runoff conditions for the required design storms, considered individually.~~
- ~~4. Calculations verifying compliance with the water quality requirements.~~
- ~~5. A description of the requirements for maintenance of the stormwater management facilities and a recommended schedule of inspection and maintenance.~~
- ~~6. The identification of a person or persons who will be responsible for maintenance.~~
- ~~7. Certification of maps, plans and designs by a professional engineer or Class III B surveyor. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4, (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations.~~

~~4 VAC 3-20-220. Minimum Requirements for submission of stormwater management annual standards and specifications.~~

~~A. A request for approval of stormwater management standards and specifications may be submitted to the department by a state agency on an annual basis. At a minimum, the following certifications shall accompany the request:~~

- ~~1. Individual stormwater management plans shall be prepared for all each of the state agency projects.~~

2. The stormwater management plans shall comply with the technical requirements established criteria as outlined in Part II (4 VAC 3-20-50 et seq.) of this chapter and, to the maximum extent practicable, any local stormwater management program technical requirements in accordance with 4 VAC 5-50-90 C of this chapter adopted pursuant to the Stormwater Management Act. It shall be the responsibility of the state agency to demonstrate that the local program technical requirements are not practical for the project under consideration.

3. An inspection and maintenance schedule shall be developed and implemented.

B. Copies of such stormwater management specifications and standards including, but not limited to, design manuals, technical guides and handbooks, shall be submitted.

4 VAC 3-20-230. Actions on plans or specifications by the department Administrative procedures: stormwater management plans.

A. Not later than Within 30 days after receipt of a complete stormwater management plan submitted by a state agency, the department shall approve or disapprove the plan.

1. The department shall transmit its decision in writing to the state agency which submitted the plan.

2. Disapproved plans must shall be revised and resubmitted to the department.

B. ~~The department's recommendations shall be binding on the state agency and on the private business or businesses, if any, hired by the state agency. Approval of a stormwater management plan for a state project shall be subject to the following conditions:~~

1. ~~The state agency shall comply with all applicable requirements of the approved plan and this chapter, and shall certify that all land clearing, construction, land development, and drainage will be done according to the approved plan.~~

2. ~~The land development shall be conducted only within the area specified in the approved plan.~~

3. ~~No changes may be made to an approved plan without review and written approval by the department.~~

4. ~~The department shall be notified one week prior to the pre-construction meeting and one week prior to the commencement of land disturbing activity.~~

5. ~~The department shall conduct periodic inspections of the project to ensure compliance with the plan.~~

6. ~~The department may require monitoring and reports from the state agency responsible for implementing the plan to ensure compliance with the plan and to determine if the measures required in the plan provide effective stormwater management.~~

C. ~~A state agency shall not change an approved stormwater management plan without approval from the department. Compliance with approved plans shall be subject to the following conditions:~~

1. ~~Where inspections by department personnel reveal deficiencies in carrying out an approved plan, the responsible state agency shall be issued a notice to comply, with corrective actions specified and the deadline within which the work shall be performed.~~

2. ~~Whenever the Commonwealth or any of its agencies fail to comply within the time provided in a notice to comply, the director may petition the secretary of a given secretariat or an agency head for a given state agency for compliance. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution.~~

3. ~~Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.~~

4 VAC 3-20-240. Compliance. (Repealed.)

A. ~~The state agency responsible for the land development shall ensure compliance with the approved plan or specifications, even if actual plan implementation is performed by a private business or businesses, hired by the state agency.~~

B. ~~The department shall perform random site inspections of state projects to assure compliance with this chapter, the Erosion and Sediment Control Act, § 10.1-560 of the Code of Virginia and related regulations.~~

C. ~~The department may require monitoring and reports from the state agency responsible for implementing the plan, to ensure compliance with the approved plan and to determine if the measures required in the plan provide effective stormwater management.~~

4 VAC 3-20-241. Administrative procedures: exceptions.

A. A request for an exception shall be submitted, in writing, to the department. An exception from the stormwater management regulations may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the purpose and intent of the Act is preserved.

B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.

4 VAC 3-20-245. Administrative procedures: maintenance and inspections.

A. Responsibility for the operation and maintenance of stormwater management facilities shall remain with the state agency and shall pass to any successor or owner. If portions

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of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each state project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. At a minimum, a stormwater management facility shall be inspected on an annual basis and after any storm which causes the capacity of the facility principal spillway to be exceeded.

C. During construction of the stormwater management facilities, the department shall make inspections on a regular basis.

D. Inspection reports shall be maintained as part of the land development project file.

PART V. REPORTING.

4 VAC 3-20-250. Reporting on stormwater management. (Repealed.)

~~A. Localities with stormwater management programs and state agencies shall submit an annual report to the department. The report shall cover the period from July 1 to June 30 and shall be submitted to the department by September 1.~~

~~B. For localities, an annual report shall include, at a minimum, the number and type of stormwater facilities installed in the locality during the preceding year; their storage capacities; the affected water body, watershed or basin; a summary of any water quality monitoring data associated with the facilities; and the number and reasons for any exceptions approved by the locality.~~

~~C. For state agencies, an annual report shall include, at a minimum, the location (locality), number and type of stormwater facilities installed during the preceding year; their storage capacities; the affected water body, watershed or basin; and a summary of any water quality monitoring data associated with the facilities.~~

~~D. The department will compile this information and report to the General Assembly on the extent to which stormwater management programs have reduced nonpoint source pollution to the Commonwealth's waters.~~

4 VAC 3-20-251. Reporting on stormwater management.

The department is required to report to the General Assembly on the extent to which stormwater management programs have reduced nonpoint source pollution to the Commonwealth's waters and mitigated the effects of localized flooding. In order to complete this report, localities with stormwater management programs and state agencies may be asked to voluntarily submit an annual report to the department. Such a request may suggest reporting of data on the number and types of stormwater management facilities installed in the preceding year, the drainage area or watershed size served, the receiving stream or hydrologic

unit, a summary of monitoring data, if any, and other data useful in determining the effectiveness of the programs and BMP technologies in current use.

VA.R. Doc. No. R97-688; Filed July 30, 1997, 11:39 a.m.

BOARD OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 9-6.14:4.1 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4 VAC 15-40-10 et seq. **Game: In General (amending 4 VAC 15-40-60).**

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

Notice to the Public:

The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amendments to board regulations. A public comment period on the proposed regulations opened July 17 and remains open until August 21, 1997. Comments submitted must be in writing; must be accompanied by the name, address and telephone number of the party offering the comments; should state the regulatory action desired; and should state the justification for the desired action. Comments should be sent to Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia 23230, and must be received no later than August 14, 1997, in order to be assured that the board will have opportunity to review them before taking final action.

A public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any parts thereof, will be held during a meeting of the board to take place at the Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia, beginning at 9 a.m. on Thursday, August 21, 1997, at which time any interested citizen present shall be heard. At the board meeting, staff will also present the results of a meeting held for the purpose of providing the public with opportunities to review and comment on the proposed regulation amendments.

If the board is satisfied that the proposed regulations, or any parts thereof, are advisable in the form in which published or as amended after receipt of the public's comments, the board may adopt regulations as final at the August 21-22 meeting. The regulation or regulation amendments adopted may be either more liberal or more restrictive than those proposed and being advertised under this notice.

Summary:

The proposed amendments (i) prohibit the possession of a gun or bow which is not unloaded and cased or dismantled on all national forest lands and on

department-owned lands and on other lands managed by the department under cooperative agreement during the closed seasons and (ii) allow the possession and transport of loaded concealed handguns by individuals possessing a concealed handgun permit as defined in § 18.2-308 of the Code of Virginia during the closed seasons on national forest lands and department-owned lands.

4 VAC 15-40-60. Hunting with dogs or possession of weapons in certain locations during closed season.

~~A. National forests and department-owned lands. Department-owned lands west of the Blue Ridge Mountains and national forest lands statewide. It shall be unlawful to have in possession a bow or a gun which is not unloaded, and cased or dismantled, in the on all national forests forest lands statewide and on department-owned lands and on other lands managed by the department under cooperative agreement located in counties west of the Blue Ridge Mountains except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, or waterfowl, in all counties west of the Blue Ridge Mountains and on national forest lands east of the Blue Ridge Mountains and migratory game birds in all counties east of the Blue Ridge Mountains. The provisions of this section shall not prohibit the conduct of any activities authorized by the board or the establishment and operation of archery and shooting ranges on the above mentioned lands. The use of firearms and bows in such ranges during the closed season period will be restricted to the area within established range boundaries. Such weapons shall be required to be unloaded, cased or dismantled in all areas other than the range boundaries. The use of firearms or bows during the closed hunting period in such ranges shall be restricted to target shooting only and no birds or animals shall be molested on these lands.~~

B. Department-owned lands east of the Blue Ridge Mountains. It shall be unlawful to have in possession a bow or gun which is not unloaded and cased or dismantled on department-owned lands and on other lands managed by the department under cooperative agreement located in the counties east of the Blue Ridge Mountains except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, waterfowl or migratory gamebirds on these lands.

C. Certain counties. Except as otherwise provided in 4 VAC 15-40-70, it shall be unlawful to have either a shotgun or a rifle in one's possession when accompanied by a dog in the daytime in the fields, forests or waters of the counties of Augusta, Clarke, Frederick, Page, Shenandoah and Warren, and in the counties east of the Blue Ridge Mountains, except Patrick, at any time except the periods prescribed by law to hunt game birds and animals.

~~C. Meaning of "possession" of bow or firearm. For the purpose of this section the word "possession" shall include, but not be limited to, having any bow or firearm in or on one's person, vehicle or conveyance.~~

D. Shooting ranges and authorized activities. The provisions of this section shall not prohibit the conduct of any activities authorized by the board or the establishment and operation of archery and shooting ranges on the lands described in subsections A, B and C of this section. The use of firearms and bows in such ranges during the closed season period will be restricted to the area within the established range boundaries. Such weapons shall be required to be unloaded and cased or dismantled in all areas other than the range boundaries. The use of firearms or bows during the closed hunting period in such ranges shall be restricted to target shooting only and no birds or animals shall be molested.

~~D. E.~~ E. It shall be unlawful to chase with a dog or train dogs on national forest lands or department-owned lands except during authorized hunting, chase, or training seasons that specifically permit these activities on these lands or during raccoon hound field trials on these lands between September 1 and March 31, both dates inclusive, that are sanctioned by bona fide national kennel clubs and authorized by permits required and issued by the department and the U.S. Forest Service.

~~E. F.~~ F. It shall be unlawful to possess or transport a loaded gun in or on any vehicle at any time on national forest lands or department-owned lands. For the purpose of this section a "loaded gun" shall be defined as a firearm in which ammunition is chambered or loaded in the magazine or clip, when such magazine or clip is found engaged or partially engaged in a firearm. The definition of a loaded muzzleloading gun will include a gun which is capped or has a charged pan.

~~F. G.~~ G. The provisions of this section shall not prohibit the possession, transport and use of loaded firearms by employees of the Department of Game and Inland Fisheries while engaged in the performance of their authorized and official duties, nor shall it prohibit possession and transport of loaded concealed handguns where the individual possesses a concealed handgun permit as defined in § 18.2-308 of the Code of Virginia.

~~H.~~ H. Meaning of "possession" of bow or firearm and definition of "loaded gun." For the purpose of this section, the word "possession" shall include, but not be limited to, having any bow or firearm in or on one's person, vehicle or conveyance. For the purpose of this section, a "loaded gun" shall be defined as a firearm in which ammunition is chambered or loaded in the magazine or clip when such magazine or clip is found engaged or partially engaged in a firearm. The definition of a loaded muzzleloading gun will include a gun which is capped or has a charged pan.

VA.R. Doc. No. R97-693; Filed July 30, 1997, 11:36 a.m.

Proposed Regulations

Title of Regulation: 4 VAC 15-330-10 et seq. Fish: Trout Fishing (adding 4 VAC 15-330-171).

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

Notice to the Public:

The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amendments to board regulations. A public comment period on the proposed regulations opened July 17, 1997, and remains open until August 21, 1997. Comments submitted must be in writing; must be accompanied by the name, address and telephone number of the party offering the comments; should state the regulatory action desired; and should state the justification for the desired action. Comments should be sent to Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia 23230, and must be received no later than August 14, 1997, in order to be assured that the board will have opportunity to review them before taking final action.

A public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any parts thereof, will be held during a meeting of the board to take place at the Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia, beginning at 9 a.m. on Thursday, August 21, 1997, at which time any interested citizen present shall be heard. At the board meeting, staff will also present the results of two meetings held for the purpose of providing the public with opportunities to review and comment on the proposed regulation amendments.

If the board is satisfied that the proposed regulations, or any parts thereof, are advisable in the form in which published or as amended after receipt of the public's comments, the board may adopt regulations as final at the August 21-22, 1997, meeting. The regulation or regulation amendments adopted may be either more liberal or more restrictive than those proposed and being advertised under this notice.

Summary:

The proposed amendment establishes a creel limit of between 1 and 6 trout per day and a size limit of between 7 and 20 inches or more in length for taking of trout from that portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County. The board proposes to adopt a single specific creel limit and a single specific minimum size limit within the stated ranges to be determined by biological considerations and public comment.

Note: Should the following proposed regulation, 4 VAC 15-330-171; Fish: Trout Fishing: Special provisions applicable to certain portions of Jackson River, or some other version of this regulation, be adopted as a final regulation at the scheduled August 21-22, 1997, meeting of the Board of

Game and Inland Fisheries, on its effective date such regulation would supersede and replace 4 VAC 15-330-171 published in the Final Regulations section of this Virginia Register. In the absence of any such action at the August 21-22 board meeting, the regulation as published in the Final Regulations section of this publication would not be superseded or replaced.

4 VAC 15-330-171. Special provisions applicable to certain portion of Jackson River.

The daily creel limit shall be (between 1 and 6) trout per day and the size limit shall be (between 7 and 20) inches or more in length on that portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County. All trout caught in these waters under (between 7 and 20) inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any trout under (between 7 and 20) inches in length in this area.

VA.R. Doc. No. R97-694; Filed July 30, 1997, 11:36 a.m.

STATE BOARD OF HEALTH

Title of Regulation: 12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control (adding 12 VAC 5-90-230 through 12 VAC 5-90-270).

Statutory Authority: §§ 32.1-12, 32.1-45.3 and 54.1-2971.1 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until October 20, 1997.

(See Calendar of Events section for additional information)

Basis: The statutory authority for these proposed amendments to the Regulations for Disease Reporting and Control is found in §§ 32.1-12, 32.1-45.3, and 54.1-2971.1 of the Code of Virginia. Section 32.1-12 generally authorizes the State Board of Health to adopt such regulations as may be necessary to protect public health. Section 32.1-45.3 requires that donors of gametes used to treat patients for infertility be tested to ascertain their HIV status. This section also requires the State Board of Health to promulgate regulations establishing a testing protocol for gamete donors. Section 54.1-2971.1 requires physicians to disclose to patients information about the testing protocol used to ensure that gamete donors are free from known infection with Human Immunodeficiency Viruses (HIV).

Purpose: The purpose of these proposed amendments, pursuant to Chapter 519 of the 1995 Acts of Assembly, is to mandate the testing of gamete donors for HIV and the rejection of donors who test HIV positive. Chapter 519 directs the State Board of Health to promulgate regulations establishing a standardized HIV testing protocol for gamete donors. These proposed amendments will protect the public health by helping prevent HIV infection among women treated for infertility by various methods.

Substance: The proposed amendments require that all practitioners using gametes for the treatment of infertility by the transfer of gametes to a recipient shall interview gamete donors at the time of donation in order to screen for high-risk behavior suggesting exposure to HIV. Potential donors reporting infection with HIV or any of the established risk factors shall be excluded from donating.

The proposed amendments require that semen specimens from donors be stored and withheld from use for at least 180 days following donation and used only if the donor tests negative at least 180 days after donation for both human immunodeficiency virus, type 1 (HIV-1) and HIV, type 2 (HIV-2). Further, ova shall be used only if the donor tests negative for both HIV-1 and HIV-2 at the initiation of the cycle during which the ova are harvested.

Practitioners using ova, embryos, or zygotes for the treatment of infertility or other medical technology involving the transfer of ova, embryos, or zygotes to a recipient will also have to notify recipients of the option of fertilizing the donor ova, storing the resultant zygotes and transferring the zygotes to the recipient only if the ova donor is negative for both HIV-1 and HIV-2 at least 180 days after donation.

Issues: The primary advantage of these proposed amendments is that they will ensure that donors who contribute sperm or ova will be interviewed to screen for high-risk behavior suggesting exposure to HIV prior to treatment of infertility by artificial insemination, in vitro fertilization, gamete intrafallopian tube transfer or any other gamete, zygote, or embryo transfer, or other intervening medical technology using sperm or ova. In addition, donor sperm must be stored for at least 180 days after donation and the sperm donor must test negative at least 180 days after donation to have the sperm considered for utilization. Donor ova shall be used only if the donor tests negative for HIV-1 and HIV-2 at the initiation of the cycle during which the ova are harvested.

The General Assembly has determined that the benefits to the sperm or ova recipient and to society as a whole are sufficiently great to warrant mandated testing of all gamete donors for HIV and the rejection of ova and sperm which test positive. In fact, it has been an accepted standard of practice within the Commonwealth since 1985. The amendment will benefit physicians, their agents, and persons treated for infertility. The amendment will benefit at least seven institutes for the treatment of infertility in Virginia. The amendment will benefit the Virginia Department of Health (VDH) by providing a regulated mandate pertaining to the testing of ova and sperm for HIV. It will also have a beneficial impact for the public and Commonwealth by further ensuring that gamete recipients and the babies born to these recipients are protected from HIV infection. The implementation of chapter 519 is not anticipated to add any additional burden or cost to the donor or medical provider. There are no disadvantages anticipated for the public, VDH, or the Commonwealth.

Estimated impact:

Number and types of regulated entities or persons affected: Persons affected by this amendment include donors and recipients, at least 300 people; physicians and their agents who engage in treatment of infertility by artificial insemination, in vitro fertilization, gamete intrafallopian tube transfer or other intervening medical technology using sperm or ova. There are at least seven institutes for the treatment of infertility in Virginia. Professionals involved in the treatment of infertility are accustomed to interviewing all gamete donors to screen for high-risk behavior suggesting exposure to HIV and to testing serum on all gamete donors for HIV antibodies prior to the utilization of the ova or sperm for the aforementioned procedures. Physicians and laboratories currently do not utilize gametes of persons who report HIV infection, have a history of high-risk behavior for exposure to HIV, or have serology test positive for the HIV antibodies, by either the enzyme-linked immunoadsorbent assay or polymerase chain reaction.

Projected cost to regulated entities for implementation and compliance: There were 64 ova donors in Virginia in 1993. There is no system to estimate the number of sperm donors; however, they are expected to total approximately 130. Based on the known cost of antibody testing, which is \$60, the following costs have been projected:

\$60.00 x 194 =	\$11,640	Initial test
\$60.00 x 130 =	7,800	Repeated test of sperm at 180 days
\$9.00 x 194 =	1,746	Cost of counseling
\$21,186		Total anticipated cost

The cost of counseling is based on the average hourly rate of \$18 paid to nurses with 30 minutes being the average length of time per counseling session.

Private patients who are identified as recipients of the donated sperm and ova will have this fee included in the overall cost of the procedures.

The aforementioned costs are currently being borne by the individual client since the standard of practice already includes the procedures making up this protocol.

Public sector: The Regulations for Disease Reporting and Control will have to be amended to prescribe the frequency of HIV testing. Since 20,000 copies of the regulations are printed each time they are amended, the cost for printing and distribution at \$.75 a copy will be \$15,000. This cost is considered part of the current Virginia Department of Health (VDH) budget responsibility in the Office of Epidemiology.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the

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projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Pursuant to a mandate from the General Assembly, these regulations establish as law the now standard practice of screening sperm donors for HIV and for behavior that leads to a high risk of contracting HIV.

Estimated economic impact. Since this regulation requires that which is already standard practice, it is without costs or benefits.

Businesses and entities affected. No businesses or entities are affected.

Localities particularly affected. No localities are affected.

Projected impact on employment. There will be no impact on employment.

Effects on the use and value of private property. There will be no effects on private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Health concurs with the analysis and findings of the proposed regulation prepared by the Department of Planning and Budget except insofar as the summary included in that analysis inaccurately characterizes the proposed regulations as establishing a practice of screening only sperm donors. The donation of both sperm and ova will be screened by the proposed regulations.

Summary:

The proposed amendment to the Regulations for Disease Reporting and Control establishes an HIV testing protocol for gamete donors pursuant to § 32.1-45.3 of the Code of Virginia which requires that donors of gametes used to treat patients for infertility be tested to ascertain their HIV status. Section 54.1-2971.1 of the Code of Virginia requires physicians to disclose to patients information about the testing protocol used to ensure that all gamete donors are free from known infection with the Human Immunodeficiency Virus. This regulation mandates the rejection of donors who test positive. The regulation also addresses the exclusion of high risk donors, the storage of semen pending HIV test, the use of ova after negative HIV test, and the notification of recipients of the option to delay transfer until after the negative HIV test.

PART XI.

HUMAN IMMUNODEFICIENCY VIRUS (HIV) TESTING OF GAMETE DONORS.

12 VAC 5-90-230. Definitions.

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

"Artificial insemination" means instrumental placement of semen into the vagina, cervical canal, or uterus of a recipient.

"Donor" means an individual who is unrelated by marriage to the recipient and who contributes sperm or ova used in the following procedures: treatment of infertility by artificial insemination; in vitro fertilization; gamete intrafallopian tube transfer; zygote intrafallopian tube transfer or any other gamete, zygote, or embryo transfer; or other intervening medical technology using sperm or ova.

"Embryo" means the product of a fertilized ovum prior to the eighth week of development inside a uterus.

"Gamete" means either sperm or ova.

"Gamete intrafallopian tube transfer" means placement of harvested ova and sperm into the fallopian tube or tubes of a recipient.

"HIV-1" means the retrovirus causing the human immunodeficiency virus infection, type 1.

"HIV-2" means the retrovirus causing the human immunodeficiency virus infection, type 2.

"In vitro fertilization" means placement of a zygote or embryo that has been fertilized outside the body into the uterus of a recipient.

"Zygote" means a fertilized ovum prior to cell cleavage.

"Zygote intrafallopian tube transfer" means placement of a zygote or zygotes into the fallopian tube or tubes of a recipient.

12 VAC 5-90-240. Excluding donors with high risk factors.

A. Practitioners using gametes for the treatment of infertility by transfer of such gametes to a recipient shall interview all gamete donors at the time of donation in order to screen for high risk behavior indicating potential exposure to HIV-1 and HIV-2.

B. Any gamete donor reporting infection with HIV-1 or HIV-2 or any of the following risk factors shall be excluded from donating:

1. Men who have had sex with another man within the preceding five years.

2. Persons who have injected drugs for a nonmedical reason in the preceding five years, including intravenous, intramuscular, and subcutaneous injections of recreational or illegal drugs.

3. Persons with hemophilia or related clotting disorders who have received human derived clotting factor concentrates.

4. Persons who have had sex in exchange for money or drugs in the preceding five years.

5. Persons who have had sex in the preceding 12 months with any person described in subdivisions 1 through 4 of this subsection or with any person suspected of being infected with HIV-1 or HIV-2.

6. Persons who have been exposed within the last 12 months to known or suspected HIV-1 or HIV-2 infected blood through percutaneous inoculation (e.g., needle stick) or through contact with an open wound, nonintact skin, or mucous membrane.

7. Current inmates of correctional systems, including jails and prisons, and individuals who have been confined in jail or incarcerated in prison for more than 72 consecutive hours during the previous 12 months.

8. Persons who have had or have been treated for syphilis or gonorrhea during the preceding 12 months.

9. Persons who within 12 months of donation have undergone acupuncture, ear or body piercing or tattooing in which sterile procedures were not used or where it is unknown if sterile procedures were used.

10. Persons who choose to defer from donation whether or not they report any of the above potential exposures to HIV-1 or HIV-2.

12 VAC 5-90-250. Storage of semen pending negative HIV tests.

Semen specimens from donors shall be stored and withheld from use for at least 180 days following donation and used only if the donor tests negative for serum antibodies for HIV-1 and HIV-2 on enzyme-linked immunoadsorbent assay or blood HIV-1 and HIV-2 by polymerase chain reaction at least 180 days after donation.

12 VAC 5-90-260. Use of ova after negative HIV tests.

Ova shall be used only if the donor tests negative for serum antibodies to HIV-1 and HIV-2 on enzyme-linked immunoadsorbent assay or blood HIV-1 and HIV-2 by polymerase chain reaction at the initiation of the cycle during which the ova are harvested.

12 VAC 5-90-270. Notifying recipients of option to delay transfer.

Practitioners using ova, embryos, or zygotes for the treatment of infertility or other medical technology involving the transfer of ova, embryos, or zygotes to a recipient shall notify these recipients of the option for having donor ova fertilized and the resultant zygotes frozen and then transferred to the recipient only if the ova donor is negative for serum antibodies for HIV-1 and HIV-2 on enzyme-linked immunoadsorbent assay or blood HIV-1 and HIV-2 by polymerase chain reaction at least 180 days after donation.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: State Plan for Medical Assistance Relating to Preauthorization of Inpatient Hospital Services.

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-95, 12 VAC 30-50-100 and 12 VAC 30-50-140; adding 12 VAC 30-50-105).

12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-20; adding 12 VAC 30-60-25; repealing 12 VAC 30-60-60).

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

Public Hearing Date: N/A -- Public comments may be submitted until October 17, 1997.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in §§ 9-6.14:7.1 and 9-6.14:9.1 of the Administrative Process Act (APA), for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency initiated the public notice and comment process as contained in Article 2 (§ 9-6.14:7.1 et seq.) of the APA. The emergency regulation became effective on January 22, 1997. Section 9-6.14:4.1 C of the Code of Virginia requires the agency to publish the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was published in the Virginia Register of Regulations on March 17, 1997 (Volume 13, Issue 13).

Federal regulations permit Medicaid programs to limit all of the services which the program covers, both mandatory and optional, as long as comparability and sufficiency of amount, duration, and scope are not violated (42 CFR 440.230 through 440.250).

Purpose: The purpose of this action is to propose permanent regulatory changes to the State Plan for Medical Assistance, which are substantially the same as the emergency regulations, concerning prior authorization requirements for inpatient hospital services. This prior authorization requirement will ensure that only medically necessary inpatient hospital services are paid for by the agency's new diagnosis related grouping (DRG) inpatient reimbursement methodology.

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This regulation is essential to protect the health of the thousands of Medicaid recipients who require inpatient hospital services each year. Without this regulation, DMAS will have no mechanism by which to continue to cover this vital service. This regulation is also required for the efficient and economical performance of an important governmental function because it permits the Commonwealth to claim millions of federal matching dollars for this service, known as the Federal Financial Participation.

Summary and Analysis: Prior to the agency's emergency regulation, the utilization control method for inpatient hospitalization in general acute care hospitals was a post-service pre-payment review methodology. DMAS utilization review analysts reviewed inpatient hospital claims which had been identified during processing for such reasons as lengths of stay greater than three days, Saturday/Sunday admissions, inpatient days billed prior to surgery, and outpatient procedures performed during an inpatient stay. These edited claims were reviewed against DMAS' medical criteria to determine if there was justification for the inpatient admission and the billed length of stay. The DMAS utilization review analysts then either approved payment, denied payment, or reduced the approved reimbursement for such hospital stays based on the medical necessity criteria, professional judgment, and any covered service restrictions in the state plan.

Language in the 1996 Appropriation Act, Item 322.K, indicated that "effective on or after July 1, 1996, the Department of Medical Assistance Services shall implement a fully prospective reimbursement system for hospital services. For inpatient hospital services, it shall use a Diagnosis Related Groups (DRG) methodology." The language further stated that "in addition, the Board of Medical Assistance Services shall revise its regulations governing its utilization control measures (preauthorization and utilization review) so as to make them consistent with a prospective DRG reimbursement methodology." By initiating the proposed utilization control methodologies, DMAS will be performing preauthorization of all inpatient hospitalizations in both general acute care hospitals and freestanding psychiatric hospitals.

Utilization management will consist of telephonic pre-admission review by reviewers who are health care professionals. The provider requesting authorization for admission will provide the nurse reviewer with the admission diagnosis, signs and symptoms of illness, and the intended plan of care. The nurse will apply criteria specified by DMAS to the information provided. Additional documentation (such as special information required for the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program) may be required by the nurse reviewer prior to authorizing admission and can be provided via telefax. If admission is deemed justified, a preauthorization number (a control number needed for claims processing purposes) and an initial length of stay will be assigned.

Prior to the expiration of the assigned initial length of stay, the provider of services will telephone a nurse reviewer to

discuss the patient's condition and the plan of care and medical need for further inpatient care should the patient's condition require it. Additional documentation may be requested via telefax or other means to determine the need for additional length of stay. The nurse reviewer will again apply criteria specified by DMAS to the information provided and determine if continued inpatient hospitalization is justified. If appropriate, an additional length of stay will be assigned. Such reviews, performed concurrently with the hospital stay and known as concurrent review, will continue in a like manner until the discharge of the patient.

If either an admission or length of stay is determined not to be justified, the provider will have an immediate reconsideration opportunity to present additional information to clarify and further explain the need for inpatient hospitalization. All telephonic review and reconsideration determinations will be followed by written notification of decisions. Urgent admissions or admissions occurring after normal working hours or on holidays will require authorization within one working day following the admission. Retrospective review will be conducted in cases of retroactive eligibility determinations. It will be the provider's responsibility to obtain the required authorization prior to billing DMAS for reimbursement.

These utilization control methods will provide a standard against which all inpatient hospitalizations will be judged and will guard against payment for unjustified inpatient hospitalizations. Currently, with the utilization controls in place, DMAS performs a prepayment but post-service delivery review and payment of pended claims for general inpatient hospital services. Preauthorization is currently performed for all admissions (under EPSDT) to freestanding psychiatric facilities. With the preauthorization requirement for all inpatient hospital services, DMAS expects it either to be budget neutral or to realize slight savings which cannot be measured at this time. DMAS has obtained an appropriate private contractor, via the Commonwealth's prescribed procurement process, to provide the preauthorization services for both general inpatient care and freestanding psychiatric care as described above, consistent with this administration's priorities.

Presently, DMAS is phasing in the earlier referenced prospective DRG reimbursement methodology. The phase-in will be occurring until July 1, 1998. At that time all inpatient hospital reimbursement (including enrolled participating hospitals and non-enrolled, non-participating out-of-state hospitals) will be fully reimbursed under the DRG methodology. During the phase-in process, DMAS is continuing to use modified versions of its previous inpatient hospital restrictions (i.e., limiting inpatient stays to 21 days within 60 days for the same or similar diagnoses). At the time of the full DRG implementation which is expected to be July 1, 1998, DMAS will discontinue the application of these limits as they will no longer be necessary to control the use of inpatient hospital services.

Issues: The agency projects no negative issues involved in implementing this proposed change. While cost control and

ultimately cost savings are key advantages to the Commonwealth with the institution of preauthorization, there are several advantages to the provider and recipient population as well. The providers will be afforded the opportunity to discuss the condition and medical plan of care with a health care professional who will consistently apply established criteria to the information presented. Providers will know in advance of service provision if criteria for reimbursement are met and if reimbursement can be expected. If inpatient hospitalization is not deemed necessary, the contractor's nurse reviewer will attempt to discuss with the provider alternatives for providing appropriate medical care.

Clarifying language is being added to the coverage of psychiatric services so that the referenced language clearly refers to outpatient care. The initial limit of 26 sessions and the restriction to no more than three sessions in any given seven-day period as stated in 12 VAC 30-50-140 are not otherwise affected by psychiatric care obtained in the inpatient setting in either a general acute care hospital or a freestanding psychiatric facility.

Fiscal/Budget Impact: There are no localities which are uniquely affected by these regulations as they apply statewide. This prior authorization policy is integral to the implementation of the diagnosis related groupings policy (the new inpatient hospital reimbursement methodology) already implemented by emergency regulation. The transition from the previous per diem methodology to the current DRG/prior authorization methodology is intended to be budget neutral. However, without the prior authorization component proposed in this proposed regulation package, DMAS expects to incur at least \$3 million in additional expenditures.

There is no anticipated fiscal impact on recipients. While total payments to inpatient hospitals are not expected to change, payments to individual enrolled hospital providers may change due to the transition in the payment methodology. The fiscal impact will probably be felt most by the hospitals which are currently exempt from review or those having a delegated review status. Most of the inpatient claims for these hospitals are paid without any DMAS prepayment review. With the onset of preauthorization, there will be no exemptions or delegated review statuses granted. All inpatient hospitalizations will have to be authorized prior to reimbursement without exception. DMAS expenditures for inpatient hospitalizations for fiscal year 1994 were \$359 million (\$179.5 million GF; \$179.5 million NGF) and for fiscal 1995 were \$416 million (\$208 million GF; \$208 million NGF). As previously stated, DMAS expects the DRG/hospital preauthorization policy to be budget neutral.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the

regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation recommends changes to the permanent regulations controlling the State Plan for Medical Assistance concerning prior authorization requirements for inpatient hospital services. This will ensure that only medically necessary inpatient hospital services are paid for by the agency's new diagnosis related grouping inpatient reimbursement methodology.

The 1996 Appropriation Act, Item 322.K, required DMAS to implement the diagnosis related groups (DRG) methodology for inpatient hospital services. With this methodology, DMAS will be performing preauthorization of all inpatient hospitalizations in both general acute care hospitals and freestanding psychiatric hospitals. A provider requesting authorization for hospitalization will provide a nurse reviewer with information on admission diagnosis, signs and symptoms of illness, and the intended plan of care. A decision to give or deny authorization will then be made based on this information. If authorization is granted, an initial length of stay will also be specified. Prior to the expiration of the initial length of stay, the provider can discuss the patient's condition with the nurse reviewer who will then apply criteria specified by DMAS to determine if continued hospitalization is justified. Urgent admissions or admissions occurring after normal working hours will have to be authorized within one working day following admission. Providers who feel a request has been unjustifiably denied can appeal and provide additional information during the process.

Estimated economic impact. DMAS is proposing this regulation to ensure that its policy on utilization control is consistent with the DRG reimbursement methodology. The economic impact of the DRG system of reimbursement has been extensively discussed in an earlier Economic Impact Analysis on the subject. In general, the DRG reimbursement methodology enhances economic efficiency in the provision of hospital services, which should decrease hospital costs over time. It encourages vertical integration and other forms of consolidation designed to reduce transaction costs and service disruptions. Finally, it also enhances distributional equity by eliminating disparities in the current system between current Medicaid cost of treatment and Medicaid reimbursements that may be attributable to changes over time in hospital specific case mixes.

Preauthorization of inpatient hospitalizations will ensure that the DRG methodology is properly applied. Providers will know prior to admission what payment to expect based on the diagnosis. This would appear to provide an incentive to under treat patients especially those that might require longer

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hospitalizations. However, providers have the opportunity of requesting longer stays after the initial approved length of stay by providing the necessary information to the nurse reviewer. Moreover, as stated in the initial EIA on the DRG methodology, "even though DRG systems are generally associated with reduced lengths of stay, they are also associated with increased levels of hospital and doctor service intensity."

DPB anticipates that preauthorization will consolidate the economic benefits of switching to the DRG reimbursement methodology from the current per diem methodology.

Businesses and entities affected. The proposed regulation particularly affects Virginia hospitals, their patients, and their employees.

Localities particularly affected. No particular localities will be affected by this regulation.

Projected impact on employment. This regulation should not have any impact on employment.

Effects on the use and value of private property. Any possible effect on the value of and use of private property will be too small to measure.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget regarding the regulations concerning Preauthorization of Inpatient Hospital Services.

Summary:

The purpose of this action is to propose permanent regulatory changes to the State Plan for Medical Assistance which are substantially the same as the emergency regulations concerning prior authorization requirements for inpatient hospital services. This prior authorization requirement will ensure that only medically necessary inpatient hospital services are paid for by the agency's new diagnosis related grouping inpatient reimbursement methodology. This prior authorization process also establishes a process by which hospitals or attending physicians may request a reconsideration process if their initial request for approval of an inpatient admission is denied. As is true of all Medicaid covered services, Medicaid recipients' rights of appeal of denied services is reiterated.

DMAS is separating its policies for nonenrolled hospital providers, contained in the new section 12 VAC 30-50-105, from the new prior authorization policies to be applied to enrolled hospital providers, contained in 12 VAC 30-50-100. The content of 12 VAC 30-50-105 is not new regulatory language and is simply a result of the separation of policies for enrolled hospital providers from nonenrolled hospital providers. The policies contained in the new section 12 VAC 30-50-105 are merely a restatement of long-standing DMAS requirements and limits applicable to inpatient hospital services.

12 VAC 30-50-95. Reimbursement of services; in general.

The provision of the following *medically necessary* services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home health services. Physical therapy services will be reimbursed only when prescribed by a physician. *Inpatient acute hospitalizations will be reimbursed only if the stay has been authorized.*

12 VAC 30-50-100. Inpatient hospital services ~~other than those provided in an institution for mental diseases provided at general acute care hospitals and freestanding psychiatric hospitals; enrolled providers.~~

~~A. Medicaid inpatient hospital admissions (lengths of stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under four days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed three days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)~~ *Preauthorization of all inpatient hospital services will be performed. This applies to both general acute care hospitals and freestanding psychiatric hospitals. Nonauthorized inpatient services will not be covered or reimbursed by the Department of Medical Assistance Services (DMAS). Preauthorization shall be based on criteria specified by DMAS. In conjunction with preauthorization, an appropriate length of stay will be assigned using the HCIA, Inc., Length of Stay by Diagnosis and Operation, Southern Region, 1996, as guidelines.*

1. Admission review.

a. Planned/scheduled admissions. Review shall be done prior to admission to determine that inpatient hospitalization is medically justified. An initial length of stay shall be assigned at the time of this review. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

b. Unplanned/urgent admissions. Review shall be performed within one working day to determine that inpatient hospitalization is medically justified. An initial length of stay shall be assigned for those admissions which have been determined to be appropriate. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

2. Concurrent review shall end for claims with dates of admission and services on or after July 1, 1998, with the full implementation of the DRG reimbursement methodology. Concurrent review shall be done to determine that inpatient hospitalization continues to be

medically necessary. Prior to the expiration of the previously assigned initial length of stay, the provider shall be responsible for obtaining authorization for continued inpatient hospitalization. If continued inpatient hospitalization is determined necessary, an additional length of stay shall be assigned. Concurrent review shall continue in the same manner until the discharge of the patient from acute inpatient hospital care. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

3. Retrospective review shall be performed when a provider is notified of a patient's retroactive eligibility for Medicaid coverage. It shall be the provider's responsibility to obtain authorization for covered days prior to billing DMAS for these services. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

4. Reconsideration process.

a. Providers requesting reconsideration must do so within 15 calendar days of receipt of initial verbal notification of denial.

b. This process is available to providers when the nurse reviewers advise the providers by telephone that the medical information provided does not meet DMAS specified criteria. At this point, the provider must request by telephone a higher level of review if he disagrees with the nurse reviewer's findings. If higher level review is not requested, the case will be denied and a denial letter generated to both the provider and recipient identifying appeal rights.

c. If higher level review is requested, the authorization request will be held in suspense and referred to the Utilization Management Supervisor (UMS). If the UMS upholds the adverse decision, the provider may accept that decision and the case will be denied and a denial letter identifying appeal rights will be generated to both the provider and the recipient. If the provider continues to disagree with the UMS' adverse decision, he must request physician review by DMAS medical support. If higher level review is requested, the authorization request will be held in suspense and referred to DMAS medical support for the last step of reconsideration.

d. DMAS medical support will review all case specific medical information. If medical support upholds the adverse decision, the request for authorization will then be denied and a letter identifying appeal rights will be generated to both the provider and the recipient. The entire reconsideration process must be completed within three working days.

5. Appeals process.

a. Recipient appeals. Upon receipt of a denial letter, the recipient shall have the right to appeal the adverse

decision under the Client Appeals regulations, Part 1 (12 VAC 30-110-10 et seq.) of 12 VAC 30-110.

b. Provider appeals. If the reconsideration steps are exhausted and the provider continues to disagree, upon receipt of the denial letter, the provider shall have the right to file an appeal if the issue is whether DMAS will reimburse the provider for services already rendered. The appeal shall be held in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

~~B. Medicaid does not pay the Medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length of stay covered by the other insurance. (See exception to subsection F of this section.) Cosmetic surgical procedures shall not be covered unless performed for physiological reasons and require DMAS prior approval.~~

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

~~D. Hospital claims with an admission date prior to the first surgical date, regardless of the number of days prior to surgery, must be medically justified. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for all preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.~~

~~E. Reimbursement will not be provided for weekend (Saturday/Sunday) admissions, unless medically justified. Hospital claims with admission dates on Saturday or Sunday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.~~

F. D. Coverage of inpatient hospitalization will shall be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission per admission in a 60-day period for the same or similar diagnosis or treatment plan. The 60-day period would begin on the first hospitalization (if there are multiple admissions) admission date. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days per admission within 60 days for the same or similar diagnosis or treatment plan will not be authorized for payment. Claims which exceed 21 days per admission within 60 days with a different diagnosis and medical justification will be paid or treatment plan will be considered for reimbursement if

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medically indicated. Except as previously noted, regardless of authorization for the hospitalization, the claims will be processed in accordance with the limit for 21 days in a 60-day period. Claims for stays exceeding 21 days in a 60-day period shall be suspended and processed manually by DMAS staff for appropriate reimbursement. The limit for coverage of 21 days for nonpsychiatric admissions shall cease with dates of service on or after July 1, 1998. Medically unjustified days in such admissions will be denied. Any claim which has the same or similar diagnosis will be denied. EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in ~~acute care facilities~~ general hospitals and freestanding psychiatric hospitals in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical or psychological, as appropriate, examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. The admission and length of stay must be medically justified and preauthorized via the admission and concurrent or retrospective review processes described in subsection A of this section. Medically unjustified days in such admissions will be denied. Hospitalizations shall not be authorized for payment.

G. E. Coverage for a normal, uncomplicated vaginal delivery shall be limited to the day of delivery plus an additional two days unless additional days are medically justified. Coverage for cesarean births shall be limited to the day of delivery plus an additional four days unless additional days are medically justified.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period. F. Coverage in freestanding psychiatric hospitals shall not be available for individuals aged 21 through 64. Medically necessary inpatient psychiatric care rendered in a psychiatric unit of a general acute care hospital shall be covered for all Medicaid eligible individuals, regardless of age, within the limits of coverage prescribed in this section and 12 VAC 30-50-105.

I. G. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary

transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS medical support. Inpatient hospitalization related to kidney transplantation will require preauthorization at the time of admission and, concurrently, for length of stay. Cornea transplants do not require preauthorization of the procedure, but inpatient hospitalization related to such transplants will require preauthorization for admission and, concurrently, for length of stay. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540.

H. Coverage of observation beds. (Reserved.)

J. The department may exempt portions or all of the utilization review documentation requirements of subsections A, D, E, F as it pertains to recipients under age 21, G, or H in writing for specific hospitals from time to time as part of their ongoing hospital utilization review performance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. I. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements review. Hospitals must submit the required DMAS forms corresponding to the procedures. Regardless of authorization for the hospitalization during which these procedures were performed, the claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review

status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support ~~pending claims on a prepayment hospital utilization review basis to the extent allowed by federal or state law or regulation.~~ The following audit conditions apply to delegated review status for hospitals J. To determine that the DMAS enrolled hospital providers are in compliance with the regulations governing hospital utilization control found in 42 CFR 456.50 and the regulations governing mental hospital utilization control found in 42 CFR 456.150, an annual audit will be conducted of each enrolled hospital. This audit can be performed either on-site or as a desk audit. The hospital shall make all requested records available and shall provide an appropriate place for the auditors to conduct such review if done on-site. The audits shall consist of review of the following:

1. ~~The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays Copy of the general hospital's Utilization Management Plan to determine compliance with the regulations found in 42 CFR 456.100 through 456.145 and for freestanding psychiatric hospitals, as required in 42 CFR 456.200 through 456.245.~~

2. ~~The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the department's auditors to conduct such review List of current Utilization Management Committee members and physician advisors to determine that the committee's composition is as prescribed in 42 CFR 456.105 and 456.106, and for freestanding psychiatric hospitals, as prescribed in 42 CFR 456.205 and 456.206.~~

3. ~~The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit Verification of Utilization Management Committee meetings since the last annual audit, including dates and lists of attendees, to determine that the committee is meeting according to its utilization management meeting requirements.~~

4. ~~The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions One completed Medical Care Evaluation Study to include objectives of the study, analysis of the results, and actions taken, or recommendations made to determine compliance with 42 CFR 456.141 through 456.145, and for freestanding psychiatric hospitals, as required in the 42 CFR 456.241 through 456.245.~~

5. ~~The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status~~

~~and reapply certain or all prepayment utilization review documentation requirements Topic of one on-going Medical Care Evaluation Study to determine whether the hospital is in compliance with 42 CFR 456.145, and for freestanding psychiatric hospitals, as required in 42 CFR 456.245.~~

6. From a list of randomly selected paid claims, the hospital must provide a copy of the physician admission certification and written plan of care for each selected stay to determine the hospital's compliance with 42 CFR 456.60 and 456.80. From a list of randomly selected paid claims, the freestanding psychiatric hospital must provide a copy of the certification for services, a copy of the physician admission certification, a copy of the required medical, psychiatric, and social evaluations, and the written plan of care for each selected stay to determine the hospital's compliance with the Psychiatric Inpatient Treatment of Minors Act (§ 16.1-335 et seq. of the Code of Virginia) and 42 CFR 441.152, 456.160, 456.170, 456.180, and 456.181.

K. The hospitals may appeal in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) any adverse decision resulting from audits described in subsection J of this section which results in retraction of payment. The appeal must be requested within 30 days of the date of the letter notifying the hospital of the retraction.

12 VAC 30-50-105. Inpatient hospital services provided at general acute care hospitals and freestanding psychiatric hospitals; nonenrolled providers (nonparticipating/out of state).

A. The full DRG inpatient reimbursement methodology shall become effective July 1, 1998, for general acute care hospitals and freestanding psychiatric hospitals which are nonenrolled providers (nonparticipating/out of state) and the same reviews, criteria, and requirements shall apply as are applied to enrolled, in-state, participating hospitals in 12 VAC 30-50-100.

B. Inpatient hospital services rendered by nonenrolled providers shall not require preauthorization with the exception of transplants as described in subsection K of this section. However, these inpatient hospital services claims will be suspended from payment and manually reviewed for medical necessity as described in subsections C through K of this section using criteria specified by DMAS.

C. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under four days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed three days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection H of this section.)

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D. Cosmetic surgical procedures shall not be covered unless performed for physiological reasons and require DMAS prior approval.

E. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

F. Hospital claims with an admission date prior to the first surgical date, regardless of the number of days prior to surgery, must be medically justified. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for all pre-operative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

G. Reimbursement will not be provided for weekend (Saturday/Sunday) admissions, unless medically justified. Hospital claims with admission dates on Saturday or Sunday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admission will be denied.

H. Coverage of inpatient hospitalization shall be limited to a total of 21 days per admission in a 60-day period for the same or similar diagnosis or treatment plan. The 60-day period would begin on the first hospitalization (if there are multiple admissions) admission date. There may be multiple admissions during this 60-day period. Claims which exceed 21 days per admission within 60 days for the same or similar diagnosis or treatment plan will not be reimbursed. Claims which exceed 21 days per admission within 60 days with a different diagnosis or treatment plan will be considered for reimbursement if medically justified. The admission and length of stay must be medically justified and preauthorized via the admission and concurrent review processes described in subsection A of 12 VAC 30-50-100. Claims for stays exceeding 21 days in a 60-day period shall be suspended and processed manually by DMAS staff for appropriate reimbursement. The limit for coverage of 21 days shall cease with dates of service on or after July 1, 1998. Medically unjustified days in such hospitalizations shall not be reimbursed by DMAS.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age who are Medicaid eligible for medically necessary stays in general hospitals and freestanding psychiatric facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health

conditions identified through a physical or psychological, as appropriate, examination.

I. Coverage for a normal, uncomplicated vaginal delivery shall be limited to the day of delivery plus an additional two days unless additional days are medically justified. Coverage for cesarean births shall be limited to the day of delivery plus an additional four days unless additional days are medically necessary.

J. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the DMAS outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions.

K. For purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover: procurement costs; all hospital costs from admission to discharge for the transplant procedure; total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540.

L. Coverage of observation beds. (Reserved.)

M. In compliance with 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed shall be subject to review of the required DMAS forms corresponding to the procedures. The claims shall suspend for manual review by DMAS. If the forms are not properly completed or not

attached to the bill, the claim will be denied or reduced according to DMAS policy.

12 VAC 30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. *Outpatient* psychiatric services.

1. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the DMAS' approval of the ~~Psychiatric Review Board~~) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the ~~Psychiatric Review Board~~ DMAS. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. *Consistent with § 6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary psychiatric services shall be covered when prior authorized by DMAS for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.*

2. Psychiatric services can be provided by psychiatrists, clinical psychologists licensed by the State Board of Medicine, psychologists clinical licensed by the Board of Psychology, or by a licensed clinical social worker under the direct supervision of a psychiatrist, licensed clinical psychologist or a licensed psychologist clinical.

3. Psychological and psychiatric services shall be medically prescribed treatment which is directly and specifically related to an active written plan designed and signature-dated by either a psychiatrist or a clinical psychologist licensed by the Board of Medicine, a psychologist clinical licensed by the Board of Psychology, or a licensed clinical social worker under the direct supervision of a licensed clinical psychologist, a licensed psychologist clinical, or a psychiatrist.

4. Psychological or psychiatric services shall be considered appropriate when an individual meets the following criteria:

a. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels which have been impaired;

b. Exhibits deficits in peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, or ability to participate in employment, educational, or social activities;

c. Is at risk for developing or requires treatment for maladaptive coping strategies; and

d. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.

5. Psychological or psychiatric services may be provided in an office or a mental health clinic.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients *over the age of 21* are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses or *treatment plan* and is further restricted to medically necessary *authorized (for enrolled providers)/approved (for nonenrolled providers)* inpatient hospital days as determined by the Program. EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in ~~acute care general hospitals and freestanding psychiatric~~ facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days ~~determined to be medically unjustified will be adjusted~~ shall be limited to medically necessary inpatient hospital days.

H. Repealed.

I. Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.

J. ~~Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period. (Reserved.)~~

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K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540.

DOCUMENT INCORPORATED BY REFERENCE

Length of Stay by Diagnosis and Operation, Southern Region, 1996, HCIA, Inc.

12 VAC 30-60-20. Utilization control: general acute care hospitals; enrolled providers.

A. ~~The Commonwealth of Virginia is required by state law to take affirmative action on all hospital stays that approach 15 days. It is a requirement that the hospitals submit to the Department of Medical Assistance Services complete information on all hospital stays where there is a need to exceed 15 days. The various documents which are submitted are reviewed by professional program staff, including a physician who determines if additional hospitalization is indicated. This review not only serves as a mechanism for approving additional days, but allows physicians on the Department of Medical Assistance Services' staff to evaluate patient documents and give the Program an insight into the quality of care by individual patient. In addition, hospital representatives of the Medical~~

~~Assistance Program visit hospitals, review the minutes of the Utilization Review Committee, discuss patient care, and discharge planning. The Department of Medical Assistance Services (DMAS) shall not reimburse for services which are not authorized as follows:~~

1. ~~DMAS shall monitor, consistent with state law, the utilization of all inpatient hospital services. All inpatient hospital stays shall be preauthorized prior to admission. Services rendered without such prior authorization shall not be covered, except as stated in subdivisions 2 and 3 of this subsection.~~

2. ~~If a provider has rendered inpatient services to an individual who later is determined to be Medicaid eligible, the provider shall be responsible for obtaining the required authorization prior to billing DMAS for these services.~~

3. ~~If a Medicaid eligible individual is admitted to inpatient hospital care on a Saturday, Sunday, holiday, or after normal working hours, the provider shall be responsible for obtaining the required authorization on the next work day following such admission.~~

4. ~~Regardless of preauthorization, in the following cases hospital inpatient claims shall continue to suspend for DMAS review before reimbursement is approved. DMAS shall review all claims for individuals over the age of 21 which pend for exceeding the 21-day limit per admission in a 60-day period for the same or similar diagnoses prior to reimbursement for the stay. This pending action shall cease for nonpsychiatric hospitalizations with dates of service on or after July 1, 1998. DMAS shall review all claims which are pending for sterilization, hysterectomy, or abortion procedures for the presence of the required federal and state forms prior to reimbursement. If the forms are not attached to the bill and not properly completed, reimbursement for the services rendered will be denied or reduced according to DMAS policy.~~

5. ~~In addition, an annual audit will be performed to evaluate a hospital's compliance with the requirements for control of utilization of inpatient services found in 42 CFR 456.50 through 456.145.~~

B. ~~In each case for which payment for inpatient hospital services, or inpatient mental hospital services is made under the State Plan:~~

1. ~~A physician must certify at the time of admission, or if later, the time the individual applies for medical assistance under the State Plan that the individual requires inpatient hospital or mental hospital care at the time the hospital is notified of an individual's retroactive eligibility status, that the individual requires or required inpatient hospital care.~~

2. ~~The physician, or physician assistant under the supervision of a physician, must recertify, at least every 60 days, that patients continue to require inpatient hospital or mental hospital care.~~

3. ~~Such services were furnished under a plan established and periodically reviewed and evaluated by a physician for inpatient hospital or mental hospital services. The physician must have a written plan of care for each individual receiving inpatient hospital care and periodically review and evaluate the need for revision to the plan.~~

12 VAC 30-60-25. Utilization control: freestanding psychiatric hospitals.

A. Psychiatric services in freestanding psychiatric hospitals shall only be covered for eligible persons younger than 21 years of age and older than 64 years of age.

B. Prior authorization required. DMAS shall monitor, consistent with state law, the utilization of all inpatient freestanding psychiatric hospital services. All inpatient hospital stays shall be preauthorized prior to reimbursement for these services. Services rendered without such prior authorization shall not be covered.

In addition, an annual audit will be performed to evaluate a freestanding psychiatric hospital's compliance with the requirements for control of utilization of inpatient services found in 42 CFR 456.150 through 456.245.

C. In each case for which payment for freestanding psychiatric hospital services is made under the State Plan:

1. A physician must certify at the time of admission, or at the time the hospital is notified of an individual's retroactive eligibility status, that the individual requires or required inpatient services in a freestanding psychiatric hospital consistent with 42 CFR 456.160.

2. The physician, physician assistant, or nurse practitioner acting within the scope of practice as defined by state law and under the supervision of a physician, must recertify at least every 60 days that the individual continues to require inpatient services in a psychiatric hospital.

3. Before admission to a freestanding psychiatric hospital or before authorization for payment, the attending physician or staff physician must perform a medical evaluation of the individual and appropriate professional personnel must make a psychiatric and social evaluation as cited in 42 CFR 456.170.

4. Before admission to a freestanding psychiatric hospital or before authorization for payment, the attending physician or staff physician must establish a written plan of care for each recipient patient as cited in 42 CFR 441.155 and 456.180.

D. If younger than 21 years of age, it shall be documented that the individual requiring admission to a freestanding psychiatric hospital is under 21 years of age, that treatment is medically necessary, and that the necessity was identified as a result of an early and periodic screening, diagnosis, and treatment (EPSDT) screening. Required patient

documentation shall include, but not be limited to, the following:

1. An EPSDT physician's screening report showing the identification of the need for further psychiatric evaluation and possible treatment.

2. A diagnostic evaluation documenting a current (active) psychiatric disorder included in the DSM-III-R that supports the treatment recommended. The diagnostic evaluation must be completed prior to admission.

3. For admission to a freestanding psychiatric hospital for psychiatric services resulting from an EPSDT screening, a certification of the need for services as defined in 42 CFR 441.152 by an interdisciplinary team meeting the requirements of 42 CFR 441.153 or 441.156 and the Psychiatric Inpatient Treatment of Minors Act (§ 16.1-335 et seq. of the Code of Virginia).

The absence of any of the required documentation in subdivisions 1 through 3 of this subsection shall result in DMAS' denial of the requested preauthorization and coverage of subsequent hospitalization.

If a Medicaid eligible individual is admitted in an emergency to a freestanding psychiatric hospital on a Saturday, Sunday, holiday, or after normal working hours, the provider shall be responsible for obtaining the required authorization on the next work day following such an admission.

12 VAC 30-60-60. Utilization control: ~~Psychiatric services resulting from an EPSDT screening.~~ (Repealed.)

~~Consistent with the Omnibus Budget Reconciliation Act of 1980 § 6403 and 12 VAC 30-50-140 D 2, psychiatric services shall be covered, based on their prior authorization of medical need, for individuals younger than 21 years of age when the need for such services has been identified in a screening as defined by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. The following utilization control requirements shall be met before preauthorization of payment for services can occur:~~

~~1. Definitions. The following words and terms, when used in the context of this chapter, shall have the following meaning unless the context clearly indicates otherwise:~~

~~"Admission" means the provision of services that are medically necessary and appropriate, and there is a reasonable expectation the patient will remain at least overnight and occupy a bed.~~

~~"CFR" means the Code of Federal Regulations.~~

~~"Psychiatric services resulting from an EPSDT screening" means services rendered upon admission to a psychiatric hospital.~~

~~"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

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

~~"JCAHO" means Joint Commission on Accreditation of Hospitals.~~

~~"Medical necessity" means that the use of the hospital setting under the direction of a physician has been demonstrated to be necessary to provide such services in lieu of other treatment settings and the services can reasonably be expected to improve the recipient's condition or to prevent further regression so that the services will no longer be needed.~~

~~"VDH" means the Virginia Department of Health.~~

2. ~~It shall be documented that treatment is medically necessary and that the necessity was identified as a result of an EPSDT screening. Required patient documentation shall include, but not be limited to, the following:~~

a. ~~Copy of the screening report showing the identification of the need for further psychiatric diagnosis and possible treatment.~~

b. ~~Copy of supporting diagnostic medical documentation showing the diagnosis that supports the treatment recommended.~~

c. ~~For admission to a psychiatric hospital, for psychiatric services resulting from an EPSDT screening, certification of the need for services by an interdisciplinary team meeting the requirements of 42 CFR 441.153 or 441.156 that:~~

~~(1) Ambulatory care resources available in the community do not meet the recipient's treatment needs;~~

~~(2) Proper treatment of the recipient's psychiatric condition requires admission to a psychiatric hospital under the direction of a physician; and~~

~~(3) The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed, consistent with 42 CFR 441.152.~~

3. ~~The absence of any of the above required documentation shall result in DMAS' denial of the requested preauthorization.~~

4. ~~Providers of psychiatric services resulting from an EPSDT screening must:~~

a. ~~Be a psychiatric hospital accredited by JCAHO;~~

b. ~~Assure that services are provided under the direction of a physician;~~

c. ~~Meet the requirements in 42 CFR Part 441 Subpart D;~~

d. ~~Be enrolled in the Commonwealth's Medicaid program for the specific purpose of providing~~

~~psychiatric services resulting from an EPSDT screening.~~

VA.R. Doc. No. R97-649; Filed July 21, 1997, 3:51 p.m.

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Title of Regulations: **Community Mental Health Services. 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-130 and 12 VAC 30-50-220; adding 12 VAC 30-50-225 and 12 VAC 30-50-226).**

12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-140; adding 12 VAC 30-60-61 and 12 VAC 30-60-143).

12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services (amending 12 VAC 30-130-540, 12 VAC 30-130-550 and 12 VAC 30-130-570).

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

Public Hearing Date: N/A -- Public comments may be submitted until October 17, 1997.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in §§ 9-6.14:7.1 and 9-6.14:9.1 of the Administrative Process Act (APA), for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, which the Governor approved on January 20, 1997, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on January 22, 1997. Section 9-6.14:4.1 C of the Code of Virginia requires the agency to publish the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was published in the Virginia Register on March 31, 1997 (Volume 13, issue 14).

Purpose: The purpose of this proposal is to recommend changes to the permanent regulations controlling rehabilitation services, specifically community mental health and mental retardation services, in support of a wider range of mental health services to Medicaid eligible persons who are mentally ill. The expansion of these services creates a payment source for the local community services boards, which draws on federal funding thereby reducing the demand for general fund and local dollars.

The purpose of this proposed regulation is to make permanent the provisions of the emergency regulations while also addressing issues raised by the Health Care Financing

Administration (HCFA) in response to DMAS' State Plan Amendment 97-02 (SPA) which was the federal filing companion to the agency's state emergency regulation. HCFA raised a number of issues in response to this SPA: mental retardation services were no longer approvable as one of the options under the rehabilitative services section; special mental health treatment services for children were no longer approvable under this rehabilitation services item but must be moved to the early and periodic screening, diagnosis and treatment service; substance abuse treatment services could not be offered to parents with children because it violated the comparability rule at 42 CFR 440.240; service limits could not be used which were based on the patient's age and diagnosis; substance abuse treatment services for pregnant women was not approvable under the rehabilitative services option but instead must be placed under the separate Supplement 3, Expanded Prenatal Care Services. These regulations have been reorganized to reflect changes required by HCFA but maintaining the services within the original intent and design. This package does not contain one service contained in the previous emergency regulation; therapeutic behavioral services to children, as that service duplicates components already covered under intensive in-home services.

Item 322 D(4) of the 1996 Appropriations Act required the Department of Medical Assistance Services (DMAS) to expand its State Plan (the Plan) coverage of community mental health and mental retardation services to be provided by community services boards (CSBs). This action represents an expansion of the original community mental health/mental retardation initiative which began in 1990.

In addition, Item 333 (E) of the 1996 Appropriations Act required the participation of CSBs in Medicaid covered services by stipulating that a CSB's failure to do so will result in the termination of a like amount of state grant support.

As part of this process the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) convened a Medicaid Expansion Committee, consisting of representatives of CSBs, major consumer and family groups, and DMHMRSAS staff for the purpose of developing these expanded services. Also, staff from the two agencies (DMAS and DMHMRSAS) have worked directly together extensively to identify and develop potential services for the expanded coverage mandated by Item 322.

This advisory committee met regularly during 1997 to review the identification and definition of possible covered services, draft emergency regulations, and review rates for the expanded services. The committee will continue meeting as the new services are implemented to review interpretive guidelines, utilization review criteria, and the proposed permanent regulations.

The DMHMRSAS surveyed the CSBs twice during the spring and summer of 1997 regarding potential services, service amounts and related costs that could be included in this expanded coverage. Recently, DMHMRSAS surveyed the CSBs to solicit comments and feedback on the proposed

rates for this expansion. A description of the expansion services follows:

1. Mental Health Intensive Community Treatment (ICT) provides outpatient mental health services outside the traditional clinic setting. It is designed to bring services to individuals who will not or cannot be served in the clinic setting.
2. Mental Health Crisis Stabilization Services provides direct mental health care to individuals experiencing acute crisis of a psychiatric nature that may jeopardize their current community living situation. It will provide less medical mental health services independently of or in conjunction with Intensive Community Treatment.
3. Mental Health Support Services provide training and support to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment.

Used singly or as a package, these services will provide comprehensive treatment and support services to persons with serious and persistent mental illness.

Issues: The advantages to the public in the coverage of these services is reduction in the number of general fund dollars needed to provide these services through the use of federal financial participation. Any CSB which is presently providing any of these services without the benefit of Medicaid payments is doing so with all general fund and local dollars. The agency projects no negative issues involved in implementing this proposed change. These proposed expanded services will enable eligible Medicaid recipients to receive a broader array of community services that will assist them to remain in their communities and thereby avoid costly institutional admissions and treatment. Systemically, the expanded services will complement and fill out the continuum of care available in the community for Medicaid recipients with mental illnesses, mental retardation, or substance abuse disorders.

Fiscal/Budget Impact: There are no localities which are uniquely affected by these regulations as they apply statewide. These regulations will affect the 40 community services boards, which will provide the services, and Medicaid recipients who meet the eligibility criteria for these new services. The fiscal impact of these expanded services that was tentatively projected during consideration of the 1996 Appropriation Act was \$4.8 million total funds in FY 1997 and \$9.6 million total funds in FY 1998. It is important to note that this expansion requires no additional general funds. The state match for the federal financial participation associated with these services will be supplied by the DMHMRSAS, as is currently the case with the existing community mental health/mental retardation services. The payment rates proposed to be effective on January 22, 1997, will be subject to retroactive review and adjustment based on information submitted by DMHMRSAS. The following table presents a very preliminary projection of the potential annual impact of these proposed expanded services. It is based on extrapolations of data from the CSB survey conducted last

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June. Some of the service definitions and units have changed since then so this presentation should be considered more descriptive than predictive:

ANNUALIZED PROJECTED IMPACT OF EXPANDED MEDICAID COMMUNITY MH/MR/SAS SERVICES

Proposed Service	Projected Annual	
	Recipients	Costs
MH Intensive Community Treatment	148	\$3,106,570
MH Crisis Stabilization	682	\$648,508
MH Support Services	1,502	\$1,142,489
TOTAL	2,332	\$4,897,567

Department of Planning and Budget's Economic Impact

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation recommends changes to the permanent regulations controlling Rehabilitation Services, specifically Community Mental Health. The expansion of these services creates a payment source for the local Community Service Boards (CSBs), in support of a wider range of mental services to Medicaid eligible persons, which draws on federal funding.

Estimated economic impact. The 1996 Appropriations Act Item 322 D(4) required DMAS to expand its State plan coverage of community mental health services to be provided by community services boards (CSBs). In addition, the 1996 Appropriations Act Item 333 (E) required community services boards to participate in Medicaid covered services by stipulating that a CSB's failure to do so will result in the termination of a like amount of state grant support. New services to be added as a result of this regulation are:

1. Mental Health Intensive Community Treatment (ICT) provide outpatient mental health services outside the traditional clinic setting. This is designed to bring services to individuals who will otherwise not seek such services in a clinic setting;
2. Mental Health Crisis Stabilization Services provide direct mental health care to individuals experiencing acute crisis of a psychiatric nature that may jeopardize their current community living situation; and

3. Mental Health Support Services provide training and support to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment.

Any CSB that is currently providing such services without the benefit of Medicaid payments is doing so primarily with General Fund and local dollars. By moving these services over to Medicaid, the State will be able to draw 50% in matching Federal funds. This obviously reduces the demand for General Funds and represents a saving to the Commonwealth.

The expanded services will enable eligible Medicaid recipients to receive needed medical, mental and community services that will assist them to remain in their communities. DMAS estimates that the total cost of providing these services will be about \$5 million. Of this amount about \$3.1 million will be spent on about 148 ICT cases (about \$29,990 per case), \$650,000 on 682 Crisis Stabilization cases (about \$1,000 per case), and \$1.1 million for 1,502 individuals who need Support Services (about \$761 per case). The average amount of money to be spent per case will be about \$2,150.

The fiscal benefits of these expenditures can be estimated as the avoided costs of future hospitalizations for these individuals in institutions that are far more expensive than having them live in the community. The economic value of the social benefits is far more extensive and difficult to capture. Giving these clients an opportunity to lead a healthy and normal life is just one example of the social benefits. It is extremely difficult to put a dollar amount on mental health. However, it reasonable to conclude that providing these services so that these individuals can go about their lives in as normal a way as possible should more that offset the cost of providing these services.

Businesses and entities affected. The businesses affected by these regulations are the various CSBs offering mental health services. An estimated 2,332 individuals with various mental health problems would benefit from this program.

Localities particularly affected. No particular localities will be affected by this regulation.

Projected impact on employment. This regulation should not have any impact on employment.

Effects on the use and value of private property. Any possible effect on the value of and use of private property will be too small to measure.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning 1997 expansion of community mental health services.

Summary:

The purpose of this proposal is to recommend changes to the permanent regulations controlling rehabilitation

services, specifically, community mental health and mental retardation services. The expansion of these services creates a payment source for the local community services boards, in support of a wider range of mental health services to Medicaid eligible persons, which draws on federal funding thereby reducing the demand for general fund and local dollars. The purpose of this proposed regulation is to make permanent the provisions of the emergency regulations while also addressing issues raised by the Health Care Financing Administration in response to DMAS' State Plan amendment. A description of the expansion services follows:

1. *Mental Health Intensive Community Treatment provide outpatient mental health services outside the traditional clinic setting. It is designed to bring services to individuals who will not or cannot be served in the clinic setting.*

2. *Mental Health Crisis Stabilization Services provides direct mental health care to individuals experiencing acute crisis of a psychiatric nature that may jeopardize their current community living situation. It will provide less medical mental health services independently of or in conjunction with Intensive Community Treatment.*

3. *Mental Health Support Services provide training and supports to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment.*

Used singly or as a package, these services will provide comprehensive treatment and support services to persons with serious and persistent mental illness.

12 VAC 30-50-130. Skilled nursing facility services, EPSDT, community mental health services and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that

well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

C. *Community mental health services. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.*

Therapeutic day treatment shall be provided in sessions of two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem-solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

~~C.~~ D. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services which delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

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12 VAC 30-50-220. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

A. Diagnostic services are not provided.

B. Screening services. Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

C. Maternity length of stay and early discharge.

1. If the mother and newborn, or the newborn alone, are discharged earlier than 48 hours after the day of delivery, DMAS will cover one early discharge follow-up visit as recommended by the physicians in accordance with and as indicated by the "Guidelines for Perinatal Care" as developed by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists (1992). The mother and newborn, or the newborn alone if the mother has not been discharged, must meet the criteria for early discharge to be eligible for the early discharge follow-up visit. This early discharge follow-up visit does not affect or apply to any usual postpartum or well-baby care or any other covered care to which the mother or newborn is entitled; it is tied directly to an early discharge. The criteria for an early discharge are as follows:

a. Discharge criteria for early discharge of mother.

(1) Uncomplicated vaginal, full-term delivery following a normal antepartum course;

(2) Postpartum observation has sufficiently documented a stable course, including the following observations:

(a) Vital signs are stable;

(b) Uterine fundus is firm, bleeding (lochia) is controlled, of normal amount and color;

(c) Hemoglobin is greater than eight, hematocrit is greater than or equal to 24 and estimated blood loss is not greater than 500 cc or blood loss does not result in the patient being symptomatic for anemia, i.e., lightheadedness, syncope, tachycardia, or shortness of breath;

(d) Episiotomy/repai red laceration is not inflamed and there is no evidence of infection or hematoma;

(e) Tolerating prescribed diet post delivery;

(f) Voiding without difficulty and passing flatus. Bowel sounds present; and

(g) If not previously obtained, ABO and Rh typing must be done and, if indicated, the appropriate amount of Rho(D) immunoglobulin must be administered.

b. Discharge criteria for early discharge of infant. The newborn must be deemed normal by physical examination and stable meeting the following criteria:

(1) Term delivery and weight is considered normal;

(2) Infant is able to maintain a stable body temperature under normal conditions;

(3) Infant is able to take and tolerate feedings by mouth and demonstrates normal sucking and swallowing reflexes;

(4) Laboratory data must be reviewed to include:

(a) Maternal testing for syphilis and hepatitis B surface antigen;

(b) Cord or infant blood type and direct Coombs test (if the mother is Rho(D) negative, or is type O, or if screening has not been performed for maternal antibodies);

(c) Hemoglobin or hematocrit and blood glucose determinations, as clinically indicated; and

(d) Any screening tests required by law.

(5) Initial hepatitis B vaccine must be administered in accordance with the time requirements in the current Recommended Childhood Immunization Schedule developed by the Advisory Committee on Immunization Practices under the requirements of § 1905(r)(1) of the Social Security Act (42 USC § 1396 d).

c. Discharge criteria for early discharge of mother and infant.

(1) Family members or other support persons must be available to the mother for the first few days following discharge;

(2) The mother or caretaker has demonstrated the ability to care for her infant, including feeding, bathing, cord care, diapering, body temperature assessment, and measurement with a thermometer;

(3) The mother or caretaker has been taught basic assessment skills, including neonatal well-being and recognition of illness. She verbalizes understanding of possible complications and has been instructed to notify the appropriate practitioner as necessary; and

(4) A physician-directed source of continuing medical care for both mother and baby must be identified and arrangements made for the baby to be examined within 48 hours of discharge.

2. The early discharge follow-up visit must be provided as directed by a physician. The physician may coordinate with the provider of his choice to provide the early discharge follow-up visit, within the following limitations. Qualified providers are those hospitals, physicians, nurse midwives, nurse practitioners, federally qualified health clinics, rural health clinics, and health

departments clinics that are enrolled as Medicaid providers and are qualified by the appropriate state authority for delivery of the service. The staff providing the follow-up visit, at a minimum, must be a registered nurse having training and experience in maternal and child health. The visit must be provided within 48 hours of discharge.

3. The visit must include, at a minimum, the following:

a. Maternal assessment must include, but is not limited to:

- (1) Vital signs;
- (2) Assessment of lochia, height and firmness of the uterus;
- (3) Assessment of the episiotomy, if applicable;
- (4) Assessment for and of hemorrhoids;
- (5) Assessment of bowel and bladder function;
- (6) Assessment of the breasts, especially the nipples if the mother is breast feeding. Assessment of the mother's understanding of breast/nipple care and understanding of proper care;
- (7) Assessment of eating habits for nutritional balance, stressing good nutrition especially in the breast feeding mother;
- (8) Assessment for signs and symptoms of anemia and, if present, notification of the responsible physician for further instructions;
- (9) Confirmation that the mother has an appointment for a six-week postpartum check-up; and
- (10) Identification of the need for and make referrals to the appropriate resources for identified medical, social, and nutritional concerns and needs.

b. Newborn assessment must include, but is not limited to:

- (1) Vital signs;
- (2) Weight;
- (3) Examination of the umbilical cord and circumcision, if applicable;
- (4) Assessment of hydration status;
- (5) Evaluation of acceptance and tolerance of feedings, including the frequency of feeds and the amount taken each feed. If possible, observation of the mother or caretaker feeding the infant for technique assessment;
- (6) Assessment of bowel and bladder function;
- (7) Assessment of skin coloration; if the infant demonstrates any degree of jaundice, notification of the physician for further instruction. If infant is pale, mottled, lethargic, or with poor muscle tone,

immediate notification of the physician for further instruction;

- (8) Assessment of infant behavior, sleep/wake patterns;
- (9) Assessment of the quality of mother/infant interaction, bonding;
- (10) Blood samples for lab work, or a urine sample as directed by state law, physician, or clinical judgment;
- (11) Confirmation that the infant has an appointment for routine two-week check up;
- (12) Discussion with the mother or caretaker planning for health maintenance, including preventive care, periodic evaluations, immunizations, signs and symptoms of physical change requiring immediate attention, and emergency services available; and
- (13) Identification of the need for and make referrals to any other existing appropriate resources for identified medical, social and nutritional concerns and needs.

D- 12 VAC 30-50-225. Rehabilitative services; intensive physical rehabilitation.

1. Intensive physical rehabilitation.

a. A. Medicaid covers intensive inpatient rehabilitation services as defined in ~~subdivision 1 d of this subsection~~ *subsection D of this section* in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

b. B. Medicaid covers intensive outpatient physical rehabilitation services as defined in ~~subdivision 1 d of this subsection~~ *subsection D of this section* in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

c. C. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in 12 VAC 30-70-10 through 12 VAC 30-70-130.

d. D. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech-language pathology, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of physical medicine and rehabilitation.

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~~e.~~ E. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

~~f.~~ F. To receive continued intensive rehabilitation services, the patient must demonstrate an ability to actively participate in goal-related therapeutic interventions developed by the interdisciplinary team. This shall be evidenced by regular attendance in planned activities and demonstrated progress toward the established goals.

~~g.~~ G. Intensive rehabilitation services shall be considered for termination regardless of the preauthorized length of stay when any of the following conditions are met:

- ~~(1)~~ 1. No further potential for improvement is demonstrated. The patient has reached his maximum progress and a safe and effective maintenance program has been developed.
- ~~(2)~~ 2. There is limited motivation on the part of the individual or caregiver.
- ~~(3)~~ 3. The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.
- ~~(4)~~ 4. Progress toward an established goal or goals cannot be achieved within a reasonable period of time.
- ~~(5)~~ 5. The established goal serves no purpose to increase meaningful functional or cognitive capabilities.
- ~~(6)~~ 6. The service can be provided by someone other than a skilled rehabilitation professional.

2. 12 VAC 30-50-226. Community mental health services.

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

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

"Individual" means the patient, client, or recipient of services set out herein.

"Individual service plan" or "ISP" means a comprehensive and regularly updated statement specific to the individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, and estimated timetable for achieving the goals and objectives. Such ISP shall be maintained up to date as the needs and progress of the individual changes.

a. B. Mental health services. The following services, with their definitions, shall be covered:

~~(1) Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders III-R (DSM III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.); parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.); and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.~~

~~(2) Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.~~

~~(3) 1. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment but who do not require inpatient treatment.~~

~~(4) 2. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, medication education, psychoeducation to teach the patient about his mental illness and appropriate medications to avoid~~

complication and relapse, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and education within a supportive and normalizing program structure and environment.

~~(5)~~ 3. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit or both, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

4. Intensive community treatment (ICT), initially covered for a maximum of 26 sessions based on an initial assessment with continuation reauthorized for an additional 26 sessions annually based on written assessment and certification of need by a QMHP, shall be defined as medical psychotherapy, psychiatric assessment, and medication management offered to outpatients outside the clinic, hospital, or office setting.

5. Crisis stabilization services for nonhospitalized individuals shall provide direct mental health care to individuals experiencing an acute psychiatric crisis which may jeopardize their current community living situation. Authorization may be for up to a 15-day period per crisis episode following a documented face-to-face assessment by a QMHP which is reviewed and approved by a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or a certified psychiatric registered nurse within 72 hours. The maximum limit on this service is up to eight hours (with a unit being one hour) per day up to 60 days annually. The goals of crisis stabilization programs shall be to avert hospitalization or rehospitalization, provide normative environments with a high assurance of safety and security for crisis intervention, stabilize individuals in psychiatric crisis, and mobilize the resources of the community support system and family members and others for on-going maintenance and rehabilitation. The services must be documented in the individual's records as having been provided consistent with the ISP in order to receive Medicaid reimbursement. The crisis stabilization program shall provide to recipients, as appropriate, treatment planning, symptom and behavior management, and individual and group counseling. This service may be provided in any of the

following settings, but shall not be limited to: (i) the home of a recipient who lives with family or other primary caregiver; (ii) the home of a recipient who lives independently; or (iii) community-based programs licensed by DMHMRSAS to provide residential services but which are not institutions for mental disease (IMDs).

6. Mental health support services shall be defined as training and supports to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment. This program shall provide the following services in order to be reimbursed by Medicaid: training in or reinforcement of functional skills and appropriate behavior related to the individual's health and safety, activities of daily living, and use of community resources; assistance with medication management; and monitoring health, nutrition, and physical condition.

b. C. Mental retardation services/related conditions. Day health and rehabilitation services shall be covered for persons with MR or related conditions and the following definitions shall apply:

Day health and rehabilitation services (limited to 780 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written physician's order/plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the physician's order/plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

- ~~(1)~~ 1. Self-care and hygiene skills;
- ~~(2)~~ 2. Eating and toilet training skills;
- ~~(3)~~ 3. Task learning skills;
- ~~(4)~~ 4. Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);
- ~~(5)~~ 5. Environmental and behavior skills (e.g., training in punctuality, self-discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);
- ~~(6)~~ 6. Medication management;
- ~~(7)~~ 7. Travel and related training to and from the training sites and service and support activities;

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~~(8)~~ 8. Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.

3- D. Coverage shall be provided for investigations by local health departments to determine the source of lead contamination in the home as part of the management and treatment of Medicaid-eligible children who have been diagnosed with elevated blood lead levels. Only costs that are eligible for federal funding participation in accordance with current federal regulations shall be covered. Payments for environmental investigations under this section shall be limited to no more than two visits per residence.

12 VAC 30-60-61. Services related to the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT); community mental health services for children.

A. *Intensive in-home services for children and adolescents.*

1. *Individuals qualifying for this service must demonstrate a medical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:*

a. *Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.*

b. *Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.*

c. *Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.*

2. *At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service must be recommended in the Individual Service Plan (ISP) which must be fully completed within 30 days of initiation of services.*

3. *Services must be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.*

4. *Services shall be used when out-of-home placement is a risk and when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the client's residence as the setting for services is more likely to be successful than a clinic.*

5. *Services are not appropriate for a family in which a child has run away or a family for which the goal is to keep the family together only until an out-of-home placement can be arranged.*

6. *Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.*

7. *At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services with the goal of keeping the child with the family.*

8. *The provider of intensive in-home services for children and adolescents must be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.*

9. *The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home services is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in-home service, and includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in-home services below the five hour a week minimum may be covered. However, variations in this pattern must be consistent with the individual service plan. Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive or nonhome based services.*

10. *The intensity of service dictates that caseload sizes should be six or fewer cases at any given time. If on review caseloads exceed this limit, the provider will be required to submit a corrective action plan designed to reduce caseload size to the required limit unless the provider can demonstrate that enough of the cases in the caseload are moving toward discharge so that the caseload standard will be met within three months by attrition. Failure to maintain required caseload sizes in two or more review periods may result in termination of the provider agreement unless the provider demonstrates the ability to attain and maintain the required caseload size.*

11. *Emergency assistance shall be available 24 hours per day, seven days a week.*

B. *Therapeutic day treatment for children and adolescents.*

1. *Therapeutic day treatment is appropriate for children and adolescents who meet one of the following:*

a. *Children and adolescents who require year-round treatment in order to sustain behavior or emotional gains.*

b. *Children and adolescents whose behavior and emotional problems are so severe they cannot be*

handled in self-contained or resource emotionally disturbed (ED) classrooms without:

- (1) This programming during the school day; or
- (2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. Children and adolescents who (i) have deficits in social skills, peer relations or dealing with authority; (ii) are hyperactive; (iii) have poor impulse control; (iv) are extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

2. Individuals qualifying for this service must demonstrate a medical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

3. The provider of therapeutic day treatment for child and adolescents services must be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

4. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

5. The program must operate a minimum of two hours per day and may offer flexible program hours (i.e., before and/or after school and/or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service shall be defined as a minimum of three but less than five hours in a given day. Three units of service shall be defined as five or more hours of service in a given day.

6. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

7. Services shall be provided following a diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker or certified psychiatric nurse and in accordance with an ISP which must be fully completed within 30 days of initiation of the service.

12 VAC 30-60-140. Community mental health services.

A. Utilization review general requirements. On-site utilization reviews shall be conducted, at a minimum annually at each enrolled provider, by the state Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS). During each on-site review, an appropriate sample of the provider's total Medicaid population will be selected for review. An expanded review shall be conducted if an appropriate number of exceptions or problems are identified.

B. The DMHMRSAS review shall include the following items:

1. Medical or clinical necessity of the delivered service;
2. The admission to service and level of care was appropriate;
3. The services were provided by appropriately qualified individuals as defined in the Amount, Duration, and Scope of Services found in 12 VAC 30-50-220; and
4. Delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

G. 12 VAC 30-60-143. Mental health services utilization criteria.

A. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in 12 VAC 30-50-100 through 12 VAC 30-50-310.

~~1. Intensive in-home services for children and adolescents.~~

~~a. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service shall be recommended in the Individual Service Plan (ISP) which shall be fully completed within 30 days of initiation of services.~~

~~b. Services shall be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.~~

~~c. Services shall be used when out-of-home placement is a risk and when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the client's~~

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residence as the setting for services is more likely to be successful than a clinic.

d. ~~Services are not appropriate for a family in which a child has run away or a family for which the goal is to keep the family together only until an out of home placement can be arranged.~~

e. ~~Services shall also be used to facilitate the transition to home from an out of home placement when services more intensive than outpatient clinic care are required for the transition to be successful.~~

f. ~~At least one parent or responsible adult with whom the child is living must be willing to participate in in home services, with the goal of keeping the child with the family.~~

g. ~~The provider of intensive in home services for children and adolescents shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

h. ~~The billing unit for intensive in home service is one hour. Although the pattern of service delivery may vary, in home service is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in home service, and includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in home services below the five hour a week minimum may be covered. However, variations in this pattern must be consistent with the individual service plan. Service plans must incorporate a discharge plan which identifies transition from intensive in home to less intensive or nonhome based services.~~

i. ~~The intensity of service dictates that caseload sizes should be six or fewer cases at any given time. If on review caseloads exceed this limit, the provider will be required to submit a corrective action plan designed to reduce caseload size to the required limit unless the provider can demonstrate that enough of the cases in the caseload are moving toward discharge so that the caseload standard will be met within three months by attrition. Failure to maintain required caseload sizes in two or more review periods may result in termination of the provider agreement unless the provider demonstrates the ability to attain and maintain the required caseload size.~~

j. ~~Emergency assistance shall be available 24 hours per day, seven days a week.~~

2. ~~Therapeutic day treatment for children and adolescents.~~

a. ~~Therapeutic day treatment is appropriate for children and adolescents who meet the DMHMRSAS definitions of "serious emotional disturbance" or "at risk of developing serious emotional disturbance" and who also meet one of the following:~~

~~(1) Children and adolescents who require year round treatment in order to sustain behavioral or emotional gains.~~

~~(2) Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self contained or resource emotionally disturbed (ED) classrooms without:~~

~~(a) This programming during the school day; or~~

~~(b) This programming to supplement the school day or school year.~~

~~(3) Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.~~

~~(4) Children and adolescents who have deficits in social skills, peer relations, dealing with authority; are hyperactive; have poor impulse control; are extremely depressed or marginally connected with reality.~~

~~(5) Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.~~

b. ~~The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

c. ~~The minimum staff to youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.~~

d. ~~The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e. before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day; and three units of service equals five or more hours of service. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled activities.~~

~~e. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.~~

~~f. Services shall be provided following a diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker or certified psychiatric nurse and in accordance with an ISP which shall be fully completed within 30 days of initiation of the service.~~

~~3. B. Day treatment/partial hospitalization services shall be provided to adults with serious mental illness following diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse, and in accordance with an ISP which shall be fully completed within 30 days of service initiation.~~

~~a- 1. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.~~

~~b- 2. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.~~

~~c- 3. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state or when other less intensive services may achieve stabilization. Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.~~

~~4. Individuals qualifying for this service must demonstrate a medical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:~~

~~a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community.~~

~~b. Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.~~

~~c. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services, or judicial system are necessary.~~

~~d. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.~~

~~4. C. Psychosocial rehabilitation services shall be provided to those individuals who have mental illness or mental retardation, and who have experienced long-term or repeated psychiatric hospitalization, or who lack daily living skills and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term care services are needed to maintain the individual in the community.~~

~~a- 1. Services shall be provided following an assessment which clearly documents the need for services and in accordance with an ISP which shall be fully completed within 30 days of service initiation.~~

~~b- 2. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.~~

~~c- 3. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.~~

~~d- 4. Time allocated for field trips may be used to calculate time and units if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.~~

~~5. Individuals qualifying for this service must demonstrate a medical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:~~

~~a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they~~

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are at risk of hospitalization or homelessness because of conflicts with family or community.

b. Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.

c. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

d. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

~~6~~. D. Admission to crisis intervention services is indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress. Crisis intervention may be the initial contact with a client.

~~a~~. 1. The provider of crisis intervention services shall be licensed as an Outpatient Program by DMHMRSAS.

~~b~~. 2. Client-related activities provided in association with a face-to-face contact are reimbursable.

~~c~~. 3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

~~d~~. 4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP must be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

~~e~~. 5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

~~f~~. 6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. When travel is required to provide out-of-clinic services, such time is reimbursable. Crisis intervention may involve *contacts with the family or significant others.*

~~6~~. E. Case management.

~~a~~. 1. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or activity or communication with the client or families, significant

others, service providers, and others including a minimum of one face-to-face client contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

~~b~~. 2. The Medicaid eligible individual shall meet the DMHMRSAS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

~~c~~. 3. There shall be no maximum service limits for case management services.

~~d~~. 4. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

~~e~~. 5. The ISP shall be updated at least annually.

F. *Intensive community treatment (ICT) for adults.*

1. An assessment which documents eligibility and need for this service shall be completed prior to the initiation of services. This assessment must be maintained in the individual's records.

2. A comprehensive psychosocial evaluation shall begin at the time of admission and must be completed within 30 days of the initiation of services to the individual.

3. A service plan must be initiated at the time of admission and must be fully developed within 30 days of the initiation of services.

G. *Crisis stabilization services.*

1. This service must be authorized following a face-to-face assessment by a QMHP. This assessment must be reviewed and approved by a licensed mental health professional within 72 hours.

2. The assessment documents the need for service and anticipated duration of need.

3. The Individual Service Plan (ISP) is developed or revised within 24 hours of assessment or reassessment.

4. Room and board, custodial care, and general supervision are not components of this service.

5. Clinic option services are not billable at the same time as crisis stabilization services.

6. Individuals qualifying for this service must demonstrate a medical necessity for the service arising from a condition due to an acute crisis of a psychiatric

nature which puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

- a. Experiencing difficulty in maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community;
- b. Experiencing in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized;
- c. Exhibiting such inappropriate behavior that immediate interventions by mental health and other agencies are necessary; or
- d. Exhibiting difficulty in cognitive ability such that the individual is unable to recognize personal danger or recognize significantly inappropriate social behavior.

H. Mental health support services.

1. The individual receiving mental health support services must have an active case management plan in effect which includes monitoring and assessment of the provision of mental health support services. The individual responsible for the case management plan and for the provision of case management services shall not be the provider of mental health support services nor the immediate supervisor of the staff person providing mental health support services.
2. There shall be a documented assessment/evaluation prior to the initiation or reauthorization of services. The assessment/evaluation must have been completed by a QMHP no more than 30 days prior to the initiation or reauthorization of services.
3. The ISP must be developed within 30 days of the initiation of services and must indicate the specific supports and services to be provided and the goals and objectives to be accomplished.
4. The ISP must be reviewed every three months, modified as appropriate, and must be updated and rewritten at least annually.
5. Only direct face-to-face contacts and services to individuals shall be reimbursable.
6. Any services provided to the client which are strictly academic in nature shall not be reimbursable. These include, but are not limited to, such basic educational programs as instruction in reading, science, mathematics, or GED.
7. Any services provided to clients which are strictly vocational in nature shall not be reimbursable. However, support activities and activities directly related to assisting a client to cope with a mental illness to the degree necessary to develop appropriate behaviors for

operating in an overall work environment shall be reimbursable.

8. Room and board, custodial care, and general supervision are not components of this service.
9. This service is not reimbursable for individuals who reside in any domiciliary care facilities such as ACRs or group homes or nursing facilities where staff are expected to provide such services.
10. Individuals qualifying for this service must demonstrate a medical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

- a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community.
- b. Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.
- c. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.
- d. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

~~D.~~ I. Mental retardation utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in 12 VAC 30-50-400 95 through 12 VAC 30-50-310.

1. Appropriate use of day health and rehabilitation services requires the following conditions shall be met:
 - a. The service is provided by a program with an operational focus on skills development, social learning and interaction, support, and supervision.
 - b. The individual shall be assessed and deficits must be found in two or more of the following areas to qualify for services:
 - (1) Managing personal care needs,
 - (2) Understanding verbal commands and communicating needs and wants,
 - (3) Earning wages without intensive, frequent and ongoing supervision or support,
 - (4) Learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,

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(5) Exhibiting behavior appropriate to time, place and situation that is not threatening or harmful to the health or safety of self or others without direct supervision,

(6) Making decisions which require informed consent,

(7) Caring for other needs without the assistance or personnel trained to teach functional skills,

(8) Functioning in community and integrated environments without structured, intensive and frequent assistance, supervision or support.

c. Services for the individual shall be preauthorized annually by DMHMRSAS.

d. Each individual shall have a written plan of care developed by the provider which shall be fully complete within 30 days of initiation of the service, with a review of the plan of care at least every 90 days with modification as appropriate. A 10-day grace period is allowable.

e. The provider shall update the plan of care at least annually.

f. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting plan of care goals.

g. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be at least four but less than seven hours on a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

h. The provider shall be licensed by DMHMRSAS.

2. Appropriate use of case management services for persons with mental retardation requires the following conditions to be met:

a. The individual must require case management as documented on the consumer service plan of care which is developed based on appropriate assessment and supporting data. Authorization for case management services shall be obtained from DMHMRSAS Care Coordination Unit annually.

b. An active client shall be defined as an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or

communication or activity with the client, family, service providers, significant others and other entities including a minimum of one face-to-face contact within a 90-day period.

c. The plan of care shall address the individual's needs in all life areas with consideration of the individual's age, primary disability, level of functioning and other relevant factors.

(1) The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of the actual review.

(2) The need for case management services shall be assessed and justified through the development of an annual consumer service plan.

d. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.

12 VAC 30-130-540. Definitions.

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

"Board" or "BMAS" means the Board of Medical Assistance Services.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the ~~client~~ recipient of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited to, the ~~client's~~ recipient's age, primary disability, level of functioning and other relevant factors.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37 of the Code of Virginia.

"DRS" means the Department of Rehabilitative Services consistent with Chapter 3 (§ 51.5-8 et seq.) of Title 51.5 of the Code of Virginia.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human

Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means ~~that which is defined in DMHMRSAS licensing regulations VR 470-02-09 [12-VAC 35-80-10 et seq. Repealed]~~ a comprehensive and regularly updated statement specific to the individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, and estimated timetable for achieving the goals and objectives. Such ISP shall be maintained up to date as the needs and progress of the individual changes.

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Preauthorization" means the approval by the care coordinator of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Related conditions," as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually

planned and coordinated and that are of lifelong or extended duration.

"Serious emotional disturbance" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in Policy 1029, Definitions of Priority Mental Health Populations, June 27, 1990.

"Serious mental illness" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in Policy 1029, Definitions, of Priority Mental Health Populations, June 27, 1990.

"Significant others" means persons related to or interested in the individual's health, well-being, and care. Significant others may be, but are not limited, to a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

"State Plan for Medical Assistance" or "Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

12 VAC 30-130-550. Mental health services.

A. The following services shall be covered: intensive in-home services, therapeutic day treatment ~~for children and adolescents~~, day treatment/partial hospitalization, psychosocial rehabilitation, ~~and~~ crisis intervention, *intensive community treatment, crisis stabilization, and support services*. These covered services are further defined below. *For purposes of this part, staff travel time shall not be included in billable time for reimbursement.*

A. B. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of ~~an individual~~ a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a ~~disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders III R (DSM III R)~~ documented medical need of the child. These services *rendered solely to an eligible child* provide crisis treatment; , individual and family counseling; , ~~life, parenting, and~~ communication skills; , case management activities and coordination with other required services; , and 24-hour emergency response. These services shall be limited annually to 26 weeks. General program requirements shall be as follows:

1. The provider of intensive in-home services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.
2. An appropriate assessment is made and documented that service needs can best be met through intensive in-home services; service shall be recommended on an Individual Service Plan (ISP).
3. Intensive in-home services shall be used when out-of-home placement is a risk, when services that are

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far more intensive than outpatient clinic care are required to stabilize the family situation, and when the *client's recipient's* residence as the setting for services is more likely to be successful than a clinic.

4. Intensive in-home services shall also be used to facilitate the return from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

5. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services.

6. Since case management services are an integral and inseparable part of this service, case management services will not be reimbursed separately for periods of time when intensive in-home services are being reimbursed.

~~B. C.~~ C. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to ~~groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance~~ *children and adolescents who have diagnosed developmental and social functioning levels which are significantly disabling. This determination of significant disability should be based upon consideration of the social functioning of most children their age and which has become more disabling over time and requires significant intervention through services that are supportive and intensive offered over a protracted period of time in order to provide therapeutic interventions.* Day treatment programs, limited annually to 780 units, provide evaluation; *individual, group and family counseling*; medication education and management; *and* opportunities to learn and use daily living skills and to enhance social and interpersonal skills, ~~and individual, group and family counseling~~. General program requirements shall be as follows:

1. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

2. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

3. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e., before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day, and three units of service ~~equals shall be defined as five or more hours of service in a given day.~~ *Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to*

~~and from the program site. Other program related transportation may be included in the program day as indicated by scheduled activities.~~

4. When day treatment occurs during the school day, time solely for academic instruction (i.e., when no treatment activity is going on) cannot be included in the billing unit.

~~G. D.~~ D. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment. General program requirements shall be as follows:

1. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

2. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. ~~Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.~~

3. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state or when other less intensive services may achieve stabilization. Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

~~D. E.~~ E. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, ~~medication education about mental illness and appropriate medication to avoid complications and relapse, psychoeducation,~~ opportunities to learn and use independent living skills and to enhance social and interpersonal skills, ~~family support, or education~~ within a supportive and normalizing program structure and environment.

1. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

2. The program shall operate a minimum of two continuous hours in a 24-hour period. A unit of service is defined as a minimum of two but less than four hours on a given day. Two units of service are defined as at least four but less than seven hours in a given day. Three units are defined as seven or more hours in a given day. ~~Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.~~

3. Time allocated for field trips may be used to calculate time and units of service if the goal is to provide training in an integrated setting, and to increase the ~~client's~~ recipient's understanding or ability to access community resources.

~~E.~~ F. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the ~~client~~ recipient or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other ~~client~~ recipient-related activities for the prevention of institutionalization. General program requirements are as follows:

1. The provider of crisis intervention services shall be licensed by DMHMRSAS.

2. ~~Client~~ Recipient-related activities provided in association with a face-to-face contact shall be reimbursable.

3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP shall be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed provided the provision of out-of-clinic services is clinically/programmatically appropriate. ~~When travel is required to provide out-of-clinic services such time is reimbursable.~~ Crisis intervention may involve the family or significant others.

G. *Intensive community treatment (ICT) shall be provided consistent with the criteria and requirements of 12 VAC 30-50-95 through 12 VAC 30-50-310.*

1. *The individual shall meet all of the following criteria, as documented by the individual's record, in order to be eligible for Medicaid coverage of this service:*

a. *The individual must meet the criteria and must be experiencing extreme or prolonged functional deficits due to psychiatric symptoms. This may include individuals who also have mental retardation or substance abuse problems. Individuals qualifying for this service must demonstrate a medical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:*

(1) *Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community.*

(2) *Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.*

(3) *Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.*

(4) *Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.*

b. *The individual is at high risk for psychiatric hospitalization or for becoming or remaining homeless, or requires intervention by the mental health or criminal justice system due to inappropriate social behavior.*

c. *The individual has a history (three months or more) of a need for intensive mental health treatment or*

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treatment for serious mental illness and chemical addiction (MICA) and demonstrates a resistance to seek out and utilize appropriate treatment options.

d. The recipient is certified by a qualified mental health professional (QMHP), as defined by DMHMRSAS, who is a part of the ICT team, as being in need of the services as defined by the Individual Service Plan.

2. The provider shall be licensed by the DMHMRSAS to provide outpatient services in order to be reimbursed for the provision of these services. In order to qualify for a provider agreement, a therapist must be available and provide services 24 hours per day, seven days per week, 365 days per year, either directly or on call.

3. ICT may be provided for a maximum of 26 weeks based on an initial assessment. Continuation of service may be reauthorized at 26-week intervals based on written assessment and certification of need by a qualified mental health professional (QMHP). The only other service which may be billed simultaneously is psychosocial rehabilitation.

4. Services must be documented through a daily log of time spent in the delivery of services and a description of the activities/services provided. There must also be at least a weekly note documenting progress or lack of progress toward goals and objectives as outlined on the ISP.

H. Crisis stabilization services shall be provided consistent with the criteria and requirements of 12 VAC 30-50-95 through 12 VAC 30-50-310. These services must be documented in the individual's records as having been provided consistent with the ISP in order to receive Medicaid reimbursement.

1. Individuals qualifying for this service must demonstrate a medical necessity for the service arising from a condition due to an acute crisis of a psychiatric nature which puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

a. Experiencing difficulty in maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community.

b. Experiencing in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.

c. Exhibiting such inappropriate behavior that immediate interventions by mental health and other agencies are necessary.

d. Exhibiting difficulty in cognitive ability such that the individual is unable to recognize personal danger or recognize significantly inappropriate social behavior.

2. This service shall not be appropriate nor reimbursed for (i) recipients with medical conditions which require hospital care; (ii) recipients with primary diagnosis of substance abuse; or (iii) recipients with psychiatric conditions which cannot be managed in the community, i.e., recipients who are of imminent danger to themselves or others.

3. Mental health crisis stabilization services is limited to nonhospitalized individuals and may be provided in any of the following settings, but shall not be limited to: (i) the home of a recipient who lives with family or other primary caregiver; (ii) the home of a recipient who lives independently; or (iii) community based programs licensed by DMHMRSAS to provide residential services.

4. In order to be reimbursed for this service by Medicaid, providers shall be licensed by DMHMRSAS to provide outpatient services. If any of these services are subcontracted by the CSB, the subcontractor shall be appropriately licensed to provide the subcontracted services.

5. Services must be documented through daily notes and a daily log of times spent in the delivery of services.

I. Mental health support services. These services shall be provided consistent with the criteria and requirements of 12 VAC 30-50-95 through 12 VAC 30-50-310.

1. Each of the following conditions must be met and be documented in the individual's record in order for Medicaid reimbursement to occur:

a. The individual meets the medical necessity criteria, as defined herein, and has a history of psychiatric hospitalization. This may include individuals with a dual diagnosis of either mental illness and mental retardation, or mental illness and substance abuse disorder. Individuals qualifying for this service must demonstrate a medical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

(1) Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness because of conflicts with family or community.

(2) Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized.

(3) Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

b. The individual meets at least two of the following criteria:

(1) Requires intermittent or on-going medication for management of psychiatric conditions;

(2) Has received crisis intervention or crisis stabilization services within the previous 12 months; and

(3) The individual needs supports in three or more of the following functional areas: (i) caring for his own needs related to health maintenance, personal hygiene, and activities of daily living; (ii) learning new skills and applying skills in natural environments; (iii) demonstrating behavior appropriate to time, place, and situation that is not threatening or harmful to the health or safety of himself or others; or (iv) functioning successfully in the community and integrated environments.

c. The individual is experiencing or is at risk of one of the following:

(1) Deterioration of functional skills or health status; or

(2) Disruption of community living situation.

2. *Provider qualifications.* The provider agency must be licensed by DMHMRSAS as a provider of supported living residential services or supportive residential services. Individuals employed or contracted by the provider agency to provide mental health support services must have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations.

3. *Mental health support services may be authorized for six consecutive months.* Continuation of services may be authorized at six month intervals or following any break in service by a QMHP based on a documented assessment and documentation of continuing need. The monthly limit on services shall be 31 units.

4. *Services must be documented through a daily log of time involved in the delivery of services and a minimum of a weekly summary note of services provided.*

12 VAC 30-130-570. Provider qualification requirements for mental health services.

To qualify as a provider of services through DMAS for rehabilitative mental health or ~~mental retardation~~ services, the provider of the services must meet certain criteria. These criteria shall be:

1. The provider shall guarantee that clients recipients have access to emergency services on a 24-hour basis;

2. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

3. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

4. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

5. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

6. In addition to those requirements stated above, a provider shall meet the following requirements specific to each disability area:

a. *Mental health.*

(1) *Intensive in-home:* licensure by DMHMRSAS as an outpatient program.

(2) *Therapeutic day treatment for children/adolescents:* licensure by DMHMRSAS as a day support program.

(3) *Day treatment/partial hospitalization:* licensure by DMHMRSAS as a day support program.

(4) *Psychosocial rehabilitation:* licensure by DMHMRSAS as a day support program.

(5) *Crisis intervention:* licensure by DMHMRSAS as an Outpatient Program.

(6) *Case management:* certified by DMHMRSAS.

(7) *Intensive community treatment for adults:* Licensure by DMHMRSAS to provide outpatient services.

(8) *Crisis stabilization services for adults:* Licensure by DMHMRSAS to provide outpatient services.

(9) *Mental health support services for adults:* Licensure by DMHMRSAS as a provider of Supported Living Residential Services or Supportive Residential Services. Individuals employed or contracted by the provider agency to implement MH support services must have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations.

b. *Mental retardation.*

(1) *Day Health and Rehabilitation Services:* licensure by DMHMRSAS as a day support program

(2) *Case Management:* Certified by DMHMRSAS

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c. Related conditions. Day health and rehabilitation services: licensure by DMHMRSAS as a day support program or contracted with DRS as habilitation services providers.

DOCUMENT INCORPORATED BY REFERENCE

Policy 1029(SYS)90-2, Definitions of Priority Mental Health Populations; Department of Mental Health, Mental Retardation and Substance Abuse Services; eff. June 27, 1990.

VA.R. Doc. No. R97-652; Filed July 21, 1997, 3:49 p.m.

Title of Regulations: **Medicaid Coverage for Licensed Clinical Social Workers and Licensed Professional Counselors.**

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-140 and 12 VAC 30-50-150).

12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-40 and 12 VAC 30-60-120).

12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-30).

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

Public Hearing Date: N/A -- Public comments may be submitted until October 17, 1997.

(See Calendar of Events section for additional information.)

Basis and Authority: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. Sections 9-6.14:7.1 and 9-6.4:9.1 of the Administrative Process Act provide for this agency's promulgation of proposed regulations subject to the Governor's review.

Chapter 946 of the 1996 Virginia Acts of Assembly requires BMAS to promulgate regulations which reimburse licensed clinical psychologists, licensed psychologists clinical, licensed clinical social workers and licensed professional counselors at rates based upon reasonable criteria, including the professional credentials for licensure. The language requires the regulations to be effective within 280 days of July 1, 1996.

Purpose: The purpose of this proposal is to promote access to health care services by establishing Medicaid coverage policies for licensed clinical psychologists, licensed clinical

social workers, and licensed professional counselors and to make technical corrections.

Substance: Although counseling services are available from five types of providers, current Medicaid policy provides for enrollment and direct reimbursement only to psychiatrists, licensed psychologists clinical, and licensed clinical psychologists. Licensed clinical social workers may not be enrolled or paid directly, but can provide services to Medicaid recipients under the direct supervision of a psychiatrist, licensed psychologist clinical, or licensed clinical psychologist. Medicaid does not currently cover services provided by licensed professional counselors.

Chapter 946 of the 1996 Virginia Acts of Assembly requires BMAS to promulgate regulations which reimburse licensed clinical psychologists, licensed clinical social workers and licensed professional counselors at rates based upon reasonable criteria, including the professional credentials for licensure. Reimbursement is currently provided to licensed clinical psychologists at the same rate as psychiatrists. Because licensed clinical social workers may only provide services to Medicaid recipients under the direct supervision of a psychiatrist, licensed psychologist clinical or licensed clinical psychologist, the supervising enrolled provider is responsible for determining the reimbursement rate to licensed clinical social workers. This regulatory action mandated by the General Assembly requires DMAS to set rates for licensed clinical psychologists, licensed clinical social workers and licensed professional counselors based upon reasonable criteria and provides for enrollment and direct reimbursement to all of these professionals.

There should be no increase in services due to this regulatory action, but rather, a shift in services from one type of professional to others will occur. Coverage of services provided by all five provider types should provide better access to care. Also, DMAS will not require supervision for licensed clinical social workers and licensed professional counselors beyond what is mandated for these providers under their licensing requirements. DMAS will recognize them as independent practitioners, which is consistent with Medicare's policy.

The legislation specifically requires DMAS to set reimbursement rates based on the providers' licensing requirements. Currently, licensed clinical psychologists and licensed psychologists clinical are reimbursed for services at 100% of the rate for psychiatrists. DMAS will now decrease this reimbursement rate to 90% of the rate for psychiatrists, to be consistent with Medicare's reimbursement methodology. Licensed clinical social workers will be reimbursed at 75% of the reimbursement rate for psychologists, which is also consistent with Medicare's reimbursement methodology. Licensed professional counselors will be reimbursed at a rate of 70% of the rate paid to psychologists. Because licensed professional counselors are not reimbursed by Medicare, DMAS has based this rate on the differences in licensing requirements between these and the other provider types. Reimbursement for all of these professionals will be limited to

those Medicaid covered services that are within the scope of the provider's practice under state licensure.

A technical correction is being included in this regulatory package to avoid the need for an additional package. Previously, the agency had promulgated regulations indicating that clinic services would be reimbursed under the agency's fee-for-service methodology. This reference was inadvertently omitted during a subsequent revision to this regulation. The agency identified this omission during its review of this regulation under the requirements of Executive Order Fifteen(94), Comprehensive Review of All Existing Agency Regulations. Therefore, DMAS is now taking action to correct the omission.

Issues: Currently, 1,078 psychiatrists and 1,160 licensed clinical psychologists are enrolled as Medicaid providers. There are no licensed psychologists clinical currently enrolled. Licensed clinical social workers must be supervised when serving Medicaid clients. The change in the supervision requirement for this group and the addition of licensed professional counselors as providers will expand the provider base. This change will have the indirect impact of easing coordination and scheduling of services for both providers and recipients.

Because DMAS is eliminating the requirement that licensed clinical social workers be directly supervised, this provider group will be recognized as independent practitioners, eliminating the burdensome requirements for supervision. It will also allow them to be reimbursed directly rather than having their supervisors as intermediaries.

The only potentially negative issue involved in implementing this proposed change is the reduction of the reimbursement rate for licensed clinical psychologists and licensed psychologists clinical. These professionals may object to a reduction. However, this reduction is consistent both with the concept of reimbursement based on licensing requirements and with Medicare's current policy.

Fiscal/Budget Impact: This regulatory action is expected to shift services from one provider type to others, not increase the number of services. Currently, 1,078 psychiatrists and 1,160 licensed clinical psychologists are enrolled as Medicaid providers. There are no licensed psychologists clinical currently enrolled. Greater access to care will be provided to recipients because of an expanded provider base. Reimbursement rates for psychotherapy services will be based on the providers' licensing requirements. Currently, licensed clinical psychologists are reimbursed for services at 100% of the rate for psychiatrists. DMAS will now decrease this reimbursement rate to 90% of the rate for psychiatrists, which is consistent with Medicare's reimbursement methodology. Licensed clinical social workers will be reimbursed at 75% of the reimbursement rate for psychologists, which is also consistent with Medicare's reimbursement methodology. Licensed professional counselors will be reimbursed at a rate of 70% of the rate paid to psychologists. Because licensed professional counselors are not reimbursed by Medicare, DMAS has

based this rate on the differences in licensing requirements between these and the other provider types. These changes may result in a slight increase in utilization with a decrease in the reimbursement per unit. The total affect is expected to be close to budget neutral with the potential for a slight savings.

The technical change to include the reference to clinic services in the list of services which are reimbursed under the agency's fee-for-service methodology will not have an impact. The use of this methodology is current policy and has already been promulgated. The reference was inadvertently omitted during previous revisions to this regulation.

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

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The purpose of the regulation is to establish Medicaid coverage policies for licensed clinical psychologists, licensed clinical social workers, and licensed professional counselors.

Although counseling services are available from five types of providers, current Medicaid policy provides for enrollment and direct reimbursement only to psychiatrists, licensed psychologists clinical, and licensed clinical psychologists. Licensed clinical social workers may not be enrolled or paid directly, but can provide services to Medicaid recipients under the direct supervision of a psychiatrist, licensed psychologist clinical, or licensed clinical psychologist. Medicaid does not currently cover services provided by licensed professional counselors.

This regulatory action mandated by the General Assembly requires DMAS to set rates for licensed clinical psychologists, licensed clinical social workers and licensed professional counselors based upon reasonable criteria and provides for enrollment and direct reimbursement to all of these professionals. Reimbursement for all these professionals will be limited to those Medicaid covered services that are within the scope of the provider's practice under state licensure.

Estimated economic impact. DMAS indicates that there should not be any increase in the number of visits that Medicaid clients receive but rather a shift in services from

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one professional to others will occur. With the enrollment of all five professional types, the number of providers should increase which should provide better access to care for Medicaid clients. Currently, 1,078 psychiatrists and 1,160 licensed psychologists are enrolled as Medicaid providers. There are no licensed psychologists clinical. With the elimination of the supervision requirements for clinical social workers, there is a potential pool of 2,671 licensed clinical social workers that can be enrolled as Medicaid providers. Similarly, there is a potential pool of 2,025 licensed professional counselors that can be enrolled as Medicaid providers.

The increase in the number of providers is especially important for those areas in Virginia that have limited access to psychiatrists or psychologists but have great access to social workers or professional counselors. Under the current regulations, clients in these areas had to either drive about an hour for psychiatric care, or had to wait for a psychiatrist or psychologist to come over and supervise the a clinical social worker. Under the new regulations, such trips and delays for some psychiatric care will be eliminated. Moreover given the relatively easy access to psychiatric care under the new regulations, some people who would not seek needed care before will do so now.

DMAS will not require supervision for licensed clinical social workers and licensed professional counselors beyond what is required under their licensing requirements. They will be recognized as independent practitioners. This eliminates the burdensome requirements of supervision and allows for direct reimbursement which also eliminates having supervisors as intermediaries.

Currently, licensed clinical psychologists are reimbursed at the same rate as psychiatrists. Because licensed clinical social workers may only provide services to Medicaid recipients under the direct supervision of a psychiatrist, licensed psychologist clinical, or licensed clinical psychologist, the supervising enrolled provider is responsible for determining the reimbursement rate to licensed clinical social workers. Under the new regulation, reimbursement rates will be based on differences in licensing requirements for the various professions and will coincide with Medicare's current reimbursement policy. Psychologists will be reimbursed at 90% of the rate for psychiatrists, licensed clinical social workers will receive 75% of the reimbursement of psychologists (or 67.5% of the rate for psychiatrists) and licensed professional counselors 70% of the reimbursement of psychologists (or 63% of the rate for psychiatrists). The rates used in the step down scale are not determined by DMAS but based on rates used by Medicare determined by the Health Care Financing Administration (HCFA). Because Medicare does currently not reimburse licensed professional counselors, DMAS based its rate on the differences in licensing requirements between these and other provider types.

We do not know if the current reimbursement scheme is based on the market wages of these professions. If they are above market wages, then we have a situation where

taxpayers are transferring wealth to these individuals. Aside from the unnecessary transfer of wealth, the overpayment could lead to an over supply of Medicaid providers. On the other hand, if these rates are below market wages, then there is the possibility that the supply of both licensed providers and the quality of licensed providers enrolling in Medicaid will be reduced below efficient levels. The number of licensed providers could decrease because of the decrease in wages, so that their time will be better spent elsewhere. With regard to the quality of providers, it is conceivable that with payment below market value, only those providers whose market value is at or below what Medicaid pays will enroll. This may represent the segment of the provider population that gives lower quality service.

The step down payment scheme is a move towards reimbursement based on relative market wages. There are differences in the licensing requirements for the various providers. For example, psychiatrists are medical doctors who have spent an additional four years in residency specializing in psychiatry, while psychologists have only recently been required to have a Ph.D. to be licensed. The 10% difference in reimbursement is an attempt to reflect this difference in training. Without information on how HCFA sets the rates it is impossible to determine whether the rates accurately reflects the relative market value of the provider types. It is however probably safe to assume that even if these rates reflected the market value of the provider types when they were set, they cannot be expected to change with the market conditions over time or to accurately reflect geographic differences. The issues of over compensation or under compensation as discussed above then become relevant over time. Having said that, it should be pointed out that the step down system should be better than the current system where all providers are paid at the same rate regardless of their training and licensing requirements.

Psychologists under the new regulation will be reimbursed at a rate lower than under the exiting rules. These professionals are likely to object to the reduction. However, so long as the reduction is consistent with reimbursement based on different licensing criteria, then it can be justified as an attempt to reimburse based on relative market wages. That is not saying that the 90% rate is efficient. In fact, it could still be that psychologists or other provider types are still overpaid or are now underpaid. Determination of the efficient rate for psychologists and the other provider groups is beyond the scope of this analysis. However care should be taken to ensure that compensation rates remain close to market rates.

It is not known whether the enrollment will increase or decrease expenditures. DMAS has to incur the cost of enrollment for these groups since they are new. This will however be likely offset by the added benefit of eliminating supervision and greater access to care for Medicaid clients.

DMAS asserts that since these changes may result in a slight increase in utilization with a decrease in the reimbursement per unit, the overall fiscal effect should be close to budget

neutral with the potential for slight savings. We cautiously agree with this assertion.

Businesses and entities affected. The businesses affected by this regulation include all five provider types. Psychologists will be reimbursed at 10% lower than they currently receive. Licensed clinical social workers no longer need direct supervision of either psychologists or psychiatrists to offer services to Medicaid clients. Medicaid clients will have a larger provider base to choose from and should have greater access to psychiatric and psychotherapy services.

Localities particularly affected. No localities will be particularly affected by this regulation.

Projected impact on employment. Although licensed clinical social workers and licensed professional counselors will be enrolled and directly reimbursed, we do not expect any increase in the number of these professionals. However, since psychologists will be reimbursed at a lower rate, there could be a drop off in the number of enrolled licensed clinical psychologists providing services to Medicaid clients. It is not possible at this time to determine the likely magnitude of this effect.

Effects on the use and value of private property. Any possible effect on the value of and use of private property will be too small to measure.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Medicaid coverage of licensed clinical social workers and licensed professional counselors.

Summary:

This regulatory action mandated by the 1996 General Assembly requires DMAS to set rates for licensed clinical psychologists, licensed clinical social workers and licensed professional counselors based upon reasonable criteria and provides for enrollment and direct reimbursement to all of these professionals.

12 VAC 30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social

services department on specific referral from those departments.

D. Psychiatric services.

1. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

2. Psychiatric services can be provided by psychiatrists, clinical psychologists licensed by the State Board of Medicine, psychologists clinical licensed by the Board of Psychology, ~~or by a licensed clinical social worker under the direct supervision of a psychiatrist, licensed clinical psychologist or a licensed psychologist clinical or a licensed professional counselor licensed by the appropriate state board.~~

3. Psychological and psychiatric services shall be medically prescribed treatment which is directly and specifically related to an active written plan designed and signature-dated by either a psychiatrist or a clinical psychologist licensed by the Board of Medicine, a psychologist clinical licensed by the Board of Psychology, or a licensed clinical social worker ~~under the direct supervision of a licensed clinical psychologist, a licensed psychologist clinical, or a psychiatrist or licensed professional counselor licensed by the appropriate state board.~~

4. Psychological or psychiatric services shall be considered appropriate when an individual meets the following criteria:

a. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels which have been impaired;

b. Exhibits deficits in peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, or ability to participate in employment, educational, or social activities;

c. Is at risk for developing or requires treatment for maladaptive coping strategies; and

d. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.

5. Psychological or psychiatric services may be provided in an office or a mental health clinic.

E. Any procedure considered experimental is not covered.

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F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Repealed.

I. Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during

the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540.

12 VAC 30-50-150. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered Podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometrists' services. Diagnostic examination and optometric treatment procedures and services by ophthalmologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services are not provided.

D. Other practitioners' services; psychological services, psychotherapy. Limits and requirements for covered services are found under Psychiatric Services (see 12 VAC 30-50-140 D).

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing by clinical psychologists licensed by the State Board of Medicine, psychologists

clinical licensed by the Board of Psychology and by a licensed clinical social worker under the direct supervision of a psychologist or psychiatrist are covered or a licensed professional counselor licensed by the appropriate state board.

12 VAC 30-60-40. Utilization control: Nursing facilities.

A. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements. All nursing facility services, including specialized care, shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.

B. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

C. The Department of Medical Assistance Services shall periodically conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. The survey will be composed of a sample of Medicaid residents and will include review of both current and closed medical records.

D. Nursing facilities must submit to the Department of Medical Assistance Services resident assessment information at least every six months for utilization review. If an assessment completed by the nursing facility does not reflect accurately a resident's capability to perform activities of daily living and significant impairments in functional capacity, then reimbursement to nursing facilities may be adjusted during the next quarter's reimbursement review. Any individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties.

E. In order for reimbursement to be made to the nursing facility for a recipient's care, the recipient must meet nursing facility criteria as described in 12 VAC 30-60-300 (Nursing Facility Criteria).

In order for reimbursement to be made to the nursing facility for a recipient requiring specialized care, the recipient must meet specialized care criteria as described in 12 VAC 30-60-320 (Adult Specialized Care Criteria) or 12 VAC 30-60-340 (Pediatric/Adolescent Specialized Care Criteria). Reimbursement for specialized care must be preauthorized by the Department of Medical Assistance Services. In addition, reimbursement to nursing facilities for residents requiring specialized care will only be made on a contractual basis. Further specialized care services requirements are set forth below.

In each case for which payment for nursing facility services is made under the State Plan, a physician must recommend at the time of admission or, if later, the time at which the individual applies for medical assistance under the State Plan that the individual requires nursing facility care.

F. For nursing facilities, a physician must approve a recommendation that an individual be admitted to a facility. The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter. At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

G. When the resident no longer meets nursing facility criteria or requires services that the nursing facility is unable to provide, then the resident must be discharged.

H. Specialized care services.

1. Providers must be nursing facilities certified by the Division of Licensure and Certification, State Department of Health, and must have a current signed participation agreement with the Department of Medical Assistance Services to provide nursing facility care. Providers must agree to provide care to at least four residents who meet the specialized care criteria for children/adolescents or adults.

2. Providers must be able to provide the following specialized services to Medicaid specialized care recipients:

a. Physician visits at least once weekly (after initial physician visit, subsequent visits may alternate between physician and physician assistant or nurse practitioner);

b. Skilled nursing services by a registered nurse available 24 hours a day;

c. Coordinated multidisciplinary team approach to meet the needs of the resident;

d. Infection control;

e. For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of 90 minutes each day, five days per week;

f. For residents over age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of two hours per day, five days a week;

g. Ancillary services related to a plan of care;

h. Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);

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i. Psychology services by a board-certified psychologist or by a licensed clinical social worker ~~under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical or a licensed professional counselor~~ related to a plan of care;

j. Necessary durable medical equipment and supplies as required by the plan of care;

k. Nutritional elements as required;

l. A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;

m. Nonemergency transportation;

n. Discharge planning; and

o. Family or caregiver training.

3. Providers must coordinate with appropriate state and local agencies for educational and habilitative needs for Medicaid specialized care recipients who are under the age of 21.

12 VAC 30-60-120. Utilization control: Intensive physical rehabilitative services.

A. A patient qualifies for intensive inpatient rehabilitation or comprehensive outpatient physical rehabilitation as provided in a comprehensive outpatient rehabilitation facility (CORF) if the following criteria are met:

1. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of an interdisciplinary coordinated team approach to improve his ability to function as independently as possible; and

2. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

B. In addition to the disability requirement, participants shall meet the following criteria:

1. Require at least two of the listed therapies in addition to rehabilitative nursing:

a. Occupational therapy.

b. Physical therapy.

c. Cognitive rehabilitation.

d. Speech/language pathology services.

2. Medical condition stable and compatible with an active rehabilitation program.

3. For continued intensive rehabilitation services, the patient must demonstrate an ability to actively participate in goal-related therapeutic interventions developed by the interdisciplinary team. This is evidenced by regular attendance in planned activities and demonstrated progress toward the established goals.

4. Intensive rehabilitation services are to be considered for termination regardless of the preauthorized length of stay when any of the following conditions are met:

a. No further potential for improvement is demonstrated. The patient has reached his maximum progress and a safe and effective maintenance program has been developed.

b. There is limited motivation on the part of the individual or caregiver.

c. The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.

d. Progress toward an established goal or goals cannot be achieved within a reasonable length of time.

e. The established goal serves no purpose to increase meaningful function or cognitive capabilities.

f. The service can be provided by someone other than a skilled rehabilitation professional.

C. Within 72 hours of a patient's admission to an intensive rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility shall notify the Department of Medical Assistance Services in writing of the patient's admission. This notification shall include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is approved, the department will establish and notify the facility of an approved length of stay. Additional lengths of stay shall be requested in writing and approved by the department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

D. Documentation of rehabilitation services shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient necessitating admission to the rehabilitation program;

2. Describe any prior treatment and attempts to rehabilitate the patient;

3. Document an accurate and complete chronological picture of the patient's clinical course and progress in treatment;

4. Document that an interdisciplinary coordinated treatment plan specifically designed for the patient has been developed;

5. Document in detail all treatment rendered to the patient in accordance with the interdisciplinary plan of care with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment;

6. Document change in the patient's conditions;
7. Describe responses to and the outcome of treatment; and
8. Describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no reimbursement will be provided. All intensive rehabilitative services shall be provided in accordance with guidelines found in the Virginia Medicaid Rehabilitation Manual.

E. For a patient with a potential for physical rehabilitation for which an outpatient assessment cannot be adequately performed, an intensive evaluation of no more than seven calendar days will be allowed. A comprehensive assessment will be made of the patient's medical condition, functional limitations, prognosis, possible need for corrective surgery, attitude toward rehabilitation, and the existence of any social problems affecting rehabilitation. After these assessments have been made, the physician, in consultation with the rehabilitation team, shall determine and justify the level of care required to achieve the stated goals.

If during a previous hospital stay an individual completed a rehabilitation program for essentially the same condition for which inpatient hospital care is now being considered, reimbursement for the evaluation will not be covered unless there is a justifiable intervening circumstance which necessitates a reevaluation.

Admissions for evaluation or training, or both, for solely vocational or educational purposes or for developmental or behavioral assessments are not covered services.

F. Interdisciplinary team conferences shall be held as needed but at least every two weeks to assess and document the patient's progress or problems impeding progress. The team shall assess the validity of the rehabilitation goals established at the time of the initial evaluation, determine if rehabilitation criteria continue to be met, and revise patient goals as needed. A review by the various team members of each others' notes does not constitute a team conference. Where practical, the patient or family or both shall participate in the team conferences. A summary of the conferences, noting the team members present, shall be recorded in the clinical record and reflect the reassessments of the various contributors.

Rehabilitation care is to be considered for termination, regardless of the approved length of stay, when further progress toward the established rehabilitation goal is unlikely or further rehabilitation can be achieved in a less intensive setting.

Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically

necessary and appropriate and that the patient continues to meet intensive rehabilitation criteria throughout the entire program. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

G. Properly documented medical reasons for furlough may be included as part of an overall rehabilitation program. Unoccupied beds (or days) resulting from an overnight therapeutic furlough will not be reimbursed by the Department of Medical Assistance Services.

H. Discharge planning shall be an integral part of the overall treatment plan which is developed at the time of admission to the program. The plan shall identify the anticipated improvements in functional abilities and the probable discharge destination. The patient, unless unable to do so, or the responsible party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every two weeks, as a part of the team conference.

I. Rehabilitation services are medically prescribed treatment for improving or restoring functions which have been impaired by illness or injury or, where function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning. The rules pertaining to them are:

1. Rehabilitative nursing requires education, training, or experience that provides special knowledge and clinical skills to diagnose nursing needs and treat individuals who have health problems characterized by alteration in cognitive and functional ability. Rehabilitative nursing are those services furnished a patient which meet all of the following conditions:

- a. The services shall be directly and specifically related to an active written treatment plan approved by a physician after any needed consultation with a registered nurse who is experienced in rehabilitation.

- b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a registered nurse or licensed professional nurse, nursing assistant, or rehabilitation technician under the direct supervision of a registered nurse who is experienced in rehabilitation.

- c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.

- d. The service shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice and include

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the intensity of rehabilitative nursing services which can only be provided in an intensive rehabilitation setting.

2. Physical therapy services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a qualified physical therapist licensed by the Board of Medicine;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

3. Occupational therapy services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of a qualified occupational therapist as defined above;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective

maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

4. Speech-language therapy services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

5. Cognitive rehabilitation services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with a clinical psychologist experienced in working with the neurologically impaired and licensed by the Board of Medicine;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be rendered after a neuropsychological evaluation administered by a clinical psychologist or physician experienced in the administration of neuropsychological assessments and licensed by the Board of Medicine and in accordance with a plan of care based on the findings of the neuropsychological evaluation;

c. Cognitive rehabilitation therapy services may be provided by occupational therapists, speech-language

pathologists, and psychologists who have experience in working with the neurologically impaired when provided under a plan recommended and coordinated by a physician or clinical psychologist licensed by the Board of Medicine;

d. The cognitive rehabilitation services shall be an integrated part of the interdisciplinary patient care plan and shall relate to information processing deficits which are a consequence of and related to a neurologic event;

e. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and

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

6. Psychology services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified psychologist as required by state law or by a licensed clinical social worker ~~under the direct supervision of a licensed clinical psychologist or a licensed psychologist-clinical or a licensed professional counselor,~~

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

7. Social work services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified social worker as required by state law;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

8. Recreational therapy are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

9. Prosthetic/orthotic services.

a. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member, and services necessary to design the device, including measuring, fitting, and instructing the patient in its use;

b. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design

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the device, including measuring, fitting and instructing the patient in its use; and

c. Maxillofacial prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine oral and dental care.

d. The services shall be directly and specifically related to an active written treatment plan approved by a physician after consultation with a prosthetist, orthotist, or a licensed, board eligible prosthodontist, certified in Maxillofacial prosthetics.

e. The services shall be provided with the expectation, based on the assessment made by physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and predictable period of time, or shall be necessary to establish an improved functional state of maintenance.

f. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical and dental practice; this includes the requirement that the amount, frequency, and duration of the services be reasonable.

12 VAC 30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12 VAC 30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (12 VAC 30-80-160 has obstetric/pediatric fees). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office. The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this regulation subdivision 1, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (s 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to

the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments which DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology ~~for (2) above~~ in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology ~~of (1) above~~ in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrist.

b. Services provided by licensed clinical social workers shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

c. Services provided by licensed professional counselors shall be reimbursed at 70% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment.

a. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

b. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

7. Local health services.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12 VAC 30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and adjusted to disregard offsets attributable to Medicare coinsurance amounts.

VA.R. Doc. No. R97-684; Filed July 30, 1997, 8:59 a.m.

Title of Regulations: Community Mental Retardation Services.

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-220; adding 12 VAC 30-50-227).

12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-140; adding 12 VAC 30-60-145).

12 VAC 30-120-10 et seq. Waivered Services (amending 12 VAC 30-120-210 through 12 VAC 30-120-250).

12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services (amending 12 VAC 30-130-540 and 12 VAC 30-130-570; repealing 12 VAC 30-130-560).

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

Public Hearing Date: N/A -- Public comments may be submitted until October 17, 1997.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in §§ 9-6.14:7.1 and 9-6.14:9.1 of the Administrative Process Act (APA), for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, which the Governor approved on January 20, 1997, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on January 22, 1997. Section 9-6.14:4.1 C of the Code of Virginia requires the agency to publish the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was published in the Virginia Register on March 31, 1997 (Volume 13, issue 14).

Purpose: The purpose of this proposal is to expand Medicaid-covered services to persons with mental retardation and to recommend changes to the permanent regulations controlling rehabilitation services, specifically community

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mental health and mental retardation services. The replacement of the 1990 and 1997 State Plan option mental retardation services (12 VAC 30-120-210 through 12 VAC 30-120-250) with new language in the home and community based care services waiver is being proposed in order to better serve the health and welfare needs of this mentally retarded population of Medicaid eligible individuals.

The purpose of this proposed regulation is also to address issues raised by the Health Care Financing Administration (HCFA) in response to DMAS' State Plan Amendment 97-02 (SPA) which was the federal filing companion to the agency's state emergency regulation. HCFA raised a number of issues in response to this SPA: mental retardation services are no longer approvable as one of the options under the rehabilitative services section; special mental health treatment services for children are no longer approvable under this rehabilitation services item, but must be moved to the early and periodic screening, diagnosis and treatment service; substance abuse treatment services could not be offered to parents with children because it violated the comparability rule at 42 CFR 440.240; service limits could not be used which were based on the patient's age and diagnosis; substance abuse treatment services for pregnant women were not approvable under the rehabilitative services option but instead must be placed under the separate Supplement 3, Expanded Prenatal Care Services.

Substance and Analysis: Item 322 D(4) of the 1996 Appropriations Act, required the Department of Medical Assistance Services (DMAS) to expand its State Plan (the Plan) coverage of community mental health and mental retardation services to be provided by community services boards (CSBs). This action represents an expansion of the original community mental health/mental retardation initiative which began in 1990.

In addition, Item 333(E) of the 1996 Appropriations Act required the participation of CSBs in Medicaid covered services by stipulating that a CSB's failure to do so will result in the termination of a like amount of state grant support.

As part of this process the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) convened a Medicaid Expansion Committee, consisting of representatives of CSBs, major consumer and family groups, and DMHMRSAS staff for the purpose of developing these expanded services. Also, staff from the two agencies (DMAS and DMHMRSAS) have worked directly together extensively to identify and develop potential services for the expanded coverage mandated by Item 322.

This advisory committee met regularly during 1997 to review the identification and definition of possible covered services, draft emergency regulations, and review rates for the expanded services. The committee will continue meeting as the new services are implemented to review interpretive guidelines, utilization review criteria, and the proposed permanent regulations.

The DMHMRSAS surveyed the CSBs twice during the spring and summer of 1997 regarding potential services, service amounts and related costs that could be included in this

expanded coverage. Recently, DMHMRSAS surveyed the CSBs to solicit comments and feedback on the proposed rates for this expansion.

The two new services which will be added to the home and community based care services for persons with mental retardation are:

1. Mental retardation crisis stabilization community services provide direct interventions to persons with mental retardation who are experiencing serious psychiatric or behavioral problems that jeopardize their current community living situations by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional admission or prevent other out-of-home placement.
2. Mental retardation supported living services provide training and supports to enable adults with mental retardation and functional limitations to be maintained in independent or semi-independent living arrangements in the community.

Day health and habilitation service, which had been part of the State Plan since 1990, is being eliminated from the Plan as HCFA has advised DMAS that habilitation services for individuals with mental retardation can only be covered either in an intermediate care (nursing) facility for the mentally retarded (ICF/MR) or in home and community-based care (CBC) waiver program. Recipients currently served who qualify for the CBC waiver will be shifted to the existing mental retardation waiver day support services.

Issues: The advantages to the public in the coverage of these services is the reduction in the number of general fund dollars needed to provide these services through the use of federal financial participation. Any CSB which is presently providing any of these services (without the benefit of Medicaid payments) is doing so with all general fund and local dollars. The agency projects no negative issues involved in implementing this proposed change. These proposed expanded services will enable eligible Medicaid recipients to receive a broader array of community services that will assist them to remain in their communities and thereby avoid costly institutional admissions and treatment. Systemically, the expanded services will complement and fill out the continuum of care available in the community for Medicaid recipients with mental illnesses, mental retardation, or substance abuse disorders.

Fiscal/Budget Impact: There are no localities which are uniquely affected by these regulations as they apply statewide. These regulations will affect the 40 community services boards, which will provide the services, and Medicaid recipients who meet the eligibility criteria for these new services. The fiscal impact of these expanded services that was tentatively projected during consideration of the 1996 Appropriation Act was \$4.8 million total funds in FY 1997 and \$9.6 million total funds in FY 1998. It is important to note that this expansion requires no additional general funds. The state match for the federal financial participation associated with these services will be supplied by the DMHMRSAS, as is currently the case with the existing

Community Mental Health/Mental Retardation services. The proposed payment rates will be subject to retroactive review and adjustment based on information submitted by DMHMRSAS. The following table presents a very preliminary projection of the potential annual impact of these proposed expanded services. It is based on extrapolations of data from the CSB survey conducted last June. Some of the service definitions and units have changed since then so this presentation should be considered more descriptive than predictive:

**ANNUALIZED PROJECTED IMPACT OF EXPANDED
MEDICAID COMMUNITY MH/MR/SAS SERVICES**

Proposed Service	Projected Annual <u>Recipients</u>	<u>Costs</u>
MR Crisis Stabilization	359	\$2,280,155
MR Supported Living	<u>256</u>	<u>\$925,529</u>
TOTAL	615	\$3,205,684

The general funds currently budgeted for day health and rehabilitation will be available to provide matching funds for day support services for person currently served in day health and rehabilitation but who now will be shifted to the CBC waiver.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation recommends changes to the permanent regulations controlling Rehabilitation Services, specifically Community Mental Retardation Services. The expansion of these services creates a payment source for the local Community Service Boards (CSBs), in support of a wider range of mental services to Medicaid eligible persons, which draws on federal funding.

Estimated Economic Impact. The 1996 Appropriations Act Item 322 D(4) required DMAS to expand its State plan coverage of community mental retardation services to be provided by Community Service Boards (CSBs). In addition, the Act required Community Service Boards to participate in Medicaid covered services by stipulating that a CSB's failure to do so will result in the termination of a like amount of state grant support. New services to be added as a result of this regulation are:

- Mental Retardation Crisis Stabilization Services provide direct interventions to persons with mental retardation who are experiencing serious psychiatric or behavioral problems that may jeopardize their current community living situations by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional admission;
- Mental Retardation Supported Living Services provide training and support to enable adults with mental retardation and functional limitations achieve and maintain independent or semi-independent living arrangements in the community.

Any CSB that is currently providing such services without the benefit of Medicaid payments is doing so primarily with General Fund and local dollars. By moving these services over to Medicaid, the state will be able to draw 50% in matching federal funds. This obviously reduces the demand for General Funds and represents a saving to the Commonwealth.

The expanded services will enable eligible Medicaid recipients to receive needed medical, mental and community services that will assist them to remain in their communities. DMAS estimates that the total cost of providing these services will be about \$3.2 million. Of this amount about \$2.2 million will be spent on about 359 Crisis Stabilization cases (about \$6,351 per case), and \$1 million for 256 individuals who need Support Services (about \$3,615 per case). The average amount of money to be spent per case will be about \$5,212.

The fiscal benefits of these expenditures can be estimated as the avoided costs of future hospitalizations for these individuals in institutions that are far more expensive than having them live in the community. Having individuals with mental retardation problems live in the community provides them with the necessary support they need and gives them a sense of belonging that we cannot quantify monetarily. The economic value of the social benefits is far more extensive and difficult to capture. Giving these clients an opportunity to lead a healthy and normal life is just one example of the social benefits. It is extremely difficult to put a dollar amount on mental health. However, it is reasonable to conclude that providing these services so that these individuals can go about their lives in as normal a way as possible should more than offset the cost of providing these services.

Businesses and entities affected. The entities affected by these regulations are the various CSBs offering mental health services. An estimated 615 mentally retarded individuals would benefit from this program.

Localities particularly affected. No particular localities will be affected by this regulation.

Projected impact on employment. This regulation should not have any impact on employment.

Effects on the use and value of private property. Any possible effect on the value of and use of private property will be too small to measure.

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Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning home and community based care services for individuals with mental retardation: 1997 MR services expansion.

Summary:

The purpose of this proposal is to recommend changes to the permanent regulations controlling rehabilitation services, specifically community mental health and mental retardation services. The replacement of the 1990 and 1997 State Plan option mental retardation services with new language in the home and community based care services waiver is being proposed in response to comments received from the Health Care Financing Administration.

The two new services which will be added to the home and community based care services for persons with mental retardation are:

1. Mental retardation crisis stabilization community services provide direct interventions to persons with mental retardation who are experiencing serious psychiatric or behavioral problems that jeopardize their current community living situations by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional admission or prevent other out-of-home placement.

2. Mental retardation supported living services provide training and supports to enable adults with mental retardation and functional limitations to be maintained in independent or semi-independent living arrangements in the community.

Day health and habilitation service, which had been part of the State Plan since 1990, is being eliminated from the Plan as HCFA has advised DMAS that habilitation services for individuals with mental retardation can only be covered either in an intermediate care (nursing) facility for the mental retarded (ICF/MR) or in home and community-based care (CBC) waiver program. Recipients currently served who qualify for the CBC waiver will be shifted to the existing mental retardation waiver day support services.

12 VAC 30-50-220. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

A. Diagnostic services are not provided.

B. Screening services. Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

C. Maternity length of stay and early discharge.

1. If the mother and newborn, or the newborn alone, are discharged earlier than 48 hours after the day of delivery, DMAS will cover one early discharge follow-up visit as recommended by the physicians in accordance with and as indicated by the "Guidelines for Perinatal Care" as developed by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists (1992). The mother and newborn, or the newborn alone if the mother has not been discharged, must meet the criteria for early discharge to be eligible for the early discharge follow-up visit. This early discharge follow-up visit does not affect or apply to any usual postpartum or well-baby care or any other covered care to which the mother or newborn is entitled; it is tied directly to an early discharge. The criteria for an early discharge are as follows:

a. Discharge criteria for early discharge of mother.

(1) Uncomplicated vaginal, full-term delivery following a normal antepartum course;

(2) Postpartum observation has sufficiently documented a stable course, including the following observations:

(a) Vital signs are stable;

(b) Uterine fundus is firm, bleeding (lochia) is controlled, of normal amount and color;

(c) Hemoglobin is greater than eight, hematocrit is greater than or equal to 24 and estimated blood loss is not greater than 500 cc or blood loss does not result in the patient being symptomatic for anemia, i.e., lightheadedness, syncope, tachycardia, or shortness of breath;

(d) Episiotomy/repared laceration is not inflamed and there is no evidence of infection or hematoma;

(e) Tolerating prescribed diet post delivery;

(f) Voiding without difficulty and passing flatus. Bowel sounds present; and

(g) If not previously obtained, ABO and Rh typing must be done and, if indicated, the appropriate amount of Rho(D) immunoglobulin must be administered.

b. Discharge criteria for early discharge of infant. The newborn must be deemed normal by physical examination and stable meeting the following criteria:

(1) Term delivery and weight is considered normal;

(2) Infant is able to maintain a stable body temperature under normal conditions;

(3) Infant is able to take and tolerate feedings by mouth and demonstrates normal sucking and swallowing reflexes;

(4) Laboratory data must be reviewed to include:

- (a) Maternal testing for syphilis and hepatitis B surface antigen;
 - (b) Cord or infant blood type and direct Coombs test (if the mother is Rho(D) negative, or is type O, or if screening has not been performed for maternal antibodies);
 - (c) Hemoglobin or hematocrit and blood glucose determinations, as clinically indicated; and
 - (d) Any screening tests required by law.
- (5) Initial hepatitis B vaccine must be administered in accordance with the time requirements in the current Recommended Childhood Immunization Schedule developed by the Advisory Committee on Immunization Practices under the requirements of § 1905(r)(1) of the Social Security Act (42 USC § 1396 d).
- c. Discharge criteria for early discharge of mother and infant.
- (1) Family members or other support persons must be available to the mother for the first few days following discharge;
 - (2) The mother or caretaker has demonstrated the ability to care for her infant, including feeding, bathing, cord care, diapering, body temperature assessment, and measurement with a thermometer;
 - (3) The mother or caretaker has been taught basic assessment skills, including neonatal well-being and recognition of illness. She verbalizes understanding of possible complications and has been instructed to notify the appropriate practitioner as necessary; and
 - (4) A physician-directed source of continuing medical care for both mother and baby must be identified and arrangements made for the baby to be examined within 48 hours of discharge.
2. The early discharge follow-up visit must be provided as directed by a physician. The physician may coordinate with the provider of his choice to provide the early discharge follow-up visit, within the following limitations. Qualified providers are those hospitals, physicians, nurse midwives, nurse practitioners, federally qualified health clinics, rural health clinics, and health departments clinics that are enrolled as Medicaid providers and are qualified by the appropriate state authority for delivery of the service. The staff providing the follow-up visit, at a minimum, must be a registered nurse having training and experience in maternal and child health. The visit must be provided within 48 hours of discharge.
3. The visit must include, at a minimum, the following:
- a. Maternal assessment must include, but is not limited to:
 - (1) Vital signs;
 - (2) Assessment of lochia, height and firmness of the uterus;
 - (3) Assessment of the episiotomy, if applicable;
 - (4) Assessment for and of hemorrhoids;
 - (5) Assessment of bowel and bladder function;
 - (6) Assessment of the breasts, especially the nipples if the mother is breast feeding. Assessment of the mother's understanding of breast/nipple care and understanding of proper care;
 - (7) Assessment of eating habits for nutritional balance, stressing good nutrition especially in the breast feeding mother;
 - (8) Assessment for signs and symptoms of anemia and, if present, notification of the responsible physician for further instructions;
 - (9) Confirmation that the mother has an appointment for a six-week postpartum check-up; and
 - (10) Identification of the need for and make referrals to the appropriate resources for identified medical, social, and nutritional concerns and needs.
 - b. Newborn assessment must include, but is not limited to:
 - (1) Vital signs;
 - (2) Weight;
 - (3) Examination of the umbilical cord and circumcision, if applicable;
 - (4) Assessment of hydration status;
 - (5) Evaluation of acceptance and tolerance of feedings, including the frequency of feeds and the amount taken each feed. If possible, observation of the mother or caretaker feeding the infant for technique assessment;
 - (6) Assessment of bowel and bladder function;
 - (7) Assessment of skin coloration; if the infant demonstrates any degree of jaundice, notification of the physician for further instruction. If infant is pale, mottled, lethargic, or with poor muscle tone, immediate notification of the physician for further instruction;
 - (8) Assessment of infant behavior, sleep/wake patterns;
 - (9) Assessment of the quality of mother/infant interaction, bonding;
 - (10) Blood samples for lab work, or a urine sample as directed by state law, physician, or clinical judgment;
 - (11) Confirmation that the infant has an appointment for routine two-week check up;

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(12) Discussion with the mother or caretaker planning for health maintenance, including preventive care, periodic evaluations, immunizations, signs and symptoms of physical change requiring immediate attention, and emergency services available; and

(13) Identification of the need for and make referrals to any other existing appropriate resources for identified medical, social and nutritional concerns and needs.

D. Rehabilitative services.

1. Intensive physical rehabilitation.

a. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision 1 d of this subsection in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

b. Medicaid covers intensive outpatient physical rehabilitation services as defined in subdivision 1 d of this subsection in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

c. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in 12 VAC 30-70-10 through 12 VAC 30-70-130.

d. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech-language pathology, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of physical medicine and rehabilitation.

e. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

f. For continued intensive rehabilitation services, the patient must demonstrate an ability to actively participate in goal-related therapeutic interventions developed by the interdisciplinary team. This shall be evidenced by regular attendance in planned activities and demonstrated progress toward the established goals.

g. Intensive rehabilitation services shall be considered for termination regardless of the preauthorized length of stay when any of the following conditions are met:

(1) No further potential for improvement is demonstrated. The patient has reached his maximum progress and a safe and effective maintenance program has been developed.

(2) There is limited motivation on the part of the individual or caregiver.

(3) The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.

(4) Progress toward an established goal or goals cannot be achieved within a reasonable period of time.

(5) The established goal serves no purpose to increase meaningful functional or cognitive capabilities.

(6) The service can be provided by someone other than a skilled rehabilitation professional.

2. Community mental health services. Definitions. The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

a. Mental health services. The following services, with their definitions, shall be covered:

(1) Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate

problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

(2) Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.

(3) Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment.

(4) Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and education within a supportive and normalizing program structure and environment.

(5) Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit or both, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits,

home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

~~b. Mental retardation services/related conditions. Day health and rehabilitation services shall be covered for persons with MR or related conditions and the following definitions shall apply:~~

~~Day health and rehabilitation services (limited to 780 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written physician's order/plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the physician's order/plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:~~

- ~~(1) Self care and hygiene skills;~~
- ~~(2) Eating and toilet training skills;~~
- ~~(3) Task learning skills;~~
- ~~(4) Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);~~
- ~~(5) Environmental and behavior skills (e.g., training in punctuality, self discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);~~
- ~~(6) Medication management;~~
- ~~(7) Travel and related training to and from the training sites and service and support activities;~~
- ~~(8) Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.~~

12 VAC 30-50-227. Lead contamination.

3. Coverage shall be provided for investigations by local health departments to determine the source of lead contamination in the home as part of the management and treatment of Medicaid-eligible children who have been diagnosed with elevated blood lead levels. Only costs that are eligible for federal funding participation in accordance with current federal regulations shall be covered. Payments for environmental investigations under this section shall be limited to no more than two visits per residence.

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12 VAC 30-60-140. Community mental health services.

A. Utilization review general requirements. On-site utilization reviews shall be conducted, at a minimum annually at each enrolled provider, by the state Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS). During each on-site review, an appropriate sample of the provider's total Medicaid population will be selected for review. An expanded review shall be conducted if an appropriate number of exceptions or problems are identified.

B. The DMHMRSAS review shall include the following items:

1. Medical or clinical necessity of the delivered service;
2. The admission to service and level of care was appropriate;
3. The services were provided by appropriately qualified individuals as defined in the Amount, Duration, and Scope of Services found in 12 VAC 30-50-220; and
4. Delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

C. Mental health services utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in 12 VAC 30-50-400 95 through 12 VAC 30-50-310.

1. Intensive in-home services for children and adolescents.

a. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service shall be recommended in the Individual Service Plan (ISP) which shall be fully completed within 30 days of initiation of services.

b. Services shall be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.

c. Services shall be used when out-of-home placement is a risk and when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the client's residence as the setting for services is more likely to be successful than a clinic.

d. Services are not appropriate for a family in which a child has run away or a family for which the goal is to keep the family together only until an out-of-home placement can be arranged.

e. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

f. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services, with the goal of keeping the child with the family.

g. The provider of intensive in-home services for children and adolescents shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

h. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home service is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in-home service, and includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in-home services below the five-hour a week minimum may be covered. However, variations in this pattern must be consistent with the individual service plan. Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive or nonhome based services.

i. The intensity of service dictates that caseload sizes should be six or fewer cases at any given time. If on review caseloads exceed this limit, the provider will be required to submit a corrective action plan designed to reduce caseload size to the required limit unless the provider can demonstrate that enough of the cases in the caseload are moving toward discharge so that the caseload standard will be met within three months by attrition. Failure to maintain required caseload sizes in two or more review periods may result in termination of the provider agreement unless the provider demonstrates the ability to attain and maintain the required caseload size.

j. Emergency assistance shall be available 24 hours per day, seven days a week.

2. Therapeutic day treatment for children and adolescents.

a. Therapeutic day treatment is appropriate for children and adolescents who meet the DMHMRSAS definitions of "serious emotional disturbance" or "at risk of developing serious emotional disturbance" and who also meet one of the following:

(1) Children and adolescents who require year-round treatment in order to sustain behavioral or emotional gains.

(2) Children and adolescents whose behavior and emotional problems are so severe they cannot be

handled in self-contained or resource emotionally disturbed (ED) classrooms without:

- (a) This programming during the school day; or
- (b) This programming to supplement the school day or school year.

(3) Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

(4) Children and adolescents who have deficits in social skills, peer relations, dealing with authority; are hyperactive; have poor impulse control; are extremely depressed or marginally connected with reality.

(5) Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

b. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

c. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

d. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e. before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day; and three units of service equals five or more hours of service. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled activities.

e. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

f. Services shall be provided following a diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker or certified psychiatric nurse and in accordance with an ISP which shall be fully completed within 30 days of initiation of the service.

3. Day treatment/partial hospitalization services shall be provided to adults with serious mental illness following diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse, and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

a. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

b. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

c. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state or when other less intensive services may achieve stabilization. Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

4. Psychosocial rehabilitation services shall be provided to those individuals who have mental illness or mental retardation, and who have experienced long-term or repeated psychiatric hospitalization, or who lack daily living skills and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term care is needed to maintain the individual in the community.

a. Services shall be provided following an assessment which clearly documents the need for services and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

b. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

c. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but less than seven hours in a given day.

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Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

d. Time allocated for field trips may be used to calculate time and units if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.

5. Admission to crisis intervention services is indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress. Crisis intervention may be the initial contact with a client.

a. The provider of crisis intervention services shall be licensed as an Outpatient Program by DMHMRSAS.

b. Client-related activities provided in association with a face-to-face contact are reimbursable.

c. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

d. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP must be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

e. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

f. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. When travel is required to provide out-of-clinic services, such time is reimbursable. Crisis intervention may involve the family or significant others.

6. Case management.

a. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires

regular direct or client-related contacts or activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

b. The Medicaid eligible individual shall meet the DMHMRSAS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

c. There shall be no maximum service limits for case management services.

d. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

e. The ISP shall be updated at least annually.

D. 12 VAC 30-60-145. Mental retardation utilization criteria.

Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in 12 VAC 30-50-400 95 through 12 VAC 30-50-310.

~~1. Appropriate use of day health and rehabilitation services requires the following conditions shall be met:~~

~~a. The service is provided by a program with an operational focus on skills development, social learning and interaction, support, and supervision.~~

~~b. The individual shall be assessed and deficits must be found in two or more of the following areas to qualify for services:~~

~~(1) Managing personal care needs,~~

~~(2) Understanding verbal commands and communicating needs and wants,~~

~~(3) Earning wages without intensive, frequent and ongoing supervision or support,~~

~~(4) Learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,~~

~~(5) Exhibiting behavior appropriate to time, place and situation that is not threatening or harmful to the~~

~~health or safety of self or others without direct supervision;~~

~~(6) Making decisions which require informed consent;~~

~~(7) Caring for other needs without the assistance of personnel trained to teach functional skills;~~

~~(8) Functioning in community and integrated environments without structured, intensive and frequent assistance, supervision or support.~~

~~c. Services for the individual shall be preauthorized annually by DMHMRSAS.~~

~~d. Each individual shall have a written plan of care developed by the provider which shall be fully complete within 30 days of initiation of the service, with a review of the plan of care at least every 90 days with modification as appropriate. A 10 day grace period is allowable.~~

~~e. The provider shall update the plan of care at least annually.~~

~~f. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting plan of care goals.~~

~~g. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be at least four but less than seven hours on a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.~~

~~h. The provider shall be licensed by DMHMRSAS.~~

2. Appropriate use of case management services for persons with mental retardation requires the following conditions to be met:

a. 1. The individual must require case management as documented on the consumer service plan of care which is developed based on appropriate assessment and supporting data. Authorization for case management services shall be obtained from DMHMRSAS Care Coordination Unit annually.

b. 2. An active client shall be defined as an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers,

significant others and other entities including a minimum of one face-to-face contact within a 90-day period.

e. 3. The plan of care shall address the individual's needs in all life areas with consideration of the individual's age, primary disability, level of functioning and other relevant factors.

(1) a. The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of the actual review.

(2) b. The need for case management services shall be assessed and justified through the development of an annual consumer service plan.

d. 4. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.

12 VAC 30-120-210. Definitions.

The following words and terms as used in this part shall have the following meanings unless the context indicates otherwise:

"*Assistive technology*" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control or communicate with the environment in which they live or which are necessary to the proper functioning of such items.

"*Care coordinators*" means community resource consultants employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to perform utilization review, recommendation of preauthorization for service type and intensity, and review of individual level of care criteria.

"*Case management*" means the assessment, planning, linking and monitoring for individuals referred for mental retardation community-based care waiver services. Case management (i) ensures the development, coordination, implementation, monitoring, and modification of the individual service plan; (ii) links the individual with appropriate community resources and supports; (iii) coordinates service providers; and (iii) monitors quality of care.

"*Case managers*" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills and abilities, as established

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by DMHMRSAS, necessary to perform case management services.

"Community based care waiver services" or "waiver services" means the range of community support services approved by the Health Care Financing Administration pursuant to § 1915(c) of the Social Security Act to be offered to mentally retarded and developmentally disabled individuals who would otherwise require the level of care provided in a nursing facility for the mentally retarded.

"Community services board" or "CSB" means the public organization authorized by the Code of Virginia to provide services to individuals with mental illness or retardation, operating autonomously but in partnership with the DMHMRSAS.

"Consumer Service Plan" or "CSP" means that document addressing the needs of the recipient of home and community-based care mental retardation services, in all life areas. The Individual Service Plans developed by service providers are to be incorporated in the CSP by the case manager. Factors to be considered when this plan is developed may include, but are not limited to, the recipient's age, primary disability, and level of functioning.

"Crisis stabilization" means direct intervention to persons with mental retardation who are experiencing serious psychiatric or behavioral problems, or both, which jeopardize their current community living situation by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional admission or prevent other out of home placement. This service must stabilize the individual and strengthen the current living situation so that the individual can be maintained in the community during and beyond the crisis period. Services will include, as appropriate, psychiatric, neuropsychiatric, and psychological assessment and other functional assessments and stabilization techniques; medication management and monitoring; behavior assessment and positive behavioral support; intensive care coordination with other agencies and providers to assist planning and delivery of services and supports to maintain community placement of the recipient; training of family members, other care givers, and service providers in positive behavioral supports to maintain the individual in the community; and temporary crisis supervision to ensure the safety of the individual and others.

"DMAS" means the Department of Medical Assistance Services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMHMRSAS staff" means community resource consultants employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to perform utilization review, recommendation of preauthorization for service type and intensity, and review of individual level of care criteria.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self-care, physical development, transportation to and from training sites, services and support activities, and prevocational services aimed at preparing an individual for paid or unpaid employment.

"Developmental risk" means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through diagnostic and evaluative criteria.

"Environmental modifications" means physical adaptations to a house, place of residence or work site, when the modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act, necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by the Department of Medical Assistance Services for children under the age of 21 according to federal guidelines which prescribe specific preventive and treatment services for Medicaid-eligible children.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means the service plan developed by the individual service provider related solely to the specific tasks required of that service provider. ISPs help to comprise the overall Consumer Service Plan of care for the individual. The ISP is defined in DMHMRSAS licensing regulations 12 VAC 35-102-10 et seq.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Nursing services" means skilled nursing services listed in the plan of care which are ordered by a physician and required to prevent institutionalization, not available under the State Plan for Medical Assistance, are within the scope of the state's Nurse Practice Act and are provided by a registered professional nurse, or licensed practical nurse under the supervision of a registered nurse, licensed to practice in the state.

"Personal assistance" means assistance with activities of daily living, medication and/or other medical needs and monitoring health status and physical condition for individuals

who do not receive residential support services and for whom training and skills development are not primary objectives or are provided through another program or service.

"*Prevocational services*" means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job or task oriented but focus on goals such as attention span and motor skills. Compensation, if provided, would be for persons whose productivity is less than 50% of the minimum wage.

"*Related conditions*" as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"*Residential support services*" means support provided in the mentally retarded individual's home or in a licensed residence which includes training, assistance, and supervision in enabling the individual to maintain or improve his health, assistance in performing individual care tasks, training in activities of daily living, training and use of community resources, and adapting behavior to community and home-like environments. Reimbursement for residential support shall not include the cost of room and board.

"*Respite care*" means services given to individuals unable to care for themselves provided on a short-term basis because of the absence or need for relief of those persons normally providing the care.

"*State Plan for Medical Assistance*" or "*Plan*" means the regulations identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"*Supported employment*" means training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized supervision to enable a consumer to maintain paid employment provided to mentally retarded individuals who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally retarded.

"*Supported living*" means training and supports to enable adults and children with mental retardation and functional limitations to be maintained in natural living arrangements in the community. This may include individuals who live with parents, other adults, or other family members or others (e.g.,

helping roommates). Training and assistance shall be provided to eligible individuals as appropriate for these services: (i) functional skills and appropriate behavior related to an individual's health and safety, home management and living skill, and use of community resources; (ii) medication management and monitoring health, nutrition and physical condition; and (iii) personal care and daily living, and use of community resources.

"*Therapeutic consultation*" means consultation provided by members of psychology, social work, behavioral analysis, speech therapy, occupational therapy, *therapeutic recreation*, or physical therapy disciplines to assist the individual, parents/family members, *early intervention providers*, residential support ~~and~~, day support *and any other providers of support services* in implementing an individual service plan.

12 VAC 30-120-220. General coverage and requirements for home and community-based care services.

A. Waiver service populations. Home and community-based services shall be available through a § 1915(c) waiver. Coverage shall be provided under the waiver for the following individuals who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded:

1. Individuals with mental retardation.
2. Individuals with related conditions currently residing in nursing facilities and determined to require specialized services.
3. Individuals under the age of six at developmental risk who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded. At age six, these individuals must be determined to be mentally retarded to continue to receive home and community-based care services.

B. Covered services.

1. Covered services shall include: residential support, day support, supported employment, personal assistance, respite care, assistive technology, environmental modifications, nursing services ~~and~~, therapeutic consultation, *crisis stabilization*, and *supported living services*.

2. These services shall be clinically appropriate and necessary to maintain these individuals in the community. Federal waiver requirements provide that the average per capita fiscal year expenditure under the waiver must not exceed the average per capita expenditures for the level of care provided in an intermediate care facility for the mentally retarded under the State Plan that would have been made had the waiver not been granted.

C. Patient eligibility requirements.

1. Virginia shall apply the financial eligibility criteria contained in the State Plan for the categorically needy

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and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

2. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

3. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after deducting the following amounts in the following order from the individual's income:

a. For individuals to whom § 1924(d) applies, Virginia intends to waive the requirement for comparability pursuant to § 1902(a)(10)(B) to allow for the following:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training shall be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of

the Social Security Act, the same as that applied for the institutionalized patient.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.

b. For all other individuals:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training will be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

4. *The following three criteria shall apply to all mental retardation waiver services:*

a. *Individuals qualifying for mental retardation waiver services must have a demonstrated clinical need for the service arising from their diagnosed condition of mental retardation resulting in significant functional limitations in major life activities;*

b. *The Plan of Care and services which are delivered must be consistent with the Medicaid definition of each service; and*

c. *Services must be authorized by the case manager based on a current functional assessment using the Inventory for Client and Agency Planning (ICAP) or other appropriate assessment and demonstrated need for each specific service.*

D. Assessment and authorization of home and community-based care services.

1. The individual's need for home and community-based care services shall be determined by the CSB case

manager after completion of a comprehensive assessment of the individual's needs and available support. The case manager shall complete the assessment, determine whether the individual meets the intermediate care facility for the mentally retarded (ICF/MR) criteria and develop the Consumer Service Plan (CSP) with input from the recipient, family members, service providers and any other individuals involved in the individual's maintenance in the community.

2. An essential part of the case manager's assessment process shall be determining the level of care required by applying the existing DMAS ICF/MR criteria (12 VAC 30-130-430 et seq.).

3. The case manager shall gather relevant medical, social, and psychological data and identify all services received by the individual. Medical examinations shall be current, completed prior to the individual's entry to the waiver, no earlier than 12 months prior to beginning waiver services. Social assessments must have been completed within one year of beginning waiver services. Psychological evaluations or reviews must be completed ~~within a year prior to the start of waiver services. In no case shall a psychological review be based on a full psychological evaluation that precedes admission to waiver services by more than three years reflect the current psychological status and cognitive abilities of the recipients.~~

4. The case manager shall explore alternative settings to provide the care needed by the individual. Based on the individual's preference, preference of parents or guardian for minors, or preference of guardian or authorized representative for adults, and the assessment of needs, a plan of care shall be developed for the individual. For the case manager to make a recommendation for waiver services, community-based care services must be determined to be an appropriate service alternative to delay, avoid, or exit from nursing facility placement.

5. Community-based care waiver services may be recommended by the case manager only if:

a. The individual is Medicaid eligible as determined by the local office of the Department of Social Services,

b. The individual is either mentally retarded as defined in § 37.1-1 of the Code of Virginia, has a related condition, and is currently residing in a nursing facility and been determined to require specialized services, or is a child under the age of six at developmental risk who would, in the absence of waiver services, require the level of care provided in an ICF/MR facility, the cost of which would be reimbursed under the Plan,

c. The individual requesting waiver services shall not receive such services while an inpatient of a nursing facility or hospital.

6. The case manager must submit the results of the comprehensive assessment and a recommendation to the ~~care coordinator~~ DMHMRSAS staff for final determination of ICF/MR level of care and authorization for community-based care services. DMHMRSAS authorization must be obtained prior to referral for service initiation and Medicaid reimbursement for waiver services. DMHMRSAS will communicate in writing to the case manager whether the recommended service plan has been approved or denied and, if approved, the amounts and type of services authorized.

7. All Consumer Service Plans are subject to approval by DMAS. DMAS is the single state authority responsible for the supervision of the administration of the community-based care waiver. DMAS has contracted with DMHMRSAS for recommendation of preauthorization of waiver services and utilization review of those services.

12 VAC 30-120-230. General conditions and requirements for all home and community-based care participating providers.

A. General requirements. Providers approved for participation shall, at a minimum, perform the following:

1. Immediately notify DMAS in writing of any change in the information which the provider previously submitted to DMAS.

2. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the services required and participating in the Medicaid Program at the time the service was performed.

3. Assure the recipient's freedom to refuse medical care and treatment.

4. Accept referrals for services only when staff is available to initiate services.

5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin and of Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of a handicap and both the Virginians with Disabilities Act and the Americans with Disabilities Act.

6. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.

8. Accept Medicaid payment from the first day of the recipient's eligibility.

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9. Accept as payment in full the amount established by DMAS.
10. Use program-designated billing forms for submission of charges.
11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the health care provided.
 - a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.
 - b. Policies regarding retention of records shall apply even if the agency discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.
12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.
13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.
14. Hold confidential and use for authorized DMAS or DMHMRSAS purposes only all medical assistance information regarding recipients.
15. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days of such change.
 - B. Requests for participation. DMAS will screen requests to determine whether the provider applicant meets the following basic requirements for participation.
 - C. Provider participation standards. For DMAS to approve contracts with home and community-based care providers the following standards shall be met:
 1. The provider must have the ability to serve all individuals in need of waiver services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement.
 2. The provider must have the administrative and financial management capacity to meet state and federal requirements.
 3. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements.
 4. The provider of residential and day support services must meet the licensing requirements of DMHMRSAS that address standards for personnel, residential and day program environments, and program and service content. Residential support services may also be provided in programs licensed by DSS (homes for adults) or in adult foster care homes approved by local DSS offices pursuant to state DSS regulations. In addition to licensing requirements, persons providing residential support services are required to pass an objective, standardized test of skills, knowledge and abilities developed by DMHMRSAS and administered according to DMHMRSAS policies.
 5. Supported employment or prevocational training services shall be provided by agencies that are either licensed by DMHMRSAS or are vendors of prevocational, vocational or supported employment services for DRS.
 6. Services provided by members of professional disciplines shall meet all applicable state licensure or certification requirements. Persons providing consultation in behavioral analysis shall be certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities. Persons providing rehabilitation engineering shall be contracted with DRS.
 7. All facilities covered by § 1616(e) of the Social Security Act in which home and community-based care services will be provided shall be in compliance with applicable standards that meet the requirements of 45 CFR 1397 for board and care facilities. Health and safety standards shall be monitored through the DMHMRSAS's licensure standards, 12 VAC 35-102-10 et seq. or through DSS licensure standards 22 VAC 40-70-10 et seq. and 22 VAC 40-770-10 et seq.
 8. Personal assistance services shall be provided by a DMAS certified personal care provider, a DMHMRSAS residential support provider or, for individuals with related conditions who are capable of directing this service, the provider may be an individual registered with DRS.
 9. Respite care services shall be provided by a DMAS certified personal care provider, a DMHMRSAS residential support provider, approved by DSS as a foster care home for children or adult foster home or be registered with the CSB as an individual provider of respite care.
 10. Nursing services shall be provided by a DMAS certified private duty nursing or home health provider or by a licensed registered nurse or practical nurse contracted or employed by the CSB.

11. Environmental modifications shall be provided in accordance with all applicable state or local building codes by contractors of the CSB or DRS who shall be reimbursed for the amount charged by said contractors.

12. Assistive technology shall be provided by agencies under contract with DMAS as a durable medical equipment and supply provider.

13. *Crisis stabilization services shall be provided by agencies licensed by DMHMRSAS as a provider of outpatient services or residential or supportive residential services. To provide the crisis supervision component, agencies must be licensed by DMHMRSAS as providers of residential services or supportive residential services. The provider agency must employ or utilize qualified mental retardation professionals, licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to individuals with mental retardation who are experiencing serious psychiatric or behavioral problems.*

14. *Supported living services shall be provided by agencies licensed by DMHMRSAS as a provider of residential services or supportive residential services. Individuals employed or contracted by the provider agency to implement supported living services must have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations. Persons providing supported living services are required to pass an objective, standardized test of skills, knowledge, and abilities developed by DMHMRSAS and administered according to DMHMRSAS policies.*

D. Adherence to provider contract and DMAS provider service manual. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider contracts and in the DMAS provider service manual.

E. Recipient choice of provider agencies. The waiver recipient shall be informed of all available providers in the community and shall have the option of selecting the provider agency of his choice from among those agencies which can appropriately meet the individual's needs.

F. Termination of provider participation. DMAS may administratively terminate a provider from participation upon 60 days' written notification. DMAS may also cancel a contract immediately or may give such notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided recipients subsequent to the date specified in the termination notice.

G. Reconsideration of adverse actions. Adverse actions may include, but are not limited to, disallowed payment of claims for services rendered which are not in accordance with DMAS policies and procedures, contract limitation or

termination. The following procedures shall be available to all providers when DMAS takes adverse action which includes termination or suspension of the provider agreement.

1. The reconsideration process shall consist of three phases:

- a. A written response and reconsideration of the preliminary findings.
- b. The informal conference.
- c. The formal evidentiary hearing.

2. The provider shall have 30 days to submit information for written reconsideration, 15 days from the date of the notice to request the informal conference, and 15 days from the date of the notice to request the formal evidentiary hearing.

3. An appeal of adverse actions shall be heard in accordance with the Administrative Process Act (s 9-6.14:1 et seq. of the Code of Virginia) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia. Court review of the final agency determination shall be made in accordance with the Administrative Process Act.

H. Responsibility for sharing recipient information. It shall be the responsibility of the case management provider to notify DMAS and DSS, in writing, when any of the following circumstances occur:

1. Home and community-based care services are implemented.
2. A recipient dies.
3. A recipient is discharged or terminated from services.
4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.

I. Changes or termination of care. It is the ~~care coordinator's~~ *DMHMRSAS staff's* responsibility to authorize any changes to a recipient's CSP based on the recommendation of the case management provider.

1. Agencies providing direct service are responsible for modifying their individual service plan and submitting it to the case manager any time there is a change in the recipient's condition or circumstances which may warrant a change in the amount or type of service rendered.

2. The case manager will review the need for a change and may recommend a change to the plan of care to the ~~care coordinator~~ *DMHMRSAS staff*.

3. The ~~care coordinator~~ *DMHMRSAS staff* will approve or deny the requested change to the recipient's plan of care and communicate this authorization to the case manager within 72 hours of receipt of the request for change.

4. The case manager will communicate in writing the authorized change in the recipient's plan of care to the

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individual service provider and the recipient, in writing, providing the recipient with the right to appeal the decision pursuant to DMAS Client Appeals Regulations (12 VAC 30-110-10 et seq.).

5. Nonemergency termination of home and community-based care services by the individual service provider. The individual service provider shall give the recipient and/or family and case manager 10 days' written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least 10 days from the date of the termination notification letter.

6. Emergency termination of home and community-based care services by the individual services provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, the case manager and ~~care coordinator~~ DMHMRSAS staff must be notified prior to termination. The 10-day written notification period shall not be required.

7. Termination of home and community-based care services for a recipient by the ~~care coordinator~~ DMHMRSAS staff. The effective date of termination shall be at least 10 days from the date of the termination notification letter. The case manager has the responsibility to identify those recipients who no longer meet the criteria for care or for whom home and community-based services are no longer an appropriate alternative. The ~~care coordinator~~ DMHMRSAS staff has the authority to terminate home and community-based care services.

J. Suspected abuse or neglect. Pursuant to § 63.1-55.3 of the Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation shall report this to the local DSS.

K. DMAS monitoring. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider will take and the length of time required to achieve full compliance with deficiencies which have been cited.

12 VAC 30-120-240. Covered services and limitations.

A. Residential support services shall be provided in the recipient's home or in a licensed residence in the amount and type dictated by the training, supervision, and personal care available from the recipient's place of residence. Service

providers are reimbursed only for the amount and type of residential support services included in the individual's approved plan of care. Residential support services shall not be authorized in the plan of care unless the individual requires these services and they exceed the care included in the individual's room and board arrangement. *In order to qualify for this service, the individual shall have a demonstrated need for 24-hour support services provided by the mental retardation waiver (e.g., ICAP service level of six or under, homelessness, a need for a group home, a need for an out-of-home placement).*

B. Day support services include a variety of training, support, and supervision offered in a setting which allows peer interactions and community integration. If prevocational services are offered, the plan of care must contain documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Individuals with Disabilities Education Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Compensation for prevocational services can only be made when the individual's productivity is less than 50% of the minimum wage. Service providers are reimbursed only for the amount and type of day support services included in the individual's approved plan of care based on the setting, intensity and duration of the service to be delivered. *In order to qualify for this service, the individual shall have a demonstrated need for support in skills which are aimed towards preparation of paid employment which may be offered in a variety of community settings. Individuals must have previously resided in a Medicaid-certified facility to qualify for prevocational day support services. Individuals shall have demonstrated the need for functional training, assistance and specialized supervision offered in settings which allow an opportunity for being a productive and contributing member of their communities.*

C. Supported employment services shall include training in specific skills related to paid employment and provision of ongoing or intermittent assistance and/or specialized supervision to enable a consumer to maintain paid employment provided to mentally retarded individuals who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally retarded. Each plan of care must contain documentation regarding whether supported employment services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Individuals with Disabilities Education Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Service providers are reimbursed only for the amount and type of habilitation services included in the individual's approved plan of care based on the intensity and duration of the service delivered. Reimbursement shall be limited to actual interventions by the provider of supported employment, not for the amount of time the individual is in the

supported employment environment. *In order to qualify for these services, the individual shall have a demonstrated need for training, specialized supervision, or assistance in paid employment and for whom competitive employment at or above the minimum wage is unlikely and who, because of the disability, needs ongoing support, including supervision, training and transportation to perform in a work setting. Such qualifying individuals must have previously resided in a Medicaid-certified facility.*

D. Therapeutic consultation is available under the waiver for Virginia licensed or certified practitioners in psychology, social work, occupational therapy, physical therapy, therapeutic recreation, rehabilitation engineering and speech therapy. Behavioral analysis performed by persons certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities may also be a covered waiver service. These services may be provided, based on the individual plan of care, for those individuals for whom specialized consultation is clinically necessary to enable their utilization of waiver services. Therapeutic consultation services, other than behavioral analysis, may be provided in residential or day support settings or in office settings in conjunction with another waiver service. Behavioral analysis may be offered in the absence of any other waiver service when the consultation provided to informal caregivers is determined to be necessary to prevent institutionalization. Service providers are reimbursed according to the amount and type of service authorized in the plan of care based on an hourly fee for service. *In order to qualify for these services, the individual shall have a demonstrated need for referral for consultation in any of these services. Documented need indicates that the Plan of Care could not be implemented effectively and efficiently without such consultation from this service.*

E. Environmental modifications shall be available to individuals who are receiving at least one other waiver service. It is provided primarily in the individual's home or other community residence in accordance with all applicable state or local building codes. A maximum limit of \$5,000 may be reimbursed in a year. *In order to qualify for these services, the individual shall have a demonstrated need for remedial or medical benefit primarily in a consumer's home, vehicle, community activity setting, or day program to specifically serve to improve the individual's personal functioning.*

F. Personal assistance is available only for individuals who do not receive residential support services and for whom training and skills development are not primary objectives or are provided through another program or service. *In order to qualify for these services, the individual shall have a demonstrated need with personal care, activities of daily living, medication or other medical needs or monitoring health status or physical condition. Training and skills development shall not be primary objectives of this service or are received in another program.*

G. Respite care services are limited to a maximum of 30 days or 720 hours per year. *In order to qualify for these*

services, the individual shall have a demonstrated need for substitute care/temporary care which is normally provided by a primary care giver to provide relief for the family or surrogate family/care giver.

H. Nursing services are for individuals with serious medical conditions and complex health care needs which require specific skilled nursing services which cannot be provided by non-nursing personnel. Skilled nursing is provided in the individual's home and/or other community setting on a regularly scheduled or intermittent need basis. The plan of care must indicate that the service is necessary to prevent institutionalization and is not available under the State Plan for Medical Assistance. *In order to qualify for these services, the individual shall have demonstrated complex health care needs which require specific skilled nursing services which are ordered by a physician and which cannot be otherwise accessed under the Title XIX State Plan.*

I. Assistive technology is available to individuals who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. A maximum limit of \$5,000 may be reimbursed in a year. *In order to qualify for these services, the individual shall have demonstrated need for remedial or medical benefit primarily in a consumer's home, vehicle, community activity setting, or day program to specifically serve to improve the individual's personal functioning.*

J. *Crisis stabilization services shall provide, as appropriate, neuropsychological, psychiatric, psychological and other assessments and stabilization, functional assessments, medication management and behavior assessment, behavior management, intensive care coordination with other agencies and providers to assist planning and delivery of services and supports to maintain community placement of the recipient; training of family members and other care givers and service providers in positive behavioral supports to maintain the recipient in the community; and temporary specialized supervision to ensure the safety of the recipient and others. The unit for each component of the service shall equal one hour. This service may be authorized for provision for a maximum period of 15 days and during more than 60 days in a calendar year. The actual service units per episode shall be based on the documented clinical needs of the recipients being served.*

1. *These services shall be available to individuals who meet at least one of the following criteria:*

- a. *Individual is experiencing a marked reduction in psychiatric, adaptive, or behavioral functioning;*
- b. *Individual is experiencing extreme increase in emotional distress;*
- c. *Individual needs continuous intervention to maintain stability; or*
- d. *Individual is causing harm to himself or others.*

2. *This service must stabilize the recipient and strengthen the current semi-independent living situation,*

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or situation with family or other primary care givers so the recipient can be maintained during and beyond the crisis period. These services may be provided directly in, but not limited to, the following settings:

- a. The home of an individual who lives with family, friends, or other primary care giver or givers;
- b. The home of an individual who lives independently/semi-independently to augment any current services and supports;
- c. A community-based residential program to augment current services and supports;
- d. A day program or setting to augment current services and supports; or
- e. A respite care setting.

3. These services may be initiated following a documented face-to-face assessment by a qualified mental retardation professional. If appropriate, the assessment shall be conducted jointly with a licensed mental health professional or other appropriate professional or professionals. Crisis stabilization services shall be billed in hourly service units and may be authorized for provision during a maximum period of 15 days and for no more than 60 days in a calendar year. Crisis supervision, if provided as part of this service, shall be separately billed in hourly service units. The need for this service or an extension of the authorization for this service must be clearly documented following a documented face-to-face reassessment conducted by a qualified mental retardation professional. If appropriate, the reassessment will be conducted jointly with a licensed mental health professional or other appropriate professional or professionals.

4. An Individualized Service Plan (ISP) must be developed or revised within 72 hours of assessment or reassessment. Crisis supervision may be provided as a component of this service only if clinical/behavioral intervention allowable under this service also is provided during authorized period. Crisis supervision must be provided face-to-face with the recipient.

5. This service shall not be used for continuous long-term care beyond the service limits. Room and board and general supervision shall not be components of this service and shall not be included in reimbursement.

K. Supported living services shall be defined as training and supports to enable high-risk individuals with mental retardation and functional limitations to be maintained in independent or semi-independent living arrangements in the community. This may include individuals who live with parents, others (e.g., helping roommates, friends) or other family members. The maximum amount of services covered for a recipient shall be set by the community services board based on documented needs of the recipient but shall not exceed 62 units per month with one unit being defined as 1-

2.99 hours per day. No more than three units shall be covered in a 24-hour period.

1. Each recipient who receives this service must also receive case management services. This service shall provide the following to eligible recipients as appropriate in order to be reimbursed by Medicaid:

- a. Training in or reinforcement of functional skills and appropriate behavior related to a recipient's health and safety, personal care, activities of daily living; and use of community resources;
- b. Assistance with medication management and monitoring health, nutrition and physical condition; and
- c. Assistance with personal care, activities of daily living, and use of community resources.

2. This service may not be provided to any individual who receives residential support or personal assistance services under the mental retardation community waiver.

3. All individuals must meet the following criteria in order for Medicaid to reimburse for mental retardation supported living services: the recipient meets the eligibility requirements for this waiver service as herein defined; the recipient shall not have a demonstrated need for 24-hour support services provided by the mental retardation waiver (e.g., currently with family, self, or others with a goal of maintaining at-home placement, ICAP service level of five or over for adults in semi-independent or independent living situations).

4. This service shall be limited to the amount of units which are based upon documented individual needs. The maximum limit shall be 62 units per month.

5. An individual's case manager shall not also be the direct service staff person, or the immediate supervisor of a staff person, who provides supported living services to that recipient.

6. This service must be provided one-on-one to the recipient.

7. This service may not be provided to any individual who receives residential support or personal assistance services under the mental retardation community waiver or some other residential program where a comparable level of care is available.

8. Room and board and general supervision shall not be components of this service. This service shall not be used solely to provide routine or emergency respite care for parent or other care givers with whom the recipient lives.

9. Utilization review.

- a. This service must be authorized by the case manager based upon a current functional assessment using the ICAP or other appropriate instrument or instruments approved by DMHMRSAS.

b. An ISP must be developed which identifies specific goals and objectives to be accomplished by provision of supported living services.

c. Receipt of this service by the recipient must be recorded with adequate documentation which addresses plan of care goals; there must be quarterly documentation of status/progress and significant events.

d. The ISP must be reviewed at least quarterly and modified as appropriate. The ISP must be updated at least annually.

e. The consumer's eligibility and need for the continuation of services must be reviewed and approved by the case manager annually.

12 VAC 30-120-250. Reevaluation of service need and utilization review.

A. The Consumer Service Plan.

1. The Consumer Service Plan shall be developed by the case manager mutually with other service providers, the recipient, consultants, and other interested parties based on relevant, current assessment data. The plan of care process determines the services to be rendered to recipients, the frequency of services, the type of service provider, and a description of the services to be offered. Only services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.

2. The case manager is responsible for continuous monitoring of the appropriateness of the recipient's plan of care and revisions to the CSP as indicated by the changing needs of the recipient. At a minimum, the case manager shall review the plan of care every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

3. The ~~care coordinator~~ DMHMRSAS staff shall review the plan of care every six months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the CSP must be authorized by the ~~care coordinator~~ DMHMRSAS staff, another employee of DMHMRSAS or DMAS.

B. Review of level of care.

~~1. The care coordinator shall review the recipient's level of care and continued need for waiver services every six months or more frequently as required to assure proper utilization of services.~~

2. 1. The case manager shall coordinate a comprehensive reassessment, including, if indicated, a medical examination and a psychological evaluation for every waiver recipient at least once a year. This reassessment shall include an update of the assessment instrument and any other appropriate assessment data based on the recipient's characteristics.

~~2. A medical examination shall be completed for adults based on need identified by the provider, consumer, case manager, or care coordinator DMHMRSAS staff. Medical examinations for children shall be completed according to the recommended frequency and periodicity of the EPSDT program.~~

~~3. A new psychological evaluation is required every three years must reflect the current psychological status and cognitive abilities.~~

C. Documentation required.

1. The case management agency must maintain the following documentation for review by the DMHMRSAS ~~care coordinator~~ staff and DMAS utilization review staff for each waiver recipient:

a. All assessment summaries and CSP's completed for the recipient maintained for a period not less than five years from the recipient's start of care.

b. All ISP's from any provider rendering waiver services to the recipient.

c. All supporting documentation related to any change in the plan of care.

d. All related communication with the providers, recipient, consultants, DMHMRSAS, DMAS, DSS, DRS or other related parties.

e. An ongoing log which documents all contacts made by the case manager related to the waiver recipient.

2. The individual service providers must maintain the following documentation for review by the DMHMRSAS ~~care coordinator~~ staff and DMAS utilization review staff for each waiver recipient:

a. All ISP's developed for that recipient maintained for a period not less than five years from the date of the recipient's entry to waiver services.

b. An attendance log which documents the date services were rendered and the amount and type of service rendered.

c. Appropriate progress notes reflecting recipient's status and, as appropriate, progress toward the goals on the ISP.

12 VAC 30-130-540. Definitions.

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

"Board" or "BMAS" means the Board of Medical Assistance Services.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the ~~client~~ recipient of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited

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to, the ~~client's~~ recipient's age, primary disability, level of functioning and other relevant factors.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

"DRS" means the Department of Rehabilitative Services consistent with Chapter 3 (§ 51.5-8 et seq.) of Title 51.5 of the Code of Virginia.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means ~~that which is defined in DMHMRSAS licensing regulations VR 470-02-09 [12 VAC 35-80-10 et seq. Repealed]~~ a comprehensive and regularly updated statement specific to the individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, and estimated timetable for achieving the goals and objectives. Such ISP shall be maintained up to date as the needs and progress of the individual changes.

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Preauthorization" means the approval by the care coordinator of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established

by DMHMRSAS, necessary to perform case management services.

"Related conditions," as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Serious emotional disturbance" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in Policy 1029, Definitions of Priority Mental Health Populations, effective June 27, 1990.

"Serious mental illness" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in Policy 1029, Definitions of Priority Mental Health Populations, effective June 27, 1990.

"Significant others" means persons related to or interested in the individual's health, well-being, and care. Significant others may be, but are not limited, to a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

"Substance abuse" means the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"State Plan for Medical Assistance" or "Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

12 VAC 30-130-560. Mental retardation/related conditions services. (Repealed.)

~~Day health and rehabilitation services shall be covered for persons with mental retardation or related conditions and the following definitions shall apply:~~

~~Day health and rehabilitation services (limited to 780 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the~~

recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

1. Self care and hygiene skills: training in personal appearance and cleanliness, clothing selection/use, personal dental hygiene;
2. Eating skills: training in sitting at table, using utensils, and eating in a reasonable manner; using restaurants;
3. Toilet training skills: training in all steps of toilet process, practice of skills in a variety of public/private environments;
4. Task learning skills: training in eye/hand coordination tasks with varying levels of assistance by supervisors, developing alternative training strategies, providing training and reinforcement in appropriate community settings where such tasks occur;
5. Community resource utilization skills: training in time, telephone, basic computations, money, warning sign recognition, and personal identification such as personal address and telephone number; use of community services, resources and cultural opportunities;
6. Environmental skills: training in punctuality, self discipline, care of personal belongings, respect for property, remaining on task and adequate attendance; training at actual sites where the skills will be performed;
7. Behavior skills: training in appropriate interaction with supervisors and other trainees, self control of disruptive behaviors, attention to program rules and coping skills, developing/enhancing social skills in relating to the general population, peer groups;
8. Medication management: awareness of importance of prescribed medications, identification of medications, the role of proper dosage and schedules, providing assistance in medication administration, and signs of adverse effects;
9. Travel and related training to and from the training sites and service and support activities;
10. Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning: training in appropriate manners, language, home care, clothing care, physical awareness and community awareness; opportunities to practice skills in community settings among the general population.
11. Transportation time to and from the program site may be included as part of the reimburseable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation

to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.

12 VAC 30-130-570. Provider qualification requirements.

To qualify as a provider of services through DMAS for rehabilitative mental health or services, mental retardation services, and substance abuse treatment services the provider of the services must meet certain criteria. These criteria shall be:

1. The provider shall guarantee that clients recipients have access to emergency services on a 24-hour basis;
2. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;
3. The provider shall have the administrative and financial management capacity to meet state and federal requirements;
4. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;
5. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and
6. In addition to those requirements stated above, a provider shall meet the following requirements specific to each disability area:
 - a. Mental health.
 - (1) Intensive in-home: licensure by DMHMRSAS as an outpatient program.
 - (2) Therapeutic day treatment for children/adolescents: licensure by DMHMRSAS as a day support program.
 - (3) Day treatment/partial hospitalization: licensure by DMHMRSAS as a day support program.
 - (4) Psychosocial rehabilitation: licensure by DMHMRSAS as a day support program.
 - (5) Crisis intervention: licensure by DMHMRSAS as an Outpatient Program.
 - (6) Case Management: certified by DMHMRSAS.
 - (7) Intensive community treatment for adults: Licensure by DMHMRSAS to provide outpatient services.
 - (8) Crisis stabilization services for adults: Licensure by DMHMRSAS to provide outpatient services.
 - (9) Mental health support services for adults: Licensure by DMHMRSAS as a provider of supported living residential services or supportive residential services. Individuals employed or

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contracted by the provider agency to implement mental health support services must have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations.

b. Mental retardation.

(1) Day Health and Rehabilitation Services: licensure by DMHMRSAS as a day support program

(2) Case Management: Certified by DMHMRSAS

(3) *Mental retardation crisis stabilization community services. The provider agency must be licensed by DMHMRSAS as a provider of outpatient services and of supported living residential services or supportive residential services. The provider agency must employ or utilize qualified mental retardation professionals, licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to recipients with mental retardation who are experiencing serious psychiatric/behavioral problems.*

(4) *Mental retardation supported living and habilitation services. The provider agency must be licensed by DMHMRSAS as a provider of supported living residential services or supportive residential services. Individuals employed or contracted by the provider agency to implement supported living and habilitation services must have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations.*

c. Related conditions. Day health and rehabilitation services: licensure by DMHMRSAS as a day support program or contracted with DRS as habilitation services providers.

DOCUMENT INCORPORATED BY REFERENCE

Policy 1029(SYS)90-2, Definitions of Priority Mental Health Populations; Department of Mental Health, Mental Retardation and Substance Abuse Services; eff. June 27, 1990.

NOTICE: Due to its length, the form filed by the Department of Medical Assistance Services for use in administering the Community Mental Retardation Services regulations is not being published; however, the name of the form is listed below. The form is available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

Inventory for Client and Agency Planning (ICAP) Response Booklet, D9200/D9210, 1986.

VA.R. Doc. No. R97-651; Filed July 21, 1997, 3:42 p.m.

Title of Regulations: Community Substance Abuse Treatment Services for Pregnant Women.

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-510; adding part headings).

12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (adding 12 VAC 30-60-147).

12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services (amending 12 VAC 30-130-540 and 12 VAC 30-130-570; adding 12 VAC 30-130-565).

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

Public Hearing Date: N/A -- Public comments may be submitted until October 17, 1997.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code of Virginia also provides, in §§ 9-6.14:7.1 and 9-6.14:9.1 of the Administrative Process Act (APA), for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, which the Governor approved on January 20, 1997, the agency is initiating the public notice and comment process as contained in Article 2, (§ 9-6.14:7.1 et seq.) of the APA. The emergency regulation became effective on January 22, 1997. Section 9-6.14:4.1 C of the Code of Virginia requires the agency to publish the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was published in the Virginia Register on March 17, 1997 (Volume 13, Issue 13).

Purpose: The purpose of this proposal is to expand Medicaid-covered services for pregnant women with substance abuse disorders and to recommend changes to the permanent regulations controlling expanded prenatal services. The expansion of these services creates a payment source for the local community services boards in the provision of these services to Medicaid eligible persons which draws on federal funding thereby reducing the demand for general fund and local dollars.

The purpose of this proposed regulation is to make permanent the provisions of the emergency regulations while also addressing issues raised by the Health Care Financing

Administration (HCFA) in response to DMAS' State Plan Amendment 97-02 (SPA) which was the federal filing companion to the agency's state emergency regulation. HCFA raised a number of issues in response to this SPA: mental retardation services were no longer approvable as one of the options under the rehabilitative services section 12 VAC 30-50-220; special mental health treatment services for children were no longer approvable under this rehabilitation services item but must be moved to the Early and Periodic Screening, Diagnosis and Treatment service; substance abuse treatment services could not be offered to parents with children because it violated the comparability rule at 42 CFR 440.240; service limits could not be used which were based on the patient's age and diagnosis; substance abuse treatment services for pregnant women were not approvable under the rehabilitative services option but instead must be placed under the separate Supplement 3, Expanded Prenatal Care Services.

Substance and Analysis: Item 322 D(4) of the 1996 Appropriation Act required the Department of Medical Assistance Services (DMAS) to expand its State Plan (the Plan) coverage of community mental health and mental retardation services to be provided by community services boards (CSBs). This action represents an expansion of the original community mental health/mental retardation initiative which began in 1990.

In addition, Item 333 (E) of the 1996 Appropriation Act requires the participation of CSBs in Medicaid covered services by stipulating that a CSB's failure to do so will result in the termination of a like amount of state grant support.

As part of this process the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) convened a Medicaid Expansion Committee consisting of representatives of CSBs, major consumer and family groups, and DMHMRSAS staff for the purpose of developing these expanded services. Also, staff from the two agencies (DMAS and DMHMRSAS) have worked together extensively to identify and develop potential services for the expanded coverage mandated by Item 322. These groups proposed the addition of new substance abuse treatment services to those mental health and mental retardation services originally adopted in 1990.

This advisory committee met regularly during 1997 to review the identification and definition of possible covered services, draft emergency regulations, and review rates for the expanded services. The committee will continue meeting as the new services are implemented to review interpretive guidelines, utilization review criteria, and the proposed permanent regulations.

The DMHMRSAS surveyed the CSBs twice during the spring and summer of 1997 regarding potential services, service amounts and related costs that could be included in this expanded coverage. Recently, DMHMRSAS surveyed the CSBs to solicit comments and feedback on the proposed rates for this expansion. A description of the expansion services follows:

1. Substance Abuse Residential Treatment Services for Pregnant Women which would provide intensive intervention services in residential facilities, other than inpatient facilities, to pregnant and postpartum women with serious substance abuse for the purposes of improving pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.

2. Substance Abuse Day Treatment Services for Pregnant Women which would provide intensive intervention services in a central location lasting two or more consecutive hours per day, which may be scheduled multiple times per week, to pregnant and postpartum women with serious substance abuse for the purposes of improving pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.

The emergency regulations also contained substance abuse treatment services (both residential and day treatment) for parents of dependent children. HCFA, in its comments and response to SPA 97-02 discussed above, has determined that this service violates the comparability standard at 42 CFR 440.240. Therefore, DMAS and DMHMRSAS have determined that this service should not be included in this proposed permanent regulation. The departments will continue to review options to expand services to Medicaid recipients who require substance abuse treatment.

Issues: The agency projects no negative issues involved in implementing this proposed change. The advantages to the public in the coverage of these services is the reduction in the number of general fund dollars needed to provide these services through the use of federal financial participation. Any CSB which is presently providing any of these services (without the benefit of Medicaid payments) is doing so with all general fund and local dollars. These proposed expanded services will enable eligible Medicaid recipients to receive totally new services that heretofore have not been covered by DMAS. Systemically, the expanded services will complement and fill out the continuum of care available in the community for Medicaid recipients with substance abuse disorders.

Fiscal/Budget Impact: There are no localities which are uniquely affected by these regulations as they apply statewide.

These regulations will affect the 40 community services boards, which will provide the services, and Medicaid recipients who meet the eligibility criteria for these new services. The fiscal impact of these expanded services that was tentatively projected during consideration of the 1996 Appropriation Act was \$4.8 million total funds in FY 1997 and \$9.6 million total funds in FY 1998. It is important to note that this expansion requires no additional general funds. The state match for the federal financial participation associated with these services will be supplied by the DMHMRSAS, as is currently the case with the existing community mental

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health/mental retardation services. The payment rates proposed to be effective on January 22, 1997, will be subject to retroactive review and adjustment based on information submitted by DMHMRSAS. The following table presents a very preliminary projection of the potential annual impact of these proposed expanded services. It is based on extrapolations of data from the CSB survey conducted last June. Some of the service definitions and units have changed since then so this presentation should be considered more descriptive than predictive:

ANNUALIZED PROJECTED IMPACT OF EXPANDED MEDICAID COMMUNITY MH/MR/SAS SERVICES

Proposed Service	Projected Annual	
	Recipients	Costs
Substance Abuse Residential Treatment for Pregnant Women	25	\$426,517
Substance Abuse Day Treatment for Pregnant Women	99	\$226,308
TOTAL	124	\$652,825

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation recommends changes to the permanent regulations controlling expanded prenatal services to provide for substance abuse treatment for pregnant women. The expansion of these services creates a payment source for the local Community Service Boards (CSBs), in support of a wider range of mental services to Medicaid eligible persons, which draws on federal funding.

Estimated economic impact. The 1996 Appropriation Act, Item 322 D(4), required DMAS to expand its state plan coverage of community mental health services to be provided by Community Service Boards (CSBs). In addition, the Act required Community Service Boards to participate in Medicaid covered services by stipulating that a CSB's failure to do so will result in the termination of a like amount of state grant support. New services to be added as a result of this regulation are:

1. Substance Abuse Residential Treatment Services for Pregnant Women which would provide intensive intervention services in residential facilities, to pregnant and postpartum women with serious substance abuse problems for the purpose of improving pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle; and

2. Substance Abuse Day Treatment Services for Pregnant Women which would provide intensive intervention services in a central location lasting two or more consecutive hours per day, which may be scheduled multiple times per week, to pregnant and postpartum women with serious substance abuse problems for the purposes of improving pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.

Any CSB that is currently providing such services without the benefit of Medicaid payments is doing so primarily with General Fund and local dollars. By moving these services over to Medicaid, the state will be able to draw 50% in matching federal funds. This obviously reduces the demand for General Funds and represents a saving to the Commonwealth.

The goal of these programs as stated is to provide mothers with substance abuse problems a chance at becoming drug-free, productive citizens. If the program can achieve these goals then the benefit will far outweigh the cost. Mothers who remain drug free will have a greater probability of holding down paying jobs and staying off welfare. The lifetime earnings of these individuals, their tax contributions, and decreased dependence on welfare should more than pay for the cost of providing this service.

However, there is a real question as to whether the program as set up will be able to achieve these goals. The program as set up gives each mother a one-time shot at becoming drug free with maximum stay at a residential facility of 330 days not exceeding 60 days postpartum. The obvious question is whether 330 days is a long enough period to bring about such behavioral changes in individuals with substance abuse problems. In any case, it is more than likely that no one will use up all of the 330 days. Most mothers do not find out they are pregnant until about 30 to 48 days into the pregnancy. This will make the effective number of days spent in residence more likely to be between 250 and 300 days. Moreover, the 60 days postpartum limit implies that a number of mothers will be eligible for much less than 250 to 300 days. Will such a person be in residence long enough to produce any long lasting changes? If the 330 days was chosen on the basis of program effectiveness, then the effectiveness of shorter stays is drawn into question.

What about the factors that contributed to the drug dependency in the first place? If these women are thrown

right back into the situations from which they came, it is not unlikely that any gains from participating in these programs will be undone. There is the need for an aggressive follow up program to ensure that the gains from the program are not transitory. DMAS has put in place an ambitious program to ensure that only those willing to recover from substance abuse are admitted to the program. There will be coordination between the treatment centers, social workers, and obstetricians to ensure that would-be mothers stay drug free after they leave the program. Obviously, without data on the success of the program these questions can not be answered easily. DPB will like to suggest that useful and appropriate data be collected on this program for analysis in the future.

The program, however, should yield some immediate economic benefits. For example, providing treatment to pregnant women with substance abuse problems should decrease the mortality and morbidity rates of newborns. DMAS maintains that conservative estimates of the cost of treating babies born addicted to drugs in neonatal intensive care units is about \$250,000 per child. Preventing just three of such cases will more than justify the cost of the program. Moreover the probability of having brain damaged babies is decreased with participation in such programs. This represents a cost saving in the special education budget of the Commonwealth. The program, if successful, will also cut down on the number of children who are put in foster care at the state's expense.

The substance abuse program that will emerge as a result of this regulation should provide protection for newborn babies from drug addictions. Decreased mortality and morbidity rates among infants born to mothers with substance abuse problems are tangible benefits from this program. Other benefits include the avoided costs of hospitalization, special education and in some cases foster care. However, the program as designed will probably do very little in helping women with substance abuse problems stay drug free after they leave the program. A more integrated approach that includes follow up and providing individuals with the environment to succeed will go a long way to ensure that the gains of this regulation are not transitory.

Businesses and entities affected. The businesses affected by these regulations are the various CSBs offering mental health services. An estimated 124 women will participate in this program annually.

Localities particularly affected. No particular localities will be affected by this regulation.

Projected impact on employment. This regulation should not have any impact on employment.

Effects on the use and value of private property. Any possible effect on the value of and use of private property will be too small to measure.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the

Department of Planning and Budget regarding the regulations concerning Community Substance Abuse Treatment Services: Residential and Day Treatment Services for Pregnant Women.

However, regardless of concurring with the basic concepts proposed in DPB's analysis, DMAS is constrained by federal law and its general fund appropriations. DMAS does not presently cover substance abuse services for the general Medicaid population due in large measure to many of the issues raised in DPB's analysis. In addition, the time constraints of the proposed services are tied to the length of the typical pregnancy and postpartum periods consistent with those permitted by federal law for Medicaid eligibility for these special groups. Once a woman's pregnancy and postpartum periods end, she loses her Medicaid eligibility unless she qualifies under another category.

Summary:

The proposed regulation recommends changes to the permanent regulations controlling expanded prenatal services to provide for substance abuse treatment for pregnant women. The expansion of these services creates a payment source for the local community services boards, in the provision of these services to Medicaid eligible persons, which draws on federal funding thereby reducing the demand for general fund and local dollars. The purpose of this proposed regulation is to make permanent the provisions of the emergency regulations while also addressing issues raised by the Health Care Financing Administration (HCFA) in response to DMAS' State Plan amendment. The services proposed to be offered are as follows:

1. *Substance Abuse Residential Treatment Services for Pregnant Women which would provide intensive intervention services in residential facilities, other than inpatient facilities, to pregnant and postpartum women with serious substance abuse for the purposes of improving pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.*

2. *Substance Abuse Day Treatment Services for Pregnant Women which would provide intensive intervention services in a central location lasting two or more consecutive hours per day, which may be scheduled multiple times per week, to pregnant and postpartum women with serious substance abuse for the purposes of improving pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.*

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PART I.
CATEGORICALLY NEEDY.

(Begins with 12 VAC 30-50-10)

PART II.
AMBULATORY SERVICES; MEDICALLY NEEDY.

(Begins with 12 VAC 30-50-40)

PART III.
AMOUNT, DURATION AND SCOPE OF SERVICES.

(Begins with 12 VAC 30-50-100)

PART IV.
CASE MANAGEMENT SERVICES.

(Begins with 12 VAC 30-50-410)

PART V.
EXPANDED PRENATAL CARE SERVICES.

12 VAC 30-50-510. Requirements and limits applicable to specific services: expanded prenatal care services.

~~Provision of coverage and reimbursement of additional prenatal care services:~~

A. Comparability of Services: Services are not comparable in amount, duration and scope. Authority of § 9501(b) of COBRA 1985 allows an exception to provide service to pregnant women without regard to the requirements of § 1902(a)(10)(B).

B. Definition of Services: Expanded prenatal care services will offer a more comprehensive prenatal care services package to improve pregnancy outcome. The expanded prenatal care services provider may perform the following services:

1. Patient education. Includes six classes of education for pregnant women in a planned, organized teaching environment including but not limited to topics such as body changes, danger signals, substance abuse, labor and delivery information, and courses such as planned parenthood, Lamaze, smoking cessation, and child rearing. Instruction must be rendered by Medicaid certified providers who have appropriate education, license, or certification.
2. Homemaker. Includes those services necessary to maintain household routine for pregnant women, primarily in third trimester, who need bed rest. Services include, but are not limited to, light housekeeping, child care, laundry, shopping, and meal preparation. Must be rendered by Medicaid certified providers.
3. Nutrition. Includes nutritional assessment of dietary habits, and nutritional counseling and counseling follow-up. All pregnant women are expected to receive basic nutrition information from their medical care providers or the WIC Program. Must be provided by a Registered Dietitian (R.D.) or a person with a master's degree in nutrition, maternal and child health, or clinical

dietetics with experience in public health, maternal and child nutrition, or clinical dietetics.

4. Blood glucose meters. Effective on and after July 1, 1993, blood glucose test products shall be provided when they are determined by the physician to be medically necessary for pregnant women suffering from a condition of diabetes which is likely to negatively affect their pregnancy outcomes. The women authorized to receive a blood glucose meter must also be referred for nutritional counseling. Such products shall be provided by Medicaid enrolled durable medical equipment providers.

5. Residential substance abuse treatment for pregnant women. Includes comprehensive, intensive residential treatment for pregnant and postpartum women to improve pregnancy outcomes by eliminating the substance abuse problem. Must be provided consistent with standards established to assure high quality of care in 12 VAC 30-60-10 et seq.

Residential substance abuse treatment for pregnant women shall provide intensive intervention services in residential facilities other than inpatient facilities and shall be provided to pregnant and postpartum women (up to 60 days postpartum) with serious substance abuse disorders, for the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle. The pregnant woman may keep her infant and other dependent children with her at the treatment center. The daily rate is inclusive of all services which are provided to the pregnant woman in the program. A unit of service shall be one day. The maximum number of units to be covered for one adult in her lifetime is 330 days of continuous service, not to exceed 60 days postpartum. These services must be reauthorized every 90 days and after any absence of less than 72 hours which was not first authorized by the program director. The program director must document the reason for granting permission for any absences in the clinical record of the recipient. An unauthorized absence of more than 72 hours shall terminate Medicaid reimbursement for this service. Unauthorized hours absent from treatment shall be included in this lifetime service limit. This type of treatment shall provide the following types of services or activities in order to be eligible to receive reimbursement by Medicaid:

- a. Substance abuse rehabilitation, counseling and treatment shall be provided to the participant women to include, but not necessarily be limited to, education about the impact of alcohol and other drugs on the fetus and on the maternal relationship; smoking cessation classes if needed; education about relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs; and the integration of urine toxicology

screens and other toxicology screens, as appropriate, to monitor intake of illicit drugs and alcohol and provide information for counseling.

b. Training about pregnancy and fetal development shall be provided at a level and in a manner comprehensible by the participating women. Such training shall include, but shall not be limited to, the impact of alcohol and other drugs on fetal development, normal physical changes associated with pregnancy as well as training in normal gynecological functions, personal nutrition, delivery expectations, and infant nutrition.

c. Initial and ongoing assessments shall be provided specifically for substance abuse, including, but not limited to, psychiatric and psychological assessments.

d. Service coordination with EPSDT shall be provided to address the needs of the existing children in the program.

e. Symptom and behavior management as appropriate for co-existing mental illness shall be provided, including medication management and ongoing psychological treatment.

f. Personal health care training and assistance shall be provided. Such training shall include:

(1) Educational services and referral services for testing, counseling, and management of HIV, provided as described in 42 USC § 300x-24(b)(6)(A) and (B), including early intervention services as defined in 42 USC § 300x-24(b)(7) and in coordination with the programs identified in 45 CFR 96.128;

(2) Educational services and referral services for testing, counseling, and management of tuberculosis, including tuberculosis services as described in 42 USC § 300x-24(a)(2) (1992) and in coordination with the programs identified in 45 CFR 96.127; and

(3) Education services and referral services for testing, counseling, and management of hepatitis.

g. Case coordination with providers of primary medical care shall be provided, including obstetrical/gynecological services for the recipient.

h. Training in decision-making, anger management and conflict resolution shall be provided.

i. Extensive discharge planning shall be provided in collaboration with the recipient, any appropriate significant others, and representatives of appropriate service agencies.

6. Day substance abuse treatment for pregnant women. Includes comprehensive, intensive day treatment for pregnant and postpartum women to improve pregnancy outcomes by eliminating the substance abuse problem.

Must be provided consistent with the standards established to assure high quality of care in 12 VAC 30-60-10 et seq.

Substance abuse day treatment services for pregnant women shall provide intensive intervention services at a central location lasting two or more consecutive hours per day, which may be scheduled multiple times per week, to pregnant and postpartum women (up to 60 days postpartum) with serious substance abuse problems for the purposes of improving the pregnancy outcome, treating the substance abuse disorder, and achieving and maintaining a sober and drug-free lifestyle. The pregnant woman may keep her infant and other dependent children with her at the treatment center. One unit of service shall equal two but no more than 3.99 hours on a given day. Two units of service shall equal at least four but no more than 6.99 hours on a given day. Three units of service shall equal seven or more hours on a given day. The lifetime limit on this service shall be 440 units in a 12-month period. The lifetime limit may only be provided during one course of treatment. Services must be reauthorized every 90 days and after any absence of five consecutive days from scheduled treatment without staff permission. More than two episodes of five-day absences from scheduled treatment without prior permission from the program director or one absence exceeding seven days of scheduled treatment without prior permission from the program director shall terminate Medicaid funding for this service. The program director must document the reason for granting permission for any absences in the clinical record of the recipient. Unauthorized hours absent from treatment shall be included in this lifetime service limit. This type of treatment shall provide the following types of services or activities in order to be eligible to receive Medicaid payment:

a. Substance abuse rehabilitation, counseling and treatment shall be provided, including education about the impact of alcohol and other drugs on the fetus and on the maternal relationship, smoking cessation classes if needed; education about relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs; and the integration of urine toxicology screens and other toxicology screens, as appropriate, to monitor intake of illicit drugs and alcohol and provide information for counseling.

b. Training about pregnancy and fetal development shall be provided at a level and in a manner comprehensible by the participating women to include, but not necessarily be limited to, the impact of alcohol and other drugs on fetal development, normal physical changes associated with pregnancy, personal nutrition, delivery expectations, and infant nutrition.

c. Initial and ongoing assessments shall be provided specifically for substance abuse, including psychiatric and psychological assessments.

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d. Service coordination with EPSDT shall be provided to address the needs of the existing children in the program.

e. Symptom and behavior management for co-existing mental illness shall be provided, including medication management and ongoing psychological treatment.

f. Personal health care training and assistance shall be provided. Such training shall include:

(1) Educational services and referral services for testing, counseling, and management of HIV, provided as described in 42 USC § 300x-24(b)(6)(A) and (B), including early intervention services as defined in 42 USC § 300x-24(b)(7) and in coordination with the programs identified in 45 CFR 96.128;

(2) Educational services and referral services for testing, counseling, and management of tuberculosis, including tuberculosis services as described in 42 USC § 300x-24(a)(2) (1992) and in coordination with the programs identified in 45 CFR 96.127; and

(3) Education services and referral services for testing, counseling, and management of hepatitis.

g. Case coordination with providers of primary medical care shall be provided, including obstetrics and gynecology services for the recipient.

h. Training in decision-making, anger management and conflict resolution shall be provided.

i. Extensive discharge planning shall be provided in collaboration with the recipient, any significant others, and representatives of appropriate service agencies.

C. Qualified providers. Any duly enrolled provider which the department determines to be qualified who has signed an agreement may provide expanded prenatal care services. The qualified providers will provide prenatal care services regardless of their capacity to provide any other services under the Plan. Providers of substance abuse treatment services must be licensed and approved by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS). Substance abuse services providers shall be required to meet the standards and criteria established by DMHMRSAS.

PART VI. DRUGS OR DRUG CATEGORIES.

(Begins with 12 VAC 30-50-520)

PART VII. TRANSPORTATION.

(Begins with 12 VAC 30-50-530)

PART VIII. ORGAN TRANSPLANT SERVICES.

(Begins with 12 VAC 30-50-540)

12 VAC 30-60-147. Substance abuse treatment services utilization review criteria.

A. Utilization reviews shall include a determination that providers meet all the requirements of Part VIII (12 VAC 30-130-540 et seq.) of 12 VAC 30-130.

B. Residential substance abuse treatment services for pregnant women. This subsection provides for required services which must be provided to participants, linkages to other programs tailored to specific recipient needs, and program staff qualifications. The following services must be rendered to program participants and documented in their case files in order for this residential service to be reimbursed by Medicaid.

1. Services must be authorized following face-to-face evaluation/diagnostic assessment conducted by one of the appropriately licensed professionals as specified in Part VIII (12 VAC 30-130-540 et seq.) of 12 VAC 30-130.

a. To assess whether the adult will benefit from the treatment provided by this service, the professional shall utilize the Adult Patient Placement Criteria for Level III.3 (Clinically-Managed Medium-Intensity Residential Treatment) or Level III.5 (Clinically-Managed Medium/High Intensity Residential Treatment) as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, 1996, published by the American Society of Addiction Medicine. Services must be reauthorized every 90 days by one of the same professionals, based on documented assessment using Adult Continued Service Criteria for Clinically-Managed Medium-Intensity Residential Treatment or Clinically-Managed Medium-High Intensity Residential Treatment as described in Patient Placement criteria for the Treatment of Substance-Related Disorders, Second Edition, 1996, published by the American Society of Addiction Medicine. In addition, services must be reauthorized by one of the same professionals if the patient is absent for a designated length of time from the program without staff permission. All of the professionals must demonstrate competencies in the use of these criteria. This authorizing professional must not be the same individual providing nonmedical clinical supervision in the program.

- b. Utilization reviews shall verify, but not be limited to, the presence of these 90-day reauthorizations as well as the appropriate re-authorizations after absences.
- c. Documented assessment regarding the recipient's need for the intense level of services must have occurred within 30 days prior to admission.
- d. The Individual Service Plan (ISP) shall be developed within one week of admission and, when appropriate, obstetric and psychiatric assessments completed and documented within a two-week period following admission. Development of the ISP shall involve the recipient, appropriate significant others, and representatives of appropriate service agencies.
- e. The ISP shall be reviewed and updated every two weeks.
- f. Psychological and psychiatric assessments, when appropriate, shall be completed within 30 days of admission for the adult.
- g. Face-to-face therapeutic contact with the recipient which is directly related to her Individual Service Plan shall be documented at least twice per week.
- h. While the recipient is participating in this substance abuse residential program for pregnant women, reimbursement shall not be made for any other community mental health/mental retardation/substance abuse rehabilitative services concurrently rendered to her.
- i. Documented discharge planning shall begin at least 60 days prior to the estimated date of delivery. If the service is initiated later than 60 days prior to the estimated date of delivery, discharge planning must begin within two weeks of admission. Discharge planning shall involve the recipient. Discharge planning shall seek to assure a stable, sober, and drug-free environment for the recipient, and treatment supports for the recipient. Discharge planning shall include representatives of appropriate service agencies.
2. Linkages to other services. Access to the following services shall be provided and documented in either the adult or family record or the program documentation:
- a. The program must have either a contractual relationship with both an obstetrician/gynecologist or with a family practice physician. The physician must be licensed by the Board of Medicine of the Virginia Department of Health Professions as a medical doctor. The contract must include a provision for medical supervision of the nurse case manager.
- b. The program must also have a documented agreement with a high-risk pregnancy unit of a tertiary care hospital to provide 24-hour access to services for the recipient and ongoing training and consultation to the staff of the program.
- c. In addition, the provider must provide access to the following services:
- (1) Psychiatric assessments as needed, which must be performed by a physician licensed to practice by the Board of Medicine.
 - (2) Psychological assessments as needed, which must be performed by a clinical psychologist licensed to practice by the Board of Psychology.
 - (3) Medication management as needed or at least quarterly for adults in the program, which must be performed by a physician licensed to practice by the Board of Medicine in consultation with the high-risk pregnancy unit, if appropriate.
 - (4) Psychological treatment, as appropriate, for adults present in the program, with clinical supervision provided by a clinical psychologist licensed to practice by the Board of Psychology.
 - (5) Primary health care, including routine gynecological and obstetrical care, if not already available to the recipients in the program through other means (e.g., Medallion or other Medicaid-sponsored primary health care program).
3. Program and staff qualifications. In order to be eligible for Medicaid reimbursement, the following minimum program and staff qualifications must be met:
- a. The provider of treatment services shall be licensed by DMHMRSAS to provide residential substance abuse services.
- b. Nonmedical clinical supervision must be provided to staff at least weekly by one of the following professionals: a counselor who has completed master's level training in either psychology, social work, counseling or rehabilitation who is also certified as a substance abuse counselor by the Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals or as a certified addictions counselor by the Substance Abuse Certification Alliance of Virginia; a professional licensed by the Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals as either a professional counselor, clinical social worker, registered nurse, clinical psychologist, or physician who demonstrates competencies described in Addiction Counselor Competencies published by the Center for Substance Abuse Treatment, March 1997; a substance abuse professional; or a certified clinical supervisor as defined by the Substance Abuse Certification Alliance of Virginia.
- c. Residential facility capacity shall be limited to 16 adults. Dependent children who accompany the mother into the residential treatment facility and neonates born while the mother is in treatment shall

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not be included in the 16-bed capacity count. These children shall not receive any treatment for substance abuse or psychiatric disorders from the facility.

d. The minimum ratio of clinical staff to pregnant women should ensure that sufficient numbers of staff are available to adequately address the needs of the recipients in the program.

C. Substance abuse day treatment services for pregnant women. This subsection provides for required services which must be provided to recipients, linkages to other programs tailored to specific recipient needs, and program and staff qualifications.

1. Services criteria. The following services must be rendered to recipients and documented in their case files in order for this day treatment service to be reimbursed by Medicaid:

a. Services must be authorized following a face-to-face evaluation/diagnostic assessment conducted by one of the appropriately licensed professionals as specified in Part VIII (12 VAC 30-130-540 et seq.) of 12 VAC 30-130.

b. To assess whether the recipient will benefit from the treatment provided by this service, the licensed health professional shall utilize the Adult Patient Placement Criteria for Level II.1 (Intensive Outpatient Treatment) or Level II.5 (Partial Hospitalization) as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, 1996, published by the American Society of Addiction Medicine. Services must be reauthorized every 90 days by one of these same professionals, based on documented assessment using Level II.1 (Adult Continued Service Criteria for Intensive Outpatient Treatment) or Level II.5 (Partial Hospitalization Treatment) as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, 1996, published by the American Society of Addiction Medicine. In addition, services must be reauthorized by one of the same professionals if the patient is absent for five consecutively scheduled days of services without staff permission. All of the professionals must demonstrate competency in the use of these criteria. This individual may not be the same individual providing nonmedical clinical supervision.

c. Documented assessment regarding the recipient's need for the intense level of services; the assessment must have occurred within 30 days prior to admission.

d. The Individual Service Plan (ISP) shall be developed within 14 days of admission and the obstetrical assessments completed and documented within a 30-day period following admission. Development of the ISP shall involve the recipient, appropriate significant others, and representatives of appropriate service agencies.

e. The ISP shall be reviewed and updated every four weeks.

f. Psychological and psychiatric assessments, when appropriate, shall be completed within 30 days of admission for the adult.

g. Face-to-face therapeutic contact with the recipient which is directly related to the recipient's ISP shall be documented at least once per week.

h. Documented discharge planning shall begin at least 60 days prior to the estimated date of delivery. If the service is initiated later than 60 days prior to the estimated date of delivery, discharge planning shall seek to begin within two weeks of admission. Discharge planning shall involve the recipient, appropriate significant others, and representatives of appropriate service agencies. The priority services of discharge planning shall seek to assure a stable, sober, and drug-free environment for the recipient and treatment supports for the recipient.

i. While participating in this substance abuse day treatment program for pregnant women, the only other mental health, mental retardation or substance abuse rehabilitation service which can be concurrently reimbursed shall be mental health emergency services.

2. Linkages to other services or programs. Access to the following services shall be provided and documented in the recipient record or program documentation.

a. The program must either have a contractual relationship with either an obstetrician/gynecologist or a family practice physician. The physician must be licensed by the Board of Medicine as a medical doctor. The contract must include provisions for medical supervision of the nurse case manager.

b. The program must have a documented agreement with a high-risk pregnancy unit of a tertiary care hospital to provide 24-hour access to services for the women and ongoing training and consultation to the staff of the program.

c. In addition, the program must provide access to the following services:

(1) Psychiatric assessments as needed for adults present in the program, which must be performed by a physician licensed to practice by the Board of Medicine.

(2) Psychological assessments as needed for adults present in the program, which must be performed by clinical psychologist licensed to practice by the Board of Psychology.

(3) Medication management as needed or at least quarterly for adults in the program, which must be performed by a physician licensed to practice by the

Board of Medicine in consultation with the high-risk pregnancy unit, if appropriate.

(4) Psychological treatment, as appropriate, for adults present in the program, with clinical supervision provided by a clinical psychologist licensed to practice by the Board of Psychology.

(5) Primary health care, including routine gynecological and obstetrical care, if not already available to the recipients in the program through other means (e.g., Medallion or other Medicaid-sponsored primary health care program).

3. Program and staff qualifications. In order to be eligible for Medicaid reimbursement, the following minimum program and staff qualifications must be met:

a. The organization providing treatment services shall be licensed by DMHMRSAS to provide either substance abuse outpatient services or substance abuse day treatment services.

b. Nonmedical clinical supervision must be provided to staff at least weekly by one of the following appropriately licensed professionals: a counselor who has completed master's level training in either psychology, social work, counseling or rehabilitation who is also certified as a substance abuse counselor by the Virginia Department of Health Professions or as a certified addictions counselor by the Substance Abuse Certification Alliance of Virginia; a professional licensed by the Virginia Department of Health Professions as either a professional counselor, clinical social worker, clinical psychologist, or physician who demonstrates competencies described in *Addiction Counselor Competencies published by the Center for Substance Abuse Treatment, March 1997*; or a substance abuse professional; or a certified clinical supervisor, as defined by the Substance Abuse Certification Alliance of Virginia.

c. The minimum ratio of clinical staff to adult recipients should ensure that adequate staff are available to address the needs of the adults in the program.

12 VAC 30-130-540. Definitions.

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

"Board" or "BMAS" means the Board of Medical Assistance Services.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the ~~client~~ recipient of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited to, the ~~client's~~ recipient's age, primary disability, level of functioning and other relevant factors.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

"DRS" means the Department of Rehabilitative Services consistent with Chapter 3 (§ 51.5-8 et seq.) of Title 51.5 of the Code of Virginia.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means that which is defined in DMHMRSAS licensing regulations, 12 VAC 35-80-10 et seq. (Repealed).

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Preauthorization" means the approval by the care coordinator of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Related conditions," as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the

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following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Significant others" means persons related to or interested in the individual's health, well-being, and care. Significant others may be, but are not limited, to a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

"State Plan for Medical Assistance" or "Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Substance abuse" means the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

12 VAC 30-130-565. Substance abuse treatment services.

A. Substance abuse treatment services shall be provided consistent with the criteria and requirements of 12 VAC 30-50-510.

B. The following criteria must be met and documented in the recipient's record before Medicaid reimbursement for substance abuse residential treatment services for pregnant women can occur:

1. The recipient must agree to participate in developing her own treatment plan; to comply with the treatment plan; to participate, support, and implement the plan of care; to utilize appropriate measures to negotiate changes in her treatment plan; to fully participate in treatment; to comply with program rules and procedures; and to complete the treatment plan in full.
2. The recipient must be pregnant at admission and intend to complete the pregnancy.
3. The recipient must:
 - a. Have used alcohol or other drugs within six weeks of referral to the program;
 - b. Be participating in less intensive treatment for substance abuse and be assessed as high-risk for relapse without more intensive intervention and treatment; or
 - c. Within 30 days, have been discharged from a more intensive level of treatment, such as hospital-based inpatient or jail- or prison-based treatment for substance abuse.
4. The recipient must be under the active care of a physician who has obstetrical privileges at a hospital licensed by the Virginia Department of Health. The recipient must agree to reveal to her obstetrician her

participation in substance abuse treatment and her substance abuse history and also agree to allow collaboration between the physician, the obstetrical staff of the hospital in which she plans to deliver, and the program staff.

5. Limits on services. In order to be reimbursed by Medicaid, the following limits shall apply to these residential substance abuse treatment services for pregnant women:

- a. The unit of service shall be one day;
- b. The maximum allowable number of units to be delivered to one adult in her lifetime is 330 days of continuous service, not to exceed 60 days postpartum.
- c. Services must be reauthorized every 90 days and after any absence not authorized by the program director.
- d. Absences of more than 72 hours which have not been previously approved by the program director shall terminate Medicaid reimbursement for this service.

C. The following criteria must be met and documented in the recipient's record before Medicaid reimbursement for substance abuse day treatment services for pregnant women can occur:

1. The recipient must agree to participate in developing her own treatment plan, to comply with the treatment plan, to utilize appropriate measures to negotiate changes in her treatment plan, to fully participate in treatment, to comply with program rules and procedures, and to complete the treatment in full.
2. The recipient must be pregnant at admission and intend to complete the pregnancy.
3. The recipient must:
 - a. Have used alcohol or other drugs within six weeks of referral to the program;
 - b. Be participating in less intensive treatment for substance abuse and assessed as high-risk for relapse without more intensive intervention and treatment; or
 - c. Within 30 days, have been discharged from a more intensive level of treatment for substance abuse, such as hospital-based or jail- or prison-based inpatient treatment or residential treatment.
4. The recipient must be under the active care of a physician who has obstetrical privileges at a hospital licensed by the Virginia Department of Health. The woman must agree to reveal to her obstetrician her participation in substance abuse treatment and her substance abuse history and also agree to allow collaboration between the physician and the obstetrical staff of the hospital in which she plans to deliver, and the program staff.

5. *Limits on services. In order to be reimbursed by Medicaid, the following limits shall apply to these programs of substance abuse day treatment services for pregnant women:*

- a. *One unit of service shall equal two but no more than 3.99 hours of service on any one day. Two units of service shall equal a minimum of four but no more than 6.99 hours on any one day. Three units of service shall equal seven or more hours on any one day.*
- b. *There shall be coverage of a lifetime maximum per individual of 440 units in a 12-month period inclusive of services provided to adults in the program.*
- c. *Services must be reauthorized every 90 days and after any absence not authorized by the program director.*
- d. *More than two episodes of five-day unauthorized absences from scheduled treatment or one unauthorized absence exceeding seven days from scheduled treatment shall terminate Medicaid reimbursement for this service.*

12 VAC 30-130-570. Provider qualification requirements.

To qualify as a provider of services through DMAS for rehabilitative mental health or mental retardation or substance abuse treatment services, the provider of the services must meet certain criteria. These criteria shall be:

- 1. The provider shall guarantee that clients recipients have access to emergency services on a 24-hour basis;
- 2. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;
- 3. The provider shall have the administrative and financial management capacity to meet state and federal requirements;
- 4. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;
- 5. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and
- 6. In addition to those requirements stated above, a provider shall meet the following requirements ~~specific to each disability area for residential and day treatment services for pregnant women.~~ For programs to be eligible to be reimbursed by Medicaid, they must meet all of the following standards:

~~a. Mental health.~~

- ~~(1) Intensive in-home: licensure by DMHMRSAS as an outpatient program.~~

~~(2) Therapeutic day treatment for children/adolescents: licensure by DMHMRSAS as a day support program.~~

~~(3) Day treatment/partial hospitalization: licensure by DMHMRSAS as a day support program.~~

~~(4) Psychosocial rehabilitation: licensure by DMHMRSAS as a day support program.~~

~~(5) Crisis intervention: licensure by DMHMRSAS as an Outpatient Program~~

~~(6) Case Management: certified by DMHMRSAS~~

~~b. Mental retardation.~~

~~(1) Day Health and Rehabilitation Services: licensure by DMHMRSAS as a day support program~~

~~(2) Case Management: Certified by DMHMRSAS~~

~~c. Related conditions. Day health and rehabilitation services: licensure by DMHMRSAS as a day support program or contracted with DRS as habilitation services providers.~~

a. *Medical care must be coordinated by a nurse case manager who is a registered nurse licensed by the Board of Nursing and who demonstrates competency in the following areas:*

- (1) Health assessment;
- (2) Mental health;
- (3) Addiction;
- (4) Obstetrics and gynecology;
- (5) Case management;
- (6) Nutrition;
- (7) Cultural differences; and
- (8) Counseling.

b. *The nurse case manager shall be responsible for coordinating the provision of all immediate primary care and shall establish and maintain communication and case coordination between the women in the program and necessary medical services, specifically with each obstetrician providing services to the women. In addition, the nurse case manager shall be responsible for establishing and maintaining communication and consultation linkages to high-risk obstetrical units, including regular conferences concerning the status of the recipient and recommendations for current and future medical treatment.*

c. *The service must provide linkages to EPSDT services.*

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DOCUMENTS INCORPORATED BY REFERENCE

Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, ASAM PPC-2, 1996, American Society of Addiction Medicine, Inc.

Addiction Counselor Competencies, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Draft dated March 1997, U.S. Department of Health and Human Services.

VA.R. Doc. No. R97-650; Filed July 21, 1997, 3:47 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: 4 VAC 25-150-10 et seq. Virginia Gas and Oil Regulation (amending 4 VAC 25-150-10, 4 VAC 25-150-50, 4 VAC 25-150-60, 4 VAC 25-150-80 through 4 VAC 25-150-130, 4 VAC 25-150-160 through 4 VAC 25-150-360, 4 VAC 25-150-380 through 4 VAC 25-150-460, 4 VAC 25-150-500 through 4 VAC 25-150-530, 4 VAC 25-150-560, 4 VAC 25-150-580 through 4 VAC 25-150-610, and 4 VAC 25-150-650 through 4 VAC 25-150-740; adding 4 VAC 25-150-135, 4 VAC 25-150-435 and 4 VAC 25-150-711; repealing 4 VAC 25-150-70, 4 VAC 25-150-540, 4 VAC 25-150-570, 4 VAC 25-150-640 and 4 VAC 25-150-710).

Statutory Authority: §§ 45.1-161.3 and 45.1-361.27 of the Code of Virginia.

Public Hearing Date: October 8, 1997 - 10 a.m.

Public comments may be submitted through October 24, 1997.

(See Calendar of Events section for additional information)

Basis: The Department of Mines, Minerals and Energy has the legal authority to promulgate this regulation under §§ 45.1-161.3 and 45.1-161.27 of the Code of Virginia. Additionally, the department is mandated in § 45.1-361.27 A of the Code to promulgate rules, regulations and orders necessary to ensure the safe and efficient development and production of gas and oil resources located in the Commonwealth. Specifically, the Code mandates that the department develop a regulation that balances seven specific goals as follows:

1. To foster, encourage and promote the safe and efficient exploration for and development, production and utilization and conservation of the Commonwealth's gas and oil resources;
2. To provide a method of gas and oil conservation for maximizing exploration, development, production and utilization of gas and oil resources;
3. To recognize and protect the rights of persons owning interests in gas or oil resources contained within a pool;
4. To ensure the safe recovery of coal and other minerals;
5. To maximize the production and recovery of coal without substantially affecting the right of a gas or oil

owner proposing to drill a gas or oil well to explore for and produce gas or oil;

6. To protect the citizens and the environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas or oil; and

7. To recognize that use of the surface for gas or oil development shall be only that which is reasonably necessary to obtain the gas or oil.

Purpose: The Virginia Gas and Oil Regulation is necessary to protect the public safety and general welfare from the effects of uncontrolled gas and oil exploration and production. The regulation requires operators of gas and oil wells, coreholes, gathering pipelines, and associated facilities to meet minimum standards for control of water pollution from well and corehole drilling, well and pipeline operations, and the land disturbances required to develop these facilities; for control of blasting on permitted sites; for the proper management and disposal of drill cuttings, drilling fluids, produced fluids, and other waste materials; for the control of leakage and venting of gas from pipelines and wells; for the proper plugging of wells and coreholes; and for control of other practices that may cause off-site disturbances.

The recommended amendments will streamline the regulatory process, eliminate unnecessary regulatory requirements, clarify language, and implement changes based on the Department of Mines, Minerals and Energy's, gas and oil operators', and citizens' experiences in implementing the regulation since it was promulgated in 1991.

Substance: The Department of Mines, Minerals and Energy is proposing amendments to the Virginia Gas and Oil Regulation to incorporate recommendations resulting from the Executive Order 15 (94) review and to reflect legislative changes to the Virginia Gas and Oil Act.

These amendments include:

1. Amend some definitions where needed to be consistent with other changes;
2. Allow original permits to include plugging of wells, eliminating the need for a later permit modification for plugging;
3. Add flexibility to how the department may handle cases when gas is found in holes not permitted as gas wells;
4. Change some requirements for information in permit applications such as requiring listing the location where spill prevention and countermeasure plans are available instead of providing the plan, and eliminating the authority for the department to request any other information;
5. Replace more prescriptive operating plan requirements with a requirement that operators indicate how the risk to the public safety and to the site and

adjacent lands are to be managed consistent with the requirements of the Virginia Gas and Oil Act;

6. Remove the requirement that public advertisements be taken out by companies wishing to transfer permits;
7. Add the ability for persons to waive the 15-day period in which they may raise objections to permit applications, increasing flexibility in the permitting process;
8. Clarify the time limits when temporary signs may be used, and eliminate the duplicative requirement for signs when gathering pipelines are in public highway rights-of-way;
9. Change the requirement for backfilling pipeline trenches to allow more than 500 feet of trench to be open for more than 48 hours if ditchline barriers are used for slopes longer than 500 feet;
10. Clarify the standards for quality of water used in drilling wells;
11. Amend the technical requirements to better match accepted, safe industry practices for casing across underground voids, for coal protection strings, and for plugging wells; and
12. Allow wells to be located closer than 200 feet and gathering pipelines to be located closer than 50 feet to inhabited buildings when the building owner has given permission and when site conditions warrant permission of a lesser distance.

Issues: The proposed changes are advantageous to the public because they will promote more efficient operation of gas and oil operations by streamlining the regulatory process and eliminating unnecessary requirements. The amended regulation will be easier for the public to understand because of language clarifications. The department does not believe the proposed changes present any disadvantages to the public.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The purpose of the proposed regulation is to oversee the permitting, operations, plugging, and site operation of gas and oil exploration and

development wells, gathering pipelines, and associated facilities. It also seeks to streamline the regulatory process, eliminate unnecessary regulatory requirements, clarify language, and implement changes based on the experiences of the Department of Mines, Minerals and Energy, gas and oil operators, and citizens.

The proposed amendments include the following significant items:

1. Allow original permits to include plugging of wells;
2. Add flexibility to how the department may handle gas found in holes not permitted as gas wells;
3. Allow for the Spill Prevention Control and Countermeasure (SPCC) plan, if available, to be filed elsewhere other than on-site, provided the location of the plan is filed with the department;
4. Replace more prescriptive operating plan requirements with a requirement that operators indicate how risk to the public safety and to the site and adjacent lands are to be managed, consistent with the requirements of the Virginia Gas and Oil Act;
5. Remove requirement that public advertisements be taken out by companies wishing to transfer ownership of permits;
6. Add the ability for persons to waive the 15-day period in which an owner can raise objections to permit applications;
7. Change requirements for backfilling pipeline trenches;
8. Clarify the standards for quality of water used in drilling wells; and
9. Allow wells to be located closer to inhabited buildings under certain conditions and with the owner's permission.

Estimated economic impact. The proposed amendments would provide for a reduction in overall compliance and administrative costs and allow for greater administrative flexibility. The inclusion of plugging in the language of original permits would eliminate the need for permit modifications in the future, resulting in a decrease in administrative costs and efforts of both parties. Operators will not need to apply for permit modifications to plug wells which should provide some cost savings, while DMME will process a single permit application for both drilling and plugging. Operators will, however, be required to inform DMME when they decide to plug wells.

Allowing operators to commercially exploit gas found in holes not originally permitted as gas wells is a much better way of utilizing the Commonwealth's natural resources as opposed to the current system where operators have to vent the gas into the atmosphere or plug the hole. The operators must meet the requirements set out by the agency for operating a gas well.

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Currently, SPCC plans, if developed, are supposed to be kept on drilling sites. However, most of these sites do not have the facilities to keep these plans. Moreover, current regulations require that wells be constructed in a way such that when a spill occurs it is contained. In addition, in case of a leak, most site managers have been trained and know what countermeasures to take. The amendment requires that the operator need not keep the plan on the site but only indicate where it can be found. Given current technology (faxes, phones, e-mail) these plans should be easily accessible in case of an emergency.

Removing the requirement that companies take out public advertisements each time it wishes to transfer permits should reduce administrative and compliance costs for the companies. Once the original permit has been granted, the company must meet all the requirements of the agency. Upon transfer of the permit to another company there is no need to bear the additional cost of a public announcement so long as the new company meets all of the requirements as stipulated in the original permit. Owner's right to know the identity of the new permittee is governed by the contractual agreement made with the original permittee. Owners do not have any statutory rights to object to the transfer of a permit.

Current regulation stipulates that if more than 500 linear feet of trench is to be open at any one time then the trench should be backfilled within 48 hours of being opened. This rule decreases the chance of soil from trenches being washed into water bodies. The change in the backtrenching requirements could result in decreased expenses as the permittee has more flexibility in the decision to backfill trenches. So long as the permittee installs ditchline barriers that provide the environmental protection needed, they have the option of filling trenches after the job is completed.

The amendment, which would allow affected parties to waive the 15-day period in which they can raise objections to permit applications, implements a 1996 amendment to the Virginia Gas and Oil Act. The amendment that will allow permitted wells to be located closer to inhabited buildings will make for a more efficient use of land while maintaining a high level of safety by imposing various conditions. If information asymmetry exists, where companies have more information than individuals, there is the possibility that companies could pressure individuals into making these decisions if it reduces company costs. Companies tend to have more information on the environmental consequences of their actions, the benefits and costs that they might not be willing to provide to individuals. Without such information, individuals may not be able to make informed decisions on the appropriate level of compensation for giving up these rights. DMME will review permit applications and would issue a permit only if site conditions have been determined to warrant a lesser distance.

These amendments overall seek to streamline the operations of DMME and reduce the administrative costs of the agency as well as reduce operations and compliance costs of companies. The benefits from these regulations are tangible with very little cost.

Businesses and entities affected. The businesses affected by this regulation will include the 32 gas, oil or geophysical permittees holding 2,763 active permits for operation in Virginia.

Localities particularly affected. The localities that will be particularly affected are the seven southwestern Virginia counties that have gas and oil operations. The counties are: Buchanan, Dickenson, Russell, Scott, Lee, Tazewell, and Wise. There are also a few wells permitted in Pulaski County and one permitted in Chesterfield County.

Projected impact on employment. These regulations are streamlining already existing regulations and should reduce the operations costs of companies. However, we do not know what the magnitude of this reduction will be and therefore cannot project its impact on employment.

Effects on the use and value of private property. The amendment that would allow affected parties to waive the 15-day period in which they can raise objections to permit applications, and the amendment that will allow permit wells to be located closer to inhabited buildings will make for more efficient use of land while maintaining a high level of safety by imposing various conditions. This should have a positive impact on the value of private property and gives greater flexibility on how owners can use their land.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: DMME concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the Virginia Gas and Oil Regulation.

Summary:

The proposed amendments incorporate recommendations resulting from the Executive Order 15 (94) review and reflect legislative changes to the Virginia Gas and Oil Act. The proposed amendments:

- 1. Allow original permits to include plugging of wells, eliminating the need for a later permit modification for plugging;*
- 2. Add flexibility to how the department may handle cases when gas is found in holes not permitted as gas wells;*
- 3. Change some requirements for information in permit applications such as requiring listing the location where spill prevention and countermeasure plans are available instead of providing the plan, and eliminating the regulatory authority for the department to request any other information;*
- 4. Replace prescriptive operating plan requirements with a requirement that operators indicate how the risk to the public safety and to the site and adjacent lands are to be managed consistent with the requirements of the Virginia Gas and Oil Act;*
- 5. Remove the requirement that public advertisements be taken out by companies wishing to transfer permits;*

6. Add the ability for persons to waive the 15-day period in which they may raise objections to permit applications, increasing flexibility in the permitting process;

7. Clarify the time limits when temporary signs may be used, and eliminate the duplicative requirement for signs when gathering pipelines are in public highway rights-of-way;

8. Change the requirement for backfilling pipeline trenches to allow more than 500 feet of trench to be open for more than 48 hours if ditchline barriers are used for slopes longer than 500 feet;

9. Clarify the standards for quality of water used in drilling wells;

10. Amend the technical requirements to better match accepted, safe industry practices for casing across underground voids, for coal protection strings, and for plugging wells; and

11. Allow wells to be located closer than 200 feet, and gathering pipelines to be located closer than 50 feet, to inhabited buildings when the building owner has given permission and when site conditions warrant permission of a lesser distance.

CHAPTER 150.

VIRGINIA GAS AND OIL REGULATION.

4 VAC 25-150-10. Definitions.

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

"Act" means the Virginia Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia.

"Adequate channel" means a watercourse that will convey a chosen the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks and overbank sections.

"Approved" means accepted as suitable for its intended purpose when included in a permit issued by the director or determined to be suitable in writing by the director.

"Berm" means a ridge of soil or other material constructed along an active earthen fill to divert runoff away from the unprotected slope of the fill to a stabilized outlet or sediment trapping facility.

"Bridge" means an obstruction intentionally placed in a well at any a specified depth.

"Cased completion" means a technique used to make a well capable of production in which production casing is set through the productive zones.

"Cased/open hole completion" means a technique used to make a well capable of production in which at least one zone is completed through casing and at least one zone is completed open hole.

"Casing" means all pipe set in wells except conductor pipe and tubing.

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Cement" means hydraulic cement properly mixed with water.

"Channel" means a natural stream or man-made waterway.

"Chief" means the Chief of the Division of Mines of the Department of Mines, Minerals and Energy.

"Coal protection string" means a casing designed to protect a coal seam by excluding all fluids, oil, gas or gas pressure from the seam, except such as may be found in the coal seam itself.

"Cofferdam" means a temporary structure in a river, lake or other waterway for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, pipelines, etc., may be constructed.

"Completion" means the process which results in a well being capable of producing gas or oil.

"Conductor pipe" means the short, large diameter string used primarily to control caving and washing out of unconsolidated surface formations.

"Corehole" means any shaft or hole sunk, drilled, bored or dug, that breaks or disturbs the surface of the earth as part of a geophysical operation for the purpose of exploration for gas or oil. The term shall not include a borehole used solely for the placement of an explosive charge or other energy source for generating seismic waves.

"Days" means calendar days.

"Denuded area" means land that has been cleared of vegetative cover.

"Department" means the Department of Mines, Minerals and Energy.

"Detention basin" means a stormwater management facility which temporarily impounds and discharges runoff through an outlet to a downstream channel. Infiltration is negligible when compared to the outlet structure discharge rates. The facility is normally dry during periods of no rainfall.

"Dike" means an earthen embankment constructed to confine or control fluids.

"Directional survey" means a well survey that measures the degree of deviation of a hole, or distance, from the vertical and the direction of deviation.

"Director" means the Director of the Department of Mines, Minerals and Energy or his authorized agent.

"Diversion" means a channel constructed for the purpose of intercepting surface runoff.

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"*Diverter*" or "*diverter system*" means an assembly of valves and piping attached to a gas or oil well's casing for controlling flow and pressure from a well.

"*Division*" means the Division of Gas and Oil of the Department of Mines, Minerals and Energy.

"*Erosion and sediment control plan*" means a document containing a description of materials and methods to be used for the conservation of soil and the protection of water resources in or on a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain a record of all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"*Expanding cement*" means any cement approved by the director which expands during the hardening process, including but not limited to regular oil field cements with the proper additives.

"*Form prescribed by the director*" means a form issued by the division, or an equivalent facsimile, for use in meeting the requirements of the Act or this chapter.

"*Firewall*" means an earthen dike or fire resistant structure built around a tank or tank battery to contain the oil in the event a tank ruptures or catches fire.

"*Flume*" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"*Flyrock*" means any material propelled by a blast that would be actually or potentially hazardous to persons or property.

"*Gas well*" means any well which produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"*Gob well*" means a coalbed methane gas well which is capable of producing coalbed methane gas from the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

"*Groundwater*" means all water under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, which has the potential for being used for domestic, industrial, commercial or agricultural use or otherwise affects the public welfare.

"*Highway*" means any public street, public alley, or public road.

"*Inclination survey*" means a well or corehole survey, using the surface location of the well or corehole as the apex, to determine the deviation of the well or corehole from the true vertical beneath the apex on the same horizontal subsurface plane.

"*Inhabited building*" means a building, regularly occupied in whole or in part by human beings, including, but not limited to, a private residence, church, school, store, public building or other structure where people are accustomed to assemble except for a building being used on a temporary basis, on a permitted site, for gas, oil, or geophysical operations.

"*Intermediate string*" means a string of casing that prevents caving, shuts off connate water in strata below the water protection string, and protects strata from exposure to lower zone pressures.

"*Live watercourse*" means a definite channel with bed and banks within which water flows continuously.

"*Mcf*" means, when used with reference to natural gas, 1,000 cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and a temperature base of 60°F.

"*Mud*" means any mixture of water and clay or other material as the term is commonly used in the industry.

"*Natural channel*" or "*natural stream*" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year, and are characterized as being irregular in cross section with a meandering course.

"*Nonerrodible*" means a material such as riprap, concrete or plastic that will not experience surface wear due to natural forces.

"*Oil well*" means any well which produces or appears capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"*Open hole completion*" means a technique used to make a well capable of production in which no production casing is set through the productive zones.

"*Person*" means any individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity.

"*Plug*" means the stopping of, or a device used for the stopping of, the flow of water, gas or oil from one stratum to another.

"*Pre-development*" means the land use and site conditions that exist at the time that the operations plan is submitted to the division.

"*Produced waters*" means water or fluids produced from a gas well, oil well, coalbed methane gas well or gob well as a byproduct of producing gas, oil or coalbed methane gas.

"*Producer*" means a permittee operating a well in Virginia that is producing or is capable of producing gas or oil.

"*Production string*" means a string of casing or tubing through which the well is completed and may be produced and controlled.

"*Red shales*" means the undifferentiated shaley portion of the bluestone formation normally found above the Pride

Shale Member of the formation, and extending upward to the base of the Pennsylvanian strata, which red shales are predominantly red and green in color but may occasionally be gray, grayish green and grayish red.

"Retention basin" means a stormwater management facility which, similar to a detention basin, temporarily impounds runoff and discharges its outflow through an outlet to a downstream channel. A retention basin is a permanent impoundment.

"Sediment basin" means a depression formed from the construction of a barrier or dam built to retain sediment and debris.

"Sheet flow," also called overland flow, means shallow, unconcentrated and irregular flow down a slope. The length of strip for sheet flow usually does not exceed 200 feet under natural conditions.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope.

"Special diligence" means the activity and skill exercised by a good businessman in his particular specialty, which must be commensurate with the duty to be performed and the individual circumstances of the case; not merely the diligence of an ordinary person or nonspecialist.

"Stabilized" means able to withstand normal exposure to air and water flows without incurring erosion damage.

"Stemming" means the inert material placed in a borehole after an explosive charge for the purpose of confining the explosion gases in the borehole or the inert material used to separate the explosive charges (decks) in decked holes.

"Storm sewer inlet" means any structure through which stormwater is introduced into an underground conveyance system.

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff, including but not limited to, the quantity, quality, the period of release or the velocity of flow.

"String of pipe" or "string" means the total footage of pipe of uniform size set in a well. The term embraces conductor pipe, casing and tubing. When the casing consists of segments of different size, each segment constitutes a separate string. A string may serve more than one purpose.

"Sulfide stress cracking" means embrittlement of the steel grain structure to reduce ductility and cause extreme brittleness or cracking by hydrogen sulfide.

"Surface mine" means an area containing an open pit excavation, surface operations incident to an underground mine, or associated activities adjacent to the excavation or surface operations, from which coal or other minerals are produced for sale, exchange, or commercial use; and includes all buildings and equipment above the surface of the ground used in connection with such mining.

"Target formation" means the geologic gas or oil formation identified by the well operator in his application for a gas, oil or geophysical drilling permit.

"Temporary stream crossing" means a temporary structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year frequency storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedance probability with a 10% chance of being equaled or exceeded in any given year.

"Tubing" means the small diameter string set after the well has been drilled from the surface to the total depth and through which the gas or oil or other substance is produced or injected.

"Two-year frequency storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedance probability with a 50% chance of being equaled or exceeded in any given year.

"Vertical ventilation hole" means any hole drilled from the surface to the coal seam used only for the safety purpose of removing gas from the underlying coal seam and the adjacent strata, thus, removing the gas that would normally be in the mine ventilation system.

"Water bar" means a small obstruction constructed across the surface of a road to interrupt the flow of water down the grade of the road and divert the water to provide for sediment control.

"Water protection string" means a string of casing designed to protect groundwater bearing strata.

4 VAC 25-150-50. Gas or oil in holes not permitted as a gas or oil well.

~~A. Gas or oil shall not be captured and used for any purpose from any well, shaft or hole, other than a permitted gas or oil well.~~

~~B. If gas or oil is captured and used from any well in place on September 25, 1991, and not permitted by the department as a gas or oil well and the gas or oil is used near the well and not transported to a pipeline regulated by the Federal Energy Regulatory Commission or the State Corporation Commission or the oil is not otherwise marketed, the owner or operator of such well shall meet the following standards:~~

- ~~1. The owner or operator may apply for a permit for a well in accordance with § 45-1-361.29 of the Code of Virginia. The owner or operator may apply to the director for a variance to the casing standards of this chapter. The request must document that the proposed variance provides comparable protection. The variance request shall address, but not be limited to, the following:~~

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- ~~a. The method of wellbore completion, whether cased, open or cased/open hole;~~
- ~~b. Coal seams to be left uncased;~~
- ~~c. Mining activity currently being conducted within 750 feet of the location;~~
- ~~d. Depth of the water protection string; and~~
- ~~e. The pressure tests to document the integrity of the casing program; or~~

~~2. In the case of gas, the owner or operator may, with the director's approval, vent the well in such a manner as to allow for the passage of the gas out to the atmosphere without a build up of pressure, but not allow passage of water, insects, or foreign materials into the well. In cases where other regulatory standards that govern the techniques for venting a well are in conflict with this subdivision, those other regulatory standards shall govern venting of the well, shaft or hole.~~

~~G. In the event the owner or operator of a well any person captures and uses gas or oil and does not permit or vent the shaft or hole as a gas or oil well as provided for in subsection B of this section chapter, the director shall take the necessary appropriate enforcement actions to ensure the well does not pose safety or environmental hazards, and may require that the well be plugged action.~~

~~D. The department shall notify coal interests of all wells in which the owner or operator is venting the gas rather than permitting or plugging the well as provided for in subsection B of this section.~~

4 VAC 25-150-60. Due dates for reports and decisions.

A. Where the last day fixed for (i) submitting a request for a hearing, holding a hearing or issuing a decision in an enforcement action under Article 3 (4 VAC 25-150-170 et seq.) of this chapter part, (ii) submitting a monthly or annual report under Article 4 (4 VAC 25-150-210 et seq.) of this chapter part, (iii) submitting a report of commencement of activity under 4 VAC 25-150-230 of this chapter, (iv) submitting a drilling report, a completion report or other report under 4 VAC 25-150-360 of this chapter, or (v) submitting a plugging affidavit under 4 VAC 25-150-460 of this chapter falls on a Saturday, Sunday, or any day on which the Division of Gas and Oil office is closed as authorized by the Code of Virginia or the Governor, the required action may be done on the next day that the office is open.

B. All submittals to or notifications of the Division of Gas and Oil identified in subsection A of this section shall be made to the division office no later than 5 p.m. on the day required by the Act or by this chapter.

4 VAC 25-150-70. Documents incorporated by reference. (Repealed.)

~~No documents are incorporated by reference.~~

4 VAC 25-150-80. Application for a permit.

A. Applicability.

1. Persons required in § 45.1-361.29 of the Code of Virginia to obtain a permit or permit modification shall apply to the division on the forms prescribed by the director. All lands on which gas, oil or geophysical operations are to be conducted, ~~including all areas proposed to be used for land application of fluids~~ shall be included in a permit application.

2. In addition to specific requirements for variances in other sections of this chapter, any applicant for a variance shall, in writing, document the need for the variance and describe the alternate measures or practices to be used.

B. The application for a permit shall, as applicable, be accompanied by the fee in accordance with § 45.1-361.29 of the Code of Virginia, the bond in accordance with § 45.1-361.31 of the Code of Virginia, and the fee for the Orphaned Well Fund in accordance with § 45.1-361.40 of the Code of Virginia.

C. Each application for a permit shall include information on all activities, including those involving associated facilities, to be conducted on the permitted site. This shall include, ~~but is not limited to the following:~~

1. The name and address of:

- a. The gas, oil or geophysical applicant;
- b. The agent required to be designated under § 45.1-361.37 of the Code of Virginia; and
- c. Each person whom the applicant must notify under § 45.1-361.30 of the Code of Virginia;

2. The certifications required in § 45.1-361.29 E of the Code of Virginia;

3. The proof of notice required in § 45.1-361.29 E of the Code of Virginia, which shall be:

- a. A copy of a signed receipt of delivery of notice by certified mail;
- b. A copy of a signed receipt acknowledging delivery of notice by hand; or
- c. If all copies of receipt of delivery of notice by certified mail have not been signed and returned within 15 days of mailing, a copy of the mailing log or other proof of the date the notice was sent by certified mail, return receipt requested;

4. Identification of the type of well or other gas, oil or geophysical operation being proposed;

5. The plat in accordance with 4 VAC 25-150-90 of this chapter;

6. The operations plan in accordance with 4 VAC 25-150-100 of this chapter;

7. The information required for operations involving hydrogen sulfide in accordance with 4 VAC 25-150-350 ~~of this chapter;~~

8. The *location where the Spill Prevention Control and Countermeasure (SPCC) plan is available*, if one ~~has been developed for the site is required;~~

9. The Department of Mines, Minerals and Energy, Division of Mined Land Reclamation's permit number for any area included in a Division of Mined Land Reclamation permit on which a proposed gas, oil or geophysical operation is to be located;

10. For an application for a conventional well, the information required in 4 VAC 25-150-500 ~~of this chapter;~~

11. For an application for a coalbed methane gas well, the information required in 4 VAC 25-150-560 ~~or 4 VAC 25-150-570 of this chapter;~~

12. For an application for a geophysical operation, the information required in 4 VAC 25-150-670 ~~of this chapter; and~~

13. For an application for a permit to drill for gas or oil in Tidewater Virginia, the environmental impact assessment meeting the requirements of § 62.1-195.1 C B of the Code of Virginia; ~~and.~~

14. ~~Any other information required by the director.~~

4 VAC 25-150-90. Plats.

A. When filing an application for a permit for a well or corehole, the applicant also shall file an accurate plat certified by a licensed professional engineer or licensed land surveyor on a scale, to be stated thereon, of 1 inch equals 400 feet (1:4800). The scope of the plat shall be large enough to show all areas within the greater of 750 feet or one half of the distance specified in § 45.1-361.17 of the Code of Virginia from the proposed well or corehole, or within a unit established by the board for the subject well. The plat shall be submitted on a form prescribed by the director.

B. The known courses and distances of all property lines and lines connecting the permanent points, landmarks or corners within the scope of the plat shall be shown thereon. All lines actually surveyed shall be shown as solid lines. Lines taken from deed descriptions only shall be shown by broken lines.

C. A north and south line shall be given and shown on the plat, and point to the top of the plat.

D. Wells *or coreholes* shall be located on the plat as follows:

1. The proposed or actual surface elevation of the subject well or corehole shall be shown on the plat, within an accuracy of one vertical foot. The surface elevation shall be tied to either a government benchmark or other point of proven elevation by differential or aerial survey or by trigonometric leveling. The location of the

government benchmark or the point of proven elevation and the method used to determine the surface elevation of the subject well or corehole shall be noted and described on the plat.

2. The proposed or actual horizontal location of the subject well or corehole determined by survey shall be shown on the plat. ~~Effective October 1, 1992,~~ The proposed or actual well or corehole location shall be shown in accordance with the Virginia Coordinate System of 1927, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. ~~Until October 1, 1992, if the subject well or corehole is not located in accordance with the State Plane Coordinate System, the measured distance in feet from the well or corehole to the nearest 2.5 minute longitude line to the east, and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map shall be shown, with a notation of the 7.5 minute topographic map name and series. Applicants are encouraged to use the State Plane Coordinate System prior to October 1, 1992.~~

3. The courses and distances of the well or corehole location from two permanent points or landmarks on the tract shall be shown; such landmarks shall be set stones, iron pipes, T-rails or other manufactured monuments, including mine coordinate monuments, and operating or abandoned wells which are platted to the accuracy standards of this section and on file with the division. If temporary points are to be used to locate the actual well or corehole location as provided for in 4 VAC 25-150-290 ~~of this chapter,~~ the courses and distances of the well or corehole location from the two temporary points shall be shown.

4. Any other well, permitted or drilled, within the distance specified in § 45.1-361.17 of the Code of Virginia or the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well shall be shown on the plat or located by notation. ~~The depth to which each well has been or is proposed to be drilled shall be shown.~~ The type of each well shall be designated by the following symbols:

- a. New drilling location ○
- ~~b. New stimulating location ○ F/S~~
- e. b. Canceled application or permit ○ CNC
- d. c. Oil well ●
- e. d. Gas well ⊙
- f. e. Dry hole ⊕ ○
- g. f. Enhanced oil recovery injection well ∅ LI
- h. g. Waste disposal well ∅ WD
- i. h. Underground gas storage well ∅ ⊙ GS

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~~j. i.~~ Abandoned well ● ✕ ∅ LI ∅ WD

~~k. j.~~ New coalbed methane drilling location ○ CBM

~~l. k.~~ Coalbed methane gas well ○ CBM

~~m. l.~~ Abandoned coalbed methane gas well ○ CBM

E. Plats shall also contain:

1. For a conventional gas and oil or injection well, the information required in 4 VAC 25-150-510 of this chapter;
2. For a coalbed methane gas well, the information required in 4 VAC 25-150-590 of this chapter; or
3. For a corehole, the information required in 4 VAC 25-150-680 of this chapter.

F. Any subsequent application for a new permit or permit modification shall include an accurate copy of the well plat, updated as necessary to reflect any changes on the site, newly discovered data or additional data required since the last plat was submitted. Any revised plat shall be certified as required in subsection A of this section.

4 VAC 25-150-100. Operations plans.

A. Each application for a permit or permit modification shall include an operations plan, in a format approved by or on a form prescribed by the director. The operations plan and accompanying maps or drawings shall become part of the terms and conditions of any permit which is issued.

B. ~~The operations plan shall sufficiently describe operations to be conducted, including how risks to the public safety or to the site and adjacent lands are to be managed. The plan shall include, but not be limited to: The applicant shall indicate how risks to the public safety or to the site and adjacent lands are to be managed, consistent with the requirements of § 45.1-361.27 B of the Code of Virginia, and shall provide a short narrative, if pertinent.~~

~~1. A description of the pre-development condition of the site, which shall include, but not be limited to:~~

~~a. A description of the slope, vegetative cover, surface waters, wetlands, groundwater, public water supply intakes, existing land use, man-made improvements, and if the site is in a 100-year floodplain;~~

~~b. A description of any feature on adjacent lands, including but not limited to the types of features identified in subdivision B 1 a of this section, that would be at risk should there be an accident on the permitted site; and~~

~~c. A description of the subsurface geology if drilling is proposed;~~

~~2. A description of construction to be undertaken on the site, including a statement of the acres to be disturbed, to the nearest 1/10 of an acre, information on blasting in accordance with 4 VAC 25-150-250 of this chapter and a~~

~~map showing the location of all proposed new roads and existing access roads;~~

~~3. An erosion and sediment control plan and description of reclamation to be completed on the site in accordance with 4 VAC 25-150-260 of this chapter;~~

~~4. A description of all equipment and facilities, including tank batteries and wellhead equipment, to be used on site during and after drilling and completion of the well or corehole, or construction of a gathering pipeline or associated facilities; including a schematic drawing or drawings showing the placement of such equipment and facilities;~~

~~5. A description of the design and operation of any pits, in accordance with 4 VAC 25-150-300 of this chapter;~~

~~6. A description of the drilling and stimulating program, including information on the water and constituents of the drilling fluids to be used in the various stages of drilling and stimulating in accordance with 4 VAC 25-150-340 of this chapter;~~

~~7. A description of how pit fluids, produced waters, drill cuttings and solids are to be managed and disposed of in accordance with 4 VAC 25-150-420 and 4 VAC 25-150-430 of this chapter; including maps depicting the scope of any proposed on-site land application of pit fluids, and a description of how other fluids and wastes from gas and oil operations are to be managed;~~

~~8. For geophysical operations, the information required in 4 VAC 25-150-600 of this chapter; and~~

~~9. For gathering pipelines, the information required in 4 VAC 25-150-740 of this chapter.~~

~~C. Maps, drawings and plans shall be certified by a licensed professional engineer or licensed land surveyor.~~

4 VAC 25-150-110. Permit amendments supplements and permit modifications.

A. Permit amendments supplements.

~~1. Applicability. If circumstances arise which require a change to any activity which has previously been approved on the permitted site, then the permittee shall request an amendment to the permit. Standard permit supplements. A permittee shall be allowed to submit a permit supplement when work being performed either:~~

~~a. Does not change the disturbance area as described in the original permit; or~~

~~b. Involves activities previously permitted.~~

~~The permittee shall submit written documentation of the changes made to the permitted area within seven working days before completing the change. All other changes to the permit shall require a permit modification in accordance with § 45.1-361.29 of the Code of Virginia.~~

~~2. Notice and fees. Notice and fees are not required for a permit amendment.~~

~~3. Standard permit amendments. For any circumstance other than when an emergency amendment is allowed, the permittee shall submit a written request to amend the permit. The permittee may not undertake the proposed work until he has received written approval from the director. The request shall include, but not be limited to:~~

- ~~a. A description of the activity to be changed;~~
- ~~b. A description of the proposed new activity; and~~
- ~~c. Any data, maps, plats or other information required by the director.~~

~~4. 2. Emergency permit amendments supplements. If the proposed amendment a change must be implemented immediately due to actual or threatened imminent danger to the public safety or to the environment, the permittee shall:~~

- ~~a. Take immediate action to minimize the danger to the public or to the environment;~~
- ~~a- b. Orally request permission of and, if notify the director as soon as possible of actions taken to minimize the danger and, if the director determines an emergency still exists and grants oral approval, commence the change additional changes if necessary; and~~
- ~~b- c. Submit a written amendment supplement to the permit, within two seven working days of requesting notifying the amendment, containing director. The supplement shall contain a description of the activity which was changed, a description of the new activity, and any amended data, maps, plats, or other information required by the director.~~

~~The director shall forward written approval of the emergency permit amendment to the permittee, and include a copy of the approval with the division's records of the permit.~~

B. Permit modifications.

1. Applicability. ~~A permittee shall obtain a permit modification whenever required in All changes to the permit which do not fit the description contained in subsection A of this section shall require a permit modification in accordance with § 45.1-361.29 of the Code of Virginia.~~

2. Notice and fees. Notice of a permit modification shall be given in accordance with § 45.1-361.30 of the Code of Virginia. The application for a permit modification shall be accompanied, as applicable, by the fee in accordance with § 45.1-361.29 of the Code of Virginia and the bond in accordance with § 45.1-361.31 of the Code of Virginia.

3. Waiver of right to object. Upon receipt of notice, any person may, on a form approved by the director, waive the time requirements and their right to object to a proposed permit modification. The department shall be

entitled to rely upon the waiver to approve the permit modification.

3- 4. Permit modification. The permittee shall submit a written application for a permit modification on a form prescribed by the director. The permittee may not undertake the proposed work until ~~he has received written approval from the director~~ *the permit modification has been issued.* The application shall include, but not be limited to:

- a. The name and address of:
 - (1) The permittee; and
 - (2) Each person whom the applicant must notify under § 45.1-361.30 of the Code of Virginia;
- b. The certifications required in § 45.1-361.29 E of the Code of Virginia;
- c. The proof of notice required in § 45.1-361.29 E of the Code of Virginia, as provided for in ~~4 VAC 25-150-180 C 3 of this chapter~~ *4 VAC 25-150-80 C 3;*
- d. Identification of the type of work for which a permit modification is requested;
- e. The plat in accordance with ~~§ 1-9 of this chapter~~ *4 VAC 25-150-90;*
- f. All data, maps, plats and plans in accordance with ~~4 VAC 25-150-100 of this chapter~~ necessary to describe the activity proposed to be undertaken;
- g. When the permit modification includes abandoning a gas or oil well as a water well, a description of the plugging to be completed up to the water bearing formation and a copy of the permit issued for the water well by the Virginia Department of Health;
- h. The information required for operations involving hydrogen sulfide in accordance with ~~4 VAC 25-150-350 of this chapter~~ if applicable to the proposed operations;
- i. The *location where the* Spill Prevention Control and Countermeasure (SPCC) plan *is available*, if one has been developed for the site of the proposed operations;
- j. The Department of Mines, Minerals and Energy, Division of Mined Land Reclamation's permit number for any area included in a Division of Mined Land Reclamation permit; *and*
- k. The information, as appropriate, required in ~~4 VAC 25-150-490 4 VAC 25-150-500, 4 VAC 25-150-560, 4 VAC 25-150-570, or 4 VAC 25-150-670 of this chapter;~~ *and.*
- ~~l. Any other information required by the director.~~

4 VAC 25-150-120. Transfer of permit rights.

A. Applicability.

Proposed Regulations

1. No transfer of rights granted by a permit shall be made without prior approval from the director.

2. Any approval granted by the director of a transfer of permit rights shall, ~~after September 25, 1991,~~ be conditioned upon the proposed new operator complying with all requirements of the Act, this chapter and the permit.

B. Application. Any person requesting a transfer of rights granted by a permit shall submit a written application on a form prescribed by the director. The application shall be accompanied by a fee of \$50 and bond, in the name of the person requesting the transfer, in accordance with § 45.1-361.31 of the Code of Virginia. The application shall contain, but is not limited to:

1. The name and address of the current permittee, the current permit number and the name of the current operation;

2. The name and address of the proposed new operator and the proposed new operations name;

3. Documentation of approval of the transfer by the current permittee;

4. ~~Certification that the proposed new operator has the right to conduct the operations and will comply with all of the requirements of the Act and this chapter, and conditions of the permit;~~

5- 4. *If the permit was issued on or before September 25, 1991,* an updated operations plan, in accordance with 4 VAC 25-150-100 ~~of this chapter,~~ showing how all permitted activities to be conducted by the proposed new permittee will comply with the standards of this chapter;

6- 5. *If the permit was issued on or before September 25, 1991,* for a well, a plat meeting the requirements of 4 VAC 25-150-90 ~~of this chapter~~ updated to reflect any changes on the site, newly discovered data or additional data required since the last plat was submitted, including the change in ownership of the well; and

7- 6. *If the permit was issued on or before September 25, 1991,* if applicable, the docket number and date of recordation of any order issued by the board for a pooled unit, pertaining to the current permit.

~~C. Notification.~~

~~The proposed new operator shall, within one day of the day on which the application is filed, publish a notice of the application for transfer of the permit rights in a newspaper of general circulation in the locality where the operation subject to the application is located. The notice shall contain, at a minimum, the name and address of the proposed new operator, the name and address of the current permittee, the current permit number, the current operations name, and the name of the city or county where the operation subject to the application is located.~~

~~D. C. Standards for approval.~~

The director shall not approve the transfer of permit rights unless the proposed new permittee:

1. Has registered with the department in accordance with § 45.1-361.37 of the Code of Virginia;

2. Has posted acceptable bond in accordance with § 45.1-361.31 of the Code of Virginia; *and*

3. ~~Has no outstanding violations of or outstanding penalties under the Act, this chapter or conditions of a permit on any other permitted gas or oil operation in the Commonwealth; and~~

4- 3. Has no outstanding debt pursuant to § 45.1-361.32 of the Code of Virginia.

~~E. The current permittee shall be responsible for any violations of or penalties under the Act, this chapter, or conditions of the permit prior to the director's approval of the transfer of permit rights. No transfer of permit rights may occur if there are unabated violations under the permit to be transferred.~~

F. D. The new permittee shall be responsible for any violations of or penalties under the Act, this chapter, or conditions of the permit after the director has approved the transfer of permit rights.

4 VAC 25-150-130. Notice of permit applications and modifications.

A. Gas, oil or geophysical operators shall provide notice of an application for a permit or permit modification in accordance with § 45.1-361.30 of the Code of Virginia, as identified on the "Technical Data Sheet for Permit Applications Under § 45.1-361.29," prescribed by the director.

B. If notice required under § 45.1-361.30 of the Code of Virginia has been sent by certified mail, return receipt requested, and the notice has not been delivered within 15 days of mailing the notice, the director shall consider notice to be given *as of the end of the 15-day period and the objection period specified in § 45.1-361.35 shall commence.*

4 VAC 25-150-135. Waiver of right to object to permit applications.

Upon receipt of notice, any person may, on a form approved by the director, waive the time requirements and their right to object to a proposed permit application. The department shall be entitled to rely upon the waiver to approve the permit application.

4 VAC 25-150-160. Approval of permits, ~~permit amendments~~ and permit modifications.

A. Permits, ~~permit amendments,~~ permit modifications and transfer of permit rights shall be granted in writing by the director.

B. The director may not issue a permit or permit modification prior to the end of the time period for filing objections pursuant to § 45.1-361.35 of the Code of Virginia.

unless, upon receipt of notice, any person may, on a form approved by the director, waive the time requirements and their right to object to a proposed permit application or permit modification application. The department shall be entitled to rely upon the waiver to approve the permit application or permit modification.

C. The director may not issue a permit to drill for gas or oil in Tidewater Virginia until he has considered the findings and recommendations of the Department of Environmental Quality, as provided for in § 62.1-195.1 of the Code of Virginia; and, where appropriate, has required changes in the permitted activity based on the ~~council's~~ Department of Environmental Quality's recommendations.

D. The provisions of any order of the Virginia Gas and Oil Board that govern a gas or oil well permitted by the director shall become conditions of the permit.

4 VAC 25-150-170. Enforcement.

A. The director shall enforce the provisions of the Act, this chapter, 4 VAC 25 Chapter 160 (4 VAC 25-160-10 et seq.) entitled "The Virginia Gas and Oil Board Regulation," any board order, or any condition of a permit, and may use the following methods:

1. Obtaining voluntary compliance through conference, warning or other means prior to issuing any enforcement notice or order;
- ~~2. Issuing notices of violation in accordance with 4 VAC 25-150-180 of this chapter;~~
- ~~3. Issuing closure orders in accordance with 4 VAC 25-150-190 of this chapter;~~
- ~~4. Issuing show cause orders in accordance with 4 VAC 25-150-200 of this chapter;~~
- ~~5. Issuing emergency orders in accordance with § 45.1-361.27 D of the Code of Virginia; or~~
- ~~6. Any other action in accordance with the Code of Virginia.~~

~~B. Nothing in this chapter shall prevent the director from taking any action or from making efforts to obtain voluntary compliance through conference, warning or other means prior to issuing any enforcement notice or order.~~

~~C. B.~~ The purpose of taking enforcement actions under this section is to obtain compliance with the provisions of the Act, this chapter, 4 VAC 25 Chapter 160 (4 VAC 25-160-10 et seq.) entitled "The Virginia Gas and Oil Board Regulation," any board order, or conditions of a permit.

~~D. C.~~ Reclamation operations and other activities intended to protect the public health and safety and the environment shall continue during the period of any notice or order unless otherwise provided in the notice or order.

~~E. D.~~ Any person found to be conducting a gas, oil or geophysical operation without a permit from the director shall be subject to enforcement for operating without a permit and

for not meeting any other standards of the Act or this chapter which would be required if the person was operating under a permit.

~~F. E.~~ Decisions of the director may be appealed to the Virginia Gas and Oil Board pursuant to § 45.1-361.23 of the Code of Virginia.

4 VAC 25-150-180. Notices of violation.

A. The director may issue a notice of violation if he finds a violation of any of the following:

1. Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia;
2. This chapter;
3. 4 VAC 25 Chapter 160 (4 VAC 25-160-10 et seq.) entitled "The Virginia Gas and Oil Board Regulation";
4. Any board order; or
5. Any condition of a permit, which does not create an imminent danger or harm for which a closure order must be issued under 4 VAC 5-150-190 of this chapter.

B. A notice of violation shall be in writing, signed, and set forth with reasonable specificity:

1. The nature of the violation, including a reference to the section or sections of the Act, applicable regulation, order or permit condition which has been violated;
2. A reasonable description of the portion of the operation to which the violation applies, including an explanation of the condition or circumstance that caused the portion of the operation to be in violation, if it is not self-evident in the type of violation itself;
3. The remedial action required, which may include interim steps; and
4. A reasonable deadline for abatement, which may include a deadline for accomplishment of interim steps.

~~C.~~ The director may extend the deadline for abatement or for accomplishment of an interim step, if the failure to meet the deadline previously set was not caused by the permittee's lack of diligence. ~~The total time for abatement under a notice of violation, including all extensions, shall not exceed 20 days from the date of issuance, except upon a showing by the permittee and approval by the director that it is not feasible to abate the violation within 20 days, or if the deadline is extended by the director during an appeal.~~ An extension of the deadline for abatement may not be granted when the permittee's failure to abate within 20 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

~~D.~~ If the permittee fails to meet the deadline for abatement or for completion of any interim steps, the director shall issue a closure order under 4 VAC 25-150-190 of this chapter.

Proposed Regulations

E. The director shall terminate a notice of violation by written notice to the permittee when he determines that all violations listed in the notice of violation have been abated.

F. A permittee issued a notice of violation may request, *in writing to the director*, an informal fact-finding hearing to review the issuance of the notice, ~~in writing to the director, within the deadline established for abatement of the violation.~~ *This written request should be made within 10 days of receipt of the notice. The permittee may request, in writing to the director, an expedited hearing.*

G. A permittee is not relieved of the duty to abate any violation under a notice of violation during an appeal of the notice. A permittee may apply for an extension of the deadline for abatement during an appeal of the notice.

H. The director shall issue a decision on any request for an extension of the deadline for abatement under a notice of violation within five days of receipt of such request. The director shall conduct an informal fact-finding hearing, in accordance with the Administrative Process Act, § 9-6.14:11 of the Code of Virginia, no later than 10 days after receipt of the hearing request.

I. The director shall affirm, modify, or vacate the notice in writing to the permittee within five days after of the date of the hearing.

4 VAC 25-150-190. Closure orders.

A. The director shall immediately order a cessation of operations or of the relevant portion thereof, when he finds any condition or practice which:

1. Creates or can be reasonably expected to create an imminent danger to the health or safety of the public, *including miners*; or
2. Causes or can reasonably be expected to cause significant, imminent, environmental harm to land, air or water resources;

B. The director may order a cessation of operations or of the relevant portion thereof, when:

1. A permittee fails to meet the deadline for abatement or for completion of any interim step under a notice of violation;
2. Repeated notices of violations have been issued for the same condition or practice; or
3. Gas, oil or geophysical operations are being conducted by any person without a valid permit from the Division of Gas and Oil.

C. A closure order shall be in writing, signed and shall set forth with reasonable specificity:

1. The nature of the condition, practice or violation;
2. A reasonable description of the portion of the operation to which the closure order applies;

3. The remedial action required, if any, which may include interim steps; and

4. A reasonable deadline for abatement, which may include deadline for accomplishment of interim steps.

D. A closure order shall require the person subject to the order to take all steps the director deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

E. If a permittee fails to abate a condition or practice or complete any interim step as required in a closure order, the director shall issue a show cause order under 4 VAC 25-150-200 ~~of this chapter.~~

F. The director shall terminate a closure order by written notice to the person subject to the order when he determines that all conditions, practices or violations listed in the order have been abated.

G. A person issued a closure order may request, *in writing to the director*, an informal fact-finding hearing to review the issuance of the order, ~~in writing to the director, within 10 days from of receipt of the order.~~ The person may request, *in writing to the director*, an expedited hearing, ~~in writing to the director, within three days of receipt of the order.~~

H. A person is not relieved of the duty to abate any condition under, or comply with, any requirement of a closure order during an appeal of the order.

I. The director shall conduct an informal fact-finding hearing, in accordance with the Administrative Process Act, § 9-6.14:11 of the Code of Virginia, no later than 15 days after the order was issued, or in the case of an expedited hearing, no later than five days after the order was issued.

J. The director shall affirm, modify, or vacate the closure order in writing to the person the order was issued to no later than five days after the date of the hearing.

4 VAC 25-150-200. Show cause orders.

A. The director may issue a show cause order to a permittee requiring justification for why his permit should not be suspended or revoked whenever:

1. A permittee fails to abate a condition or practice or complete any interim step as required in a closure order; ~~or~~
2. A permittee fails to ~~diligently pursue activity in accordance with 4 VAC 25 150 230 of this chapter.~~ *comply with the provisions of 4 VAC 25 Chapter 160 (4 VAC 25-160-10 et seq.) entitled "The Virginia Gas and Oil Board Regulation"; or*
3. *A permittee fails to comply with the provisions of an order issued by the Virginia Gas and Oil Board.*

B. A show cause order shall be in writing, signed, and set forth with reasonable specificity:

1. The permit number of the operation subject to suspension or revocation; and

2. The reason for the show cause order.

C. The permittee shall have five days from receipt of the show cause order to request *in writing* an informal fact-finding hearing ~~in writing~~.

D. The director shall conduct an informal fact-finding hearing, in accordance with the Administrative Process Act, § 9-6.14:11 of the Code of Virginia, no later than five days after receipt of the request for the hearing.

E. The director shall issue a written decision within five days ~~after~~ of the date of the hearing.

F. If the permit is revoked ~~or suspended~~, the permittee shall immediately cease operations on the permit area and ~~shall complete reclamation within the deadline specified in the order.~~

~~1. If the permit is revoked, complete reclamation within the deadline specified in the order; or~~

~~2. If the permit is suspended, complete all actions to abate all conditions, practices or violations, as specified in the order.~~

G. *If the permit is suspended, the permittee shall immediately commence cessation of operations on the permit area and complete all actions to abate all conditions, practices or violations, as specified in the order.*

4 VAC 25-150-210. Monthly reports.

A. Each producer shall submit a monthly report, on a form prescribed by the director or in a format approved by the director, to the division no later than 45 days after the last day of each month.

B. Reports of gas production.

1. Every producer of gas shall report *in Mcf* the amount of production ~~in Mcf~~, from each well ~~and a summary of the volumes of in field use, reserved or used by lessors and deliveries to pipelines.~~

2. Reports shall be summarized by county or city.

3. Reports shall provide the date of any new connection of a well to a gathering pipeline or other marketing system.

C. Reports of oil production.

1. Every producer of oil shall report *in barrels* the amount of oil production, oil on hand and oil delivered, ~~in barrels~~, from each well.

2. Reports shall be summarized county or city.

3. Reports shall provide the date of any new connection of a well to a gathering pipeline or other marketing system.

D. *Reports of shut-in wells. If a well is shut-in or otherwise not produced during any month, it shall be so noted on the monthly report.*

4 VAC 25-150-220. Annual reports.

A. Each permittee shall submit a calendar-year annual report to the ~~the~~ division by no later than March 31 of the next year.

B. The annual report shall include as appropriate:

1. A confirmation of the accuracy of the *permittee's* current registration filed with the division ~~for the permittee~~, or a report of any change in the information;

2. The name, address and phone number or numbers of the ~~person~~ *persons* to be contacted at any time in case of an emergency;

3. Production of gas or oil on a well-by-well and county-by-county or city-by-city basis for each permit or as prescribed by the director and the average price received for each MCF of gas and barrel of oil;

4. Certification by the permittee that the permittee has paid all severance taxes for each permit; and

5. When required, payment to the Gas and Oil Plugging and Restoration Fund as required in § 45.1-361.32 of the Code of Virginia.

4 VAC 25-150-230. Commencement of activity.

A. Gas, oil or geophysical activity commences with ground disturbing activity.

B. A permittee shall notify the division at least two working days prior to commencing ground disturbing activity, drilling a well or corehole, completing *or recompleting* a well or plugging a well or corehole, ~~giving~~. *The permittee shall notify the division, either orally or in writing, of the permit number and the date and time that the work is scheduled to commence. Notice may be given orally or in writing.*

~~C. After commencement of permitted activity, a permittee shall diligently pursue the permitted activity.~~

~~D. Permittees shall meet the requirements for commencement of activity as required in § 45.1-361.33 of the Code of Virginia. If a permittee fails to diligently pursue permitted activity which was commenced within 24 months from the date the permit was issued, the director may issue a show cause order to revoke the permit. This subsection applies to permits issued on or after September 25, 1991.~~

C. For dry holes and in emergency situations, the operator may notify the division within two working days of commencing plugging activities.

4 VAC 25-150-240. Signs.

A. Temporary signs. Each permittee shall keep a sign posted at the point where the access road enters the permitted area of each well or corehole being drilled or tested, showing the name of the well or corehole permittee, the well name and the permit number, the ~~telephone number~~ *for the Division of Gas and Oil* ~~phone number~~ and a ~~phone~~ *telephone* number to ~~contact~~ *use* in case of an emergency or for reporting problems.

Proposed Regulations

The sign shall be posted from the commencement of construction until:

1. The well is completed;
2. The dry hole or corehole is plugged;
3. The site is stabilized; or
4. The permanent sign is posted.

B. Permanent signs. ~~4-~~ Each permittee shall keep a permanent sign posted in a conspicuous place on or near every producing well or well capable of being placed into production and on every associated facility. For any well drilled or sign replaced after September 25, 1991, the sign shall:

- ~~a-~~ 1. Be a minimum of 18 inches by 14 inches in size;
- ~~b-~~ 2. Contain, at a minimum, the permittee's name, the well name and the permit number, the Division of Gas and Oil phone number and ~~a phone~~ the telephone number to ~~contact~~ use in case of an emergency or for reporting problems;
- ~~c-~~ 3. Contain lettering a minimum of 1¼ inches high ~~in a color contrasting with the background~~; and
- ~~d-~~ 4. For a well, be located on the well or on a structure such as a meter house or pole located within ~~45~~ 50 feet of the well head.

~~2-~~ Each permittee operating a gathering pipeline shall keep a permanent sign posted where a gathering pipeline is placed within a highway right-of-way. The sign shall meet the requirements 24 VAC 30-150-870 and 24 VAC 30-150-1560 of the Virginia Department of Transportation "Land Use Permit Manual," January, 1983 for marking of underground utilities.

C. All signs shall be maintained or replaced as necessary to be kept in a legible condition.

4 VAC 25-150-250. Blasting and explosives.

A. Applicability. This section governs all blasting on gas, oil or geophysical sites, except for:

1. Blasting being conducted as part of seismic exploration where explosives are placed and shot in a borehole to generate seismic waves; or
2. Use of a device containing explosives for perforating a well.

B. Certification.

1. ~~On or after September 25, 1992,~~ All blasting on gas, oil and geophysical sites shall be conducted by a person who is certified by the Board of Coal Mineral Mining Examiners, Board of ~~Mineral Coal~~ Mining Examiners, or by the Virginia Department of Housing and Community Development.
2. The director may accept a certificate issued by another state in lieu of the certification required in

~~subdivision B 1 of this section, providing the blaster submit documentation that the requirements for certification in the other state are substantially equivalent to those of the boards of examiners provided the Board of Mineral Mining Examiners, the Board of Coal Mining Examiners, or the Department of Housing and Community Development has approved reciprocity with that state.~~

C. Blasting safety. Blasting shall be conducted in a manner designed to prevent injury to persons, or damage to features described in the operations plan under 4 VAC 25-150-100 B ~~1-b~~ of this chapter.

~~1-~~ When an operator applies for a permit under which blasting is proposed, he shall indicate in the operations plan the distance to the nearest inhabited building.

~~2-~~ 1. When blasting is conducted within 200 feet of a pipeline or high-voltage transmission line, the blaster shall take due precautionary measures for the protection of the pipeline or high-voltage transmission line, and shall notify the owner of the facility or his agent that such blasting is intended.

~~3-~~ 2. Flyrock shall not be allowed to fall farther from the blast than one-half the distance between the blast and the nearest inhabited building, and in no case outside of the permitted area.

~~4-~~ 3. When blasting near a highway, the blaster must ensure that all traffic is stopped at a safe distance from the blast. Blasting areas shall be posted with warning signs.

~~5-~~ 4. All blasting shall be conducted during daylight hours, one-half hour before sunrise to one-half hour after sunset, unless approved by the director.

~~6-~~ 5. Misfires.

a. The handling of a misfired blast shall be under the direct supervision of a certified blaster.

b. When a misfire occurs, the blaster shall wait for at least 15 minutes, or the period of time recommended by the manufacturer of the explosives and the detonator, whichever is longer, before allowing anyone to return to the blast site.

~~7-~~ 6. Blasting signals.

a. Before a blast is fired, a warning signal audible to a distance of at least one-half mile shall be given by the blaster in charge, who shall make certain that all surplus explosives are in a safe place and that all persons are at a safe distance from the blast site or under sufficient cover to protect them from the effects of the blast.

b. A code of warning signals shall be established and posted in one or more conspicuous places on the permitted site, and all employees shall be required to conform to the code.

7. Explosives and detonators shall be placed in substantial, nonconductive, closed containers (such as those containers meeting standards prescribed by the Institute of Makers of Explosives) when brought on the permitted site. Explosives and detonators shall not be kept in the same container. Containers shall be posted with warning signs.

8. Storage of explosives and detonators on gas, oil or geophysical sites is allowed only with prior approval by the director.

9. The permittee shall report to the Division of Gas and Oil by the quickest means possible any theft or unaccounted-for loss of explosives. When reporting such a theft or loss, the permittee shall indicate other local, state and federal authorities contacted.

10. Damaged or deteriorated explosives and detonators shall be destroyed by a certified blaster in accordance with the manufacturer's recommendations.

D. Ground vibration.

1. The ground-vibration limits in this subsection shall not apply on surface property owned or leased by the permittee, or on property for which the surface owner gives a written waiver specifically releasing the operator from the limits.

2. Blasting without seismographic monitoring. Blasting may be conducted by a certified blaster without seismographic monitoring provided the maximum charge is determined by the formula, $W = D^2/D_s$, $W = (D/D_s)^2$ where W is the maximum weight of explosive in pounds per delay (eight milliseconds or greater); D is the actual distance in feet from the blast location to the nearest inhabited building; and D_s is the scaled distance factor to be applied without seismic monitoring, as found in Table 1.25.D-1.

TABLE 1.25.D-1: MAXIMUM ALLOWABLE PEAK VELOCITY

Distance (D), from blasting site in feet	Maximum allowable peak particle velocity (Vmax) for ground vibration, in inches/second	Scaled Distance Factor (Ds) to be applied without seismic monitoring
0 to 300	1.25	50
301 to 5000	1.00	55
5001 and beyond .	0.75	65

3. Blasting with seismographic monitoring.

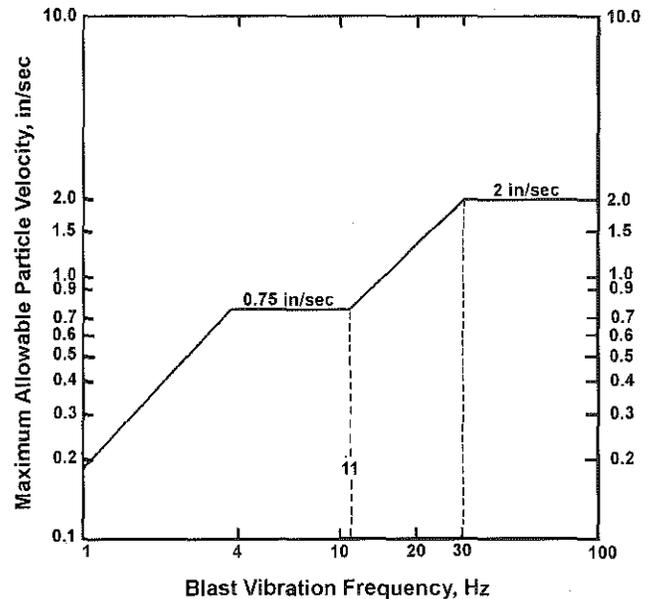
a. A permittee may use the ground-vibration limits in Table 1.25.D-2 to determine the maximum allowable peak particle velocity. If Table 1.25.D-2 is used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting

records shall be approved by the director before implementation of this alternative blasting level.

b. The permittee may choose to record every blast. As long as the seismographic records indicate particle velocities have remained within the limits prescribed in Tables 1.25.D-1 or 1.25.D-2, the permittee shall be considered to be in compliance with this subsection.

Table 1.25.D-2: ALTERNATIVE BLASTING LEVEL CRITERIA

(Source modified from figure B-1, Bureau of Mines R(8507))



c. Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

d. All seismic tests carried out for the purposes of this section shall be analyzed by a qualified seismologist.

e. All seismic tests carried out for the purposes of this section shall be conducted with a seismograph that has an upper-end flat frequency response of at least 200 Hz.

E. Airblast shall not exceed the maximum limits prescribed in Table 1.25.E-1 at the location of any inhabited building. The 0.1 Hz or lower, flat response or C-weighted, slow response shall be used only when approved by the director.

Table 1.25.E-1: AIRBLAST LIMITS

Lower Frequency Limit of measuring system, in Hz (+3db)	Measurement Level, in db
0.1 Hz or Lower Flat Response	134 Peak
2 Hz or Lower Flat Response	133 Peak
6 Hz or Lower Flat Response	129 Peak
C-weighted Slow Response	105 Peak

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F. If the director concludes that blasting on a particular site has potential to create unsafe conditions, then he may:

1. Require the permittee to monitor ground vibration and airblast for all blasts on the site for a specified period of time;
2. Impose more-stringent limits on ground vibration and airblast levels than those specified in this section. The director may order the permittee to obtain an evaluation of the blast site by a vibration consultant or a technical representative of the explosives manufacturer before imposing a more-stringent limit. Blasting may not resume on the site being evaluated until the evaluation and recommendations are submitted to the director, and the director has ~~approved~~ *given his approval*.

G. Records.

1. The permittee shall keep records of all blasts, and these records shall contain the:
 - a. Name of company or contractor;
 - b. Location, date, and time of *the* blast;
 - c. Name, signature, and certification number of *the* blaster in charge;
 - d. Type of material blasted;
 - e. Number of holes; *their* burden; and spacing;
 - f. Diameter and depth of *the* holes;
 - g. Types of explosives used;
 - h. Total amount of explosives used per hole;
 - i. Maximum weight of explosives per delay period;
 - j. Method of firing and *the* type of circuit;
 - k. Direction and distance in feet to *the* nearest inhabited building;
 - l. Weather conditions (including wind directions, etc.);
 - m. Height or length of stemming;
 - n. Description of any mats or other protection used;
 - o. Type of detonators ~~used~~ and delay periods used;
 - p. Any seismograph reports, including:
 - (1) *The* name and signature of *the* person operating the seismograph;
 - (2) *The* name of *the* person analyzing the seismograph record;
 - (3) The exact location of the seismograph in relation to the blast;
 - (4) The date and time of the reading; and
 - (5) The seismograph reading.
2. The permittee shall retain all records of blasting, including seismograph reports, at least three years, ~~and~~

On request, *the permittee shall* make these records available for inspection by the director.

4 VAC 25-150-260. Erosion, sediment control and reclamation.

A. Applicability. Permittees shall meet the erosion and sediment control standards of this section whenever there is a ground disturbance for a gas, oil or geophysical operation. Permittees shall reclaim the land to the standards of this section after the ground disturbing activities are complete and the land ~~is will not to~~ be used for further permitted activities.

B. Erosion and sediment control plan. Applicants for a permit shall submit an erosion and sediment control plan as part of their operations plan. The plan shall describe how erosion and sedimentation will be controlled and how reclamation will be achieved.

C. Erosion and sediment control standards. Whenever ground is disturbed for a gas, oil or geophysical operation, the following erosion and sediment control standards shall be met.

1. All trees, shrubs and other vegetation shall be ~~removed~~ *cleared* as necessary before any blasting, drilling, or other site construction, including road construction, begins. During construction of the project, topsoil sufficient to provide a suitable growth medium for permanent stabilization with vegetation shall be segregated and stockpiled. Soil stockpiles shall be stabilized in accordance with the standards of subdivisions C 2 and C 3 of this section to prevent erosion and sedimentation.

2. Except as provided for in subdivisions ~~C 7~~ C 5 and ~~C 14~~ C 12 c of this section, permanent or temporary stabilization measures shall be applied to denuded areas within ~~seven~~ 30 days ~~after of~~ achievement of *final* grade on ~~any portion~~ of the site unless the area will be redisturbed within 30 days.

- a. *If no activity occurs on a site for a period of 30 consecutive days, then stabilization measures shall be applied to denuded areas within seven days of the last day of the 30-day period.*

- ~~a.~~ b. Temporary stabilization measures shall be applied to denuded areas that may not be at final grade but will be left inactive for one year or less.

- ~~b.~~ c. Permanent stabilization measures shall be applied to denuded areas that are to be left inactive for more than one year.

3. A permanent vegetative cover shall be established on denuded areas to achieve permanent stabilization on areas not otherwise permanently stabilized. ~~The vegetative cover shall be:~~ *Permanent vegetation shall not be considered established until a ground cover is uniform, mature enough to survive and will inhibit erosion.*

- ~~a.~~ Diverse, effective and permanent;

- ~~b. Composed of species compatible with area; and~~
- ~~c. Capable of stabilizing the soil surface to prevent erosion.~~
- ~~4. Success of the permanent vegetative cover shall be judged on the effectiveness of the vegetation and the extent of cover compared to the cover occurring in similar natural vegetation of the area. Ground cover shall be considered successful if it has 90% or greater of the rate of coverage achieved by similar naturally occurring vegetation. Statistically valid sampling techniques, using a 90% statistical confidence interval such as a one-sided test with a 0.10 alpha error, shall be used for measuring percentage of cover.~~
- ~~5. Where a pre-development site was unable to support vegetation, the permittee may apply for a variance to use alternate stabilization techniques.~~
- ~~6. 4. Temporary sediment control structures such as basins, traps, perimeter dikes berms or sediment barriers shall be constructed prior to beginning other ground disturbing activity, and shall be maintained until the site is stabilized.~~
- ~~7. 5. Stabilization measures shall be applied to earthen structures such as pits, impoundments, dikes and diversions immediately after sumps, diversions, dikes, berms and drainage windows within 30 days of installation.~~
- ~~8. 6. Sediment basins.~~
 - ~~a. Surface runoff from disturbed areas that is composed of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The sediment basin shall be designed and constructed to accommodate the anticipated sediment loading from the ground disturbing activity. The spillway or outfall system design shall take into account the total drainage area flowing through the disturbed area to be served by the basin.~~
 - ~~b. If surface runoff that is composed of flow from other drainage areas is separately controlled by other erosion and sediment control measures, then the other drainage area is not considered when determining whether the three acre limit has been reached and a sediment basin is required.~~
- ~~9. 7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. No trees, shrubs, stumps or other woody material shall be placed in fill.~~
- ~~10. 8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.~~
- ~~11. 9. Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.~~

~~12. 10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.~~

~~13. 11. Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.~~

~~14. 12. Live watercourses.~~

~~a. When any construction required for erosion and sediment control, reclamation or stormwater management must be performed in a live watercourse, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible. Nonrodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonrodible cover materials.~~

~~b. When the same location in a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary stream crossing constructed of nonrodible material shall be provided.~~

~~c. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.~~

~~15. Underground gathering pipelines and utility lines shall be installed in accordance with the following standards:~~

~~a. 13. If more than 500 linear feet of trench is to be open at any one time on any continuous slope, then the trench shall be backfilled within 48 hours of being opened and ditchline barriers shall be installed at no more than 500 feet intervals and prior to entering watercourses or other bodies of water.~~

~~b. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both, and discharged in a manner that does not adversely affect flowing streams or off-site property.~~

~~16. 14. Where construction vehicle access routes intersect a paved highway or public road, provisions, such as surfacing the road, shall be made to minimize the transport of sediment by vehicular tracking onto the paved highway surface. Where sediment is transported onto a paved or public highway road surface, the road surface shall be cleaned immediately at by the end of each day. Sediment shall be removed from the highway by shoveling or sweeping and transported back to an approved area on the permitted site. Washing shall be allowed only after sediment is removed in this manner.~~

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47-15. The design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, and any other necessary design criteria required by the director to ensure control of erosion, sedimentation and runoff, and safety appropriate for their planned duration and use. This shall include, at a minimum, that roads are to be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

- a. Control or prevent erosion and siltation by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;
- b. Control runoff to minimize downstream sedimentation and flooding; and
- c. Use nonacid or nontoxic ~~forming~~ substances in road surfacing.

~~16.~~ 16. Unless approved by the director, all temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized within the permitted area to prevent further erosion and sedimentation.

D. Final reclamation standards.

1. All equipment, structures or other facilities not required for monitoring the site or permanently marking an abandoned well or corehole shall be removed from the site, unless otherwise approved by the director.

2. *Each pipeline abandoned in place shall be disconnected from all sources of natural gas or produced fluids and purged.*

~~2-A~~ 3. *If final stabilization measures are being applied to access roads or ground-disturbed pipeline rights-of-way, or if the rights-of-way will not be redisturbed for a period of 30 days, water bar bars shall be placed across roads them at approximately a 30-degree angle angles at the head of all pitched grades and at intervals no more than the distance in the following table:*

Percent of Road Grade	Spacing of Water Bars in Feet
0-2	250
3-5	135
6-10	80
11-15	60
15+ 16+	40

~~3-~~ 4. The permittee shall notify the division when the site has been graded and seeded for final reclamation in accordance with ~~subdivisions C 3 and C 4~~ *subdivision C 3* of this section. Notice may be given orally or in writing. The vegetative cover shall be successfully maintained

for a period of two years after notice has been given before the site is eligible for bond release.

4-5. If the land disturbed during gas, oil or geophysical operations will not be reclaimed with permanent vegetative cover as provided for in subsection C of this section, the permittee or applicant shall, in the operations plan, request a variance to these reclamation standards and propose alternate reclamation standards and an alternate schedule for bond release.

E. The director may waive or modify any of the requirements of this section that are deemed inappropriate or too restrictive for site conditions. A permittee requesting a variance shall, in writing, document the need for the variance and describe the alternate measures or practices to be used. Specific variances allowed by the director shall be ~~documented in~~ *become part of* the operations plan. The director shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

4 VAC 25-150-270. Stormwater management.

A. This section shall apply whenever an applicant or permittee must complete an erosion and sediment control plan under 4 VAC 25-150-260 ~~of this chapter~~. The erosion and sediment control plan shall also describe how stormwater runoff will be managed in accordance with the standards of this section.

B. Areas downstream from permitted sites shall be protected from sediment disposition, erosion and damage due to increases in volume, velocity and peak flow rates of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following:

1. Increased volumes of sheet flows or *concentrated flows* that may cause erosion and sedimentation on adjacent property shall be diverted to a stable outlet, adequate channel or a sediment control, detention or retention facility.

2. Adequacy of all channels and pipes shall be verified in the following manner:

a. The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is ~~one hundred~~ 100 times greater than the contributing drainage area of the site in question; or

b. The receiving channel or pipe shall be analyzed as follows:

(1) Natural channels shall be analyzed, using data for a two-year ~~frequency~~ storm, to verify that stormwater will not overtop channel banks ~~nor~~ or cause erosion of *the* channel bed or banks.

(2) All previously constructed man-made channels shall be analyzed, using data for a 10-year ~~frequency~~ storm, to verify that stormwater will not overtop its banks and, using data for a two-year

frequency storm; to demonstrate that stormwater will not cause erosion of the channel bed or banks.

(3) Pipes and storm sewer systems shall be analyzed, using data from a 10-year frequency storm; to verify that stormwater will be contained within the pipe or system. A downstream stability analysis at the outfall of the pipe or storm sewer system shall also be performed.

3. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the site.

4. If the applicant chooses an option that includes stormwater detention or retention, then the plan must provide for maintenance of the detention or retention facilities. The plan shall set forth the maintenance requirements of the facility and the person responsible for performing the maintenance.

5. Outflows from a sediment basin, stormwater management facility or other concentrated runoff leaving a permitted site shall be discharged into an adequate channel.

~~6. If an existing natural receiving channel or previously constructed man made receiving channel is not adequate, the applicant shall:~~

~~a. Improve the natural channel to a condition where a 10-year frequency storm will not cause the channel to overtop its banks and a two year frequency storm will not cause erosion of the channel bed or banks;~~

~~b. Develop a site design that will not cause the pre-development peak runoff rate from a two year storm to increase when runoff outfalls into a natural channel or will not cause the pre-development peak runoff rate from a 10 year storm to increase when runoff outfalls into a man-made channel; or~~

~~c. Provide a combination of channel improvement, stormwater detention or retention or other measures, approved by the division, to prevent downstream erosion.~~

C. Stormwater runoff which has been contaminated by or come into contact with overburden, raw material, intermediate products, finished products, byproducts or wastes from gas, oil or geophysical operations located on the permitted site shall be managed in accordance with a plan approved by the director.

D. The director may waive or modify any of the requirements of this section that are deemed inappropriate or too restrictive for site conditions. ~~A permittee requesting a variance shall, in writing, The permittee's written request for a variance shall~~ document the need for the variance and describe the alternate measures or practices to be used. Specific variances allowed by the director shall be documented in the operations plan. The director shall consider variance requests judiciously, keeping in mind both

the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

4 VAC 25-150-280. Logs and surveys.

A. Each permittee drilling a well or corehole shall complete a driller's log, a gamma ray log or other log showing the top and bottom points of geologic formations and any other log required under this section. The driller's log shall state, at a minimum, the character, depth and thickness of geological formations encountered, including groundwater bearing strata, coal seams, mineral beds and gas or oil bearing formations.

B. ~~In any case where~~ *When* a permittee or the director has ~~identified~~ *identifies* that a well or corehole is to be drilled or deepened in an area of the Commonwealth which is known to be underlain by coal seams, the following shall be required:

1. The vertical location of coal seams in the borehole shall be determined and shown in the driller's log and gamma ray or other log.

2. The horizontal location of the borehole in coal seams shall be determined through an inclination survey from the surface to the lowest known coal seam. Each inclination survey shall be conducted as follows:

a. The first survey point shall be taken at a depth not greater than the ~~shallowest~~ *most shallow* coal seam; and

b. Thereafter shot points shall be taken at each coal seam or at intervals of 200 feet, whichever is less, to the lowest known coal seam.

3. Prior to drilling any borehole into a coal seam in which active mining is being conducted within 500 feet of where the borehole will penetrate the seam, the permittee shall conduct an inclination survey to determine whether the deviation of the bore hole exceeds one degree from true vertical. If the borehole is found to exceed one degree from vertical, then the permittee shall:

a. Immediately cease operations;

b. Immediately notify the coal owner and the division;

c. Conduct a directional survey to drilled depth to determine both horizontal and vertical location of the borehole; and;

d. Unless granted a variance by the director, correct the borehole to within one degree of true vertical.

4. Except as provided for in subdivision B 3 of this section, if the deviation of the borehole exceeds one degree from true vertical at any point between the surface and the lowest known coal seam, then the permittee shall:

a. Correct the borehole to within one degree ~~from~~ of true vertical; or

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b. Conduct a directional survey to the lowest known coal seam and notify the coal owner of the actual borehole location.

5. The director may grant a variance to the requirements of subdivisions B 3 and B 4 of this section only after the permittee and coal owners have jointly submitted a written request for a variance stating that a directional survey or correction to the borehole is not needed to protect the safety of any person engaged in active coal mining or to the environment.

6. ~~The director may, at any time until 30 days after a permittee has filed the completion report required in 4 VAC 25-150-360 of this chapter require that a directional survey be conducted by the permittee~~ If the director finds that the lack of assurance of the horizontal location of the bore of a well or corehole to a known coal seam poses a danger to persons engaged in active coal mining or the lack of assurance poses a risk to the public safety or the environment, *the director may, until 30 days after a permittee has filed the completion report required in 4 VAC 25-150-360, require that a directional survey be conducted by the permittee.*

~~C. 7.~~ The drillers' log shall be updated on a daily basis. The driller's log and results of any other required survey shall be kept at the site until drilling and casing or plugging a dry hole or corehole are completed.

4 VAC 25-150-290. Actual well or corehole location.

A. The actual horizontal surface location of the well shall be within three feet of the permitted location designated on the well plat, *except where an operator has stated that the location may vary up to 10 feet in the notice as required in § 45.1-361.30 of the Code of Virginia.*

~~B. The permittee shall submit written certification on a form prescribed by the director, within two days after inception of drilling, that the actual well location conforms to the location standards of this section.~~

~~C. B.~~ The permittee shall survey the actual location of the well which may be made from a minimum of two temporary points not disturbed during development of the well or site and shown on the plat submitted with the permit application. The permittee shall submit an updated plat, certified by a licensed land surveyor or licensed professional engineer, showing the actual well location *certified to be within three feet of the permitted location, or within 10 feet as provided for in subsection A of this section.* This updated plat shall be included with the drilling report submitted in accordance with 4 VAC 25-150-360 of this chapter.

4 VAC 25-150-300. Pits.

A. General requirements.

~~1. All fluids from a well or corehole shall be handled in a properly constructed, lined pit. A pit may not be used for more than one well or corehole. The director may approve a variance if a permittee wishes to use another~~

~~method to manage fluids from a well or corehole, or to place fluids from more than one well in a pit if comparable protection will be provided.~~

~~2. 1.~~ Pits are to be temporary in nature, and are to be reclaimed when the operations using the pit are complete.

~~3. 2.~~ Pits may not be used as erosion and sediment control structures or stormwater management structures, and surface drainage may not be directed into a pit ~~unless the pit meets the requirements for erosion and sediment control structures in 4 VAC 25-150-260 of this chapter or stormwater management structures in 4 VAC 25-150-270 of this chapter.~~

~~3.~~ *Pits shall have a properly installed and maintained liner or liners made of 10mil or thicker high-density polyethylene or its equivalent.*

~~B. Operations plan requirements.~~

~~1. The operations plan shall contain sufficient information to adequately describe the location, specifications, operation, maintenance, draining and reclamation of the pit. The description shall show how the pit will meet the requirements of this section and the requirements for draining and reclaiming the pit of 4 VAC 25-150-420 and 4 VAC 25-150-430 of this chapter.~~

~~2. When a pit is to be used as an erosion and sediment control structure or as a stormwater management structure, the operations plan must show how the pit will meet the requirements of 4 VAC 25-150-260 and 4 VAC 25-150-270 of this chapter, and must contain detailed drawings of the pit, since pit size and design may need to be altered from that normally used in drilling.~~

~~C. B. Technical requirements.~~

1. Pits shall be constructed of sufficient size and shape to contain all fluids and maintain a two-foot freeboard.

2. Pits shall be lined in accordance with the requirements for liners in ~~4 VAC 25-150-430 of this chapter~~ *subdivision A 3 of this section.* If drilling solids are not to be disposed of in the pit, the permittee may request a variance to the liner specifications in ~~4 VAC 25-150-430.~~

~~D. C. Operational requirements.~~

1. The integrity of lined pits must be maintained until the pits are reclaimed or otherwise closed. Upon failure of the lining or pit, the operation shall be shut down until the liner and pit are repaired or rebuilt. The permittee shall notify the division, by the quickest available means, of any failure of the lining or pit leak.

2. Motor oil and, to the extent practicable, crude oil shall be kept out of the pit. Oil shall be collected and disposed of properly. Litter and other solid waste shall be collected and disposed of properly and not thrown into the pit.

3. At the conclusion of drilling and completion operations or after a dry hole, well or corehole has been plugged, the pit shall be drained in a controlled manner and the fluids disposed of in accordance with 4 VAC 25-150-420 ~~of this chapter~~. If the pit is to be used for disposal of solids, then the standards of 4 VAC 25-150-430 ~~of this chapter~~ shall be met.

4 VAC 25-150-310. Tanks.

A. All tanks installed on or after September 25, 1991, shall be designed and constructed to contain the fluids to be stored in the tanks and prevent unauthorized discharge of fluids.

B. All tanks shall be maintained in good condition and repaired as needed to ensure the structural integrity of the tank.

C. Every permanent tank or battery of tanks shall be surrounded by a containment dike or firewall with a capacity of 1½ times the volume of the single tank or largest tank in a battery of tanks.

D. Dikes and firewalls shall be maintained in good condition, and the reservoir shall be kept free from brush, water, oil or other fluids.

E. Permittees shall inspect the structural integrity of tanks and tank installations, at a minimum, annually. The report of the annual inspection shall be maintained by the permittee for a minimum of three years and be submitted to the director upon request.

F. *Load lines shall be properly constructed and operated on the permitted area.*

4 VAC 25-150-320. Blowout prevention.

A. Applicability. All wells shall be equipped to control formation pressure during drilling and servicing as follows:

1. Blowout prevention equipment is required when formation pressures of 1,000 pounds or greater are encountered or are expected to be encountered, or when drilling in an area where there is no prior knowledge of the formation pressures to be encountered.

2. A diverter system is required when formation pressures are expected to be less than 1,000 pounds.

B. All blowout preventers, diverters, choke lines, kill lines and manifolds shall be installed above ground level. Casing heads and optional spools may be installed below ground level provided they are readily accessible.

C. The diverter, chokelines and kill lines shall be anchored, tied or otherwise secured to prevent whipping resulting from pressure surges.

D. Pressure ratings.

1. All pipe fittings, valves and unions placed on or connected with the well or corehole, as well as blowout prevention equipment, casing, casing head, drill pipe, or tubing shall have a minimum working pressure rating of

110% of the maximum anticipated pressure that the material will be exposed to and shall be in good working condition.

2. All ram type blowout preventers and related equipment shall be tested to 110% of the maximum anticipated formation pressure, not to exceed 70% of the rated burst pressure of the casing that the blowout preventers are connected to before being placed in service. Annular type blowout preventers shall be tested in conformance with the manufacturer's published instructions, or those of a licensed professional engineer, prior to use.

E. While in service, blowout prevention equipment shall be visually inspected daily. A preventer operating test shall be performed at least once on all the blowout prevention equipment except the blind rams which shall be tested on each round trip.

F. All employees on the rig shall be trained, knowledgeable and able to properly operate the blowout preventer system. In addition, when blowout prevention equipment is installed, at least one person who is certified in blowout prevention and well control procedures by a school of blowout prevention acceptable to the director shall be responsible for the proper testing and operations of the blowout preventers and related equipment, ~~shall be on the well site at least once per day during all drilling or servicing operations and otherwise shall be present on the well site within one hour of any incident which involves well control.~~

G. ~~Where blowout prevention and related equipment are installed, they shall be maintained in serviceable condition. When repairs or other work must be performed to the blowout prevention equipment, drilling and servicing operations must stop until the blowout prevention equipment is returned to service.~~

H. A record of all tests on the equipment shall be kept at the rig for inspection by the director until drilling or servicing operations have been completed.

4 VAC 25-150-330. Swabbing, perforating and wireline operations.

A. All wells and coreholes shall be cleaned into properly constructed pits or containers at a safe distance from the rig floor and from any potential fire hazard.

B. Possible sources of ignition, such as all engines and motors not essential to the swabbing operation, shall be shut down while swabbing operations are being conducted.

C. Swabbing operations shall be conducted only during daylight hours or with adequate illumination.

D. Swabbing shall be conducted so that fluids are routed through a closed-flow system to the maximum extent possible.

E. ~~No employee shall be permitted in or on the derrick during the time the swabbing line or other wireline is being run within the hole.~~

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~~F. When handling a wireline which will recoil when released, the loose end shall not be left unsecured.~~

~~G. E. All oil savers shall be of the type that do not require a person to be near the lubricator or wellhead to control the oil saver.~~

~~H. F. All swabbing lines, blow down lines or flow lines to pits or tanks shall be securely anchored. Whenever hydrocarbons or other volatile fluids may be expected, these lines shall extend a ~~minimum safe distance of 50 feet~~ from the well and away from any other source of ignition.~~

~~I. G. On wells where there is a possibility of flow during swabbing or other wireline operations, a lubricator shall be used that will allow the removal of the swabbing or other tools without venting gas from the well.~~

~~J. H. There shall be no radio or radio-phone transmitters operated where perforating operations are in progress. Warning signs shall be conspicuously placed at entrances to work sites, which shall be at a minimum, 200 feet from the operation where perforating is being done.~~

~~K. I. Upon the conclusion of perforating operations, the work area shall be inspected and all explosive material and scraps shall be placed in containers and removed from the site.~~

~~L. J. Electrical grounding between the well head, service unit, and rig structure shall be made prior to operating tools using explosives.~~

4 VAC 25-150-340. Drilling fluids.

A. Operations plan requirements. Applicants for a permit shall provide, ~~in the operations plan required in 4 VAC 25-150-100 of this chapter prior to commencing drilling,~~ documentation that the water meets the requirements of subsection B of this section, and a general description of the additives and muds to be used in all stages of drilling. Providing that the requirement in 4 VAC 25-150-340 C is met, variations necessary because of field conditions may be made with prior approval of the director and shall be documented in the driller's log.

B. Water quality in drilling.

1. Before the water protection string is set, permittees shall use one of the following sources of water in drilling ~~that:~~

~~a. Is from a source meeting the requirements of the State Water Control Board regulations entitled "Groundwater Standards" and "Water Quality Criteria for Groundwater (9 VAC 25-260-10 et seq.);"~~

~~b. a. Water that is from a water well at or spring located on the drilling site; or~~

~~c. Is from a source that equals or exceeds the quality of the water at the site, which shall be documented by:~~

~~(1) An analysis of water from the closest source (spring or well) within 500 feet of the proposed drilling location;~~

~~(2) An analysis of the water to be used; and if needed~~

~~(3) A plan for treating the drilling water prior to use to a level meeting the standards of this section.~~

b. Conduct an analysis of groundwater within 500 feet of the drilling location, and use:

(1) Water which is of equal or better quality than the groundwater; or

(2) Water which can be treated to be of equal or better quality than the groundwater. A treatment plan must be included with the application if water is to be treated.

If, after a diligent search, a groundwater source (such as a well or spring) cannot be found within 500 feet of the drilling location, the applicant may use water meeting the parameters listed in the Department of Environmental Quality's "Water Quality Criteria for Groundwater," 9 VAC 25-260-230 et seq. The analysis shall include, but is not limited to, the following items:

(1) Chlorides;

(2) Total dissolved solids;

(3) Hardness;

(4) Iron;

(5) Manganese;

(6) PH;

(7) Sodium; and

(8) Sulfate.

2. After the water-protection string is set, permittees may use waters that do not meet the standards of subdivision B 1 of this section.

C. Drilling muds. No permittee may use an oil-based drilling fluid or other fluid which has the potential to cause acute or chronic adverse health effects on living organisms unless a variance has been approved by the director. Permittees must explain the need to use such materials and provide the material data safety sheets. In reviewing the request for the variance, the director shall consider the concentration of the material, the measures to be taken to control the risks, and the need to use the material. Permittees shall also identify what actions will be taken to ensure use of the additives will not cause a lessening of groundwater quality.

4 VAC 25-150-350. Gas, oil or geophysical operations in hydrogen sulfide areas.

A. Applicability. ~~4.~~ This section shall apply to every permittee who drills or operates a well or drills a corehole:

a. 1. In areas of unknown hydrogen sulfide conditions;

- ~~b~~- 2. Below the base of the devonian shale; or
- ~~e~~- 3. In areas where the hydrocarbons contain gas with a concentration of 100 parts per million (ppm) or greater of hydrogen sulfide as a constituent of the gas.

B. Permittees shall not remove hydrocarbons with a hydrogen sulfide concentration of 100 parts per million or greater from the well site where they were produced unless:

- 1. The hydrocarbons have been cleaned on-site so that the hydrogen sulfide concentration is less than 100 parts per million; or
- 2. The permittee has received a variance from the director.

C. General requirements.

- 1. Each permittee subject to this section shall determine the hydrogen sulfide concentration in the hydrocarbons by a test approved by the director such as a test in accordance with ASTM Standard D-2385-66, or GPA Plant Operation Test Manual C-1, GPA Publication 2265-68.
- 2. Automatic hydrogen sulfide detection and alarm equipment that will warn of the presence of hydrogen sulfide gas shall be utilized at the site.

~~3~~- D. Materials and equipment ~~provision~~.

- ~~a~~- 1. For new construction or modification of facilities, including materials and equipment to be used in drilling and workover operations, permittees shall only use metal components, approved by the director, which have been selected and manufactured so as to be resistant to hydrogen sulfide stress cracking under the operating conditions for which their use is intended. This requirement may be met by use of components that satisfy the requirements of NACE Standard MR-01-75 and API RP-14E, §§ 1.7(c), 2.1(c) and 4.7. The handling and installation of materials and equipment used in hydrogen sulfide service are to be performed in such a manner so as not to induce susceptibility to sulfide stress cracking.
- ~~b~~- 2. Other materials and equipment, including materials and equipment used in drilling and workover operations, may be used for hydrogen sulfide service provided such materials and equipment are proved, as the result of advancements in technology or as the result of control and knowledge of operating conditions such as temperature and moisture content, suitable for the use intended and where such usage is technologically acceptable as good engineering practice, and the director has approved a variance for the materials and equipment for the specific uses.
- ~~e~~- 3. In the event of a failure of any element of an existing system as the result of hydrogen sulfide stress cracking, the compliance status of the system shall be determined by the director after the operator has

submitted a detailed written report on the failure to the director.

~~D~~- E. Reporting ~~provision~~. The permittee shall report the hydrogen sulfide concentrations of the hydrocarbon in any well or corehole where the hydrogen sulfide concentration is equal to or exceeds 100 parts per million with the drilling report under 4 VAC 25-150-360 ~~of this chapter~~, or with the plugging affidavit for coreholes under 4 VAC 25-150-460 ~~of this chapter~~.

4 VAC 25-150-360. Drilling, completion and other reports.

- A. Each permittee conducting drilling shall file, on a form prescribed by the director, a drilling report within 30 days after a well reaches total depth.
- B. Each permittee drilling a well shall file, on a form prescribed by the director, a completion report within 30 days after the well is completed.
- C. The permittee shall file the driller's log, the results of any other log or survey required to be run in accordance with this chapter *or by the director*, and the plat showing the actual location of the well with the drilling report, unless they have been filed earlier.

D. The permittee shall, within two years of reaching total depth, file with the division the results of all gamma ray, density, neutron and induction logs, or their equivalent, that have been conducted on the wellbore in the normal course of activities.

4 VAC 25-150-380. Accidents, spills and unpermitted discharges.

A. Accidents. A permittee shall, by the quickest available means, notify the director in the event of any fire, blowout, pit failure, hydrogen sulfide release, unanticipated loss of drilling fluids, or other accident resulting in an actual or potential imminent danger to the environment, public safety or welfare; ~~and~~ *The permittee shall take immediate action to abate the actual or potential danger. The permittee shall submit a written report ~~shall be submitted~~ within seven days of the incident. ~~The written report shall contain~~ containing:*

- 1. A description of the incident and its cause;
- 2. The date, time and duration of the incident;
- 3. ~~What~~ *A description of the steps that have been taken to date; and*
- 4. ~~What~~ *A description of the steps are planned to be taken to prevent a recurrence of the incident.*

B. On-site spills.

- 1. A permittee shall take all reasonable steps to prevent, minimize, or correct any spill or discharge of fluids on a permitted site which has a reasonable likelihood of adversely affecting human health or the environment. All actions shall be consistent with the requirements of an abatement plan, if any has been set, in a notice of

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violation or closure, emergency or other order issued by the director.

2. A permittee shall orally report on-site spills or unpermitted discharges of fluids which are not required to be reported in subsection A of this section to the division within 24 hours. The oral report shall provide all available details of the incident, including any adverse ~~effects~~ effects on any person or the environment. A written report shall be submitted within seven days of the spill or unpermitted discharge. The written report shall contain:

- a. A description of the incident and its cause;
- b. The period of release, including exact dates and times;
- c. ~~What A description of the steps have been taken to~~ date; and
- d. ~~What A description of the steps are planned to be~~ taken to reduce, eliminate and prevent a recurrence of the release.

C. Off-site spills. ~~4-~~ Permittees shall submit a written report of any spill or unpermitted discharge of fluids that originates off of a permitted site with the monthly report under 4 VAC 25-150-210 of ~~this chapter~~. The written report shall contain:

- ~~a-~~ 1. A listing of all agencies contacted about the spill or unpermitted discharge; and
- ~~b-~~ 2. All actions taken to contain, clean up or mitigate the spill or unpermitted discharge.

4 VAC 25-150-390. Shut-in wells.

~~A. If a well is shut in or otherwise not produced during any month, it shall be so noted on the monthly report submitted by the permittee.~~

~~B. A. If a well is shut-in or otherwise not produced for a period of 12 consecutive months, the permittee shall measure the shut-in pressure on the production string or strings. If the well is producing on the backside or otherwise through the casing, the permittee shall measure the shut-in pressure on the annular space.~~

~~G. B. A report of the pressure measurements shall be maintained by the permittee for a minimum of three years and be submitted to the director upon request.~~

4 VAC 25-150-400. Measurement of gas and oil.

A. Natural gas.

1. Each producer shall measure all gas produced from each well, or as prescribed by the director, using a method permitting the computation of volumes, in Mcf. This requirement may be met by use of the standards in:

- a. "Orifice Metering of Natural Gas," ANSI/API 2530, American Gas Association, 1978;

b. "AGA Gas Measurement Manual, Part 2: Displacement Measurement," American Gas Association, 1977; or

c. "AGA Gas Measurement Manual, Part 3: Gas Turbine Metering," American Gas Association, 1989.

2. The director may require use of meters at designated places to obtain accurate records of the production of gas.

~~B. Oil. Each permitted oil operation with oil production shall be provided with and use sufficient tankage tanks or meters to measure all the volume of oil produced. In no case shall meters be the sole means of measuring oil, unless such metering operation is conducted in accordance with a method approved by the director such as the API Manual of Petroleum Measurement Standards, 1981, Chapter 6.1, LACT Systems. A permittee may request a variance from the director to use a gauge tank to check the readings of meters.~~

4 VAC 25-150-410. Venting and flaring of gas; escape of oil.

A. It shall be unlawful for any permittee to allow crude oil or natural gas to escape from any well, gathering pipeline or storage tank except as provided for in this section or in an approved operations plan. The permittee shall take all reasonable steps to shut in the gas or oil in the well, or make the necessary repairs to the well, gathering pipeline or storage tank to prevent the escape. All actions shall be consistent with the requirements of an abatement plan, if any has been set, in a notice of violation or closure, emergency or other order issued by the director.

B. A permittee shall drill or repair a well with special diligence so that waste of gas or oil from the well shall not continue longer than reasonably necessary *under the following circumstances:*

1. ~~When in the process of drilling a well, during drilling,~~ gas or oil is found in the well and the permittee desires to continue to search for gas or oil by drilling deeper; or

2. ~~When it becomes necessary to make~~ making repairs to any well producing gas or oil, commonly known as cleaning out; ~~and.~~

~~3. When in either event it is necessary for the gas or oil in the well to escape therefrom during the process of drilling or making repairs. The permittee shall take all reasonable steps to shut in the gas or oil well and prevent escape of gas or oil during any temporary suspension of the deeper drilling or repair.~~

C. No gas shall be flared or vented from a well *for more than seven days* after completion of the well except *in these circumstances:*

1. When a well must be blown to remove accumulated formation fluid which has restricted efficient production, *or the well must be* otherwise cleaned out as provided for in subsection B of this section;

2. For the safety of mining operations;
3. For any activity excluded in the definition of "waste" under § 45.1-361.1 of the Act; or
4. For any other operational reason approved in advance by the director.

D. In all cases where both gas and oil are found and produced from the same stratum, the permittee shall use special diligence to conserve and save as much of the gas as is reasonably possible.

E. Venting shall only be used when flaring is not safe or not feasible.

4 VAC 25-150-420. Disposal of pit and produced fluids.

A. Applicability. *All fluids from a well, pipeline or corehole shall be handled in a properly constructed pit, tank or other type of container approved by the director.*

~~A permittee shall not produce gas or oil from any well dispose of fluids from a well, pipeline or corehole until the the director has approved the permittee's plan for permanent disposal of pit or produced the fluids. Temporary storage of pit or produced fluids is allowed with the approval of the director. Other fluids shall be disposed of in accordance with the operations plan approved by the director.~~

~~B. Application and plan. The director must approve an operator's application, maps and narrative describing the method to be used for permanent disposal of fluids before the permittee may land apply any fluids on the permitted site or remove any fluids from a permitted site. An operator may submit the application on a form prescribed by the director and accompanied by maps and narrative with the original permit application, or with an application for a permit modification. The application, maps and narrative shall become part of the operator's operations plan. The permittee shall submit an application for either on-site or off-site permanent disposal of fluids on a form prescribed by the director. Maps and a narrative describing the method to be used for permanent disposal of fluids must accompany the application if the permittee proposes to land apply any fluids on the permitted site. The application, maps, and narrative shall become part of the permittee's operations plan.~~

~~C. Removal of free fluids. Fluids shall be removed from the pit to the extent practical so as to leave no free fluids. In the event that there are no free fluids for removal, the permittee shall report this on the form provided by the director.~~

~~D. On-site disposal. The following standards for on-site land application of fluids shall be met:~~

- ~~1. Permittees shall comply with the requirements of the "Antidegradation Policy for Groundwater," of the State Water Control Board "Groundwater Standards (9 VAC 25-260-10 et seq.)," Fluids to be land-applied shall meet the parameters listed in the Department of Environmental Quality's "Water Quality Criteria for Groundwater" (9 VAC 25-260-230 et seq.).~~

2. Land application of fluids shall be confined to the permitted area.

3. Fluids shall be applied in a manner which will not cause erosion or runoff. The permittee shall take into account site conditions such as slope, soils and vegetation when determining the rate and volume of land application on each site. *As part of the application narrative, the permittee shall show the calculations, in the application narrative, used to determine the maximum rate of application for each site.*

~~4. Fluids shall not be applied to areas that are not stabilized.~~

~~5. 4. Fluid application shall not be conducted when the ground is: saturated, snow-covered or frozen.~~

~~a. Saturated;~~

~~b. Snow covered; or~~

~~c. Frozen.~~

~~6. 5. The following buffer zones shall be maintained unless a variance has been granted by the director:~~

~~a. Fluid shall not be applied closer than 25 feet from highways or property lines not included in the acreage shown in the permit.~~

~~b. Fluid shall not be applied closer than 50 feet from surface watercourses, wetlands, natural rock outcrops, or sinkholes.~~

~~c. Fluid shall not be applied closer than 100 feet from water supply wells or springs.~~

~~7. 6. The permittee shall monitor vegetation for two years after the last fluid has been applied to a site. If any adverse effects are found, the permittee shall report the adverse effects in writing to the division.~~

~~8. 7. The director may require monitoring of groundwater quality on sites used for land application of fluids to determine if the groundwater has been degraded.~~

~~D. E. Off-site disposal of fluids.~~

~~1. Each permittee using an off-site facility for disposal of fluids shall submit:~~

~~a. A copy of a valid permit for the disposal facility to be used; and~~

~~b. Documentation that the facility will accept the fluids.~~

~~2. Each permittee using an off-site facility for disposal of fluids shall use a waste-tracking system to document the movement of fluids off of a permitted site to their final disposition. The system shall meet the following standards: Records compiled by this system shall be available for inspection on request.~~

~~a. A form recording the names, addresses and phone numbers of the permittee, hauler and the disposal facility operator, a description of the volume and type~~

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~~of waste fluids, and the times and dates the fluids were collected, hauled and disposed of shall be used.~~

~~b. The form shall be completed as needed by the permittee, hauler and disposal facility operator.~~

~~c. The waste tracking form shall include certifications from the hauler and disposal facility operator that no wastes were dumped illegally or at a location or facility not designated in the approved off-site disposal plan, and that no hazardous wastes were mixed with the fluids during transport.~~

~~d. The permittee shall retain the records of disposal for three years after the shipment date and submit the records to the director upon request.~~

~~e. The permittee shall report any discrepancy in fluid descriptions or place of origin or any significant discrepancy in the volume that arise between collection and disposition of the fluids.~~

4 VAC 25-150-430. Disposal of solids.

~~A. Applicability. All drill cuttings and solids remaining after completion or plugging shall be disposed of in the on-site pit as provided in subsection C or D of this section or as approved by the director. All other solid waste from gas, oil or geophysical operations shall be disposed of in a facility permitted to accept the that type of waste being disposed of.~~

~~B. Plan. Each operator shall submit a description of how drill cuttings and solids will be disposed of in his the operations plan.~~

~~C. Disposal in a pit. Drill cuttings and solids remaining after completion or plugging may be disposed of on-site in an approved pit, without testing of the material, as follows:~~

~~1. Pits shall have a properly installed and maintained liner or liners made of:~~

~~a. A single liner made of a 20 mil or thicker, high density polyethylene; or~~

~~b. A double liner system made of two, 10 mil thick, high density polyethylene sheets separated by 8 to 12 inches of dirt or other material.~~

~~2. Fluids shall be drained from the pit to leave no free liquids.~~

~~3. The remaining drill cuttings and solids shall be covered with a liner meeting the standards of subdivision C 1 of this section 4 VAC 25-150-300, or a low-permeability clay cap, and shall be covered by soil. The combination of soil and liner or cap shall be at least four feet thick, capable of shielding the drill cuttings and solids remaining in the pit, suitable for supporting vegetation, and sloped to prevent ponding.~~

~~D. Variance based on representative data.~~

~~An operator may propose alternative liner specifications based on test data representative of the site and type of operation. The test data may be used to support variance~~

~~requests for more than one well. However, no variance based on representative instead of actual data may be granted for the disposal of drill cuttings and solids when the well is drilled using drilling muds or additives subject to the requirements of 4 VAC 25-150-340 C of this chapter. Before applying for this variance, the operator must first have obtained the approval of the director of the testing methodology proposed to support the variance request or requests. Requests for approval of the testing program must identify the testing protocols, reporting schedules, identification of the geographic area for which the results will apply, and demonstration that the sample is of sufficient size and characterization to be representative of the area.~~

4 VAC 25-150-435. Plugging for abandonment or plug-back operations.

~~A. Permit requirements; variances.~~

~~1. Plugging operations shall not commence until a detailed plugging plan has been submitted to and approved by the director. A permit modification is required if the well was not previously permitted for plugging.~~

~~2. Any person may file an application with the director to replug a previously plugged well in any manner permissible under provisions of this section to facilitate the safe mining-through of the well at a later date. The application shall be treated in all respects like any other application for a permit under § 45.1-361.29 of the Code of Virginia.~~

~~3. The director may, upon application by the permittee, approve a variance to the prescribed plugging methods for the following reasons if it is determined that the alternate plan meets the requirements of the Act:~~

~~a. The coal owner or operator requests a special plugging program to facilitate mine safety, mining through the well, or to obtain approval from another governmental agency for the safe mining-through of a well. The application for a variance must include documentation of the request from the coal owner or operator.~~

~~b. The permittee has obtained written authorization from the coal owner or operator for alternate plugging of the coal-bearing section. The application for a variance must include documentation of approval by the coal owner or operator.~~

~~c. Downhole conditions such as junk in the hole, a stuck or collapsed casing, caving or other adverse conditions which would prevent proper execution of the prescribed plugging methods.~~

~~d. A permittee presents an alternate plugging plan which may differ in method from that prescribed herein, but which will achieve the desired result.~~

B. Plugging in open hole. When a well or section of a well without casing is to be plugged or plugged back, it shall be sealed and filled as prescribed in this section.

1. At a point approximately 20 feet above each oil, gas or water-bearing stratum in open hole, a plug shall be placed so as to completely seal the wellbore. Whenever two or more gas or oil stratum are not widely separated, they may be treated as a single stratum and plugged accordingly. Cement plugs shall be at least 100 feet in length. At least 20 feet of cement shall be placed on top of open hole bridge plugs.

2. At each coal seam, a cement plug shall be placed from not less than 40 feet below the base of the coal to not less than 20 feet above the top of the coal. Whenever two or more coal seams are not widely separated, they may be treated as a single seam and plugged accordingly. This subsection applies only to coal seams which occur at a depth compatible with mining. Coal-bearing sections at greater depths may be plugged in accordance with subdivision B 1 of this section.

3. If a source of groundwater capable of having a beneficial use is exposed in open hole below surface (water-protection) casing, a cement plug at least 100 feet in length shall be placed below the base of the lowest such groundwater zone.

4. A cement plug of a minimum length of 100 feet shall be placed across the shoe of the surface (water-protection) casing. The plug shall be placed so as to have approximately equal lengths in open hole and inside casing. If the well is without surface casing, a continuous cement plug shall be placed from at least 50 feet below the base of the lowest known aquifer or 300 feet depth, whichever is deeper, to the surface.

5. All intervals below and between plugs shall be filled with drilling mud, bentonite gel, or other appropriately weighted materials approved by the director.

C. Plugging in cased hole. When a cased hole or section of a cased hole is to be plugged or plugged back, it shall be sealed and filled as prescribed in this section.

1. All perforated intervals shall be either squeeze-cemented or otherwise isolated from the wellbore by suitable plugs placed across or immediately above the perforated interval. Cement plugs placed across perforations shall extend to at least 50 feet above the top perforations. A cement plug shall be placed to at least 50 feet above squeezed perforations. Cement plugs placed entirely above perforations shall be at least 100 feet in length. At least 20 feet of cement shall be placed on top of bridge plugs, cement retainers, or other tools left in the hole.

2. At each coal seam which is behind a properly installed and cemented coal-protection casing, a cement plug shall be placed from not less than 40 feet below the base of the coal to not less than 20 feet above the top of

the coal. Whenever two or more coal seams are not widely separated, they may be treated as a single seam and plugged accordingly.

3. If casing is not to be pulled, and there is uncemented annulus behind the pipe, plugging shall be as follows:

a. Each oil, gas or water-bearing stratum present behind the pipe in an uncemented annulus must be isolated by perforating the casing at each zone and squeezing cement up into the zone, or circulating cement up the annulus such that a cement fill-up of not less than 100 feet is achieved. When squeezing or circulating the annulus, a cement plug of at least 50 feet shall be placed inside the casing above the perforations.

b. If the well penetrates a minable coal-bearing section, and no coal-protection casing was used, and if surface (water-protection) casing is either absent or not properly placed and cemented to surface, the production casing shall be converted to a coal-protection string by perforating at least 40 feet below the base of the lowest coal stratum, and circulating cement in the annulus from that point to the surface.

c. At each coal seam in a minable coal-bearing section which is protected by a properly installed and cemented coal-protection string, a cement plug shall be placed in casing from not less than 40 feet below the base of the coal to not less than 20 feet above the top of the coal. If there is uncemented annulus between the inner casing and the coal-protection string, the casing shall be perforated to allow cement to be circulated over the prescribed interval, and a plug of equal length shall be placed inside the inner casing.

d. If a fresh water aquifer is exposed to the wellbore in an uncemented annulus, it shall be isolated by perforating the casing at least 100 feet below the aquifer and squeezing cement into the annulus or circulating it up the annulus so that a fill-up of not less than 100 feet is achieved. When squeezing or circulating cement, a cement plug of at least 100 feet shall be placed inside the casing above the perforation.

e. At a point no less than 50 feet below the shoe of surface (water-protection) string, the casing shall be perforated and cement circulated up the annulus to a minimum fill-up of 100 feet. A plug of equal length shall be placed inside the casing.

f. From a point not less than 50 feet below surface, a cement plug shall be installed which reaches the surface. If any uncemented annuli are present at the surface, the voids should be filled and sealed to the greatest extent possible by introducing cement from the surface.

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g. All intervals below and between plugs shall be filled with drilling mud, bentonite gel, or other appropriately weighted materials approved by the director.

4. If casing is to be pulled, plugging shall be as follows:

a. All perforated intervals shall be isolated as described in subdivision C 1 of this section.

b. Casing stubs shall be isolated by placing a plug across or above the cut-off point. Cement plugs shall be at least 100 feet in length and shall be placed so as to have approximately equal lengths inside and above the remnant casing. Permanent bridge plugs may be placed above the stub and shall be capped by at least 20 feet of cement.

D. Plugging operations involving uncemented water-protection casing or coal-protection casing.

1. If the annulus of the largest casing present across a minable coal-bearing section is not cemented across that section, then one of the two procedures listed below must be followed:

a. The casing must be perforated at least 40 feet below the lowest coal seam, and cement circulated in the annulus to the surface (if water-protection casing is absent or not properly placed and cemented to surface), or to at least 100 feet above the highest coal (if the casing is to be partially pulled to facilitate plugging operations in the fresh water zone). Plugging shall proceed according to cased hole requirements; or

b. The casing shall be pulled from the well, and plugging shall proceed according to open hole requirements.

2. If the annulus of the largest casing present across the fresh-water-bearing section is not cemented across that section, then one of the two procedures listed below must be followed:

a. The casing shall be perforated below the lowest known fresh-water zone or at a minimum depth of 300 feet. Cement shall be circulated in the annulus to the surface. Plugging shall proceed according to open hole requirements; or

b. The casing shall be pulled from the well, and a continuous cement plug shall be placed from below the base of the lowest known fresh-water aquifer exposed to the wellbore, or 300-foot depth, whichever is deeper, to the surface.

E. Unfillable cavities. When an unfillable cavity such as a cavern, mine void, blast stimulation zone or gob completion is encountered, the section shall be plugged as follows:

1. If the stratum with the unfillable cavities is the lowest gas or oil stratum in the well, a plug shall be placed at the nearest suitable point not less than 20 feet above the stratum. Cement plugs shall be at least 100 feet long,

and at least 20 feet of cement shall be placed on top of bridge plugs.

2. If the stratum with unfillable cavities is above the lowest gas or oil stratum, a plug shall be placed below the stratum and shall extend to within 20 feet of its base. A plug shall also be placed above the stratum as described in subdivision E 1 of this section.

4 VAC 25-150-440. Abandonment of a gas or oil well or corehole as a water well.

A permittee wishing to develop a gas or oil well or corehole as a water well shall submit an application for a permit modification in accordance with 4 VAC 25-150-110 of this chapter.

4 VAC 25-150-450. Identification, plugging and control of wells or coreholes in which radioactive source logging tools have been abandoned.

A. Permittees shall, by the quickest available means, notify the division of the loss of a radioactive source in a well or corehole.

B. No radioactive source shall be declared abandoned until all reasonable effort has been expended to retrieve the radioactive source tool.

C. A well or corehole in which a radioactive source has been abandoned shall be mechanically equipped and plugged so as to prevent either accidental or intentional mechanical disintegration of the radioactive source, as follows:

1. Sources abandoned in the bottom of the hole shall be covered with a 100-foot standard color cement plug, dyed with red iron oxide, and an approved deflection device shall be placed on top of the plug. The dye is to alert any reentry operator prior to encountering the source. From this point to the surface, the well or corehole shall be plugged as provided in ~~4 VAC 25-150-540, 4 VAC 25-150-640 or 4 VAC 25-150-740 of this chapter~~ 4 VAC 25-150-435.

2. Sources lost in locations other than in the bottom of the hole shall be abandoned ~~meeting~~ in accordance with the following standards:

a. If a well or corehole with the lost radioactive source will be abandoned and plugged, then a 100-foot standard color cement plug, dyed with red iron oxide, shall be placed above the abandoned source and an approved deflection device shall be placed on top of the plug. From this point to the surface, the well or corehole shall be plugged as provided in ~~4 VAC 25-150-540, 4 VAC 25-150-640 or 4 VAC 25-150-740 of this chapter~~ 4 VAC 25-150-435.

b. If a well or corehole is to be deviated or sidetracked around a lost radioactive source, then a 100-foot standard color ~~dye~~ cement plug, dyed with red iron oxide, shall be placed above the abandoned source,

and an approved deflection device shall be placed on top of the plug.

c. Upon abandoning a well in which a radioactive source has been cemented in place behind a casing string above total depth, a 100-foot standard color cement plug, dyed with red iron oxide, shall be placed opposite the abandoned source and an approved deflection device placed on top of the plug, in addition to the plugging standards provided in ~~4 VAC 25-150-540, 4 VAC 25-150-640 or 4 VAC 25-150-710 of this chapter~~ 4 VAC 25-150-435.

3. If a permittee finds, after expending a reasonable effort, that ~~it is not possible, because of hole conditions, make it impossible~~ to abandon the source as prescribed in subdivision C 1 or C 2 of this section, then the permittee shall apply for a variance from the director for an alternate abandonment procedure.

D. Upon plugging and abandoning any well or corehole in which a radioactive source has been left in the hole, and after removing the wellhead equipment, a permanent plaque shall be attached to the top of the casing left in the hole in such a manner that reentry cannot be accomplished without disturbing the plaque. The plaque shall serve as a visual warning to any person reentering the hole that a radioactive source has been abandoned in place in the well. The plaque shall contain the trefoil radiation symbol with a radioactive warning and shall be constructed of a long-lasting material such as monel, stainless steel or brass.

E. The permittee shall erect a permanent marker as a visual warning to any person who may reenter the hole for any reason, showing that the hole contains a radioactive source. In addition to meeting the requirements of 4 VAC 25-150-460 ~~of this chapter~~, any marker for a hole containing a radioactive source shall bear the following information:

1. Surface location of the well;
2. Name of the lease;
3. Source of material abandoned in the well;
4. Total depth of the well;
5. Depth at which the source has been abandoned;
6. Date of the abandonment of the source;
7. Activity of the source;
8. Plug-back depth; and
9. A warning not to drill below the plug-back depth.

F. The information required by subsection E of this section shall be provided with the plugging affidavit submitted pursuant to 4 VAC 25-150-460 ~~of this chapter~~.

4 VAC 25-150-460. Identifying plugged wells and coreholes; plugging affidavit.

A. Abandoned wells and coreholes shall be permanently marked in a manner as follows:

1. The marker shall extend not less than 30 inches above the surface and enough below the surface to make the marker permanent.

2. The marker shall indicate the permittee's name, the well name, the permit number and date of plugging.

~~B. Each permittee plugging a well or corehole shall, prior to the well being plugged, submit a copy of the format to be used under subdivision A 2 of this section to the director.~~

~~C. In an area where there are no known underlying coal seams,~~ B. A permittee may apply for a variance from the director to use alternate permanent markers. Such alternate markers shall provide sufficient information for locating the abandoned well or corehole. Provisions shall also be made to provide for the physical detection of the abandoned well or corehole from the surface by magnetic or other means.

~~D. C.~~ C. When any well or corehole has been plugged or replugged in accordance with ~~4 VAC 25-150-540, 4 VAC 25-150-640 or 4 VAC 25-150-710 of this chapter~~ 4 VAC 25-150-435, two persons, experienced in plugging wells or coreholes, who participated in the plugging of a well or corehole, shall complete the plugging affidavit designated by the director, setting forth the time and manner in which the well or corehole was plugged and filled, and the permanent marker was placed.

~~E. D.~~ D. One copy of the plugging affidavit shall be retained by the permittee, one shall be mailed to any coal owner or operator on the tract where the well or corehole is located, and one shall be filed with the division within 30 days after the day the well was plugged.

4 VAC 25-150-500. Application for a permit.

In addition to the requirements of 4 VAC 25-150-80 or 4 VAC 25-150-110 ~~of this chapter~~, every application for a permit or permit modification for a conventional gas or oil well or a Class II injection well shall contain:

1. The approximate depth to which the well is proposed to be drilled or deepened, or the actual depth if *to which* the well has been drilled;

2. The ~~location~~ *approximate depth* and thickness, if *applicable*, of all known coal seams, known groundwater-bearing strata, and other known gas or oil strata between the surface and the depth to which the well is proposed to be drilled;

3. If casing or tubing is proposed to be or has been set, a description of the entire casing program, including the size of each string of pipe, the starting point and depth to which each string is to be or has been set, and the extent to which each string is to be or has been cemented;

~~4. If the proposed work is to drill, redrill or deepen a well, a plan showing the proposed manner of plugging the well immediately after drilling if the proposed well work is unsuccessful so that the well must be plugged and abandoned;~~

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~~5. 4. If the proposed work is for a Class II injection well, a copy of either the permit issued by, or the permit application filed with the Environmental Protection Agency under the Underground Injection Control Program; and the applicant shall reference the appropriate sections of the application filed with the Environmental Protection Agency whenever the Environmental Protection Agency governs an activity otherwise governed by this chapter; and.~~

~~6. If the proposed work is to plug or replug an existing well:~~

~~a. A statement of the time at which the work of plugging or replugging is proposed to be commenced;~~

~~b. A copy of all logs required to be run in accordance with this chapter and not previously filed with the division; and~~

~~c. A work order showing in detail the proposed manner of plugging or replugging the well.~~

5. In addition to the requirements of 4 VAC 25-150-80 and 4 VAC 25-150-100, every application for a permit or permit modification for a conventional gas or oil well or a Class II injection well may contain, if the proposed work is to drill, redrill or deepen a well, a plan showing the proposed manner of plugging the well immediately after drilling if the proposed well work is unsuccessful.

4 VAC 25-150-510. Plats.

A. In addition to the requirements of 4 VAC 25-150-90 of this chapter, every plat for a conventional gas or oil well shall show:

1. The boundaries of any drilling unit established by the board around the subject well;

2. The boundaries and acreage of the tract on which the well is located or is to be located;

3. The boundaries and acreage of all other tracts within one-half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

4. Surface owners on the tract to be drilled and on all other tracts *within the unit* where the surface of the earth is to be disturbed;

5. All gas, oil or royalty owners on any tract located within one half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

6. Coal owners and mineral owners on the tract to be drilled and on all other tracts located within 500 feet of the subject well location;

7. Coal operators who have registered operations plans with the department for activities located on the tract to be drilled, or who have applied for or obtained a coal mine license, coal surface mine permit or a coal exploration notice or permit from the department with respect to all tracts within 500 feet of a proposed gas or oil well;

8. Any inhabited building, highway, railroad, stream, surface mine or mine opening within 500 feet of the proposed well; and

9. If the plat is for an enhanced oil recovery injection well, any other well within ~~2,640~~ 2,500 feet of the proposed or actual well location, which shall be presumed to embrace the entire area to be affected by an enhanced oil recovery injection well in the absence of a board order establishing units in the target pool of a different size or configuration; and

~~10. Any other data the director may require.~~

B. If the well location is underlain by known coal seams, or if required by the director, the well plat shall locate the well and two permanent points or landmarks with reference to the mine coordinate system if one has been established for the area of the well location, and shall in any event show all other wells, surface mines and mine openings within the scope of the plat.

4 VAC 25-150-520. Setback restrictions.

No permit shall be issued for any well to be drilled closer than 200 feet from any inhabited building, *unless site conditions as approved by the director warrant the permission of a lesser distance, and there exists a lease or agreement between the operator and the owner of the inhabited building. A copy of the lease or agreement shall accompany the application for a permit.*

4 VAC 25-150-530. Casing requirements for conventional gas or oil wells.

A. Water-protection string.

1. Except as provided in subdivision A 3 5. of this section, the permittee shall set a water-protection string to a point at least 300 feet below the surface or 50 feet below the deepest known groundwater horizon, whichever is deeper, circulated and cemented in to the surface. If the cement does not return to the surface, every reasonable attempt shall be made to fill the annular space by introducing cement from the surface.

~~2. The water protection string and cement shall be designed to withstand, and shall be tested to, 300 psig surface pressure. The water protection string and cement shall be allowed to stand for 12 hours before drilling out from under the casing, unless the director approves a shorter period of time. The operator shall test or require the cementing company to test the cement mixing water for pH and temperature prior to mixing the cement and to record the results on the cementing ticket.~~

3. ~~A coal-protection string may also serve as a water-protection string. After the cement is placed, the operator shall wait a minimum of eight hours and allow the cement to achieve a calculated compressive strength of 500 psi before drilling, unless the director approves a shorter period of time. The wait-on-cement (WOC) time shall be recorded within the records kept at the drilling rig while drilling is taking place.~~

4. *When requested by the director, the operator shall submit copies of cement tickets or other documents that indicate the above specifications have been followed.*

5. *A coal-protection string may also serve as a water-protection string.*

B. Coal-protection strings.

1. When any well penetrates coal seams that have not been mined out, the permittee shall, except as provided in subdivisions B 2 and B 3 of this section, set a coal-protection string. The coal-protection string shall exclude all fluids, oil, gas and gas pressure ~~from the coal seam, except such fluid, oil, gas and gas pressure as may be that~~ which is naturally present in each coal seam. The coal-protection string shall also exclude all injected material or disposed waste from the coal ~~seam seams and the wellbore~~. The string of casing shall be set to a point at least ~~30~~ 50 feet below the lowest coal seam, or as provided in subdivision B 3 of this section, and shall be circulated and cemented ~~in~~ from that point to the surface ~~or to a point not less than 50 feet into the water-protection string or strings which are cemented to the surface~~.

2. For good cause shown, either before or after the permit is issued, when the procedure specified in subdivision B 1 is demonstrated by the permittee as not practical, the director may approve a casing program involving the cementing of a coal-protection string in multiple stages, or the cementing of two or more coal-protection strings, or the use of other alternative casing procedures. ~~The director may approve the program provided the director he~~ is satisfied that the result will be operationally equivalent to compliance with the provisions of subdivision B 1 of this section for the purpose of permitting the subsequent safe mining through of the well or otherwise protecting the ~~seam coal seams~~ as required by this section. In the use of multiple coal-protection strings, each string below the topmost string shall be cemented at least ~~30~~ 50 feet into the next higher string or strings that are cemented to the surface and be verified by a cement ~~and~~ top log.

3. Depth of coal-protection strings:

a. A coal-protection string shall be set to the top of the red shales in any area underlain by them unless, on a showing by the permittee in ~~his~~ the permit application, the director has approved the casing point of the coal-protection string at some depth less than the top of the red shales. In such event, the permittee shall conduct

a gamma ray/density ~~compensated~~ log survey on an expanded scale to verify whether the well penetrates any coal seam in the uncased interval between the bottom of the coal-protection string as approved and the top of the red shales.

b. If an unanticipated coal seam ~~is or seams are~~ discovered in the uncased interval, the permittee shall report the discovery in writing to the director. The permittee shall cement the next string of casing, whether a part of the intermediate string or the production string, in the applicable manner provided in this section for coal-protection strings, from a point ~~30~~ at least 50 feet below the lowest coal seam so discovered ~~or to the top of the red shales, whichever is shallower~~ a point at least 50 feet above the highest coal seam so discovered.

c. The gamma ray/density ~~compensated~~ log survey shall be filed with the director at the same time the driller's log is filed under 4 VAC 25-150-360 ~~of this chapter~~.

d. When the director believes, after reviewing documentation submitted by the permittee, that the total drilling in any particular area has verified the deepest coal seam higher than the red shales, so that further gamma ray/density ~~compensated~~ logs on an expanded scale are superfluous for the area, he may waive the constructing of a coal-protection string or the conducting of such surveys deeper than 100 feet below the verified depth of the deepest coal seam.

C. Coal-protection strings of wells drilled prior to July 1, 1982. In the case of wells drilled prior to July 1, 1982, through coal seams without coal-protection strings substantially as prescribed in subsection B of this section, the permittee shall retain such coal-protection strings as were set. During the life of the well, the permittee shall, consistent with a plan approved by the director, keep the annular spaces between the various strings of casing adjacent to coal seams open to the extent possible, and the top ends of all such strings shall be provided with casing heads, or such other approved devices as will permit the free passage of gas or oil and prevent filling of the annular spaces with dirt or debris.

D. Producing from more than one stratum. The casing program for any well designed or completed to produce from more than one stratum shall be designed in accordance with the appropriate standard practices of the industry.

E. ~~Liner when well or corehole is drilled through mined-out coal seams~~ Casing through voids.

1. ~~When a well or corehole is drilled through a coal seam from which the coal has been removed, the hole shall be drilled at least thirty feet below the mined out seam and of a size sufficient to permit the placing of a liner which shall start at a point not less than 20 feet beneath the horizon of the mined out coal seam and extend to a point not less than 20 feet above it. The liner~~

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~~shall be firmly attached to the string of casing used at that point, and the space between the liner and the casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a height of 10 feet above the bottom of the liner to form a sealed seat for both liner and casing. When a well is drilled through a void, the hole shall be drilled at least 30 feet below the void, the annular space shall be cemented from the base of the casing up to the void and to the surface from the top of the liner void, or it shall be cemented at least 30 50 feet into the next higher string or strings of casing that are cemented to the surface and be verified by a cement bond top log.~~

2. For good cause shown, the director may approve alternative casing procedures proposed by the permittee, provided that the director is satisfied that the alternative casing procedures are operationally equivalent to the requirements imposed by subdivision E 1 of this section.

~~3. Except as provided in subdivision E 4 of this section, when a well or corehole is drilled through two or more coal seams from which the coal has been removed, and only one coal protection string is planned, the liner shall be started not less than 20 feet below the deepest mined out coal seam and shall extend to a point not less than 20 feet above the shallowest mined out coal seam. The annular space shall then be cemented as provided in subdivision E 1 of this section.~~

4. 3. For good cause shown, the director may: a. impose special requirements on the permittee to prevent communication between two or more mined out coal seams; or voids.

b. Permit a casing program which calls for some or all mined out coal seams to be equipped each with its own liner in the manner required by subdivision E 1 of this section.

F. A well penetrating a mine other than a coal mine. In the event that a permittee has requested to drill a well in such a location that it would penetrate any active or abandoned mine other than a coal mine, the director shall establish approve the safety precautions to be followed by the permittee prior to the commencement of activity.

G. When a well is drilled through caverns.

~~When a well is drilled through one or more natural or artificial caverns to which the provisions of subsection E or F of this section do not apply, the permittee shall propose, and upon approval of the director, follow safety precautions for drilling through the caverns.~~

H. Unanticipated caverns or groundwater.

The permittee shall report to the director, by the quickest available means, when an unanticipated cavern or groundwater horizon is encountered during drilling. The permittee shall propose a permit amendment to take the necessary actions to protect the cavern or groundwater. The

permittee shall not proceed with drilling until the director has approved the permit amendment.

G. Reporting of lost circulation zones. The permittee shall report to the director as soon as possible when an unanticipated void or groundwater horizon is encountered that results in lost circulation during drilling. The permittee shall take every necessary action to protect the lost circulation zone.

4 VAC 25-150-540. Plugging conventional wells. (Repealed.)

A. Plugging a well that does not penetrate a coal seam.

1. ~~When a well does not penetrate a coal seam, it shall be plugged and filled as prescribed in this subsection. Details of the plugging must be shown in an application submitted by the permittee to the director. The plugging shall, subject to the exceptions in subdivision A 3 of this section, be as follows:~~

a. ~~From the bottom of the well to a point 20 feet above the top of its lowest oil, gas or water bearing stratum, the well shall either:~~

(1) ~~Be filled with mud, clay or other impermeable material; or~~

(2) ~~Have a permanent bridge anchored 30 feet below its lowest oil, gas or water bearing stratum, and therefrom be filled with mud, clay or other impermeable material;~~

b. ~~From a point 20 feet above the top of its lowest oil, gas or water bearing stratum, a plug of cement or other suitable material shall be placed which will completely seal the hole;~~

c. ~~Between this sealing plug and a point 20 feet above the next higher oil, gas or water bearing stratum, if any, the hole shall be filled or bridged and filled as first provided, on top of which another plug of cement or other suitable material shall be placed as provided in subdivision A 1 b of this section;~~

d. ~~If applicable due to the presence of additional oil, gas or water bearing strata, the hole shall be filled and plugged as provided in subdivision A 1 c of this section through the uppermost plug of cement or other suitable material 20 feet above the highest such stratum;~~

e. ~~Approximately 10 feet below the bottom of the largest casing left in the well, a cement plug shall be placed;~~

f. ~~From the cement plug at the bottom of the largest casing left in the well to a point 50 feet below the surface, the well shall be filled with mud, clay or other impermeable material;~~

g. ~~From the point 50 feet below the surface to the surface, a plug of cement shall be installed.~~

2. Notwithstanding the prescription in subdivision A 1 of this section, whenever two or more gas or oil strata are not widely separated and are free from water, they may be grouped and treated as a single stratum, and the filling and plugging prescribed in subdivision A 1 of this section may be performed as though the group of gas or oil strata were a single stratum.

3. If any gas or oil stratum in the well to be plugged has been stimulated by blasting, then the well may be filled and plugged as prescribed in subdivision A 1 of this section as long as the blasting did not result in cavities which cannot readily be filled. However, if there are blasted out cavities in any gas or oil stratum which cannot be filled as prescribed in subdivision A 1 of this section, then they shall be filled as prescribed in subdivisions A 3 a and A 3 b of this section, and the remainder of the hole shall be plugged and filled as prescribed in subdivision A 1 of this section.

a. If the stratum with unfillable cavities is the lowest gas or oil stratum in the well, one of the two plugging alternatives in subdivision A 3 a (1) or A 3 a (2) of this section shall be employed in the following order of preference:

(1) If reasonably possible, from a point not less than 20 feet below the stratum with unfillable cavities to a point not less than 20 feet above it, a liner shall be placed and compactly filled with cement, mud, clay or other impermeable sealing material; or

(2) Alternatively, if need be, at the nearest suitable point not less than 20 feet above the stratum, a plug of cement or other suitable material shall be placed which will completely seal the hole.

b. If the stratum with unfillable cavities is above the lowest gas or oil stratum, then one of the two plugging alternatives in subdivisions A 3 b (1) or A 3 b (2) of this section shall be employed in the following order of preference:

(1) If reasonably possible, from a point not less than 20 feet below the shot stratum with unfillable cavities to a point not less than 20 feet above it, a liner shall be placed and compactly filled with cement, mud, clay or other impermeable sealing material; or

(2) Alternatively, if need be, a plug of cement or other suitable material shall be placed not less than 20 feet below the stratum which will completely seal the hole from the lower strata, and a second plug of cement or other suitable material shall be placed not less than 20 feet above the stratum which will completely seal the hole at that point.

B. Plugging a well penetrating a coal seam without a coal protection string.

1. When a well penetrates a coal seam and does not have a coal protection string installed in the manner required by 4 VAC 25-150-530 of this chapter, it shall be

plugged and filled as prescribed in this subsection. Details of the plugging must be shown in an application submitted by the permittee to the director. The plugging shall be as follows:

a. From the bottom of the well to a point not less than 40 feet below the lowest coal seam, the well shall be plugged and filled as prescribed in subsection A of this section;

b. At the point not less than 40 feet below the lowest coal seam, a cement plug shall be securely placed in the well;

c. From the cement plug to a point 20 feet above the lowest coal seam, the well shall be filled with cement;

d. From the point not less than 20 feet above the lowest coal seam to a point 40 feet below the next higher coal seam, if any, the well shall be filled with mud, clay or other impermeable material;

e. If applicable due to additional coal seams, the hole shall be filled and plugged as provided in the second, third, and fourth steps through the highest coal seam;

f. From a point 20 feet above the highest coal seam to a point 50 feet below the surface, filling and plugging of the well shall continue in the manner provided in subsection A of this section; and

g. From the point 50 feet below the surface to the surface, a plug of cement shall be installed.

C. Plugging a well with coal protection strings installed.

1. When a well penetrates a coal seam through which a coal protection string has been installed in the manner required by 4 VAC 25-150-530 of this chapter, the well shall be plugged and filled as prescribed in this subsection to facilitate the safe mining through of the well at a later date. Details of the plugging must be shown in an application submitted by the permittee to the director.

a. From the bottom of the well to a point approximately 100 feet below the lowest coal seam, the well shall be plugged and filled as prescribed in subsection A of this section, except that expanding cement shall be used instead of regular hydraulic cement;

b. At the point 100 feet below the lowest coal seam, a 100 foot plug of expanding cement shall be placed in the well so that the top of the plug is located at a point just below the coal protection string or the lowest coal seam;

c. After the plug has been securely placed in the well as provided in subdivision C 1 b of this section, the coal protection string, or innermost coal protection string if more than one coal protection string is set from that point to the surface, shall be emptied of liquid from the surface to a point 100 feet below the

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~~lowest coal seam or to the bottom of the coal protection string, whichever is closer to the surface; and~~

~~d. A vent or other device approved by the director shall be installed on the top of the coal protection string, or innermost coal protection string, a distance of not less than thirty inches above ground level in a manner that will exclude liquids and solids from the well and that will permit ready access when required to the full internal diameter of the coal protection string, or innermost coal protection string, of the well.~~

~~D. Special plugging at the coal owner or operator's request:~~

~~1. When a well penetrates a coal seam and does not have a coal protection string installed in the manner required by 4 VAC 25-150-530 or 4 VAC 25-150-610 of this chapter, in order to facilitate the safe mining through of the well at a later time, the director may, upon application by the permittee, approve a variance to the plugging method provided in subsection B of this section. A permittee and coal owner or operator may jointly submit a request for a variance for special plugging as part of the permit modification application. The request for a variance shall include the permit number, well name and proposed plugging program. The request shall be filed with the director prior to the scheduled plugging of the well.~~

~~2. If under particular circumstances a specific method of plugging is required to obtain the approval of another governmental agency for the safe mining through of a well, then the director may approve a variance for the different method of plugging if he finds that:~~

~~a. The well will be adequately plugged to meet the purpose of the Act;~~

~~b. The well will be adequately plugged for the purpose of safely mining through; and~~

~~c. No gas, oil or other fluids can migrate into the mine workings.~~

~~E. Replugging a previously plugged well.~~

~~Any person may file an application with the director to replug a previously plugged well in any manner permissible under the provisions of this section to facilitate the safe mining through of the well at a later date. The application shall be treated in all respects like any other application for a permit under § 45.1-361.29 of the Code of Virginia.~~

4 VAC 25-150-560. Application for a permit.

In addition to the requirements of 4 VAC 25-150-80 or 4 VAC 25-150-110 of this chapter, every application for a permit or permit modification for a coalbed methane gas well shall contain:

1. An identification of the category of owner or operator, as listed in § 45.1-361.30 A of the Code of Virginia, that each person notified of the application belongs to;

2. The signed consent required in § 45.1-361.29 of the Code of Virginia;

3. Proof of conformance with any mine development plan in the vicinity of the proposed coalbed methane gas well, when the Virginia Gas and Oil Board has ordered such conformance;

4. The approximate depth to which the well is proposed to be drilled or deepened, or the actual depth if the well has been drilled;

5. The location *approximate depth* and thickness, *if applicable*, of all known coal seams, known groundwater-bearing strata, and other known gas or oil strata between the surface and the depth to which the well is proposed to be drilled;

6. If casing or tubing is proposed to be or has been set, a description of the entire casing program, including the size of each string of pipe, the starting point and depth to which each string is to be or has been set, and the extent to which each string is to be or has been cemented together with any request for a variance under 4 VAC 25-150-580 of this chapter;

7. An explanation of the procedures to be followed to protect the safety of persons working in an underground coal mine for any coalbed methane gas well to be drilled within 200 feet of or into any area of an active underground coal mine; which shall, at a minimum, require that notice of such drilling be given by the permittee to the mine operator and the Chief at least two working days prior to drilling within 200 feet of or into the mine;

~~8. If the proposed work is to drill, redrill or deepen a coalbed methane gas well, a plan showing the proposed manner of plugging the well immediately after drilling if the proposed well work is unsuccessful so that the well must be plugged and abandoned; and~~

~~9. if the proposed work is to plug or replug an existing well:~~

~~a. A statement of the time at which the work of plugging or replugging is proposed to be commenced;~~

~~b. A copy of all logs required to be run in accordance with this chapter, not previously filed with the division; and~~

~~c. A work order showing in detail the proposed manner of plugging or replugging the well.~~

8. *If the proposed work is for a Class II injection well, a copy of the Environmental Protection Agency permit, or a copy of the application filed with the Environmental Protection Agency under the Underground Injection Control Program; and*

9. In addition to the requirements of 4 VAC 25-150-80 or 4 VAC 25-150-100, every application for a permit or permit modification for a coalbed methane well or a Class II injection well may contain, if the proposed work is to drill, redrill or deepen a well, a plan showing the proposed manner of plugging the well immediately after drilling if the proposed well work is unsuccessful so that the well must be plugged and abandoned.

4 VAC 25-150-570. Simultaneous applications for permits for a coalbed methane gas well and a vertical ventilation hole. (Repealed.)

~~A. Applicants who intend to operate a coalbed methane gas well for a period of time and then later convert that well to operation as a vertical ventilation hole may submit simultaneous applications for both permits prior to commencement of any activity on the proposed well site. This application process may also be used by applicants who plan to convert from a coalbed methane gas well to a vertical ventilation hole while mining through, and then later operate the hole as a gob well. Applications made under this section for coalbed methane gas wells or gob wells shall be in accordance with the requirements of the Act and of this chapter. Applications made under this section for vertical ventilation holes shall be in accordance with the requirements of Parts II and III of the Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells, 4 VAC 25-100-10 et seq.~~

~~B. Applications submitted simultaneously under this section shall contain, in addition to the information required for each type of permit when submitted separately, a detailed description of the nature of the activities to be conducted from the time activity commences on the site until final plugging of the holes takes place. The description shall include the estimated date for converting the well.~~

~~C. Applicants who submit simultaneous applications under this section shall fulfill the notice requirements for each type of permit at the time of the application. The notice shall inform all parties with standing to object to any permit of their right to object, and state the prescribed time limits for objections. Any person who objects to applications for permits filed under this section shall comply with the applicable requirements for filing objections to the type of permit being requested.~~

~~D. If there are timely objections made to permits proposed in simultaneously submitted applications, then the chief and the director shall determine who has authority to hear the objections and schedule a hearing according to applicable provisions of the laws and regulations pertaining to the permits for which objections are made. If objections are filed against more than one type of permit, then the objections may be heard jointly at a single hearing.~~

~~E. The director shall issue a permit for a coalbed methane gas well when a simultaneous application has been submitted for a vertical ventilation hole only after the chief has indicated to the director that the vertical ventilation hole~~

~~application meets the requirements for a permit from the chief.~~

~~F. The operators of a coalbed methane gas well and a vertical ventilation hole so permitted shall jointly notify the chief and the director in writing at least two working days prior to commencement of activity on conversion of a coalbed methane well to a vertical ventilation hole or conversion of a vertical ventilation hole to a gob well.~~

4 VAC 25-150-580. Variance request to convert a vertical ventilation hole to a coalbed methane gas well.

A. An applicant may request a variance to the casing standards in 4 VAC 25-150-610 of this chapter when the applicant desires to convert a vertical ventilation hole drilled prior to September 25, 1991, to a coalbed methane gas well. All other standards for coalbed methane gas wells shall be met. The variance request must be included in the request for a permit, and shall address the following subjects:

1. Method of wellbore completion, whether cased, open or cased/open hole;
2. Coal seams to be left uncased;
3. Mining activity currently being conducted within 750 feet of the location;
4. Depth of the water-protection string *and information on how the casing was cemented; and*
5. In the case of a coalbed methane gas well drilled through a coal seam from which the coal has been removed, the protection provided to prevent the escape of any gases into the mined out seam; *and*.

~~6. The pressure tests to document the integrity of the casing program. The production casing shall be tested to 300 psig surface pressure or the highest pressure anticipated to be placed on the casing, whichever is greater. If after 30 minutes, the pressure has dropped by 10% or more of the test pressure, corrective action shall be taken to ensure that the casing is so set and cemented that it will hold at least 90% of the test pressure for 30 minutes or more.~~

B. No variance to the casing standards in 4 VAC 25-150-610 of this chapter shall be allowed for the conversion of any vertical ventilation hole drilled on or after September 25, 1991, to a coalbed methane gas well.

4 VAC 25-150-590. Plats.

A. In addition to the requirements of 4 VAC 25-150-90 of this chapter, every plat for a coalbed methane gas well shall show:

1. Boundaries and acreage of any drilling unit established by the board around the subject well;
2. Boundaries and acreage of the tract on which the well is located or is to be located;
3. Boundaries and acreage of all other tracts within one-half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the

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nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

4. Surface owners on the tract to be drilled and on all other tracts *within the unit* where the surface of the earth is to be disturbed;

5. All gas, oil or royalty owners on any tract located within one-half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

6. Coal owners and mineral owners on the tract to be drilled and on all other tracts located within 750 feet of the subject well location;

7. Coal operators who have registered operations plans with the department for activities located on the tract to be drilled, or who have applied for or obtained a coal mine license, coal surface mine permit or a coal exploration notice or permit from the department with respect to all tracts within 750 feet of a proposed gas or oil well; *and*

8. Any inhabited building, highway, railroad, stream, surface mine or mine opening within ~~750~~ 500 feet of the proposed well; *and*.

~~9. Any other data the director may require.~~

B. The well plat shall locate the well and two permanent points or landmarks with reference to the mine coordinate system if one has been established for the area of the well location, and shall show all other wells, ~~surface mines and mine openings~~ within the scope of the plat.

4 VAC 25-150-600. Setback restrictions.

No permit shall be issued for any well to be drilled closer than 200 feet from any inhabited building, *unless site conditions as approved by the director warrant the permission of a lesser distance, and there exists a lease or agreement between the operator and the owner of the inhabited building. A copy of the lease or agreement shall accompany the application for a permit.*

4 VAC 25-150-610. Casing requirements for coalbed methane gas wells.

~~A. The following minimum casing requirements shall be met for casing coalbed methane gas wells.~~

~~4. A. Water protection string.~~

~~a. Unless otherwise granted in a variance from the director, all wells drilled in search of coalbed methane gas shall have 1. Except as provided in subdivision A 5 of this section, the permittee shall set a water protection string set to a point at least 300 feet below the surface or 50 feet below the lowest groundwater horizon, whichever is deeper, circulated and cemented in to the surface. If cement does not return to the surface, every reasonable~~

effort shall be made to fill the annular space by introducing cement from the surface.

~~b. If cement does not return to the surface, every reasonable attempt shall be made to fill the annular space by introducing cement from the surface. The water protection string and cement shall be designed to withstand, and shall be tested to, 300 psig surface pressure. The water protection string and cement shall be allowed to stand for 12 hours before drilling out from under the casing, unless the director approves a shorter period of time.~~

2. *The operator shall test or require the cementing company to test the cement mixing water for pH and temperature prior to mixing the cement and to record the results on the cementing ticket.*

3. *After the cement is placed, the operator shall wait a minimum of eight hours and allow the cement to achieve a calculated compressive strength of 500 psi before drilling, unless the director approves a shorter period of time. The wait-on-cement (WOC) time shall be recorded within the records kept at the drilling rig while drilling is taking place.*

4. *When requested by the director, the operator shall submit copies of cement tickets or other documents that indicate the above specifications have been followed.*

~~e.~~ 5. A coal-protection string may also serve as a water protection string.

B. Coal protection production strings.

~~Any coal seams that will not be produced from and that have not been mined out shall be cased and cemented in accordance with 4 VAC 25-150-530 B of this chapter.~~

1. *When any well penetrates coal seams that have not been mined out, the permittee shall, except as provided in subdivisions B 2 and B 3 of this section, set a coal-protection string. The coal-protection string shall exclude all fluids, oil, gas, and gas pressure, except that which is naturally present in each coal seam. The coal-protection string shall also exclude all injected material or disposed waste from the coal seams or the wellbore. The string of casing shall be set to a point at least 50 feet below the lowest coal seam, or as provided in subdivision B 3 of this section, and shall be circulated and cemented from that point to the surface, or to a point not less than 50 feet into the water-protection string or strings which are cemented to the surface.*

2. *For good cause shown, either before or after the permit is issued, when the procedure specified in subdivision B 1 is demonstrated by the permittee as not practical, the director may approve a casing program involving:*

a. The cementing of a coal-protection string in multiple stages;

b. The cementing of two or more coal-protection strings; or

c. The use of other alternative casing procedures.

3. The director may approve the program, provided he is satisfied that the result will be operationally equivalent to compliance with the provisions of subdivision B 1 of this section for the purpose of permitting the subsequent safe mining through the well or otherwise protecting the coal seams as required by this section. In the use of multiple coal-protection strings, each string below the topmost string shall be cemented at least 50 feet into the next higher string or strings that are cemented to the surface and be verified by a cement top log.

4. Depth of coal-protection strings.

a. A coal-protection string shall be set to the top of the red shales in any area underlain by them unless, on a showing by the permittee in the permit application, the director has approved the casing point of the coal-protection string at some depth less than the top of the red shales. In such event, the permittee shall conduct a gamma-ray/density log survey on an expanded scale to verify whether the well penetrates any coal seam in the uncased interval between the bottom the coal-protection string as approved and the top of the red shales.

b. If an unanticipated coal seam or seams are discovered in the uncased interval, the permittee shall report the discovery in writing to the director. The permittee shall cement the next string of casing, whether a part of the intermediate string or the production string, in the applicable manner provided in this section for coal-protection strings, from a point at least 50 feet below the lowest coal seam so discovered to a point at least 50 feet above the highest coal seam so discovered.

c. The gamma-ray/density log survey shall be filed with the director at the same time the driller's log is filed under 4 VAC 25-150-360.

d. When the director believes, after reviewing documentation submitted by the permittee, that the total drilling in any particular area has verified the deepest coal seam higher than the red shales, so that further gamma-ray/density logs on an expanded scale are superfluous for the area, he may waive the constructing of a coal-protection string or the conducting of such surveys deeper than 100 feet below the verified depth of the deepest coal seam.

~~C. When a well is drilled through a mined-out coal seam, a liner shall be installed in accordance with 4 VAC 25-150-530 E of this chapter. Coal-protection strings of wells drilled prior to July 1, 1982. In the case of wells drilled prior to July 1, 1982, through coal seams without coal-protection strings as prescribed in subsection B of this section, the permittee shall retain such coal-protection strings as were set. During the life of the well, the permittee shall, consistent with a plan~~

approved by the director, keep the annular spaces between the various strings of casing adjacent to coal seams open to the extent possible, and the top ends of all such strings shall be provided with casing heads, or such other approved devices as will permit the free passage of gas or oil and prevent filling of the annular spaces with dirt or debris.

~~D. When a well is drilled through any active or abandoned mine other than a coal mine, the well shall be developed in accordance with the requirements of 4 VAC 25-150-530 F of this chapter. Producing from more than one stratum. The casing program for any well designed or completed to produce from more than one stratum shall be designed in accordance with the appropriate standard practices of the industry.~~

~~E. When a well is drilled through any natural or artificial caverns to which the provisions of subsection C or D of this section do not apply, the well shall be developed in accordance with the requirements of 4 VAC 25-150-530 G of this chapter. Casing through voids.~~

1. When a well is drilled through a void, the hole shall be drilled at least 30 feet below the void. The annular space shall be cemented from the base of the casing up to the void, and to the surface from the top of the void; or it shall be cemented at least 50 feet into the next higher string or strings of casing that are cemented to the surface, and shall be verified by a cement top log.

2. For good cause shown, the director may approve alternate casing procedures proposed by the permittee, provided that the director is satisfied that the alternative casing procedures are operationally equivalent to the requirements imposed by subdivision E 1 of this section.

3. For good cause shown, the director may impose special requirements on the permittee to prevent communication between two or more voids.

~~F. Unanticipated caverns or groundwater. A well penetrating a mine other than a coal mine.~~

~~The permittee shall report to the director, by the quickest available means, when an unanticipated cavern or groundwater horizon is encountered during drilling. The permittee shall propose a permit amendment to take the necessary actions to protect the cavern or groundwater. The permittee shall not proceed with drilling until the Director has approved the permit amendment. In the event that a permittee has requested to drill a well in such a location that it would penetrate any active mine other than a coal mine, the director shall approve the safety precautions to be followed by the permittee prior to the commencement of activity.~~

G. Production casing.

1. Unless otherwise granted in a variance from the director:

a. For coalbed methane gas wells with cased completions and cased/open hole completions, production casing shall be set and cemented in place

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~~with a calculated cement volume to fill the annular space from the bottom of the casing to the surface or to a point not less than 30 50 feet into the lowest coal-protection or water-protection string or strings which are cemented to the surface.~~

b. For coalbed methane gas wells with open hole completions, the base of the casing shall be set to not more than 100 feet above the uppermost coalbed which is to be completed open hole. The casing shall be cemented to fill the calculated annular space from the bottom of the casing to the surface or to a point not less than 30 50 feet into the lowest coal-protection or water-protection string or strings which are cemented to the surface.

~~2. Before drilling out the production casing, the casing shall be tested to 300 psig surface pressure or the highest pressure anticipated to be placed on the casing, whichever is greater. If after 30 minutes, the pressure has dropped by 10% or more of the test pressure, corrective action shall be taken to ensure that the casing is so set and cemented that it will hold 90% of the test pressure for 30 minutes or more. All test results shall be posted at the well site and shall be reported with the completion report pursuant to 4 VAC 25-150-360 of this chapter.~~

~~3. 2. A coal-protection string may also serve as production casing.~~

H. Reporting of lost circulation zones. The permittee shall report to the director as soon as possible when an unanticipated void or groundwater horizon is encountered that results in lost circulation during drilling. The permittee shall take every necessary action to protect the lost circulation zone.

4 VAC 25-150-640. Plugging coalbed methane gas wells. (Repealed.)

~~A. In addition to the provisions of 4 VAC 25-150-540 of this chapter, coalbed methane gas wells may be plugged as follows:~~

~~1. For open hole, cased hole, or cased/open hole completions, plugging shall be:~~

~~a. From the bottom of the well to a point not less than 40 feet below the lowest coal seam, or from the obtainable bottom, whichever is shallower, the well shall either (i) be filled with mud, clay, or other impermeable material, or (ii) have a permanent bridge anchored 40 feet below its lowest coal seam;~~

~~b. From the point 40 feet below the lowest coal seam to a point 20 feet above the lowest coal seam, the well shall be filled with cement;~~

~~c. From the point not less than 20 feet above the lowest coal seam to a point 40 feet below the next higher coal seam, if any, the well shall be filled with mud, clay, or other impermeable material;~~

~~d. If applicable due to additional completed zones or mineable coal seams, the hole shall be filled and plugged as provided in subdivisions A 1 b and A 1 c of this section through the shallowest coal seam;~~

~~e. From a point 20 feet above the shallowest coal seam to a point 50 feet below the surface, the well shall be filled with mud, clay or other impermeable material; and,~~

~~f. From a point 50 feet below the surface to the surface, a plug of cement shall be installed.~~

~~2. For completions in the gob, plugging shall be:~~

~~a. A permanent bridge plug shall be set at the base of the deepest casing string left in the well;~~

~~b. A 100-foot cement plug shall be set on top of the permanent bridge;~~

~~c. If applicable due to additional completed zones or mineable coal seams, the hole shall be filled and plugged as provided in subdivisions A 1 b and A 1 c of this section through the shallowest coal seam;~~

~~d. From the point 20 feet above the shallowest coal seam to the point 50 feet below the surface, the well shall be filled with mud, clay or other impermeable material; and~~

~~e. From the point 50 feet below the surface to the surface, a plug of cement shall be installed.~~

~~B. These provisions shall not be construed to impair or abridge the requirements of the Federal Mine Safety and Health Administration or the Department of Mines, Minerals and Energy, Division of Mines on coal operators for mining near or through a coalbed methane gas well.~~

4 VAC 25-150-650. Abandonment through conversion to a vertical ventilation hole.

~~A. A permittee wishing to abandon a coalbed methane gas well as a vertical ventilation hole shall submit an application for a permit modification for such abandonment unless conversion to a vertical ventilation hole was approved in a permit issued in accordance with 4 VAC 25-150-570 of this part which includes approval from the chief of the Division of Mines.~~

~~B. No application under this section shall be approved by the director until the application for a vertical ventilation hole has been approved by the chief.~~

4 VAC 25-150-660. Applicability.

~~Part IV (4 VAC 25-150-660 et seq.) of this chapter sets forth requirements unique to ground-disturbing geophysical exploration. Permittees must comply with both the standards of general applicability in Part I of this chapter and the standards for ground disturbing geophysical exploration in this part.~~

4 VAC 25-150-670. Application for a permit.

A. *In accordance with 4 VAC 25-150-80 and 4 VAC 25-150-110, a permit shall be required for a corehole or other ground-disturbing geophysical exploration.*

B. In addition to the requirements of 4 VAC 25-150-80 or 4 VAC 25-150-110, every application for a corehole permit or permit modification under this part shall contain:

1. The approximate depth to which the corehole is proposed to be drilled or deepened, or the actual depth if the corehole has been drilled;
2. The ~~location~~ approximate depth and thickness, if applicable, of all known coal seams, known groundwater bearing strata, and other known gas or oil strata between the surface and the depth to which the corehole is proposed to be drilled;
3. If casing or tubing is proposed to be set, the entire casing program, including the size diameter of each string of pipe casing, the starting point and depth to which each string is to be set, whether or not the casing is to remain in the hole after the completion of drilling, and the extent to which each string is to be cemented, if applicable;
4. If a corehole is proposed to be drilled or deepened, A plan to plug the corehole shall be included, which shall contain: shows the proposed manner of plugging or replugging the corehole.
 - a. ~~A statement of the time at which the work of plugging or replugging is proposed to be commenced;~~
 - b. ~~A copy of all logs required to be run in accordance with this chapter not previously filed with the division; and~~
 - c. ~~A plan showing the proposed manner of plugging or replugging the corehole.~~

4 VAC 25-150-680. Plats.

A. In addition to the requirements of 4 VAC 25-150-90 of this chapter, every plat for a corehole shall show:

1. The boundaries of the tract on which the corehole is located or is to be located;
2. Surface owners on the tract to be drilled and surface owners on all other the tracts where the surface is to be disturbed;
3. Coal owners and mineral owners on the tract to be drilled;
4. Coal operators who have registered operations plans with the department for activities located on the tract to be drilled; and
5. Any inhabited building, highway, railroad, stream, surface mine or mine opening within 500 feet of the proposed corehole; and
6. Any other data the director may require.

B. If the corehole location is underlain by known coal seams, the plat shall locate the corehole and two permanent points or landmarks with reference to the mine coordinate system if one has been established for the area of the corehole location, and shall in any event show all other wells, surface mines and mine openings within the scope of the plat.

4 VAC 25-150-690. Operations plans.

In addition to the requirements of 4 VAC 25-150-100 of this chapter, every operational plan for a corehole shall describe the measures to be followed to protect water quality during the geophysical operations drilling, and the measures to be followed to protect any voids encountered during drilling.

4 VAC 25-150-700. Setback restrictions.

No permit shall be issued for any corehole to be drilled closer than 200 feet from inhabited building, unless site conditions as approved by the director warrant the permission of a lesser distance, and there exists a lease or agreement between the operator and the owner of the inhabited building. A copy of the lease or agreement shall accompany the application for a permit.

4 VAC 25-150-710. Plugging coreholes. (Repealed.)

A. ~~A plugging plan shall be submitted with the application for a permit for a corehole.~~

B. ~~A corehole shall be plugged and filled as follows:~~

1. ~~From the bottom of the corehole to a point not less than 40 feet below the lowest coal, oil, gas, or water-bearing stratum, the hole shall be filled with mud, clay, or other impermeable material.~~
2. ~~From this point to a point 20 feet above the lowest coal, oil, gas, or water-bearing stratum, the hole shall be filled with cement.~~
3. ~~From the point not less than 20 feet above the lowest coal, oil, gas, or water-bearing stratum to a point 40 feet below the next higher coal, oil, gas, or water-bearing stratum, the hole shall be filled with mud, clay, or other impermeable material.~~
4. ~~If applicable due to additional coal, oil, gas, or water-bearing stratum, the hole shall be filled and plugged as provided in the first, second, and third steps through the highest coal, oil, gas, or water-bearing stratum.~~
5. ~~From a point 20 feet above the highest coal, oil, gas, or water-bearing stratum to a point 50 feet below the surface, or in areas with unconsolidated material deeper than 50 feet below the surface, to a point five feet below the top of consolidated rock, the hole shall be filled with mud, clay, or other impermeable material.~~
6. ~~From the point 50 feet below the surface or the point five feet below the top of consolidated rock to the surface, whichever is deeper, a plug of cement shall be set.~~

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~~C. Whenever two or more coal, oil, or gas strata are not sufficiently separated and are free from water, they may be grouped and treated as a single stratum, and the filling and plugging prescribed in subsection B of this section may be performed as though the group were a single stratum.~~

~~D. For good cause shown, or when a corehole has a two inch or smaller diameter, a permittee may request a variance for alternate plugging procedures. The director shall approve the alternate procedures when he is satisfied the alternate procedures are as effective as the requirements of subsections B and C of this section.~~

4 VAC 25-150-711. Voids and lost circular zones.

A. Casing through voids.

1. When a corehole is drilled through a void, the hole shall be drilled at least 30 feet below the void. The annular space shall be cemented from the base of the casing up to the void, and to the surface from the top of the void; or it shall be cemented at least 50 feet into the next higher string or strings of casing that are cemented to the surface, and be verified by a cement top log.

2. For good cause shown, the director may approve alternate casing procedures proposed by the permittee, provided that the director is satisfied that the alternative casing procedures are operationally equivalent to the requirements imposed by this section.

3. For good cause shown, the director may impose special requirements on the permittee to prevent communication between two or more voids.

B. Reporting of lost circulation zones. The permittee shall report to the director as soon as possible when an unanticipated void or groundwater horizon is encountered that results in lost circulation during drilling. The permittee shall take every necessary action to protect the lost circulation zone.

4 VAC 25-150-720. Applicability.

A. Part V (4 VAC 25-150-720 et seq.) of this chapter sets forth requirements unique to gathering pipelines. Permittees must comply with the standards for gathering pipelines in this part and the following standards in Part I:

1. All of Article 1, "General Information," except 4 VAC 25-150-50, "Gas or Oil in Holes Not Permitted as a Gas or Oil Well";
2. All of Article 2, "Permitting," except 4 VAC 25-150-90, "Plats";
3. All of the sections in Article 3, "Enforcement";
4. 4 VAC 25-150-220, "Annual Reports" of Article 4, "Reporting";
5. 4 VAC 25-150-230, 4 VAC 25-150-240, 4 VAC 25-150-250, 4 VAC 25-150-260, 4 VAC 25-150-270, 4 VAC 25-150-310, 4 VAC 25-150-350, 4 VAC 25-150-380, 4

VAC 25-150-410, 4 VAC 25-150-420, 4 VAC 25-150-430 of Article 5, "Technical Standards"; and

6. 4 VAC 25-150-470, "Release of Bond" of Article 6, "Plugging and Abandonment."

B. A permit shall be required for installation and operation of every gathering pipeline and associated structures for the movement of gas or oil production from the wellhead to a previously permitted gathering line, a transmission or other line regulated by the Federal Energy Regulatory Commission United States Department of Transportation or the State Corporation Commission, to the first point of sale, or for oil, to a temporary storage facility for future transportation by a method other than a gathering pipeline.

C. Each gathering pipeline or gathering pipeline system may be permitted separately from gas or oil wells or may be included in the permit for the well being served by the pipeline.

4 VAC 25-150-730. General requirements.

A. Gathering pipelines shall be installed to be compatible with other uses of the area.

B. No permit shall be issued for a gathering pipeline to be installed closer than 50 feet from any inhabited building, unless site conditions as approved by the director warrant the use of a lesser distance and there exists a lease or agreement between the operator, the inhabitants of the building and the owner of the inhabited building. A copy of the lease or agreement shall accompany the application for a permit.

C. ~~Materials.~~ Materials used in gathering pipelines shall be able to withstand anticipated conditions. At a minimum this shall include:

1. All plastic gathering pipeline connections shall be fused, not coupled.
2. All buried gathering pipelines shall be detectable by magnetic or other remote means from the surface.

D. All new gathering pipelines shall be tested to maintain a minimum of 110% of anticipated pressure prior to being placed into service.

E. All gathering pipelines shall be maintained in good operating condition at all times.

4 VAC 25-150-740. Operations plans.

~~A. In addition to the requirements of 4 VAC 25-150-100 of this chapter, every operations plan for a gathering pipeline shall contain: For a gathering pipeline, the operations plan shall be in a format approved by, or on a form prescribed by the director.~~

~~1. An accurate map or maps meeting the following requirements:~~

~~a. The proposed lines shall be located on maps depicting topography on a scale of not less than 1 inch equals 600 feet (1:7200); and~~

~~b. The total distance and width of the right of way and the diameter of the gathering pipelines shall be shown; and~~

~~2. Information identifying the materials to be used in the gathering pipeline system, the construction standards to be met, including the location of all drips, and the quality control testing program to be followed prior to putting the gathering pipeline into service.~~

B. On a form prescribed by the director, the operator shall indicate how risks to the public safety or to the site and adjacent lands are to be managed, and shall provide a short narrative, if pertinent.

NOTICE: The forms used in administering 4 VAC 25-150-10 et seq., the Virginia Gas and Oil Regulation, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Mines, Minerals and Energy, 9th Street Office Building, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

- Registration Form, DGO-GO-A (9/94), rev. 1/98.
- Application for a New Permit, Permit Modification, or Transfer of Permit Rights, DGO-GO-1 (11/95), rev. 1/98.
- Operator's Surety Bond, DGO-GO-2 (9/94), rev. 1/98.
- Operator's Cash Bond, DGO-GO-3 (9/94), rev. 1/98.
- Notice of Application for a Permit or Permit Modification, DGO-GO-4 (9/94), rev. 7/97.
- Persons Receiving Official Notice of Permit Application or Permit Modification, DGO-GO-5 (9/94), rev. 7/97.
- Notice by Publication of an Application for a Permit, DGO-GO-6 (9/94), rev. 1/98.
- Well Location Plat, DGO-GO-7 (9/94), rev. 1/98.
- Information Sheet for Applications to Transfer Permit Rights, DGO-GO-8 (9/94), rev. 1/98.
- Technical Data Sheet for Permit Applications Under § 45.1-361.29, DGO-GO-9 (Rev. 5/23/96).
- Technical Data Sheet for Gathering Pipelines Pipelines and Associated Facilities, DGO-GO-10 (9/94), rev. 1/98.
- Technical Data Sheet for Permit Modification to Plug or Replug, DGO-GO-11 (9/94), rev. 1/98.
- ~~Operation Operations Plan Requirements - Checklist, DGO-GO-12 (9/94), rev. 1/98.~~
- ~~Operation Operations Plan - Checklist, DGO-GO-12A (7/95; included in DGO-GO-12).~~
- ~~Certification of Location of a New Well, DGO-GO-13 (9/94).~~
- Drilling Report, DGO-GO-14 (9/94), rev. 1/98.

- Completion Report, DGO-GO-15 (9/94), rev. 1/98.
- Application for Disposal of Pit or Produced Fluids, DGO-GO-16 (9/94), rev. 1/98.
- Application to Complete Abandoned Gas or Oil Well as a Water Well, DGO-GO-17 (9/94), rev. 1/98.
- Plugging Affidavit, DGO-GO-18 (9/94), rev. 1/98.
- Monthly Gas Production Report, DGO-GO-19 (9/94), rev. 1/98.
- Monthly Oil Production Report, DGO-GO-20 (9/94), rev. 1/98.
- Notice of Right to Object, rev. 10/96.
- License to Perform - Plugging of Orphaned Well, DGO-GO-23, (11/96).
- License to Perform - Plugging of Well/Bond Forfeiture, DGO-GO-24, (11/96).
- Affidavit and Release in Support of Surface Owner's Application to the Virginia Division of Gas and Oil for Use of an Orphaned Well as a Water Well, DGO-GO-25, (11/96).

VA.R. Doc. No. R97-687; Filed July 30, 1997, 10:14 a.m.

VIRGINIA RACING COMMISSION

Title of Regulation: 11 VAC 10-130-10 et seq. Virginia Breeders Fund (amending 11 VAC 10-130-10 through 11 VAC 10-130-40 and 11 VAC 10-130-60 through 11 VAC 10-130-80; adding 11 VAC 10-130-51, 11 VAC 10-130-75, 11 VAC 10-130-76 and 11 VAC 10-130-77; repealing 11 VAC 10-130-50).

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

Public Hearing Date: September 17, 1997 - 9:30 a.m.
 Public comments may be submitted until October 17, 1997.
 (See Calendar of Events section for additional information)

Basis: The Virginia Racing Commission derives its statutory authority to promulgate regulations from the provisions of § 59.1-369 of the Code of Virginia. The code states, in part in subdivision 3, "The Commission shall promulgate regulations and conditions under which horse racing with pari-mutuel wagering shall be conducted in the Commonwealth, and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter."

Purpose: The commission has promulgated this regulation to achieve its statutory function of maintaining horse racing in the Commonwealth of the highest quality. The proposed regulation amends the existing regulation pertaining to the Virginia Breeders Fund to promote the public welfare by strengthening the native industry of horse breeding.

The proposed regulation substitutes foal registration for mare registration for Virginia-bred Thoroughbreds as well as institutes stallion and foal registration for Virginia-bred Standardbreds. In addition, the proposed regulation

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incorporates the changes in the Code of Virginia approved during the 1997 session of the General Assembly giving the commission authority to designate race meetings outside of the Commonwealth for purses and races restricted to Virginia-bred horses as well as stallion owner and breeder awards for those racehorses that win races at the designated race meetings.

Substance: The proposed regulation provides a new definition for Virginia-bred Standardbred racehorses. Because the Standardbred industry in the Commonwealth is in its infancy, the regulation permits Virginia residents, during the first six years of live racing, to purchase horses from out of state and register these horses as Virginia-bred Standardbreds under tightly controlled circumstances. This new definition coupled with the very high purse structure at Colonial Downs will ensure that Virginia will strengthen its horse breeding industry with infusions of the finest Standardbred pedigree lines in the nation. Furthermore, by designating Thoroughbred race meetings outside of the Commonwealth, Virginia owners will have more opportunities to enter their horses in races restricted to Virginia-breds.

Issues: The main advantage of the proposed regulation relating to the operation of the Virginia Breeders Fund is that it increases the opportunities for owners to race Virginia-bred Thoroughbreds as well as increases the opportunities for stallion owners and breeders to earn awards from the fund. This will ensure the widest possible distribution of awards and incentives from the fund. The proposed regulation provides for an increase in the percentage of the fund devoted to breeder awards while reducing the amount available for purses. The proposed regulation was drafted in conjunction with representatives of the horse breeding industry through the Advisory Committee of the Virginia Breeders Fund. This regulation creates no disadvantages to the Commonwealth or the public.

Estimated Impact: Increasing the opportunities for restricted races for Virginia-bred Thoroughbreds to race meetings designated by the commission will serve as a stimulus for the horse breeding industry in the Commonwealth. Furthermore, allowing the purchase of out-of-state Standardbreds to be registered as Virginia-breds will build a strong, quality horse breeding industry for harness racing in the Commonwealth. In 1994, representatives of the horse breeding industry indicated that with the advent of live racing there would a 10% increase in the size of the foal crops from 640 for Thoroughbreds and 115 for Standardbreds. The commission has since adopted this 10% increase in the size of the foal crops as a performance measure for the Virginia Breeders Fund program.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the

regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation:

1. Provides a new definition for a Virginia-bred Standardbred racehorse,
2. Increases the percentage of the fund devoted to breeder and stallion owner awards while reducing the amount available for purses paid to the owners of the winning horse,
3. Designates Thoroughbred races outside of Virginia that will qualify for Breeder Fund Awards, and
4. Substitutes foal registration for mare registration for Virginia-bred Thoroughbreds and institutes stallion and foal registration for Virginia-bred Standardbreds.

Estimated economic impact. Currently, a Virginia-bred Standardbred horse is defined as one foaled or conceived in the Commonwealth of Virginia or sired by a Virginia Standardbred. The new regulation will expand this definition to include a Standardbred purchased and registered by a Virginia resident during the first six calendar years of live pari-mutuel harness racing in the Commonwealth. The rationale for this amendment is that since the Standardbred industry is in its infancy in the Commonwealth, it would encourage residents to purchase quality horses and build up not just the stock of Standardbreds but also the quality of Standardbreds.

Increasing the quality of horses is tied directly to the incentives part of this regulation. The proposed regulation provides for an increase in the percentage of the fund devoted to breeder awards and stallion-owner awards, while it reduces the amount available for purses. The commission argues that by changing the award structure the horse-breeding industry will receive infusions of the finest Standardbred pedigree lines in the nation. The change in the award structure is as follows: for Thoroughbreds, 35% of the fund will be paid to the breeder of the winning horse compared to 25% under the current system. The owner of the stallion that sired the winning horse receives 15%, the same as under the current system. The remaining 50% (60% under the old system) shall be paid to supplement purses paid to the owners of the winning horse. The purse supplement may be used as an award to the owner of the winning Virginia-bred horse, if any, in an unrestricted race or a purse in a race restricted to Virginia-bred Thoroughbred horses.

For Standardbreds, 15% of the fund will be paid to the breeder of the winning horse compared to 10% under the current system. The owner of the stallion that sired the

winning horse receives 10%, compared to 5.0% under the current system. The remaining 75% (85% under the old system) to be used as purse supplements, part of which will be set aside to develop a stakes program for two- and three-year-old Virginia-bred Standardbred horses. The remainder of the purse supplement may be paid to the owner of a Virginia-bred Standardbred horse that wins a nonrestricted race.

The third issue involves designating Thoroughbred races outside of Virginia where the winning horse, if registered in Virginia, can qualify for the above awards. The argument here is to allow for more opportunities for Virginia owners to enter races restricted to Virginia-bred horses, thereby increasing the chances of receiving awards from the funds. However, since the races outside of Virginia do not contribute to the fund, this means the fund will be spread more thinly. In particular, the expected amount anyone can hope to get from the fund does not change although the number of opportunities to win an award has increased. This is a direct consequence of the fact that the amount of the fund remains the same. One could, however, make the argument that depending on the preferences of breeders, stallion owners, and horse owners, they might prefer an increased probability of winning small amounts from the fund instead of a lower probability of winning larger amounts. This argument depends by and large on the nature of the preferences of the participants toward risk, which we do not know. The inclusion of horse races external to Virginia is unlikely to produce any economic benefit.

The economic benefits of this regulation are small at best and may well be negative. The transfer of funds from pari-mutuel wagers into the breeders fund decreases the amount of money available to be awarded to winning betters. Depending on how responsive betters are to changes in the purse structure, there could be a decrease in the number of betters. This is especially important in this industry where the opportunities for wagering in nearby states are plentiful.

In a market economy, market forces ensure that resources used in the production of private goods are allocated to the use that maximizes their economic value. Government intervention in these markets, such as subsidies or taxes, usually creates distortions and reallocates resources away from their highest use. The Breeders Fund is a subsidy intended to encourage the breeding and raising of racehorses in Virginia funded by a tax on wagerers. The effect of this subsidy is that it makes the horse industry appear more profitable than it really is. There is the likelihood that the subsidy could draw resources out of the production of goods and services with higher returns. This will result in the Commonwealth not receiving the highest possible return on these resources. The overall effect is a net economic loss to society.

The redistribution of the fund itself among the various interest groups should have little or no economic impact. For producers, increasing the subsidy will act as an incentive to increase breeding activity. The decrease in the purse supplement to horse owners decreases the incentive to own

mares. Whether the net effect is positive or negative will depend on the magnitude of these changes but will be small in any event. The economic impact on the Virginia economy will probably be negligible.

Businesses and entities affected. The businesses affected by this regulation will be the breeders, stallion owners, and racehorse owners. There will also be some impact on betters at racetracks.

Localities particularly affected. No localities will be particularly affected by this regulation.

Projected impact on employment. There will be no measurable change in employment due to this regulation.

Effects on the use and value of private property. Since the fund acts as a subsidy to breeders and owners, the price of horses may increase. The value of land used for horse breeding and racing could be artificially increased due to this regulation.

Summary of analysis. This regulation provides a subsidy to the horseracing industry in the form of awards from the Breeders Fund. By giving this subsidy, more producers may enter the horseracing industry, but there is no reason to believe entry produces a net increase in economic activity. There is a likelihood that the subsidy could draw resources out of the production of goods and services with higher returns into the subsidized industry. The net economic benefit to the Commonwealth will, at best, be small.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: While the Virginia Racing Commission finds many interesting points in the analysis, it disagrees with the conclusion that the net economic benefit will be small. The commission could cite several impartial economic studies conducted in the other states, primarily Florida, New York, Kentucky and California, documenting the very positive economic impact of the horse breeding industry upon a state's economy and there is every reasonable expectation Virginia's experience will not be unique.

Summary:

The regulation establishes the operating procedures for the Virginia Breeders Fund, specifies the eligibility of horses and their owners for awards from the fund and the eligibility of horses for entry into races restricted to Virginia-breds, and specifies the distribution of incentives from the fund.

11 VAC 10-130-10. Definitions.

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

"Breeding season" means a period of time beginning on February 1 and ending on August 1 of each year. For Standardbreds, the breeding season means a period of time beginning February 15 and ending on July 15 of each year.

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"Stallion owner" means an owner or lessee of record of a stallion that covered mares in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred horse.

"Virginia-bred Arabian horse" means a registered Arabian horse foaled in the Commonwealth of Virginia.

"Virginia Arabian horse breeder" means the owner or lessee of record of the mare at the time of foaling of a Virginia-bred Arabian horse.

"Virginia Arabian sire" means a registered Arabian stallion that covered mares only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Arabian horse.

"Virginia-bred Quarter Horse" means a registered Quarter Horse foaled or conceived in the Commonwealth of Virginia.

"Virginia Quarter Horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Quarter Horse.

"Virginia Quarter Horse sire" means a registered Quarter Horse stallion or registered Virginia Thoroughbred stallion that covered mares only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Quarter Horse.

"Virginia-bred Standardbred horse" means a registered Standardbred horse foaled or conceived in the Commonwealth of Virginia. ~~After December 31 of the fifth calendar year following the year in which Standardbred racing first commences in the Commonwealth pursuant to an unlimited license issued by the commission, the horse must be, sired by a Virginia Standardbred sire, or purchased by a Virginia resident and meeting the following requirements:~~

1. ~~During the first six calendar years of live pari-mutuel harness racing in the Commonwealth, a foal not meeting the requirements of the previous paragraph may still be registered as Virginia-bred providing it is registered by a Virginia resident and owner with the commission by submitting documentation proving that the horse was purchased prior to April 1 of its two-year-old year and prior to making its first start in a nonqualifying race. For purposes of registration under this subdivision, neither the stallion owner of a sire standing outside the Commonwealth nor the breeder of a Standardbred foaled outside the Commonwealth shall be eligible for any award from the Virginia Breeders Fund;~~

2. ~~For purposes of determining the eligibility for an owner to register a Virginia Standardbred, a Virginia resident and owner shall be defined as a person legally required to file a resident income tax return with the Commonwealth that year or a partnership, corporation, stable name or other entity which is solely owned by Virginia residents and owners legally required to file resident income tax returns with the Commonwealth that year; and~~

3. ~~After December 31 of the fourth calendar year of live harness racing in the Commonwealth, foals of that year and each succeeding year must be sired by a Virginia Standardbred sire to qualify as Virginia-bred Standardbreds.~~

"Virginia Standardbred horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Standardbred horse.

"Virginia Standardbred sire" means a registered Standardbred stallion that ~~covered mares stood~~ only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Standardbred horse. *Shipment of semen for the breeding of mares outside the Commonwealth shall be permitted so long as any resulting foals meet the requirements of this chapter in all other respects.*

"Virginia-bred Thoroughbred horse" means a registered Thoroughbred horse foaled in Virginia and, if foaled in the Commonwealth after December 31 of the second calendar year following the year in which Thoroughbred racing first commences in the Commonwealth pursuant to an unlimited license issued by the commission, shall also satisfy one of the following additional requirements:

1. The foal was sired by a Virginia Thoroughbred sire; or
2. If not so sired, the dam, if bred back that same breeding season, is bred to a Virginia Thoroughbred sire; or
3. If not so sired, or the dam is not bred back that same breeding season or is bred to a sire other than a Virginia Thoroughbred sire, the dam remains continuously in the Commonwealth from September 1 to date of foaling, or if barren to February 1 of the following year.

"Virginia Thoroughbred horse breeder" means the owner or lessee of record of the mare at the time of foaling a Virginia-bred Thoroughbred horse.

"Virginia Thoroughbred sire" means a registered Thoroughbred stallion that covers mares, other than test mares, only in the Commonwealth during the breeding season in which it sires a Virginia-bred Thoroughbred horse, or only during that part of the breeding season after entering the Commonwealth.

11 VAC 10-130-20. Generally.

The purpose of ~~these regulations~~ *this chapter* is to establish procedures for the administration of the Virginia Breeders Fund by the Virginia Racing Commission as provided for in § 59.1-372 of the Code of Virginia.

A. Certification. The commission shall certify that a racehorse is a Virginia-bred for eligibility for entry into races restricted to Virginia-bred horses, ~~and to qualify its owner for purse supplements and to qualify~~, the stallion owner, if applicable, and breeder for awards.

B. Determination of eligibility. The final determination of all questions, disputes or protests relating to the registration, eligibility for certification or breeding of a Virginia-bred horse and the final determination of eligibility of any horse to enter a race restricted to Virginia-bred horses shall rest solely with the commission.

C. Documentation. In making its determination, the commission, in its discretion, may require the submission of any certificate of foal registration, eligibility paper or any other registration document, affidavits or other substantive proof to support or deny any claim concerning registration of a horse as a Virginia-bred.

D. False statements. Any person who submits false or misleading information to a breed registry, to the commission or to any racing official, may be fined, have his permit suspended or revoked, be denied participation in the Virginia Breeders Fund for a period of time deemed appropriate by the commission, or any or all of the foregoing.

E. Forfeiture of awards and purse moneys. Any person who is denied participation in the Virginia Breeders Fund under the provisions of ~~the regulations this chapter~~ shall forfeit and restore to the commission any awards and purse moneys received based upon the submission of false or misleading information. Until the awards and purse moneys are restored, the commission may suspend the person's permit to participate in horse racing at licensed facilities.

F. Recognized registries. The commission shall recognize certificates of registration from the following breed registries:

1. Thoroughbred: The Jockey Club;
2. Standardbred: The United States Trotting Association;
3. Quarter horse: The American Quarter Horse Association; and
4. Arabian horse: The Arabian Horse Registry of America.

G. Payment of awards. All awards for *owners*, stallion owners and breeders ~~may~~ shall be distributed from the Virginia Breeders Fund ~~within 30 days of the end of the race meeting that generated the funds in a manner prescribed by the commission.~~ The following provisions shall apply to payment of *owner*, stallion owner and breeder awards pursuant to an unlimited license issued by the commission:

1. Determination of individual distributions to a stallion owner shall be in the same ratio as the amount of nonsupplement first-place purse money won by the Virginia-bred horse at the race meeting, which qualifies the stallion owner for an award, to the total amount of nonsupplemented first-place purse money won by all Virginia-bred horses which qualify stallion owners for awards at the race meeting;
2. Determination of individual distributions to a breeder shall be in the same ratio as the amount of nonsupplemented first-place purse money won by the

Virginia-bred horse at the race meeting, which qualifies the breeder for an award, to the total amount of nonsupplemented first-place purse money won by all Virginia-bred horses at the race meeting;

~~3.~~ *Determination of individual distributions to an owner shall be in the same ratio as the amount of nonsupplemented first-place purse money won by the Virginia-bred horse at the race meeting which qualifies the owner for an award to the total amount of nonsupplemented first-place purse money won by all Virginia-bred horses at the race meeting;*

~~3-~~ 4. To become eligible for an *owner*, a stallion owner or a breeder award from the Virginia Breeders Fund, the *owner*, stallion owner or breeder must be certified by the commission prior to receiving any award, unless his *racehorse*, stallion or broodmare has been previously registered with the commission;

4- 5. A stallion owner or breeder will have 25 days after the closing of the race meeting, at which he becomes eligible for an award, to be certified by the commission unless his stallion or broodmare has been previously registered with the commission;

~~5-~~ 6. A stallion owner or breeder need only be certified once per racehorse; and

~~6-~~ 7. Any unclaimed awards from the Virginia Breeders Fund shall be ~~distributed proportionately among those stallion owners and breeders who have been certified as being entitled to an award from the race meeting which generated the funds remitted to the fund.~~

H. Distribution by breeds. The funds generated by the breed of horse through pari-mutuel wagering at a race meeting shall be distributed to that breed of horse through *owner awards*, stallion owner awards, breeder awards, *purses* and purse supplements.

I. Reimbursement of funds. The source of funding is 1.0% of all pari-mutuel pools which shall be paid to the commission within five days of the date that the funds were generated. Purse moneys shall be paid from the horsemen's account when approval is granted by the stewards. The commission shall reimburse the horsemen's account to the extent that funds are available from the Virginia Breeders Fund. ~~Any deficiencies in the horsemen's account shall be assumed by the licensee.~~

J. Restrictions. In disbursing the Virginia Breeders Fund, the following restrictions shall apply:

1. Supplements to purses from the Virginia Breeders Fund shall not be considered in determining breeder or stallion awards;
2. The amount of the purses for races restricted to Virginia-bred horses or any adjustments must be fair, equitable and appropriate to the quality of the horses competing for those purses;

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3. Purses from the Virginia Breeders Fund shall be considered for stallion owner and breeder awards.

~~3- 4. Funds allocated for purse supplements~~ purses shall be credited to the owner's account by the horsemen's bookkeeper in accordance with procedures established elsewhere in these regulations; and

~~4- 5. Underpayment of moneys generated by each breed shall be remitted to the commission, deposited in an interest bearing account and carried forward to be distributed as purse supplements or purse moneys for races restricted to the same breed of Virginia-bred horses, which generated the moneys, during the next succeeding race meeting at the same horse racing facility for the breed that generated the purse money Virginia Breeders Fund.~~

K. Reservation of funds. The commission may set aside funds for distribution in future years; if the commission, in its discretion, determines that there is an insufficient supply of Virginia-bred horses of a certain breed to warrant a distribution. In this event, the funds shall be deposited in an interest bearing account for future distribution of awards and purse supplements to the breed that generated the funds so set aside.

L. Assignment of awards. Awards distributable to breeders and stallion owners are only assignable pursuant to a court order.

M. Advisory committee. To assist it in establishing this awards and incentive program to foster the industry of breeding racehorses in Virginia, the commission shall appoint an advisory committee composed of two members from each of the registered breed associations representing each breed of horse participating in the fund program, one member representing the owners and operators of racetracks and one member representing all the meets sanctioned by the National Steeplechase Hunt Association.

The commission, in its discretion, may establish and appoint the members of subcommittees of the advisory committee for each breed of horse participating in the fund program. Each subcommittee shall be composed of one commissioner, the executive secretary of the commission, two advisory committee members, a member representing an owner or operator of a horse racing facility, and an at-large member ~~from~~ associated with the breed of horse participating in the fund program. All appointments shall be approved by the commission.

11 VAC 10-130-30. Commencement of registration.

The commission shall establish a date when owners of Thoroughbred stallions shall commence registering their stallions and breeders of Virginia-bred Thoroughbred horses shall commence registering their broodmares foals. No fee shall be assessed for registering stallions or foals prior to the date for the commencement of registration.

11 VAC 10-130-40. Stallion registration.

A. Initial registration. For a stallion owner to be certified to receive stallion owner awards from the Virginia Breeders Fund, the stallion owner shall register his stallion with the commission by satisfying the following requirements:

1. Each year prior to the commencement of the breeding season, but no later than January 31, or within 30 days following the entry into stud in Virginia if entry is after the breeding season commences, the owner or authorized agent shall submit an application on a form prepared by the commission, which shall set forth the name of the stallion, year of foaling, registration number, pedigree, including sire, dam and sire of the dam, where the stallion is standing at stud, the date of entry to stud if after the commencement of the breeding season, and the name(s) and address(es) of owner(s) and lessee(s);

2. The application shall be signed and dated by the owner or lessee, or the authorized agent;

3. A notarized copy of the stallion's Certificate of Foal Registration, clearly showing the front and transfer side of the document, shall accompany the application;

4. If the stallion is held under a lease or a syndicate agreement, a copy of the lease or agreement shall accompany the application, and the lease or agreement must include a statement that the lessee or syndicate manager is authorized to sign the service certificate and receive stallion awards; and

5. The owner or authorized agent shall submit to the commission a notarized copy of The Jockey Club's Report of Mares Bred at the conclusion of the breeding season but no later than August 1.

B. Late Registration fees. A stallion may be registered with the commission for the breeding season after January 31 or 30 days following its entry into stud in Virginia. A registration fee of \$100 shall accompany the application. A late registration fee of \$250 shall be assessed. A late registration of a stallion shall be accepted by the commission until August 1 for that breeding year.

C. Change of ownership. If there is a change in ownership; or the stallion is subsequently leased or syndicated; or the location of where the stallion is standing is changed, the new owner, lessee or syndicate manager shall submit to the commission a new application for stallion registration.

11 VAC 10-130-50. Broodmare registration. (Repealed.)

~~A. For an owner or lessee of broodmare to be certified to receive breeder awards from the Virginia Breeders Fund, the owner or lessee shall register his broodmare with the commission by satisfying the following requirements:~~

~~1. Each year prior to the commencement of the breeding season but no later than January 31, or within 30 days after the mare enters the Commonwealth, if the entry is after the commencement of the breeding season, the~~

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~~breeder or his authorized agent must submit an application, on a form prepared by the commission, including the name of the broodmare, year of foaling, registration number, pedigree, including sire, dam and sire of the dam, the location in Virginia where the mare domiciled, and the name and address of the owner;~~

~~2. The application shall be signed and dated by the owner or authorized agent;~~

~~3. A notarized copy of the broodmare's Certificate of Foal Registration, clearly showing the front and transfer side of the document, shall accompany the application;~~

~~4. If the broodmare is held under a lease, a statement to that effect and a copy of the lease, which must include a statement that the lessee is authorized to register the foal, shall accompany the application;~~

~~5. If the broodmare was not bred to a Virginia Thoroughbred sire or is not bred back to a Virginia Thoroughbred sire, then the owner or authorized agent shall sign the affidavit stating that the broodmare has been domiciled in the Commonwealth of Virginia since September 1 of the preceding year; and~~

~~6. If there is a change of ownership, or if the broodmare is subsequently leased, or there is a change in the prior lease agreement, the new owner or lessee shall submit a new application to the commission.~~

~~B. Late registration. A broodmare may be registered with the commission for the breeding season after January 31 or 30 days following its entry into Virginia. A late registration fee of \$100 shall be assessed. A late registration of a broodmare shall be accepted by the commission until August 1 for that breeding year.~~

11 VAC 10-130-51. Foal registration.

~~A. Requirements. For an owner or lessee of a dam to be certified to receive breeder awards from the Virginia Breeders Fund, the owner or lessee must register his foal with the commission by satisfying the following requirements:~~

~~1. The owner, lessee or his authorized agent must submit an application on a form prepared by the commission, including the name of the stallion; the name of the dam; the sire of the dam; the sex; color; year of birth; the location of foaling; and name, address and telephone number of the owner, lessee or his authorized agent;~~

~~2. The application must be signed and dated by the owner, lessee, or his authorized agent;~~

~~3. If the dam is held under a lease, a statement to that effect and a copy of the lease which must include a statement that the lessee is authorized to register the foal must accompany the application;~~

~~4. If the dam of the foal was not bred to a Virginia Thoroughbred sire or is not bred back to a Virginia Thoroughbred sire, then the owner, lessee or his~~

~~authorized agent must sign the affidavit stating that the dam has been domiciled in the Commonwealth of Virginia from September 1 of the preceding year to February 1; and~~

~~5. All Virginia-bred Thoroughbred horses must be registered with the commission prior to being entered in Virginia-bred races.~~

~~B. Registration fees. A foal may be registered by December 31 of its year of foaling by submitting a \$25 fee which must accompany the application for foal registration. A yearling may be registered by December 31 of its yearling year by submitting a \$50 fee which must accompany the application for foal registration. A two-year-old or older may be registered by submitting a \$200 fee which must accompany the application for foal registration.~~

11 VAC 10-130-60. Fund distribution; allocation of funds.

~~A. Allocation of funds. The funds generated by pari-mutuel wagering on Thoroughbred horse races for the Virginia Breeders Fund shall be allocated on the following schedule:~~

~~1. 25% 35% shall be set aside for payment to the breeders of Virginia-bred Thoroughbred horses that win races at horse racing facilities licensed a race meeting designated by the commission;~~

~~2. 15% shall be set aside for payment to owners or lessees of registered Virginia stallions which sire Virginia-bred Thoroughbred horses that win races at horse racing facilities licensed race meetings designated by the commission; and~~

~~3. 60% 50% shall be paid to supplement purses as determined by the commission under the following provisions:~~

~~a. A purse supplement An award may be paid to the owner or owners of a Virginia-bred Thoroughbred horse each time the horse wins a nonrestricted race at a horse racing facility licensed race meetings designated by the commission; and~~

~~b. Purse supplements Purses shall be paid for purses for races restricted to Virginia-bred Thoroughbred horses.~~

11 VAC 10-130-70. Restricted races.

~~The racing secretary at each unlimited race meeting licensed by the commission shall include in the condition book restricted races which equal not less than 5.0% of the total nonsubstitute races included in that book, and that those races shall be run if eight six separate betting interests are entered. If there is not a sufficient number of registered Virginia-bred horses entered to fill the race, then the racing secretary may substitute another race.~~

11 VAC 10-130-75. Commencement of registration.

~~The commission shall establish a date when owners of Standardbred stallions shall commence registering their~~

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stallions and breeders of Virginia-bred Standardbred horses shall commence registering their foals.

11 VAC 10-130-76. Stallion registration.

A. *Initial registration.* For a stallion owner to be certified to receive stallion owner awards from the Virginia Breeders Fund, the stallion owner must register his stallion with the commission by satisfying the following requirements:

1. Each year prior to the commencement of the breeding season, but no later than January 31, or within 30 days following the entry into stud in Virginia if entry is after the breeding season commences, the owner or authorized agent shall submit an application on a form prepared by the commission, which shall set forth the name of the stallion; year of foaling; registration number; pedigree; including sire, dam and sire of the dam; where the stallion is standing at stud; the date of entry to stud if after the commencement of the breeding season; and the names and addresses of owners and lessees;
2. The application must be signed and dated by the owner or lessee, or the authorized agent;
3. A notarized copy of the stallion's Certificate of Registration, clearly showing the front and transfer side of the document, must accompany the application;
4. If the stallion is held under a lease or a syndicate agreement, a copy of the lease or agreement must accompany the application, and the lease or agreement must include a statement that the lessee or syndicate manager is authorized to sign the Service Certificate and receive stallion awards; and
5. The owner or authorized agent must submit to the commission a notarized copy of The United States Trotting Association's Report of Mares Bred at the conclusion of the breeding season and no later than December 31 of the breeding year.

B. *Registration fees.* A stallion may be registered with the commission for the breeding season after January 31 or 30 days following its entry into stud in Virginia. A registration fee of \$100 shall accompany the application. A late registration fee of \$250 shall be assessed. A late registration of a stallion shall be accepted by the commission until August 1 for that breeding year.

C. *Change of ownership.* If there is a change in ownership, or the stallion is subsequently leased or syndicated, or the location of where the stallion is standing is changed, the new owner, lessee or syndicate manager must submit to the commission a new application for stallion registration.

11 VAC 10-130-77. Foal registration.

A. *Requirements.* For an owner or lessee of a dam to be certified to receive breeder awards from the Virginia Breeders Fund, the owner or lessee must register its foal with the commission by satisfying the following requirements:

1. The owner, lessee or his authorized agent must submit an application, on a form prepared by the commission, including the name of the stallion; the name of the dam; the sire of the dam; sex; color; year of foaling; and name, address and telephone number of the owner, lessee or his authorized agent;
2. The application must be signed and dated by the owner, lessee or his authorized agent;
3. If the dam is held under a lease, a statement to that effect and a copy of the lease which must include a statement that the lessee is authorized to register the foal must accompany the application; and
4. All Virginia-bred Standardbred horses must be registered with the commission prior to being entered in races.

B. *Registration fees.* A foal may be registered by December 31 of its year of foaling by submitting a \$25 fee which must accompany the application for foal registration. A yearling must be registered by December 31 of its yearling year by submitting a \$125 fee which must accompany the application for foal registration. A two-year-old or older horse may be registered by submitting a \$250 fee which must accompany the application for foal registration. Any purchased horse must be registered within the required purchase period.

11 VAC 10-130-80. Allocation and restriction of funds.

A. *Allocation.* The funds generated by Standardbred harness racing through pari-mutuel wagering shall be allocated according to the following schedule:

1. 40% 15% shall be set aside for payment to the breeders of Virginia-bred Standardbred horses that win races at horse racing facilities licensed by the commission;
2. 5.0% 10% shall be set aside for payment to the owners or lessees of Virginia Standardbred stallions which sire Virginia-bred Standardbred horses that win races at horse racing facilities licensed by the commission; and
3. 85% 75% shall be paid to supplement purses according to the following provisions:
 - a. Not less than 75% shall be set aside to develop a stakes program for two- and three-year-old Virginia-bred Standardbred horses; and
 - b. Any remaining amounts shall be set aside and may be paid to the owner or owners of a Virginia-bred Standardbred horse each time the horse wins a nonrestricted race at a horse racing facility licensed by the commission.

B. *Restriction.* During the first two calendar years of live pari-mutuel harness racing in the Commonwealth, payment of stallion owner and breeder awards shall be limited to an amount not exceeding 20% of that horse's nonmaiden

nonsupplemented first-place purse used in the calculation and 40% of that horse's maiden nonsupplemented first-place purse used in the calculation.

C. Restricted races. The racing secretary at each unlimited race meeting licensed by the commission shall include on the condition sheet at least one race each day restricted to Virginia-bred Standardbred horses and the race shall be run if six separate betting interests are entered. If there is not a sufficient number of registered Virginia-bred horses entered to fill the race, then the racing secretary may substitute another race.

VIRGINIA BREEDERS FUND
STALLION REGISTRATION FOR THE YEAR 19__

___ Thoroughbred ___ Standardbred

For a stallion owner to be eligible for awards from the Virginia Breeders Fund an application must be submitted to the Virginia Racing Commission prior to the commencement of the breeding season but no later than January 31, or within 30 days of following entry into stud in Virginia if entry is after the breeding season commences.

(Name of Stallion)

(Year of Foaling) (Registration Number)

(Sire) (Dam) (Sire of the Dam)

Where Stallion Is Standing:

Name and Address of Owner or Lessee:

1) A notarized copy of the stallion's Certificate of Foal Registration, clearly showing the front and transfer side of the document, must accompany the application.

2) If the stallion is held under a lease or syndicate agreement, a copy of the lease or agreement must accompany the application, and the lease or agreement must include a statement that the lessee or syndicate manager is authorized to sign the Service Certificate and receive stallion awards.

I HEREBY CERTIFY THAT THE STALLION NAMED ABOVE HAS COVERED MARES, OTHER THAN TEST MARES, ONLY IN THE COMMONWEALTH OF VIRGINIA DURING THE BREEDING SEASON IN WHICH IT SIRES VIRGINIA-BRED THOROUGHBRED HORSES OR ONLY DURING THAT PART OF THE BREEDING SEASON AFTER ENTERING THE COMMONWEALTH.

(Signature of Owner or Lessee)

(Date)

STATE WATER CONTROL BOARD

Title of Regulation: 9 VAC 25-260-10 et seq. Water Quality Standards (amending 9 VAC 25-260-310 and 9 VAC 25-260-520).

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

Public Hearing Date: September 23, 1997 - 7 p.m.

Public comments may be submitted until October 17, 1997.

(See Calendar of Events section for additional information)

Basis: Section 62.1-44.15(3a) of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) authorizes the State Water Control Board to establish, amend or cancel water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law. Such standards shall be adopted only after a hearing is held and the board takes into consideration the economic and social costs and benefits which can reasonably be expected to be obtained as a result of the standards as adopted, modified or cancelled. Section 303(c)(1) of the Federal Clean Water Act requires the states to hold hearings for the purpose of reviewing water quality standards and, as appropriate, modifying and adopting standards. The Environmental Protection Agency's (EPA) water quality standards regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish water quality standards to protect the beneficial uses of aquatic life. EPA retains approval/disapproval oversight but delegates to the states the selection and designation of water quality standards for specific water bodies.

Purpose: The purpose of the proposed amendment is to establish site-specific criteria for ammonia that would apply to Sandy Bottom Branch in Accomack County. The regulation is justified with regards to the public's welfare in that it was developed specifically to protect the aquatic life in the stream while not incurring an unnecessary economic burden to the discharger to that stream.

Substance: The proposed regulatory amendment would establish site-specific criteria for ammonia (rather than relying on the statewide criteria for ammonia) which are based on a site-specific study conducted by the only discharger to the stream, Tyson Foods of Temperanceville, Virginia. This study developed information on the sensitivity of aquatic life indigenous to the receiving stream. The site-specific criteria are designed to protect the aquatic community in Sandy Bottom Branch, Accomack County, yet they are less stringent than the Virginia water quality criteria that would otherwise apply. The intent of the regulation is to provide adequate protection to the aquatic life at the site, while not requiring more waste water treatment than is necessary.

Issues: The primary issue relevant to the public regarding the proposed amendment is whether the site-specific criteria are technically sound and protective of the aquatic life in the stream. Regarding this issue, the proposed site-specific criteria were calculated by DEQ using the methods

recommended by EPA in their 1984 ammonia criteria document to evaluate the toxicity data generated by the site-specific study. However, EPA has recently reassessed their ammonia criteria and are now proposing different methods (currently in draft form) for evaluating ammonia toxicity data. DEQ requests public comments on whether or not these more recent methods should be used to reevaluate the site-specific study and recalculate the proposed criteria. Supplemental information regarding this issue is available from DEQ. In addition, the state is required to conduct an impact assessment of the costs and benefits resulting from this regulation. The question of whether the impact assessment adequately reflects the true costs and benefits resulting from this amendment to the regulation is another issue.

Another issue raised by the public in response to the Notice of Intended Regulatory Action is how less restrictive site-specific ammonia criteria would affect efforts to reduce nitrogen in the Chesapeake Bay. These are separate issues and must be addressed in an individual manner. The proposed amendment is concerned with protecting the aquatic animals in this specific stream from the toxic effects of ammonia, while the goal of reducing nitrogen nutrients to the Chesapeake Bay represents efforts to control undesirable plant growth in the Bay. The goal of reducing nitrogen in the Chesapeake Bay is outside the scope of this proposed amendment.

The proposed site-specific criteria should protect the aquatic community in Sandy Bottom Branch and will be implemented in the same manner as the statewide standards. Therefore, it presents no advantages or disadvantages to the general public or the Department of Environmental Quality. It could provide an economic advantage to Tyson Foods because of the potential for reduced treatment costs.

Economic Impact: It is anticipated that this proposed amendment should not have an adverse impact upon the public, including localities. On the contrary, by adopting site-specific criteria for ammonia that are less restrictive than the criteria which would otherwise apply, less waste water treatment will be required and correspondingly lower costs should be realized by the only industrial permittee that discharges into this stream. This permittee has requested adoption of this amendment. At this time, however, no estimates of potential cost savings have been provided by this permittee. No other member of the regulated community will be affected by the proposed site-specific standard.

The proposed amendments, if adopted, are not expected to impact the DEQ in terms of resources as the amendments would only require staff to use the site-specific criteria to calculate a permit limit instead of the established Virginia water quality criteria for ammonia. The formulas used to calculate the site-specific criteria are in the same form as the statewide standard, so there should be little difficulty in using the site-specific standard.

Environmental Impact: These site-specific criteria were designed to protect the aquatic community in this stream,

Proposed Regulations

therefore there is no adverse environmental impact anticipated from adopting this amendment.

Affected localities: The affected locality is Accomack County.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. This proposed regulation establishes a site-specific water quality standard for unionized ammonia for Sandy Bottom Branch in Temperanceville, Virginia. The proposed chronic standard is less restrictive than the established Virginia standard by 29% in the summer and 267% in the winter.

Estimated economic impact. Tyson Foods owns a processing facility that discharges ammonia into Sandy Bottom Branch. Tyson sponsored a study to determine whether the stream could accept an ammonia concentration higher than that called for in the water quality standards without damage to aquatic life. The Department of Environmental Quality (DEQ) reviewed and reinterpreted the data in the study to ensure that the ammonia concentrations proposed would not harm sensitive species in the stream. This included an analysis of the sensitivity of species in nearby (reference) streams that have not been affected by an industrial discharge. The study indicated that of those species in Sandy Bottom Branch and nearby reference streams, the fish and insect populations present show a low sensitivity to ammonia and would not be harmed by the concentrations allowed in this standard.

DEQ has also indicated¹ that it is unlikely that those using the stream for recreational purposes could sense the difference between the normal water quality standard and that proposed here. This would be true at both the acute and chronic standards.

The additional nitrogen flowing into the Chesapeake Bay will have an incremental impact on Bay biology. However, the water quality regulations are designed to protect streams from the toxic effects of pollutants. The impact of biological nutrients such as nitrogen on the Bay are being addressed by a comprehensive nutrient reduction strategy that is being developed under an agreement between the affected states.

It is likely that the protection of the Bay from excess biological nutrients can be handled in a much more cost-effective way through this Bay-wide strategy rather than through individual water quality standard adjustments. Thus, consideration of the costs associated with additional nutrient loads should be undertaken in the context of the nutrient reduction strategy rather than this water quality standard.

Given this discussion, we conclude that (additional nutrient loading aside) this change in water quality standards will not result in any significant economic costs either through damage to biological resources or to the recreational value of the stream.

A spokeswoman for Tyson Foods has indicated that Tyson has not made an estimate of its cost savings due to this regulation. The main impact on the Tyson facility affected by this proposal is that the facility will be better able to remain in compliance with its water quality standards in winter months during periods of extreme cold. The efficiency of water treatment facilities is greatly reduced during extreme cold. According to Tyson, it would be very expensive to redesign their treatment facilities to retain their efficiency during very cold weather. Thus, the relaxed water quality standards are of substantial (if unknown) value to Tyson.

Given the lack of economic costs associated with the relaxed standard, the savings experienced by Tyson will result in a net economic benefit to Virginia.

Businesses and entities affected. Only the one Tyson facility will be affected by this standard.

Localities particularly affected. The only direct economic impact of this regulation will occur in Temperanceville, Virginia. However, the impact will be in the form of somewhat lower compliance costs at the Tyson Foods facility. The benefits of this change will probably be felt more by Tyson stockholders than by the community of Temperanceville. The local community could conceivably suffer some short run economic loss if these regulations result in lower expenditures by Tyson on wastewater treatment. This would be balanced by the potential for longer run gain in employment if the Tyson facility expands in Temperanceville due to lower treatment costs. Either way, the affect will be small.

Projected impact on employment. In the long run, there could be some small net gain in employment in Virginia due to lower costs of production. The existence and magnitude of any such gain is highly speculative at this time.

Effects on the use and value of private property. Since the Tyson facility can now produce its output at a somewhat lower cost, the value of the facility is somewhat increased. Some of that gain may be felt in the value of Tyson's property in Temperanceville. Again, the existence and magnitude of this impact is speculative.

Summary:

The State Water Control Board proposes to amend the Water Quality Standards by adopting a site-specific

¹ Alex Barron, DEQ, personal conversation.

water quality standard for ammonia for Sandy Bottom Branch near Temperanceville in Accomack County on the Eastern Shore. This site-specific standard is less restrictive than the established Virginia standard that would otherwise apply to this stream.

The only discharger to this stream is Tyson Foods, which operates a chicken processing plant. Tyson Foods funded a scientific study which indicates that the aquatic community in this stream can tolerate more ammonia than the Virginia standard would allow. In this case, a site-specific standard which allows higher permit limits should adequately protect the aquatic community. Adopting this site-specific standard should result in cost savings to the permittee due to higher permit limits and reduced waste water treatment requirements. Tyson Foods has requested this site-specific standard be adopted.

9 VAC 25-260-310. Special standards and requirements.

The special standards are shown in small letters to correspond to lettering in the basin tables. The special standards are as follows:

a. Shellfish waters. In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present, including those waters on which condemnation or restriction classifications are established by the State Department of Health, the following standard for fecal coliform bacteria will apply:

The median fecal coliform value for a sampling station shall not exceed an MPN of 14 per 100 ml of sample and not more than 10% of samples shall exceed 43 for a 5-tube, 3-dilution test or 49 for a 3-tube, 3-dilution test.

The shellfish area is not to be so contaminated by radionuclides, pesticides, herbicides, or fecal material that the consumption of shellfish might be hazardous.

b. Policy for the Potomac Embayments. At its meeting on September 12, 1996, the board adopted a policy (9 VAC 25-415-10 et seq. Policy for the Potomac Embayments) to control point source discharges of conventional pollutants into the Virginia embayment waters of the Potomac River, and their tributaries, from the fall line at Chain Bridge in Arlington County to the Route 301 Bridge in King George County. The policy sets effluent limits for BOD₅, total suspended solids, phosphorus, and ammonia, to protect the water quality of these high profile waterbodies.

c. Cancelled.

d. Aquia Creek. No proposal resulting in the discharge of treated wastes to Aquia Creek will be approved unless the following is provided:

(1) At least 100 days' storage to allow complete elimination of discharges during the low-flow summer months; or

(2) Other treatment, based on sound engineering concepts (preferably with experimental data to show their feasibility), be provided for nutrient removal prior to discharge.

e. Cancelled.

f. Cancelled.

g. Occoquan watershed policy. At its meeting on July 26, 1971, (Minute 10) the board adopted a comprehensive pollution abatement and water quality management policy for the Occoquan watershed. The policy set stringent treatment and discharge requirements in order to improve and protect water quality, particularly since the waters are an important water supply for Northern Virginia. Following a public hearing on November 20, 1980, the board, at its December 10-12, 1980, meeting, adopted as of February 1, 1981, revisions to this policy (Minute 20). These revisions became effective March 4, 1981. Copies are available upon request from the State Water Control Board.

h. Cancelled.

i. Cancelled.

j. Cancelled.

k. Cancelled.

l. Cancelled.

m. The following effluent standards apply to the entire Chickahominy watershed above Walker's Dam:

CONSTITUENT	CONCENTRATION
1. Bio-chemical Oxygen demand 5-day at 20°	6.0 mg/l monthly average, with not more than 5% of individual samples to exceed 8.0 mg/l
2. Settleable Solids	Not to exceed 0.1 ml/l
3. Suspended Solids	5.0 mg/l monthly average, with not more than 5% of individual samples to exceed 7.5 mg/l
4. Ammonia Nitrogen	Not to exceed 2.0 mg/l as N
5. Total Phosphorus	Not to exceed 0.1 mg/l monthly average for all discharges with the exception of Holly Farms Poultry Industries, Inc. which shall meet 0.3 mg/l monthly average and 0.5 mg/l daily maximum.

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6. Other Physical and Chemical Constituents

Other physical or chemical constituents not specifically mentioned will be covered by additional specifications as conditions detrimental to the stream arise. The specific mention of items 1 through 5 does not necessarily mean that the addition of other physical or chemical constituents will be condoned.

n. No sewage discharges, regardless of degree of treatment, should be allowed into the James River between Boshier and Williams Island Dams.

o. The concentration and total amount of impurities in Tuckahoe Creek and its tributaries of sewage origin shall be limited to those amounts from sewage, industrial wastes, and other wastes which are now present in the stream from natural sources and from existing discharges in the watershed.

p. Cancelled.

q. Rappahannock River Basin.

The following effluent standards (adopted in Minute 17 from the proceedings of the board at its meeting on September 17-18, 1972) apply to all waste discharges to the Rappahannock River Basin above the proposed Salem Church Dam in accordance with paragraphs (1) and (2) below:

CONSTITUENT	FINAL EFFLUENT REQUIREMENTS (WEEKLY AVERAGE)
BOD - mg/l	1
COD - mg/l	10
Suspended solids - mg/l	0 (unmeasurable)
MBAS - mg/l	0.1
Turbidity (Jackson Units)	0.4
Fecal Coliform Bacteria per 100 ml sample	Less than 2
Nitrogen - mg/l	1
Phosphorus - mg/l	0.1

(1) After the date of Congressional authorization for actual construction of the dam has been given, all new proposals shall comply fully with the adopted standards of the paragraph above and all existing owners shall immediately commence the necessary planning, financing and design to ensure that facilities are completed prior to final completion of the construction of the dam; and

(2) Any new proposals for waste discharges to the area encompassed by the standards shall provide such conventional treatment that in the opinion of the State Department of Health, the staff and the board, satisfactory advanced waste treatment units can readily be added when funds for construction of the Salem Church Dam have been authorized.

r. Cancelled.

s. Chlorides not to exceed 40 mg/l at any time.

t. Cancelled.

u. Maximum temperature for the New River Basin from West Virginia state line upstream to the Giles - Montgomery County line:

The maximum temperature shall be 27°C (81°F) unless caused by natural conditions; the maximum rise above natural temperatures shall not exceed 2.8°C (5°F).

This maximum temperature limit of 81°F was established in the 1970 water quality standards amendments so that Virginia temperature standards for the New River would be consistent with those of West Virginia, since the stream flows into that state.

v. The maximum temperature of the New River and its tributaries (except trout waters) from the Montgomery-Giles County line upstream to the Virginia-North Carolina State line shall be 29°C (84°F).

w. In Minute 3 from its meeting on March 10-11, 1977, the board authorized a variance to the General Standard relating to zinc for the length of Ash Camp Creek and a portion of Little Roanoke Creek from the confluence of Ash Camp Creek to the Route 47 bridge.

x. Clinch River from the confluence of Dumps Creek at river mile 268 at Carbo downstream to river mile 255.4. The special water quality standard for copper (measured as total recoverable) in this section of the Clinch River is 12.4 ug/l for protection from chronic effects and 19.5 ug/l for protection from acute effects. This site specific standard is needed to provide protection to several endangered species of freshwater mussels.

y. For Sandy Bottom Branch, Temperanceville, Accomack County, the site-specific water quality standard for un-ionized ammonia at a specific pH and temperature shall be calculated by the following equations:

$$\text{Acute Standard} = 1.028(\text{mg/L})/\text{FT}/\text{FPH}/2$$

$$\text{Chronic Standard at temperatures} > 13^{\circ}\text{C}$$

$$= 1.028 (\text{mg/L})/\text{FT}/\text{FPH}/\text{RATIO}$$

$$\text{Chronic Standard at temperatures} < 13^{\circ}\text{C}$$

$$= 1.028 (\text{mg/L})/\text{FT}/\text{FPH}/4.726$$

where:

$$\text{FT} = \text{Final Temperature}$$

$$= 10^{0.03(20-\text{TCAP})} \text{ when } \text{TCAP} < T < 30^{\circ}\text{C}$$

$$= 10^{0.03(20-T)} \text{ when } 0 < T < \text{TCAP}$$

$$\text{TCAP} = 25^{\circ}\text{C (acute standard)}$$

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= 20°C (chronic standard)

FPH = Final pH

= 1 when 8.0 < pH < 9.0

= $(1 + 10^{7.4 - pH}) / 1.25$ when 6.5 < pH < 8.0

RATIO = 13.5 when 7.7 < pH < 9.0

= $20.25 \times (10^{7.7 - pH}) / (1 + 10^{7.4 - pH})$

when 6.5 < pH < 7.7

Conversions from un-ionized to total ammonia concentrations and to mg/Liter ammonia as N should be performed using the formulas for those purposes found in 9 VAC 25-260-140 B, footnotes *** and **** at the bottom of the ammonia Tables 1-4.

9 VAC 25-260-520. Chesapeake Bay, Atlantic Ocean and Small Coastal Basins.

SECTION DESCRIPTION	SEC.	CLASS	SP.STDS.
The Atlantic Ocean from Cape Henry Light (Latitude 36°55'06" North; Longitude 76°00'04" West) east to the three mile limit and south to the North Carolina State line. The Atlantic Ocean from Cape Henry Light to Thimble Shoal Channel (Latitude 36°57'30" North; Longitude 76°02'30" West) from Thimble Shoal Channel to Smith Island (Latitude 37°07'04" North; Longitude 75°54'04" West), and north to the Virginia-Maryland State line.	1	I	a
All free flowing portions of the streams, creeks and coves in Section 1 east of the east-west divide boundary on the Eastern Shore of Virginia.	1a	III	
Tidal portions of streams, creeks and coves in Section 1 east of the east-west divide boundary on the Eastern Shore of Virginia.	1b	II	a
Chesapeake Bay and its tidal tributaries from Old Point Comfort Tower (Latitude 37°00'00" North; Longitude 76°18'08" West) to Thimble Shoal Light (Latitude 37°00'09" North; Longitude 76°14'04" West) to and along the south side of Thimble Shoal Channel to its eastern end (Latitude 36°57'03" North; Longitude 76°02'03" West) to Smith Island (Latitude 37°07'04" North; Longitude 75°54'04" West) north to the Virginia-Maryland border following the east-west divide boundary on the Eastern Shore of Virginia, west along the Virginia-Maryland border, to the Virginia Coast, (Latitude 37°53'23" North; Longitude 76°14'25" West) and south following the Virginia Coast to Old Point Comfort Tower (previously described), unless otherwise designated.	2	II	a
Free flowing portions of streams lying on the Eastern Shore of Virginia west of the east-west divide boundary unless otherwise designated.	2a	III	
Drummonds Millpond including Coards Branch.	2b	III	
The Virginia Department of Agriculture experimental station pond and its tributaries.	2c	III	
The free flowing streams tributary to western portion of the Chesapeake Bay the lying between the Virginia-Maryland State line and Old Point Comfort.	2d	III	
Harwood's Mill Reservoir (in Poquoson River's headwaters - a source of water for the City of Newport News) and its tributaries.	2e	III	PWS
Brick Kiln Creek and its tributaries from Fort Monroe's raw water intake (at the Big Bethel Reservoir) to a point 5 miles upstream.	2f	III	PWS
<i>Sandy Bottom Branch, Accomack County, from the confluence with Holdens Creek upstream including all named and unnamed tributaries.</i>	2h	III	x
Chesapeake Bay from Old Point Comfort Tower (Latitude 37°00'00" North; Longitude 76°18'08" West) to Thimble Shoal Light (Latitude 37°00'09" North; Longitude 76°14'04" West) along the south side of Thimble Shoal Channel to Cape Henry Light (Latitude 36°55'06" North; Longitude 76°00'04" West).	3	II	a
Little Creek from its confluence with Chesapeake Bay (Lynnhaven Roads) to end of navigable waters.	3a	II	a

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Tidal portions of Lynnhaven watershed from its confluence with the Chesapeake Bay (Lynnhaven Roads) to and including Lynnhaven Bay, Western Branch Lynnhaven River, Eastern Branch Lynnhaven River, Long Creek, Broad Bay and Linkhorn Bay, Thalia Creek and its tributaries to the end of tidal waters. Great Neck Creek and Little Neck Creek from their confluence with Linkhorn Bay and their tidal tributaries. Rainey Gut and Crystal Lake from their confluence with Linkhorn Bay.	3b	II	a
Free flowing portions of streams in Section 3b, unless otherwise designated.	3c	III	
Impoundments on Little Creek watershed.	3d	III	PWS
London Bridge Creek from its confluence with the Eastern Branch of Lynnhaven River to the end of tidal waters. Wolfsnare Creek from its confluence with the Eastern Branch Lynnhaven River to the fall line.	3e	II	
Free flowing portions of London Bridge Creek and Wolfsnare Creek and their free flowing tributaries.	3f	III	
Lake Joyce and Lake Bradford.	3g	III	

VA.R. Doc. No. R97-679; Filed July 29, 1997, 4:18 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.

BOARD OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 9-6.14:4.1 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4 VAC 15-330-10 et seq. Fish: Trout Fishing (amending 4 VAC 15-330-150; adding 4 VAC 15-330-171).

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

Effective Date: October 15, 1997.

Summary:

The amendment to 4 VAC 15-330-150 removes the portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County from the list of trout streams on which trout fishing is restricted to catch and release only and all fishing is restricted to the use of artificial lures only. The addition of 4 VAC 15-330-171 prohibits the harvest or possession of trout (but does not prohibit fishing, for trout or other, with the use of any type of legal bait or lures) on this portion of the Jackson River. These amendments effectively reestablish the regulation of fishing on this portion of the Jackson River as it existed prior to January 1, 1997.

Agency Contact: Copies of the regulation may be obtained from Phil Smith, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341.

4 VAC 15-330-150. Special provision applicable to Stewarts Creek Trout Management Area; certain portions of Dan, Jackson, Rapidan, South Fork Holston and Staunton rivers, the East Fork of Chestnut Creek, Roaring Fork, and their tributaries.

It shall be lawful year around to fish for trout using only artificial lures with single hooks within the Stewarts Creek Trout Management Area in Carroll County, in the Rapidan and Staunton rivers and their tributaries upstream from a sign at the Lower Shenandoah National Park boundary in Madison County, in the Dan River and its tributaries between the Townes Dam and the Pinnacles Hydroelectric Project powerhouse in Patrick County and, ~~in the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County,~~ in the East Fork of Chestnut Creek (Farmer's Creek) and its tributaries upstream from the Blue Ridge Parkway in Grayson and Carroll counties, and in

Roaring Fork and its tributaries upstream from the southwest boundary of Beartown Wilderness Area in Tazewell County and in that section of the South Fork Holston River and its tributaries from the concrete dam at Buller Fish Culture Station downstream to the lower boundary of the Buller Fish Culture Station in Smyth County. All trout caught in these waters must be immediately returned to the water. No trout may be in possession at any time in these areas.

4 VAC 15-330-171. Special provisions applicable to certain portion of Jackson River.

It shall be unlawful to creel or possess trout on that portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County.

VA.R. Doc. No. R97-692; Filed July 30, 1997, 11:35 a.m.

DEPARTMENT OF MOTOR VEHICLES

Title of Regulation: 24 VAC 20-20-10 et seq. Privacy Protection Act Rules and Regulations (REPEALED).

Statutory Authority: §§ 46.2-203 and 46.2-208 of the Code of Virginia.

Effective Date: September 20, 1997.

Summary:

In 1977 the Commissioner of the Department of Motor Vehicles adopted regulations to carry out provisions of the Privacy Protection Act as related to driver and vehicle information. These Privacy Protection Act Rules and Regulations categorize the type of information that may be disseminated, the purpose for which the information may be used, to whom information may be disseminated, and specify security and usage requirements. With amendments to §§ 46.2-208 through 46.2-210 of the Code of Virginia, these regulations are no longer needed. Therefore, DMV has repealed these regulations.

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: Marc Copeland, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23269-0001, telephone (804) 367-1875.

VA.R. Doc. No. R97-646; Filed July 17, 1997, 3:55 p.m.

Final Regulations

Title of Regulation: 24 VAC 20-30-10 et seq. Virginia Driver Improvement Act Rules and Regulations (REPEALED).

Statutory Authority: §§ 46.2-203 and 46.2-489 of the Code of Virginia.

Effective Date: September 20, 1997.

Summary:

This regulation sets forth general requirements for assignment to the various treatments outlined in the Driver Improvement Program statutes prior to the 1995 amendments. The purpose of this action is to repeal the existing regulation, which was originally promulgated in 1975 and last amended in 1978. As such, the regulation has no substantive relationship to either the current statute or program.

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: Marc Copeland, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23269-0001, telephone (804) 367-1875.

VA.R. Doc. No. R97-645; Filed July 17, 1997, 3:56 p.m.

Title of Regulation: 24 VAC 20-130-10 et seq. International Registration Plan Virginia Rules and Regulations (REPEALED).

Statutory Authority: §§ 46.2-203 and 46.2-703 of the Code of Virginia.

Effective Date: September 20, 1997.

Summary:

The purpose of this action is to repeal the regulation. This regulation was first published in 1975 when Virginia and 13 other jurisdictions were members of the International Registration Plan (Plan). The regulation was used by Virginia primarily as a tool to educate the motor carrier industry to the workings of the Plan. Today, there are 49 jurisdictions that are members of the International Registration Plan. The Plan has been changed many times in the intervening years, making the regulation published in 1975 obsolete. The current Plan, along with various other related national policies and procedures, provides the necessary guidance to the member jurisdictions and the motor carrier industry alike.

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: Marc Copeland, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23269-0001, telephone (804) 367-1875.

VA.R. Doc. No. R97-644; Filed July 17, 1997, 3:57 p.m.

BOARD OF NURSING

Title of Regulation: 18 VAC 90-50-10 et seq. Regulations Governing the Certification of Massage Therapists.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Effective Date: September 17, 1997.

Summary:

This regulation establishes an application process and requirements for certification in accordance with the provisions of § 54.1-3029 of the Code of Virginia, fees for administration of the regulatory program, a schedule of renewal and reinstatement, and standards of conduct which will protect the health, welfare and safety of the citizens of the Commonwealth. The board adopted changes to the proposed regulation by: (i) accepting 200 hours in a noncertified education program for someone seeking certification, provided the applicant meets other requirements of law and regulation; (ii) allowing an applicant who has been in practice for any amount of time prior to July 1, 1997, and has met other requirements to become certified; (iii) requiring that applicants for certification under the provisions of § 54.1-3029 B of the Code of Virginia apply for such certification prior to July 1, 1998; and (iv) providing that any material misrepresentation in the course of one's practice as a massage therapist could be considered unprofessional conduct and grounds for disciplinary action by the board.

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 Nancy K. Durrett, R.N., Board of Nursing, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909.

CHAPTER 50. REGULATIONS GOVERNING THE CERTIFICATION OF MASSAGE THERAPISTS.

PART I. GENERAL PROVISIONS.

18 VAC 90-50-10. Definitions.

The terms "board," "certified massage therapist" and "massage therapy," when used in this chapter, shall have the meanings ascribed to them in § 54.1-3000 of the Code of Virginia.

18 VAC 90-50-20. Operational requirements.

A. Requirements for current mailing address.

1. Each applicant or certificate holder shall maintain a record of his current mailing address with the board. Any change of address shall be submitted in writing to the board within 30 days of such change.
2. All required notices mailed by the board to any applicant or certificate holder shall be validly given when mailed to the latest address on file with the board.

B. A certificate holder who has had a change of name shall submit as legal proof to the board a copy of the marriage certificate or court order evidencing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence and the required fee.

C. Each certified massage therapist shall conspicuously post his current Virginia certificate in a public area at his practice location.

18 VAC 90-50-30. Fees.

A. Fees listed in this section shall be payable to the Treasurer of Virginia and shall not be refunded unless otherwise provided.

B. Fees required by the board are:

Application for certification	\$40
Biennial renewal	\$50
Reinstatement of certification	\$50
Duplicate certificate	\$15
Verification of certification	\$25
Transcript of all or part of applicant/ certificate holder records	\$20
Returned check charge	\$15

PART II.
REQUIREMENTS FOR CERTIFICATION.

18 VAC 90-50-40. Initial certification.

A. An applicant seeking initial certification shall submit a completed application and required fee and verification of meeting the requirements of § 54.1-3029 A or B of the Code of Virginia.

B. An applicant who does not meet the education and examination requirements of § 54.1-3029 A of the Code of Virginia shall provide satisfactory evidence that the applicant:

1. Is at least 18 years old;
2. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in this chapter; and
3. Has competed at least 200 hours of training in a [certified massage therapy] education program as provided in § 54.1-3029 B of the Code of Virginia and

has [~~at least one year of practice in~~ been practicing] massage therapy [prior to July 1, 1997], or has completed 20 hours of such training and has at least 10 years of practice in massage therapy, or has passed the National Certification Exam for Therapeutic Massage and Bodywork prior to 1994.

[Applicants for certification under the provisions of § 54.1-3029 B of the Code of Virginia shall have met all requirements and paid the required fee prior to July 1, 1998. A completed application shall be postmarked on or before June 30, 1998.]

18 VAC 90-50-50. Certification by endorsement.

A. A massage therapist who has been licensed or certified in another U.S. jurisdiction and who is in good standing or is eligible for reinstatement, if lapsed, shall be eligible for certification by endorsement in Virginia.

B. An applicant for certification by endorsement shall submit a completed application and required fee to the board and shall submit the required form to the appropriate credentialing agency in the state of original licensure or certification for verification. Applicants will be notified by the board after 30 days if the completed verification form has not been received from that state.

C. An applicant who has been licensed or certified in another country shall take a national certifying examination and become nationally certified as required by § 54.1-3029 of the Code of Virginia.

18 VAC 90-50-60. Provisional certification.

A. An eligible candidate who has filed an application for certification in Virginia may practice massage therapy in Virginia for a period not to exceed 90 days between completion of the education program and the receipt of the results of the candidate's first certifying examination.

B. The designation of "massage therapist" or "certified massage therapist" shall not be used by the applicant during the 90 days of provisional certification.

C. An applicant who fails the certifying examination shall have his provisional certification withdrawn upon the receipt of the examination results and shall not be eligible for certification until he passes such examination and becomes nationally certified.

PART III.
RENEWAL AND REINSTATEMENT.

18 VAC 90-50-70. Renewal of certification.

A. Certificate holders born in even-numbered years shall renew their certificates by the last day of the birth month in even-numbered years. Certificate holders born in odd-numbered years shall renew their certificates by the last day of the birth month in odd-numbered years.

B. The certificate holder shall complete the application and return it with the required fee.

Final Regulations

C. Failure to receive the application for renewal shall not relieve the certified massage therapist of the responsibility for renewing the certificate by the expiration date.

D. The certificate shall automatically lapse by the last day of the birth month if not renewed; and use of the title "massage therapist" or "certified massage therapist" is prohibited.

18 VAC 90-50-80. Reinstatement of lapsed certificates.

A. A massage therapist whose certificate has lapsed shall file a reinstatement application and pay the current renewal fee and the reinstatement fee.

B. The board may require evidence that the massage therapist is prepared to resume practice in a competent manner.

PART IV. DISCIPLINARY PROVISIONS.

18 VAC 90-50-90. Disciplinary provisions.

The board has the authority to deny, revoke or suspend a certificate issued or to otherwise discipline a certificate holder upon proof that the practitioner has violated any of the provisions of § 54.1-3007 of the Code of Virginia or of this chapter or has engaged in the following:

1. Fraud or deceit which 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. Misrepresenting one's qualifications including scope of practice.

2. Unprofessional conduct which shall mean, but shall not be limited to:

- a. Performing acts which constitute the practice of any other health care profession for which a license or a certificate is required or acts which are beyond the limits of the practice of massage therapy as defined in § 54.1-3000 of the Code of Virginia;
- b. Assuming duties and responsibilities within the practice of massage therapy without adequate training or when competency has not been maintained;
- c. Failing to acknowledge the limitations of and contraindications for massage and bodywork or failing to refer patients to appropriate health care professionals when indicated;
- d. Initiating or engaging in any sexual conduct involving a patient;
- e. Falsifying or otherwise altering patient or employer records [;]

f. Violating the privacy of patients or the confidentiality of patient information unless required to do so by law; [or]

g. Employing or assigning unqualified persons to practice under the title of "massage therapist" or "certified massage [~~therapist~~ therapist"; or]

[h. Engaging in any material misrepresentation in the course of one's practice as a massage therapist.]

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF NURSING
6606 WEST BROAD STREET, 4TH FLOOR
RICHMOND, VIRGINIA 23230-1717
(804) 662-9909

INSTRUCTIONS FOR FILING APPLICATION
FOR CERTIFICATION AS A MASSAGE THERAPIST

APPLICATION

COMPLETE THE APPLICATION FORM AND RETURN IT WITH THE REQUIRED FEE TO THE ADDRESS SHOWN ABOVE. COMPLETE THE AFFIDAVIT ON PAGE 3 AND HAVE IT NOTARIZED BY A NOTARY PUBLIC.

SUPPORTING DOCUMENTS

THE FOLLOWING IS REQUIRED TO SUPPORT THE APPLICATION:

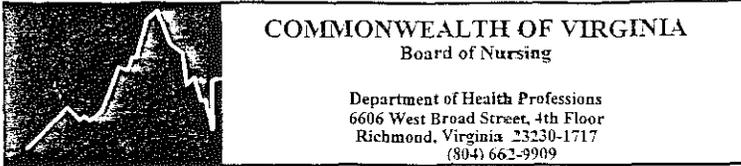
1. A TRANSCRIPT FROM YOUR MASSAGE THERAPY EDUCATION PROGRAM SENT DIRECTLY TO THIS OFFICE.
2. VERIFICATION OF HAVING PASSED THE NATIONAL CERTIFICATION EXAM FOR MASSAGE AND BODY WORK OR EVIDENCE THAT YOU ARE SCHEDULED TO TAKE THE NEXT AVAILABLE EXAMINATION SENT DIRECTLY TO THIS OFFICE.
3. VERIFICATION OF CURRENT NATIONAL CERTIFICATION.

PROVISIONAL CERTIFICATION

1. AN ELIGIBLE CANDIDATE WHO HAS FILED AN APPLICATION FOR CERTIFICATION IN VIRGINIA MAY PRACTICE MASSAGE THERAPY IN VIRGINIA FOR A PERIOD NOT TO EXCEED 90 DAYS BETWEEN COMPLETION OF THE EDUCATION PROGRAM AND RECEIPT OF THE RESULTS OF THE CANDIDATE'S FIRST CERTIFYING EXAMINATION.
2. DURING THE 90 DAYS OF PROVISIONAL CERTIFICATION, THE DESIGNATION OF "MASSAGE THERAPIST" OR "CERTIFIED MASSAGE THERAPIST," MAY NOT BE USED.
3. AN APPLICANT WHO FAILS THE CERTIFYING EXAMINATION WILL HAVE HIS PROVISIONAL CERTIFICATION WITHDRAWN AND WILL NOT BE ELIGIBLE FOR CERTIFICATION UNTIL HE PASSES SUCH EXAMINATION AND BECOMES NATIONALLY CERTIFIED.

AN INCOMPLETE APPLICATION FOR LICENSURE WILL BE RETAINED ON FILE ONLY AS REQUIRED FOR AUDIT. IF NOT COMPLETED WITHIN ONE YEAR, A NEW APPLICATION MAY BE NECESSARY.

PLEASE NOTIFY THIS OFFICE WITHIN THIRTY DAYS OF A NAME CHANGE OR ADDRESS CHANGE.



**APPLICATION FOR CERTIFICATION
MESSAGE THERAPIST**

I hereby make application for certification as a massage therapist. The following information in support of my application is submitted with a check or money order in the amount of \$40 made payable to the Treasurer of Virginia. Fee is non-refundable.

For Office Use Only				Approval:
Fee Rec'd:	Ack. Sent:	Pt. 2 Rec'd:	Provisional Number:	Certificate Number # 0019:
		Pt. 3 Rec'd:		Date Issued:

1. Identifying Information

APPLICANT - Please print or type the information requested below and on the succeeding pages. Use full name not initials.

Name - Last	Suffix	First	Middle	Maiden
Street Address				
City		State		Zip Code
Date of Birth (M/D/Y)		Social Security Number		Area Code & Telephone Number

2. Education Information

Name of Education Program: _____

Program Address: _____

Date Program Completed:	Length of Program in hours:
-------------------------	-----------------------------

Program accredited/approved by: (Accrediting Authority) _____

3. Examination and Certification Information

Title of Examination:	Date Passed:
Name of Certification Organization:	Registration No.:

4. Please respond to the following questions:

- Have you ever *applied* for licensure or certification as a health care provider in Virginia? Yes ___ No ___ If yes: Year _____ Type of license _____
- Have you ever *applied* for licensure or certification as a health care provider in another state? Yes ___ No ___ If yes give the date, state and type of license: State _____ Year Certified/Licensed _____ Type of License _____
- (1) Have you ever been certified or licensed as a massage therapist in any jurisdiction? Yes ___ No ___ If yes give the certificate or license number and jurisdiction. State of original licensure _____ Year _____ Certificate/License number _____
- (2) In what other states have you been certified or licensed as a massage therapist? State _____ Year Certified/Licensed _____ Certificate/License Number _____ State _____ Year Certified/Licensed _____ Certificate/License Number _____ State _____ Year Certified/Licensed _____ Certificate/License Number _____

d. Please answer yes or no to each of the following:

Has any certificate or license issued to you been voluntarily surrendered to any licensing authority in any jurisdiction _____, placed on probation _____, suspended _____, revoked _____, or otherwise disciplined _____ or has your practice ever been the subject of an investigation by any licensing board _____? If yes, explain in detail below.

Is your certificate or license in good standing in all jurisdictions where licensed? Yes ___ No _____. If no, explain in detail below.

- Have you ever been convicted, pled guilty to or pled Nolo Contendere to the violation of any federal, state or other statute or ordinance constituting a felony or misdemeanor? (Including convictions for driving under the influence, but excluding traffic violations) Yes ___ No _____. If yes, explain on next page and have a certified copy of the court order sent directly to the Board of Nursing.
- Do you have a mental, physical or chemical dependency condition which could interfere with your current ability to practice as a massage therapist? Yes ___ No _____. If yes, explain on next page and have a letter from your treating licensed professional, summarizing diagnosis, treatment, and prognosis, sent directly to the Board of Nursing.
- If education program was less than 500 hours, list employers and dates of employment since completion of education program.

Employer: _____	Dates: From: _____ To: _____
Address: _____	Phone #: _____
Employer: _____	Dates: From: _____ To: _____
Address: _____	Phone #: _____
Employer: _____	Dates: From: _____ To: _____
Address: _____	Phone #: _____

(Use space on next page if additional lines are needed)

PLEASE BE SURE THAT YOU HAVE ANSWERED EACH OF THE ABOVE QUESTIONS.

EXPLANATIONS

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF NURSING
6606 WEST BROAD STREET, 4TH FLOOR
RICHMOND, VIRGINIA 23230-1717
(804) 662-9909

INSTRUCTIONS FOR FILING APPLICATION
FOR CERTIFICATION AS A MASSAGE THERAPIST BY ENDORSEMENT

APPLICATION FORM

COMPLETE THE APPLICATION FORM AND RETURN IT WITH THE REQUIRED FEE TO THE BOARD OFFICE. COMPLETE THE AFFIDAVIT ON PAGE 3 AND HAVE IT NOTARIZED BY A NOTARY PUBLIC.

LICENSE VERIFICATION FORM

COMPLETE ONLY THE TOP PORTION OF THE LICENSE VERIFICATION FORM AND SEND IT TO THE LICENSING AUTHORITY WHERE YOU WERE ORIGINALLY CERTIFIED OR LICENSED BY EXAMINATION. YOU ARE RESPONSIBLE FOR ANY FEE YOUR ORIGINAL AUTHORITY MAY REQUIRE TO COMPLETE THE FORM. DELAYS MAY BE AVOIDED BY INQUIRING ABOUT THESE FEES IN ADVANCE. YOUR ORIGINAL LICENSING AUTHORITY WILL SEND THE FORM TO THIS OFFICE. VERIFICATION FORMS RECEIVED IN THIS OFFICE PRIOR TO RECEIPT OF THE APPLICATION WILL BE RETAINED ON FILE FOR NO LONGER THAN 90 DAYS. IF THE APPLICATION IS NOT RECEIVED WITHIN THIS TIME, YOU MUST REQUEST ANOTHER FORM TO BE COMPLETED AND SENT TO THIS OFFICE.

NAME CHANGE

IF YOUR NAME ON THE APPLICATION FOR VIRGINIA CERTIFICATION IS DIFFERENT FROM THE NAME ON FILE WITH YOUR ORIGINAL LICENSING AUTHORITY, A COPY OF YOUR MARRIAGE CERTIFICATE OR THE COURT ORDER AUTHORIZING THE CHANGE MUST ACCOMPANY YOUR APPLICATION.

FOR APPLICANTS EDUCATED IN OTHER COUNTRIES

IF YOUR MASSAGE THERAPY EDUCATION WAS RECEIVED IN ANOTHER COUNTRY AND YOU ARE NOT LICENSED IN ANOTHER STATE IN THE U.S.A., CONTACT THIS OFFICE BEFORE FILING THIS APPLICATION.

AN INCOMPLETE APPLICATION FOR LICENSURE WILL BE RETAINED ON FILE ONLY AS REQUIRED FOR AUDIT. IF NOT COMPLETED WITHIN ONE YEAR, A NEW APPLICATION MAY BE NECESSARY.

PLEASE NOTIFY THIS OFFICE WITHIN THIRTY DAYS OF A NAME CHANGE OR ADDRESS CHANGE.

AFFIDAVIT

(To be completed before a notary public)

State of _____ County/City of _____

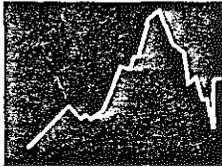
Name _____, being duly sworn, says that he/she is the person who is referred to in the foregoing application for certification as a massage therapist in the Commonwealth of Virginia; that the statements herein contained are true in every respect; that he/she has complied with all requirements of the law; and that he/she has read and understands this affidavit.

Signature of Applicant

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

My commission expires on _____

Signature of Notary Public



COMMONWEALTH OF VIRGINIA
Board of Nursing

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717
(804) 662-9909

**APPLICATION FOR CERTIFICATION BY ENDORSEMENT
MASSAGE THERAPIST**

I hereby make application for certification as a massage therapist. The following information in support of my application is submitted with a check or money order in the amount of \$40 made payable to the Treasurer of Virginia. Fee is non-refundable.

For Office Use Only				Approval:
Fee Rec'd:	Ack. Sent:	Pt. 2 Rec'd:	Pt. 3 Rec'd:	Certification Number #0019:
				Date Issued:

I. Identifying Information

APPLICANT - Please print or type the information requested below and on the succeeding pages. Use full name not initials.

Name - Last	Suffix	First	Middle	Maiden
Street Address				
City		State		Zip Code
Date of Birth (M/D/Y)	Social Security Number		Area Code & Telephone Number	

2. Education Information

Name of Education Program:	
Program Address:	
Date Program Completed:	Length of Program in hours:
Program accredited/approved by: (Accrediting Authority)	

3. Examination and Certification Information

Title of Examination:	Date Passed:
Name of Examining Authority:	

4. Certification/Licensure History

a. For applicants who have been certified or licensed in another state:

State of original certification/licensure _____
Year _____ Certificate/License number _____

1. In what other states have you been certified or licensed as a massage therapist?

State _____	Year Certified/Licensed _____	Certificate/License Number _____
State _____	Year Certified/Licensed _____	Certificate/License Number _____
State _____	Year Certified/Licensed _____	Certificate/License Number _____

b. Please answer yes or no to each of the following:

Has any certificate or license issued to you been voluntarily surrendered to any licensing authority in any jurisdiction _____, placed on probation _____, suspended _____, revoked _____, or otherwise disciplined _____ or has your practice ever been the subject of an investigation by any licensing board _____? If yes, explain in detail below.

Is your certificate or license in good standing in all jurisdictions where licensed? Yes _____ No _____. If no, explain in detail below.

5. Have you ever been convicted, pled guilty to or pled Nolo Contendere to the violation of any federal, state or other statute or ordinance constituting a felony or misdemeanor? (Including convictions for driving under the influence, but excluding traffic violations) Yes _____ No _____. If yes, explain below and have a certified copy of the court order sent directly to the Board of Nursing.

6. Do you have a mental, physical or chemical dependency condition which could interfere with your current ability to practice as a massage therapist? Yes _____ No _____. If yes, explain below and have a letter from your treating licensed professional, summarizing diagnosis, treatment, and prognosis, sent directly to the Board of Nursing.

PLEASE BE SURE THAT YOU HAVE ANSWERED EACH OF THE ABOVE QUESTIONS.

EXPLANATIONS:

EXPLANATIONS (Continued)

VA.R. Doc. No. R97-660; Filed July 23, 1997; 12:23 p.m.

AFFIDAVIT

(To be completed before a notary public)

State of _____ County/City of _____

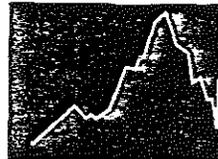
Name _____, being duly sworn, says that he/she is the person who is referred to in the foregoing application for certification as a massage therapist in the Commonwealth of Virginia; that the statements herein contained are true in every respect; that he/she has complied with all requirements of the law; and that he/she has read and understands this affidavit.

Signature of Applicant

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

My commission expires on _____

Signature of Notary Public



COMMONWEALTH OF VIRGINIA
Board of Nursing

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717
(804) 662-9909

MASSAGE THERAPIST
CERTIFICATION/LICENSURE VERIFICATION FORM

TO THE APPLICANT - Complete the top portion only and send to licensing authority in the state where you were originally certified or licensed as a massage therapist. (Fee may be required.)

Name - Last	First	Middle	Social Security Number
-------------	-------	--------	------------------------

Address _____

License or Certification Number:	Year Issued:
----------------------------------	--------------

Name on Original License or Certificate: _____

TO THE LICENSING AUTHORITY: Please provide information requested and return form to the Virginia Board of Nursing.

APPLICANT'S FULL NAME:

Last	First	Middle	Maiden
------	-------	--------	--------

Was school approved/accredited at time applicant graduated? Yes No Date Program Completed: _____

Name of School _____

Location: _____

Title of Examination: _____ Date Passed _____

Name of National Certifying Organization _____

CERTIFICATE OR LICENSE NUMBER _____ was granted on _____ by examination _____ by endorsement _____ Status of License: Current Lapsed Inactive

Has license ever been suspended, revoked or otherwise disciplined? Yes No If yes, please attach certified copy of any order by the Board.

I certify the above information to be true in every respect, according to the record on file with the _____ Licensing Authority.

EMERGENCY REGULATIONS

BOARD OF DENTISTRY

Title of Regulation: 18 VAC 60-20-10 et seq. Virginia Board of Dentistry Regulations (adding 18 VAC 60-20-105).

Statutory Authority: §§ 54.1-2400 and 54.1-2709 of the Code of Virginia.

Effective Dates: July 16, 1997, through July 1, 1998.

Statement of Necessity for Emergency Regulations:

At its meeting on May 2, 1997, the Virginia Board of Dentistry approved a proposed emergency regulation for the establishment of an inactive license in dentistry and dental hygiene. Proposed regulations are consistent with and mandated by Chapter 855 of the 1997 Acts of Assembly, which included a provision for promulgation of effective regulations in 280 days or less from the enactment of the legislation. Therefore, in accordance with § 9-6.14:4.1 C 5 of the Administrative Process Act, the Board has adopted 18 VAC 60-20-105 of this chapter as an Emergency Regulation.

The Board intends to make inactive licensure available to its licensees as soon as possible in order to relieve retirees from the burden of taking continuing education courses. Therefore, the Board has adopted this emergency regulation to become effective on or after July 1, 1997, consistent with the effective date of the law.

18 VAC 60-20-105. Inactive License.

A. Any dentist or dental hygienist who holds a current, unrestricted license in Virginia may, upon submission of the required application and fee, be issued an inactive license. The holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry or dental hygiene in Virginia.

B. An inactive license, held for more than one year, may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed CE hours equal to the requirement for the number of years, not to exceed three years, in which the license has been inactive. The Board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2706 of the Code of Virginia.

/s/ John W. Hasty, Director
Department of Health Professions
Date: May 30, 1997

/s/ Robert C. Metcalf
Secretary of Health and Human Resources
Date: July 9, 1997

/s/ George Allen
Governor
Date: July 14, 1997

VA.R. Doc. No. R97-643; Filed July 16, 1997, 1:12 p.m.

DEPARTMENT OF STATE POLICE

Title of Regulation: 19 VAC 30-170-10 et seq. Regulations Governing the Operation and Maintenance of the Sex Offender and Crimes against Minors Registry.

Statutory Authority: §§ 19.2-289 and 19.2-390 of the Code of Virginia.

Effective Dates: July 24, 1997, through July 23, 1998.

Preamble:

The 1997 Session of the General Assembly made extensive changes to the Sex Offender and Crimes against Minors Registry including a name change. These changes are reflected in the amended regulations and are also outlined in SB 746, SB 855 and HB 2024.

The effective date of the enabling legislation did not allow sufficient time to comply with the Administrative Process Act (APA).

During the term of these emergency regulations, the Department of State Police will promulgate permanent regulations following the APA.

Definitions.

A Sex Offender and Crimes against Minors Registrant is a person whose offense means a violation of or attempts of Virginia Code §§ 18.2-63, 18.2-64.1, 18.2-370, 18.2-370.1, or a "sexually violent offense," or where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation of subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361 or subsection B of § 18.2-366, or subdivision (B)(1) of § 18.2-374.1.

Sexually violent offense means a violation of §§ 18.2-61, 18.2-67.1, 18.2-67.2 or subdivision (A)(1) of § 18.2-67.3.

Article 1.

Sex Offender and Crimes against Minors Registry Established.

§1.1. The Department of State Police shall keep and maintain a Sex Offender and Crimes against Minors Registry, to include conviction data, including fingerprints and photographs received from the courts and other entities pursuant to Virginia Code § 19.2-390.1 and registrations and re-registrations received from persons required to do so by Virginia Code § 19.2-298.1 through § 19.2-298.4.

§1.2. The records of the Sex Offender and Crimes against Minors Registry shall be maintained separate and apart from all other records maintained by the Department of State Police.

Article 2.

Registration.

§2.1. Any person required to register with the Department of State Police pursuant to Virginia Code § 19.2-298.1 shall do so by completing the Sex Offender Registration Form, Form

~~SP-236, and mailing it to Department of State Police, Central Criminal Records Exchange, Attn: Sex Offender Registry, P. O. Box 27472, Richmond, Virginia 23261-7472. Form SP-236 may be obtained at any office of the Department of State Police.~~

§2.1. Every person convicted after July 1, 1997, of an offense for which registration is required shall be required, as a part of the sentence imposed upon conviction, to register and re-register with the Department of State Police. In accordance with § 19.2-298.1, the court shall order the person to submit all information required by the State Police to the local law enforcement agency. The local law enforcement agency will forward to the State Police such information within seven (7) days of sentencing. Upon release from incarceration, a person who is required to register, must register within ten (10) days of their release from confinement or within ten (10) days of the suspension of their sentence. For those persons who have been convicted in other states of offenses for which registry is required, they shall obtain from the local law enforcement agency in the jurisdiction in which they have established residence, one set of fingerprints and one photograph and shall provide to the local agency all information necessary for inclusion in the Registry. Any person required to register, shall do so by completing the Sex Offender and Crimes against Minors Registration Form (Form SP-236) within the prescribed time period. Completed forms shall be mailed to the Department of State Police, Central Criminal Records Exchange, Attn: Sex Offender Registry, P.O. Box 27472, Richmond, Virginia 23261-7472. Form SP-236 may be obtained at any office of the Department of State Police.

§2.2. Within ~~thirty~~ ten days following any change of residence by any person required to register with the Sex Offender and Crimes against Minors Registry, any such person shall re-register by mailing a new Sex Offender Registration Form with the new residence information. Every person convicted of a sexually violent offense shall re-register with the State Police every ninety (90) days from the date of initial registration in accordance with § 19.2-298.1 (F) of the Code of Virginia. The State Police will provide the person with an address verification form to be used for re-registration (Form SP-236A).

§2.3. Upon the receipt of a registration or re-registration pursuant to § 19.2-298.1 of the Code of Virginia, the Department of State Police will promptly notify the chief law-enforcement officer of the county, city, or town of the locality listed as the person's address on the registration or re-registration and transmit the appropriate information as required by the Federal Bureau of Investigation for inclusion in the National Sex Offender Registry.

§2.4. The duration of registration requirement shall be ten (10) years from the date of initial registration. Any person who has been convicted of (i) two or more offenses for which registration is required or (ii) any sexually violent offense shall have a continuing duty to re-register for life. Any period of confinement in a state or local correctional facility, hospital or any other institution or facility during the otherwise

applicable ten-year period shall toll the registration period and the duty to re-register shall be extended. In accordance with §19.2-390 (E), corrections officials, sheriffs, and jail superintendents of regional jails shall make reports of changes in correctional status information to the Central Criminal Records Exchange.

Article 3.

Expungement from Registry.

§3.1. Upon receipt of a certified copy of a death certificate recording the death of any person registered with the Sex Offender and Crimes against Minors Registry, the Department of State Police will expunge any and all records concerning such person from the Sex Offender and Crimes against Minors Registry.

§3.2. Upon receipt of a duly attested copy of a pardon issued by the Governor of Virginia as to any conviction reported to the Sex Offender and Crimes against Minors Registry, the Department of State Police will expunge any and all records concerning such conviction from the Sex Offender and Crimes against Minors Registry. If the pardoned person has no other convictions requiring registration, the Department of State Police will expunge any and all records concerning such person from the Sex Offender and Crimes against Minors Registry.

§3.3. Upon receipt of a report from any clerk of a circuit court that any conviction previously reported to the Sex Offender and Crimes against Minors Registry has been reversed, the Department of State Police will expunge any and all records concerning such conviction from the Sex Offender and Crimes against Minors Registry. If the person whose conviction is reversed has no other convictions requiring registration, the Department of State Police will expunge any and all records concerning such person from the Sex Offender and Crimes against Minors Registry.

§3.4. Upon receipt of a certified copy of an order of expungement entered pursuant to Virginia Code §§ 19.2-298.3 or 19.2-392.2 the Department of State Police will expunge any and all records concerning such conviction from the Sex Offender and Crimes against Minors Registry. If the person whose conviction has been expunged has no other convictions requiring registration, the Department of State Police will expunge any and all records concerning such person from the Sex Offender and Crimes against Minors Registry.

§3.5. Sexually violent offenders may seek relief from registration in accordance with § 19.2-298.4 of the Code of Virginia which states that upon the expiration of three (3) years from the date upon which the duty to register is imposed, any person convicted of a sexually violent offense as defined in § 19.2-298.1 may petition the court in which he was convicted for relief from the requirement to re-register every ninety (90) days. The court shall hold a hearing on the petition, on notice to the attorney for the Commonwealth, to determine whether the person suffers from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly

Emergency Regulations

impairs his ability to control his sexual behavior. Prior to the hearing the court shall order a comprehensive assessment of the applicant by a panel of three certified sex offender treatment providers as defined in § 54.1-3600. A report of the assessment shall be filed with the court prior to the hearing and costs of the assessment shall be taxed as costs of the proceeding. If, after consideration of the report and such other evidence that the person does not suffer from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior, the petition shall be granted and the duty to re-register every ninety (90) days shall be terminated. The person however, is still under a duty to register annually. Should the petition be denied, the duty to re-register every ninety days shall continue. The person may appeal the denial of the petition to the Supreme Court. A petition for relief pursuant to this section may not be filed within three (3) years from the date on which any previous petition for such relief was denied.

Article 4.

Dissemination of Sex Offender and Crimes against Minors Registry Information.

§4.1. Any authorized officer or employee of an agency authorized to receive Sex Offender and Crimes against Minors Registry information pursuant to Virginia Code § 19.2-390.1 or § 19.2-298.1 through 19.2-298.4 may request such information by completing a Sex Offender Registry Record Request form, Form SP-230, and mailing the completed form, along with the appropriate fee, to Department of State Police, Central Criminal Records Exchange, P. O. Box C-85076, Richmond, Virginia 23261-5076. Form SP-230 may be obtained from any office of the Department of State Police.

§4.2. Sex Offender and Crimes against Minors Registry information shall be made available, upon request, to criminal justice agencies including local law enforcement agencies through the Virginia Criminal Justice Information Network (VCIN) as defined by § 9-169 of the Code of Virginia; public school divisions; private, denominational or parochial school; a child-welfare agency or registered or unregistered small family day-care home as defined in § 63.1-195 of the Code of Virginia; or to any person who is seeking child-minding or day-care services as defined by § 19.2-390.1 (C) of the Code of Virginia.

§4.3. Upon the receipt of a registration or re-registration pursuant to § 19.2-298.1, the Department of State Police shall promptly notify the chief law-enforcement officer of the county, city or town of the locality listed as the person's address on the registration or re-registration and the Federal Bureau of Investigation for entry into the National Sex Offender Registry.

§4.5. Whenever a person subject to registration changes residence to another state, the Department of State Police shall notify the designated law enforcement agency of that state.

Article 5.

Fee for Responding to Requests for Information.

§5.1. Any person requesting Sex Offender and Crimes against Minors Registry information shall pay a fee of fifteen dollars (\$15.00) for each Sex Offender and Crimes against Minors Registry record requested. If the request is made in conjunction with a request for a criminal history "name search" record for the same individual, the person making the request shall pay a fee of twenty dollars (\$20.00), to cover both requests.

I certify that this regulation is full, true, and correctly dated.

/s/ M. Wayne Huggins
Superintendent
Department of State Police
Date: July 23, 1997

/s/ Barry Green
Deputy Secretary of Public Safety
Date: July 16, 1997

/s/ George Allen
Governor
Date: July 17, 1997

Article 6.

Forms.

§6.1. Form SP-236. Sex Offender and Crimes against Minors Registration Form.

§6.2. Form SP-230. Sex Offender and Crimes against Minors Registry Record Request.

§6.3. Form SP-236A. Violent Offender Re-registration.

W-643157
W-643157

SP-230 (Rev. 7-1-97)

Combination Order Form for Criminal History Record and/or Sex Offender and Crimes Against Minors Registry Search

This is a multi-purpose request form. It is imperative to read and follow instructions on the reverse before completing and mailing. Incomplete or inaccurately completed forms will be returned. PERSONAL CHECKS NOT ACCEPTED.

CHARGE ACCT# _____
PAID

Select the type name search requested:

- Criminal History Record _____ \$15.00
Sex Offender and Crimes Against Minors Registry _____ \$15.00
Criminal History/Sex Offender and Crimes Against Minors Registry Record Searches _____ \$20.00

FOR AN ADDITIONAL COPY OF A SEX OFFENDER RECORD OR A CRIMINAL HISTORY RECORD, CHECK THE APPROPRIATE BLOCK AND INCLUDE THE AMOUNT OF \$5.00 FOR EACH ADDITIONAL RECORD REQUEST.

I. Name To Be Searched: A. Last Name First Middle Maiden Sex Race Date of Birth

Complete Address (Street/RFD): Social Security Number:
City State Zip-Code

II. I certify I am entitled by law to receive the requested record(s), and that record(s) provided shall be used only for the screening of current or prospective employees or volunteers. I understand that further dissemination of Sex Offender and Crimes Against Minors Registrations or Criminal History Records or their use for purposes not authorized by law is prohibited and constitutes a violation punishable as a Class 1 or Class 2 misdemeanor. Sex Offender and Crimes Against Minors Registry searches may only be conducted for: public school divisions, private denominational or parochial schools, child welfare agencies, and registered/unregistered small family day-care homes as defined in Section 63.1-195, Code of Virginia, without the notarized consent of the individual.

A. Agency, Individual Or Authorized Agent Making Request: MAIL REPLY TO:

NAME
STREET/RFD
CITY STATE ZIP-CODE

- Search conducted for: (Check the appropriate box)
Registered small family day-care home
Unregistered small family day-care home
Foster care
Domestic adoption
International adoption
VISA application
Child-minding and day-care services
Other

III. ALL individuals making a request for Criminal History Record and/or Sex Offender and Crimes Against Minors Registry search(es) must complete Section I, II & III. As provided in Sections 19.2-389 and 19.2-390.1 of the Code of Virginia, I hereby request the criminal history record and/or sex offender registration of the individual named in Section I(A) above.

Date of Request Signature of Person Making Request Printed Name

CHILD-MINDING OR DAY-CARE SERVICE PROVIDERS

IV. This section MUST be completed by CHILD-MINDING OR DAY-CARE SERVICE PROVIDERS. I hereby consent to and authorize the Virginia State Police to search the Sex Offender and Crimes Against Minors Registry to determine if I am registered as a sex offender. I also authorize the search results to be reported to the agent/individual specified in Section II(A).

Signature of Person Named in I: Notary
My Commission Expires Year

V. RESULTS OF NAME SEARCH: (DO NOT WRITE IN THIS SPACE, OFFICE USE ONLY)
*NO CONVICTION DATA NO CRIMINAL RECORD NO SEX OFFENDER REGISTRATION
*DOES NOT PRECLUDE THE EXISTENCE OF AN ARREST RECORD

Date: By:

Please fold reply at marks indicated

Emergency Regulations

VI. Instructions for completing the Request Form for the Criminal History Record/Sex Offender and Crimes Against Minors Registry search(es).

A. General Instructions:

1. Please read and follow the instructions. There are three types of searches you may request. The types of search and the fee for each are: (Check)
 - Criminal History Record \$15.00
 - Sex Offender and Crimes Against Minors Registry \$15.00
 - Criminal History/Sex Offender and Crimes Against Minors Registry Record \$20.00
2. If your request for a name search is based on requirements in the following categories, complete only Sections I and II and III of the SP 230 form.
 - Registered small family day-care home
 - Unregistered small family day-care home
 - Foster care
 - Domestic adoption
 - International adoption
 - VISA application
 - Child-minding and day-care services*

*Request for child-minding or day-care services requires the notarized signature of the person whose name is in Sections I and IV. Sections I, II, III and IV of this form must be completed. Child-minding or day-care services cannot request criminal history record information on this form.
3. A Sex Offender and Crimes Against Minors Registry search may only be conducted for: law enforcement agencies; public school divisions; private, denominational or parochial schools; child welfare agencies; or a registered/unregistered small family day care home as specified in Section 63.1-195, of the Code of Virginia without the notarized consent of the individual.
4. In signing this form, you are certifying that you are entitled by law to receive the record(s), the record(s) provided shall be used only for the screening of current or prospective employees or volunteers, and that further dissemination of such record or parts thereof not authorized by law is prohibited and constitutes a violation punishable as a Class 1 or Class 2 misdemeanor.

B. Instructions for individual Sections form:

1. Section I: Name To Be Searched
 - A. Type or print legibly the full name (last, first, middle and maiden), sex, race, date of birth, and complete address of the person whose name is to be searched against the master criminal name file and/or the Sex Offender and Crimes Against Minors Registry.
2. Section II: Agency, Individual or Authorized Agent Making Request
 - A. Your agency identification serves as the mailing label for State Police to return the search results, therefore, type or print, legibly the data requested.
3. Section III: Requestor Information and Signature

All requesters of searches must sign and date the disclosure in the space provided.
4. Section IV: Child-Minding

If the requester is engaged in child-minding or day-care services, the form must have the notarized signature of the person whose name is to be searched. This person must sign and date the form in the presence of a notary public. The notary public must sign the form as witness to the signature of the individual.

C. Mailing instructions:

1. This form may be faxed to 804-674-2690. This form cannot be processed until the originals are received with payment. *** Allow 30 days for processing ***
2. Affix postage and mail to:
DEPARTMENT OF STATE POLICE
CENTRAL CRIMINAL RECORDS EXCHANGE
P. O. BOX C-85076
RICHMOND, VIRGINIA 23261-5076

PLEASE PRESS HARD AND USE A BALL-POINT PEN TO IMPROVE LEGIBILITY

MAIL STATE POLICE COPY TO
DEPARTMENT OF STATE POLICE
CENTRAL CRIMINAL RECORDS
EXCHANGE
ATTN: SEX OFFENDER REGISTRY
PO BOX CB5076
RICHMOND, VA 23261-7472

**VIRGINIA DEPARTMENT OF STATE POLICE
INSTRUCTIONS FOR REGISTERING AN INDIVIDUAL IN THE
SEX OFFENDER AND CRIMES AGAINST MINORS REGISTRY**

Distribution
Page 1 Instructions
Page 2 State Police
Page 3 Offender's copy

Registering an individual in the Sex Offender and Crimes Against Minors Registry is not an everyday occurrence, therefore it is most important that you read these instructions thoroughly.

These instructions categorically address responsibilities of clerks of courts, Virginia Departments of Corrections, Probation/Parole and other community supervision law enforcement officials to register a convicted sex offender in the Sex Offender and Crimes Against Minors Registry and forward 1 set of fingerprints and 1 photograph of the individual to the Department of State Police as set forth in Section 19.2-298.1 of the Code of Virginia. Individuals convicted of the following charge must register and their conviction for a charge as recorded in "A" sets forth whether the individual is to be classified as a sex offender or violent sex offender.

A. Convictions Reportable to the Sex Offender and Crimes Against Minors Registry			
Sexually Violent Offenses	Section	Charge	Sexual Offenses
			Section
			18.2-
			18.2-
Rape	18.2-61	*Abduction	18.2-4
Forcible Sodomy	18.2-67.1	*Abduction for immoral purposes clause (ii) or (iii)	18.2-6
Object Sexual Penetration	18.2-67.2	*Carnal knowledge of a child between 13 & 15 years of age	18.2-6
Aggravated Sexual Battery	18.2-67.3	*Carnal knowledge of certain minors	18.2-6
		Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual; battery	18.2-6
		Crimes against nature (carnally knows in any manner and brute animal or knows any male	18.2-3
		or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge)	18.2-3
		Adultery & fornication by persons forbidden to marry;incest	18.2-3
		*Taking indecent liberties with Children	18.2-3
		*Taking indecent liberties with child by persons in a supervisory relationship	18.2-3
		*Production, publication, sale, possession with intent ect.,	18.2-3
		Note: * Attempts of these charges or where the victim is a minor or is physically helpless or mentally	18.2-6
		incapacitated	18.2-6

B. Clerk of Court and Local Law Enforcement Agency

Upon Conviction
Pursuant to Section 19.2-298.1 of the Code of Virginia, every person convicted after July 1, 1997, including juveniles convicted in circuit court whether sentenced as an adult or juvenile for a conviction of any of the crimes listed in Item "A", is required to register in the "Sex Offender and Crimes Against Minors Registry" maintained by the Department of State Police. Upon conviction, the court shall remand the person to the custody of the local law enforcement agency of the county or city for the purpose of obtaining 1 set of fingerprints and 1 photograph. The local law enforcement agency shall also complete the required information on the individuals and forward the fingerprint registration and photograph to the Department of State Police within seven days of sentencing or ten days of suspension of a sentence reportable to the "Registry".

C. Virginia Department of Corrections or Community Supervision

Section 53.1-116 and 53.1-160.1 requires the sheriff, jail superintendent and the Department of Corrections to give notice to an individual prior to their release or discharge of their duty to register and re-register and to obtain the individual's fingerprints and photograph on the registration form and forward to State Police within seven days prior to their release from custody.

D. Local Law Enforcement Agency - Individuals obtaining residence in Virginia from another State

Registration is required for all individuals convicted of violations under the laws of the United States or any other substantially similar law as listed in Item "A" of these instructions for which registration is required. The individual is responsible for reporting to their local law-enforcement agency within ten days of establishing residence for the purpose of a law enforcement official to execute the Sex Offender Registration form and obtain one set of fingerprints and 1 photograph. The local law enforcement official shall advise the individual of his responsibility to re-register and promptly submit the individual's fingerprint registration and photograph to State Police. The disclosure statement of the sex offenders responsibility to register is located on the sex offender's copy of the registration form and must be provided to the individual registering by a law enforcement official.

E. Local Law Enforcement Agency - Registration and change of address

Within Virginia - Whenever a person responsible to register changes residence within the Commonwealth or to another state. They are required to re-register with local law enforcement within 10 days following the change of address. The local law enforcement agency is responsible for executing this document and obtaining a photograph of the sex offender and forwarding the re-registration forthwith to the State Police.
Outside Virginia - Local law enforcement is responsible for executing this registration and obtaining the individual's fingerprints and photograph and recording the address of the new residence outside the Commonwealth to which the individual is moving within 10 days of establishing the new residence.

QUESTIONS REGARDING THESE INSTRUCTIONS OR THE SEX OFFENDER REGISTRATION PROCESS MAY BE DIRECTED TO THE CCRE MANAGER AT 804-674-2070.

INSTRUCTIONS FOR COMPLETING THE REGISTRATION FORM ARE AS FOLLOWS

1. Enter the name and full address of the law enforcement agency completing the registration, including the official's printed name and signature.
2. Record registrant's full name, including maiden if applicable, including sex, race, date of birth, note and aliases used or known to have been used, and social security number.
3. Complete full home address, including county of residence, state and zip code.
4. Require registrant to read "Disclosure of My Duty to Re-Register" and then obtain the registrant's signature.
5. Record SID (CCRE Number), FBI number if known, and date registration was completed.
6. Virginia Conviction(s) Information: List the specific reference to the offense(s) for which the individual has been convicted by recording the Code Section(s) and literal description(s) of the offense(s).
7. Out of State Conviction(s) Information: Record any past criminal convictions which may be substantially similar to the offenses as aforementioned in item A.
8. Affix registrant's photograph and record complete conviction data on the reverse side of the fingerprint card. Upon completion of registration, mail immediately to the address noted on the upper left-hand corner of this document.

Emergency Regulations

SP 236 (REV 7-1-97)

RECORD COMPLETE CONVICTION DATA AND AFFIX REGISTRANT'S PHOTOGRAPH ON THE REVERSE SIDE OF THIS DOCUMENT.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE
SEX OFFENDER REGISTRATION FORM

Distribution:
Page 1 Instructions
Page 2 State Police
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AGENCY NAME _____ AGENCY ADDRESS _____

OFFICIAL COMPLETING THIS REGISTRATION _____ OFFICIAL'S SIGNATURE _____

OFFENDER INFORMATION

LAST NAME _____ MAIDEN _____ FIRST _____ MIDDLE _____ SEX _____ RACE _____

ALIASES USED _____ SSN _____

HOME STREET ADDRESS _____ CITY/TOWN _____ STATE _____ ZIP CODE _____ RESIDENT OF CITY OR COUNTY _____

SEXUAL ABUSE PERSON REGISTERING _____ SID NUMBER OR FBI NUMBER _____ DATE SUBMITTED _____

SIGN AFTER READING DISCLOSURE (SEE BACK)

1. R THUMB	2. R INDEX	3. R MIDDLE	4. R RING	5. R LITTLE
6. L THUMB	7. L INDEX	8. L MIDDLE	9. L RING	10. L LITTLE
LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY		L THUMB	R THUMB	RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

AFFIX PHOTO HERE

NO SMALLER THAN
2" X 4"

NO LARGER THAN
4" X 5"

VIRGINIA CONVICTION(S) INFORMATION

DATE CONVICTED	CONVICTED OF	CODE SECTION	SENTENCING COURT

OUT OF STATE CONVICTION(S) INFORMATION / CONVICTED IN ANOTHER STATE OF SEX OFFENSE(S)

YES NO

DATE CONVICTED	CONVICTED OF	CODE SECTION	SENTENCING COURT

Convictions Reportable to the Sex Offender and Crimes Against Minors Registry

Sexually Violent Offenses		Sexual Offenses	
Charge	Section	Charge	Section
Rape	18.2-61	*Abduction	18.2-47.A
Forcible Sodomy	18.2-67.1	*Abduction for immoral purposes clause (i) or (ii)	18.2-48
Object Sexual Penetration	18.2-67.2	*Carnal knowledge of a child between 13 & 15 years of age	18.2-63
Aggravated Sexual Battery	18.2-67.3	*Carnal knowledge of certain minors	18.2-64.1
		Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual, battery	18.2-67.5
		Crimes against nature (carnally knows in any manner and brute animal or knows any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge)	18.2-361(b)
		Adultery & fornication by persons forbidden to marry;incest	18.2-366(b)
		*Taking indecent liberties with Children	18.2-370
		*Taking indecent liberties with child by persons in a supervisory relationship	18.2-370.1
		*Production, publication, sale, possession with intent ect.,	18.2-374.1.B1
		Note:* Attempts of these charges or where the victim is a minor or is physically helpless or mentally incapacitated	18.2-67.10

Emergency Regulations

SP-236A (7-1-97)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE
SEX OFFENDER AND CRIMES AGAINST MINORS RE-REGISTRATION AND
ADDRESS VERIFICATION FORM

OFFENDER INFORMATION

LAST NAME		FIRST	MIDDLE	SEX	FACE	DOB
HOME STREET ADDRESS		CITY-TOWN	STATE	ZIP CODE	RESIDENT OF CITY OR COUN	
REGISTRATION NUMBER	SID NUMBER	FBI NUMBER	SOCIAL SECURITY NUMBER			

VIOLENT SEX OFFENDER SEX OFFENDER

Please verify the information on this form, with your signature, thumb prints and date. This form must be received at the Department of State Police on or before _____.

Section 19.2-298.1 of the Code of Virginia mandates that every person required to register under this section, other than a person convicted of a sexually violent offense, shall re-register with the State Police on an annual basis from the date of the initial registration. Every person convicted of a sexually violent offense shall re-register with the State Police every ninety days from the date of initial registration. **Failure to comply with the registration required is punishable as a Class 1 misdemeanor or a Class 6 felony.**

The accurate completion and timely submission of the address verification and re-registration form will fulfill your obligation of re-registering and verifying your current address with the Department of State Police as required by Section 19.2-298.1 of the Code of Virginia.

I certify the information provided on the address verification and re-registration form is complete and accurate and I am aware of my responsibility to re-register with the Department of State Police within 10 days of changing my address either within or outside the state of Virginia.

Signature _____ Date _____

Your thumb prints may be taken at any State Police Office or you may contact your local Police Department or Sheriff's Office to request this service.

MAIL THIS FORM TO:
DEPARTMENT OF STATE POLICE
CENTRAL CRIMINAL RECORDS EXCHANGE
ATTN: SEX OFFENDER REGISTRY
P. O. BOX C-85076
RICHMOND, VA 23261-5076
(804) 674-2138

R. THUMB	
L. THUMB	

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 23, 1997

COMMONWEALTH OF VIRGINIA

At the relation of the

CASE NO. PUC970113

STATE CORPORATION COMMISSION

Ex Parte: Investigation of the termination of local exchange service for failure to pay for long distance services

ORDER INVITING COMMENTS

By interim order entered January 28, 1988, in Case No. PUC870004, the Commission allowed Local Exchange Carriers ("LECs") to continue the termination of local service to subscribers who failed to pay for long distance services billed by LECs on behalf of certificated Interexchange Carriers ("IXCs"), but only if the customer had no bona fide dispute with the IXC for whom the LEC is billing. Since that time, the Commission has granted certificates of public convenience and necessity to additional IXCs as well as to new competitive local exchange carriers ("CLECs") pursuant to the provisions of Va. Code § 56-265.4:4.C and the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq.

The policy announced in 1988 was based on conditions at that time. In light of improvements in technology and growing competition, boosted recently by the availability of dialing parity for IXCs in many areas of the Commonwealth, the Commission has determined that this particular issue merits further review and reconsideration. Comments are invited about any aspect of this policy, but at a minimum should address the following:

(1) Is termination of a customer's local service proper for failure to pay the toll bill of (a) that customer's presubscribed IXC, (b) a certificated IXC other than the customer's presubscribed IXC, (c) a noncertificated IXC, or (d) any of the above, i.e., should termination of local service for IXC non-payment be permitted at all?

(2) If local service is not to be terminated for failure to pay toll bills billed on behalf of IXCs, should the prohibition also apply to intraLATA toll furnished by the LEC itself?

(3) If local service is not to be terminated for failure to pay toll bills, should LECs nonetheless be permitted to block a customer's access to IXCs or their own toll services? If such blocking is allowed, should the LEC be permitted to block access to all toll providers, or only to the provider whose bill is unpaid?

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUC970113.

(2) The Division of Communications shall publish on one occasion, on or before August 4, 1997, as classified

advertising, in newspapers of general circulation throughout the Commonwealth, notice as follows:

NOTICE THAT THE VIRGINIA STATE CORPORATION COMMISSION MAY PROHIBIT TERMINATION OF LOCAL TELEPHONE SERVICE FOR FAILURE TO PAY AMOUNTS OWED FOR CERTAIN LONG DISTANCE SERVICES, CASE NO. PUC970113

The Virginia State Corporation Commission ("SCC") is inviting comments about the advisability of prohibiting local telephone companies from terminating a customer's local service for failure to pay for long distance services billed by the local telephone company on behalf of a company providing such service.

Currently, local telephone companies are allowed to terminate local service for a customer's failure to pay a long distance bill if the long distance company has a certificate of public convenience and necessity from the SCC. The SCC invites comments about (1) the advisability of continuing that policy, (2) if local service is not to be terminated for failure to pay toll charges billed on behalf of long distance companies, should the prohibition also apply to regional toll charges furnished by the local telephone company itself, and (3) if local service is not to be terminated, should local telephone companies nonetheless be allowed to block that customer's access to long distance companies?

Persons may submit comments on whether to retain or revise that policy on or before September 5, 1997. Such comments should be sent to the Clerk of the Commission, P.O. Box 2118, Richmond, Virginia 23218, referring to Case No. PUC970113. Individuals may submit single copies. Corporations shall be represented by Virginia counsel and shall submit an original and fifteen (15) copies of any such comments.

Persons desiring copies of the Commission's current order or the January 28, 1988 order in Case No. PUC870004 that established the current policy may order either or both of them by writing the Division of Communications at P.O. Box 1197, Richmond, Virginia 23218 or by calling 804-371-9420.

VIRGINIA STATE CORPORATION COMMISSION

(3) Comments on whether to retain or revise the policy on terminating local service for failure to pay for long distance services may be filed by interested persons on or before September 5, 1997.

(4) The Commission Staff may file a report analyzing the comments on or before September 26, 1997.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to each local exchange company subject to the jurisdiction of the Commission as set out in Appendix A attached hereto; each interexchange carrier certificated in Virginia as set out in Appendix B attached hereto; to the

State Corporation Commission

Office of Attorney General, Division of Consumer Counsel, 900 East Main Street, Richmond, Virginia 23219; to Andrew D. Lipman, Esquire, and Jean L. Kiddo, Esquire, Swidler & Berlin, 3000 K Street, N.W., Washington, D.C. 20007-5116; Operator Service Providers, Mr. Paul Gamberg, 6611 Valjean Avenue #201, Van Nuys, California 91406; the Commission's Office of General Counsel and the Commission's Divisions of Communications, Public Utility Accounting, and Economics and Finance.

VA.R. Doc. No. R97-676; Filed July 29, 1997, 9:16 a.m.

(2) This order shall be sent for publication in the Virginia Register;

(3) 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 give such notice hereof as may be appropriate.

VA.R. Doc. No. R97-677; Filed July 29, 1997, 9:15 a.m.

PROPOSED REGULATION

Bureau of Financial Institutions

Title of Regulation: 10 VAC 5-170-10 et seq. Electronic Funds Transfer (REPEALING).

Statutory Authority: § 12.1-13 of the Code of Virginia.

AT RICHMOND, JULY 21, 1997

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI970062

Ex Parte: In the matter of
repealing the "Virginia Electronic
Funds Transfer (EFT) Regulations"

ORDER REPEALING A REGULATION

By order herein dated May 30, 1997, the Commission directed that notice be given of its intention to repeal the "Virginia Electronic Funds Transfer (EFT) Regulations," Chapter 170 (10 VAC 5-170-10 et seq.) of Title 10 of the Virginia Administrative Code. The statute on which the regulation had been based, v.z., § 6.1-39.4 of the Code of Virginia, was repealed effective July 1, 1997, by Chapter 141 of the 1997 Acts of the General Assembly. The Bureau of Financial Institutions has advised the Commission that the purposes once served by the regulation are now addressed by other provisions of Virginia law and federal law, and the Bureau has recommended that the subject regulation be repealed and that no replacement be adopted at this time.

Notice of the proposed repeal was published June 23, 1997, in the Virginia Register. Notice was also given by mail to all banks and savings institutions chartered under Title 6.1, the Virginia Banker's 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 July 14, 1997, for the filing of comments or requests for a hearing on the proposed repeal. No comment or request for a hearing was received.

Therefore, IT IS ORDERED THAT:

(1) The "Virginia Electronic Funds Transfer (EFT) Regulations," 10 VAC 5-170-10 et seq., is repealed.

MARINE RESOURCES COMMISSION

MARINE RESOURCES COMMISSION

NOTICE: The Marine Resources Commission is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

Title of Regulation: 4 VAC 20-890-10 et seq. Pertaining to Channeled Whelk (amending 4 VAC 20-890-20 and 4 VAC 20-890-30).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: August 1, 1997.

Preamble:

This regulation establishes limitations on the commercial harvest and possession of channeled whelk in order to conserve this resource and provide for continued recruitment of channeled whelk to the fishery. The limitations include a minimum possession size and landing limit and restrictions on the type of gear which can be used to harvest channeled whelk from Virginia waters.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-890-20. Definitions.

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

"Bushel" means a Virginia bushel with a volumetric measure equivalent to 1.4 U.S. standard bushels or 3003.9 cubic inches.

"Channeled whelk" means any whelk of the species Busycotypus canaliculatus.

"Land" or "landing" means to enter port with channeled whelk on board any boat or vessel, to begin offloading channeled whelk, or to offload channeled whelk.

"Length" means the total length of a channeled whelk, measured from the tip of the apex to the outer tip of the shell opening.

4 VAC 20-890-30. Minimum size limits.

It shall be unlawful for any person to possess more than 10 channeled whelk per bushel, which measure less than 5-½ inches in length. Those undersized whelk in excess of the allowance level shall be immediately returned to the water alive.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R97-678; Filed July 29, 1997, 3:25 p.m.

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: Regulations for the Control and Abatement of Air Pollution (Rev. SS).
9 VAC 5-20-10 et seq. General Provisions.
9 VAC 5-80-10 et seq. Permits for Stationary Sources.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. It is needed to implement a federal mandate. 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 21, 1997

VA.R. Doc. No. R97-666; Filed July 28, 1997, 12:15 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-120-360 et seq. Part VI: Medallion II.

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. The regulation is necessary to implement a federal mandate. 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 9, 1997

VA.R. Doc. No. R97-663; Filed July 28, 1997, 12:16 p.m.

MILK COMMISSION

Title of Regulation: 2 VAC 15-10-10 et seq. Public Participation Guidelines (REPEALING).

Title of Regulation: 2 VAC 15-11-10 et seq. Public Participation Guidelines.

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: May 12, 1997

VA.R. Doc. No. R97-667; Filed July 28, 1997, 12:15 p.m.

Title of Regulation: 2 VAC 15-20-10 et seq. Regulations for the Control and Supervision of Virginia's Milk Industry.

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: May 12, 1997

VA.R. Doc. No. R97-668; Filed July 28, 1997, 12:15 p.m.

VIRGINIA RACING COMMISSION

Title of Regulation: 11 VAC 10-20-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, after a review of the public comment received, if necessary and appropriate at that time.

/s/ George Allen
Governor
Date: May 15, 1997

VA.R. Doc. No. R97-669; Filed July 28, 1997, 12:15 p.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: 22 VAC 40-680-10 et seq. Virginia Energy Assistance Program.

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: December 18, 1996

VA.R. Doc. No. R97-662; Filed July 28, 1997, 12:16 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: 9 VAC 20-70-10 et seq. **Financial Assurance Regulations for Solid Waste Facilities.**

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. The regulation is mandated by federal and state 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: May 19, 1997

VA.R. Doc. No. R97-664; Filed July 28, 1997, 12:15 p.m.

STATE WATER CONTROL BOARD

Title of Regulation: 9 VAC 25-195-10 et seq. **General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concentrated Aquatic Animal Production Facilities.**

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. It is needed to implement a federal mandate. 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 19, 1997

VA.R. Doc. No. R97-665; Filed July 28, 1997, 12:15 p.m.

The Legislative Record

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July 1997

Commission on Early Childhood and Child Day Care Programs

June 23, 1997, Richmond

The commission is charged with encouraging the availability of quality, affordable and accessible child day care programs in the Commonwealth and is to serve as a forum for the continuing review and study of these programs and services. The commission convened its first meeting following the 1997 Session to review the Child Care and Development Fund Plan (CCDF) which was formulated this spring by a subcommittee of the State Board

of Social Services. The federal welfare reform legislation passed last year combined all federal child care funds into a single block grant. A comprehensive two-year state child care plan, the CCDF was filed with the federal government on July 1, 1997, for implementation on October 1, 1997. The purpose of the June 23rd meeting was to have the commissioner of the Department of Social Services (DSS) brief the commission on the details of the CCDF and allow a number of interested parties to respond with their concerns about the CCDF.

Prior to the meeting, commission members had formulated a list of questions about the CCDF plan to be answered by DSS. The DSS commissioner turned over his portion of the presentation to the chair of the State Board subcommittee and the DSS director of planning and policy.

4 SJR 259: Electric Utility Restructuring

7 SJR 259: Taxation of Electric Utilities

8 HJR 532: State and Local Taxing Authority

9 Industrial Hemp

10 Courts of Justice Subcommittees

12 HJR 519: Future of Transportation

12 HJR 622: Education for Workforce Training

14 Unclaimed Property

15 Joint Commission on Technology and Science

Formulating the CCDF

The State Board subcommittee had six public work sessions and four public hearings during the months of March, April and May, 1997. The child care community, including advocates, providers, businesses, non-profit organizations, local agency workers and parents, were invited to comment. In addition, DSS staff provided background presentations on particular issues as the plan was developed. The CCDF goals were as follows:

- Ensure that the family child care system contributes to the broader objective of self sufficiency,
- Promote parental choice in the selection of child care,
- Address the problem of the child care waiting lists by ensuring the maximum available dollars are directed to the purchase of child care services,
- Ensure that subsidy dollars are provided to the neediest families,
- Create flexibility in the design of quality child care programs across the State, and

VIRGINIA DIVISION OF LEGISLATIVE SERVICES

Virginia Register of Regulations

- Promote consumer education for parents in the selection of child care.

In order to monitor the achievement of these goals, DSS will secure the services of an independent evaluator. DSS also needs to gather demographic data on those families who receive child care subsidies in the Commonwealth in order to formulate the most equitable methodology for determining eligibility for child day care assistance.

Income Ceiling

The DSS planning director's presentation responded to questions previously raised by commission members. In order to meet the goals of serving the neediest families first and serving the waiting list population, the subcommittee and DSS determined that it was necessary to reduce the income ceiling. Under the current system, income ceilings are set at 50 percent of the state median income, with a local option to serve families with income up to 75 percent of the state median income. The CCDF uses the federal poverty level as the basic indicator for program eligibility and adjusts for local cost of living by establishing four groups with income ceilings ranging from 140 percent to 170 percent of the federal poverty level.

The lowering of the income cap in the Northern Virginia region may help address the acute waiting list problem in this region. For example, Fairfax County estimates that 392 families will no longer be eligible under the new income limits in the CCDF. Families who are ineligible under the new rules will be informed and will receive one additional year of subsidy to prepare for the transition. Localities will then be able to serve families from the waiting list with the funds freed after those families at higher income levels have been moved off the child care subsidy.

Central Reporting

Heretofore, the day care program has been locally focused with no centralized computer system or reporting requirements. DSS must put into place a computer system to track day care data in order to comply with new federal reporting requirements. Because information regarding the waiting list for subsidized care is limited, there is no way to project whether budgeted funds will be sufficient to address all the day care needs of the Commonwealth. In January 1997, a survey of each local department of social services revealed that almost 10,000 families are on waiting lists. In the interest of fundamental fairness, money will be distributed as broadly as possible under the CCDF in the hope of addressing the day care requirements of the Commonwealth's neediest families.

Comments on the CCDF Plan

Several speakers, including child care advocates and representatives of programs affected by the CCDF, welcomed the opportunity to comment on the plan.

The project finance manager of the Virginia Small Business Financing Authority discussed the Child Day Care Financing Program, which provides direct loans to child care providers to finance quality enhancements for their child care programs or to meet or maintain child care standards, including health, safety and fire codes. Through the program, over \$1.9 million in financing has been approved, over 2,400 new child care spaces have opened, over 130 new employment positions have been created, and more than 6,000 children have been served in over 128 centers and family day homes in the past four years. Nevertheless, the CCDF does not include funding for the program as a quality activity. Since the 1997 Appropriations Act already funds the program for fiscal year 1998, DSS responded that it chose to devote all possible CCDF dollars to the direct purchase of day care services for children of needy families.

A representative of Places and Programs for Children, Inc., a United Way Agency, commented that the CCDF does not include a definition of quality even though it allocates four percent of the block grant for quality enhancement. The CCDF does not emphasize quality care over simple custodial care. Finally, DSS should not redefine the whole child care delivery system without knowing its true impact.

A representative of the Virginia Head Start Association stated that since Head Start programs are a significant player in the licensed child day care community, the survey on which the payment rates are based should include the daily cost per child of providing Head Start services. The scholarship program for persons employed in child day care should include Head Start staff under the Head Start to Work wrap-around program. Finally, funding for Head Start expansion is a critical provision of the CCDF.

A representative of the Virginia Association for Early Childhood Education (VAECE) voiced his concern first about the lack of specificity throughout the CCDF. Second, the Local Quality Initiative Grant Program will require wide distribution of funds and it is likely that administrative costs will be increased, thereby reducing the pool of money for quality enhancement. He suggested a regional approach to distributing the funds. Third, the CCDF's attempt at social engineering by instituting a requirement for placement of children at the end of the day care subsidy list if they are born ten months or more after the implementation of the plan is short-sighted in that it will hinder self-sufficiency. Fourth, the method of reimbursement, which pushes parents to find cheap child care in order to reduce or eliminate the amount of co-payments, could lead to the selection of poor quality and less reliable care. Fifth, VAECE expressed disappointment that the commissioner did not follow through with his promise to create a committee to develop the CCDF made up of child care specialists throughout the Commonwealth. Finally, information concerning the State Board of Social Services subcommittee meetings was difficult to obtain, with the result that it impeded meaningful public comment.

A representative of the Family Foundation supported the proposed income ceiling, which ensures that available funds will go further to serve the neediest families. The moneys appropriated by the General Assembly for expansion of the child day care Resource and Referral (R&R) program seems excessive and extravagant. Any R&R system should make it easy for parents to locate all legal, local child care providers through an unbiased listing with brief factual data about each provider.

A representative of the Proprietary Child Care Association of Virginia stated that the goals of the CCDF should be efficiency, consistency in child care policy and parental choice. He commented that any effort made by special interest and "big government" advocates that are designed to control child care and limit parental choice and provider participation should be opposed. He noted that market rates calculated at the 75th percentile of cost are a disincentive for private providers to serve low-income families and argued for a higher rate.

A representative of the Action Alliance for Virginia's Children and Youth criticized the CCDF drafting process for not involving child care professionals, as promised last year by Commissioner Carter, in the actual development of the plan and urged that they be involved in the next phase, the development of the policy and procedural details in implementing the CCDF. As drafted, the plan is unclear on how the funds will be allocated. She stated that a minimum allocation for quality enhancement programs is deficient, and urged the commission to seek stronger quality enhancement programs than the CCDF espouses. She objected to the incentive to poor parents to find the cheapest child care available: "Quality child care is never cheap. Nutritious food, dependable staff with low turnover rate, adequate materials and supplies cost money." She concluded on a positive note in commending the CCDF's emphasis on consumer education and welcomed the great opportunity that the additional child care funds will afford low income people.

A representative of Fairfax County stated that two provisions of the CCDF are problematic: the income ceiling and the parent fee increase over time. She stated that if child care costs too much at the point a family is no longer eligible for a subsidy, the family cannot maintain self-sufficiency. Recognizing that affordable child care is instrumental to the success of welfare reform, Congress allowed states to increase the income ceiling and provide care without time limits. However, the CCDF moves Virginia in the opposite direction. Fairfax County proposes the following alternative income limit:

Federal and state funds may be used to subsidize the cost of care on a sliding fee basis up to 50 percent of the local median income or income in a metropolitan area. Localities in Virginia which have the lowest median incomes may request a review of this provision and exceptions may be made to the 50 percent limit following a review by the department.

Also, the provision to increase parent fees in the fourth and fifth years would have parents pay a higher proportion of the costs irrespective of their income. Fairfax County requests that

localities have the option of using a single fee scale for the entire time a family may be participating in subsidized care.

A representative of the Virginia League of Social Services Executives commended those who have formulated the CCDF for permitting league input throughout the process. However, the league disagrees with the income limits set in the CCDF and proposed the minimum income limit for eligibility be set as described in the Fairfax County proposal. The league also supports a proposal that the time limits for child care subsidies be made a local option. Further, the league proposes a thorough assessment of the administrative requirements for delivering assistance to clients and the additional burdens placed on localities in conjunction with an effort to develop and enhance existing information technology systems. Finally, the league proposes that the CCDF be implemented on a pilot basis in select Virginia localities while conducting an analysis of the changes and that an evaluation component be incorporated.

Finally, a representative from the Virginia Child Care and Resource and Referral Network stated that the CCDF contracts with the statewide Information and Referral System (I&R) to provide information on child day care availability and providers rather than Child Care Resource and Referral Agencies (CCR&R). It would make better sense to contract with CCR&R, which are established agencies already collecting the child care provider data. CCR&R provide services daily that include consumer education and counseling, child care referral, provider training and recruitment activities that increase the supply of child care in the community. I&Rs do not recruit or train child care providers unless they are affiliated with a CCR&R. Moreover, I&Rs update information annually, whereas the CCR&R's data base is constantly updated as they gather information from providers on a daily basis.

Regulations

The chair of the Council on Child Day Care provided an update on the child day center regulations. At its May meeting, council members reviewed suggestions from the Department of Planning and Budget and voted to amend the draft regulations. A revised draft of the proposed regulations has been resubmitted to the Department of Planning and Budget for economic analysis.

JLARC Review of Child Day Care in Virginia

The 1997 Appropriations Act directs the Joint Legislative Audit and Review Commission (JLARC) to examine child day care in Virginia. JLARC conducted its last review in 1990, with the result that a number of legislative changes were made. The project leader of the follow-up study stated that other changes related to child day care since 1990 include a substantial increase in the number of licensed providers, the elimination of the Virginia Council on Child Day Care and Early Childhood Programs by the 1996 General Assembly and the ongoing

reorganization of DSS. The study will be presented on July 14 to JLARC and it will address the following issues:

- How well does the current regulatory system for child care ensure the Commonwealth's interest in protecting the health and safety of children in care?
- How effective is the DSS licensing program in enforcing child care regulations?
- Is state funding for child care effectively and efficiently allocated and administered?

As the meeting concluded, the chairman stated that he was troubled by some of the comments made about the CCDF and looked forward to hearing the recommendations from the JLARC study in July.

The Honorable Stanley C. Walker, *Chairman*
Legislative Services contact: Amy Marschean



SJR 259

Joint Subcommittee Studying Electric Utility Restructuring

July 15 and 16, 1997, Richmond

The joint subcommittee convened a two-day workshop to examine key questions emerging during its second year of studying retail competition in the sale of electricity. Retail competition would permit the competitive sale of electric power, releasing electricity customers from their local public service companies to purchase power in a nationwide electricity market. Proponents contend it would lower the price of electricity for everyone, while critics suggest that the benefits of retail competition would be enjoyed by only a narrow class of large industrial customers, leaving a disrupted market for the remainder. To date, eight states have passed retail competition legislation, while the majority of states—like Virginia—have convened legislative or regulatory studies of this issue.

Virginia's residential, business and industrial electricity rates are relatively low-to-moderately-priced when compared to prices in New Hampshire, Pennsylvania, Rhode Island and California—high-cost states that have enacted retail competition legislation. To date, the joint subcommittee has not received information suggesting that Virginia's electric customers are paying excessive rates. However, as a New Hampshire Public Service Commission attorney told the joint subcommittee, retail competition offers benefits in addition to potential reductions in the cost of electricity. Thus, the joint subcommittee is determining whether there exist other compelling practical and policy reasons for redesigning the Commonwealth's electricity delivery system—a system currently comprising the service territories of investor-owned utilities (such as Virginia Power and AEP Virginia), electric cooperatives, and municipal power systems.

The joint subcommittee convened this two-day workshop to answer the following questions: (i) How many states have enacted restructuring legislation, and what are the features of their bills? (ii) What do the federal restructuring bills look like, and how likely is their passage? and (iii) Is the current electricity

transmission system in Virginia and across the country technologically ready to support nationwide retail competition? Finally, the subcommittee requested information from the public utilities staff of the Virginia State Corporation Commission (SCC) concerning the status of its working groups as the SCC prepares its recommendations concerning a Virginia restructuring plan and a report on that plan slated for November. The subcommittee also reviewed historical and regulatory developments in the electric utility industry triggering this intensive, complex debate.

State Legislative Activity

The joint subcommittee learned that while nearly every state is looking at this issue, only eight states have enacted retail competition legislation thus far. In 1996, legislatures in New Hampshire, Rhode Island, California and Pennsylvania passed bills authorizing retail competition. In 1997, legislatures in Oklahoma, Montana, Maine and Nevada have enacted retail competition laws. Thus, four high cost states moved on this issue in 1996, and three lower-cost states (Maine is considered high cost) have acted in 1997. At the same time, however, retail competition bills failed in 18 states (including Texas, Connecticut, New York, Vermont, and Illinois) during the 1997 legislative season, while legislative study proposals were not approved in Colorado, Georgia, Florida, South Carolina and Vermont.

A utilities market analyst pointed out to the joint subcommittee that the scope and details of the eight restructuring bills enacted vary widely. Some states, like New Hampshire and Pennsylvania, have initial pilot programs in their legislation (in which a percentage of electricity customers may shop for their electric suppliers), followed by phase-in periods to a date in which retail competition is available to all customers statewide. In contrast, Oklahoma's 1997 bill directs its public service commission to develop a retail competition plan. Furthermore, the Oklahoma bill conditions any such plan on the development of an acceptable strategy for dealing with restructuring's potential impact on state and local tax revenues from electric utility taxation.

Federal Legislative Activity

The momentum for legislative study on the state level may be driven, in large part, by the potential for federal legislation preempting state authority over electric competition. Significant federal intervention in the interstate electricity market began in 1978, when Congress passed the Public Utilities Regulatory Policies Act (PURPA), requiring public utilities to purchase power from independent power producers if the latter could produce it as cheaply as the former. And, as underscored by a Virginia Tech professor currently analyzing the utility market's transformation, a federal electric utility policy favoring open markets was declared in earnest with the passage in 1992 of the National Energy Policy Act (EPACT). EPACT and a resultant Federal Energy Regulatory Commission Order (FERC Order 888), opened the transmission system to independent power producers for wholesale power sales. EPACT, however, did not permit FERC to implement retail competition, leaving that issue to the states.

However, a number of federal legislators are eager to open up the retail market, and soon. For example, legislation introduced in 1996 by Congressman Dan Schaefer of Colorado (HR 655) mandates full retail competition in all states by the year 2000. Whether Congress possesses sufficient constitutional authority to mandate state implementation of retail restructuring is open to interpretation, however, following the U.S. Supreme Court's 1997 decision in *Prinz v. U.S.* The *Prinz* decision questions federal authority to direct state implementation of federal legislation unless the federal government has clear preemptive authority granted by the U.S. Constitution over the legislation's subject area. However, a former FERC commissioner told the joint subcommittee that in his opinion, a key U.S. Supreme Court case upholding the constitutionality of PURPA (in which state public utility commissions were effectively directed by federal law to assist in that law's implementation), is probably not in jeopardy despite the *Prinz* decision. Thus, the extent of federal authority in opening the nation to retail competition remains an open question.

A consensus in Congress has not emerged on this issue either. Bills such as Congressman Schaefer's, Congressman DeLay's HR 1230 (mandating full nationwide retail competition by 1999) and others before the House Commerce Committee are, according to a representative of the Edison Electric Institute, in conflict with another view of restructuring in Congress, represented by Senator Thomas's S 21 pending before the Senate Energy Committee. That bill presents a pro-state view emerging in the Senate empowering retail competition in the states, but without federal mandates. Consequently, while both Senate and House committees continue their work on this issue with frequent committee hearings and workshops, no agreement between the two chambers appears imminent.

Restructuring and Transmission System Technology

As part of its two-day activities, the joint subcommittee focused on restructuring and the current electric power transmission system. Subcommittee members toured the Virginia Power System Operations Center to observe that utility's computerized generation, dispatching and transmission management system and also received a presentation from an Electric Power Research Institute (EPRI) representative concerning ongoing research and development work in the field of electric transmission technology. The EPRI representative emphasized that power generation and transmissions related to wholesale power sales ("contract flows") result in power flows in all directions across the interconnected electrical transmission network.

Wholesale power transactions, frequently uncoordinated through any centralized operations system, can potentially overload transmission lines, resulting in their shutdown and—in a severe case—cascading shutdowns of adjacent lines to which power is shifted. According to EPRI's representative, at least one significant recent power outage in the West may have been caused by line overloading relating to wholesale wheeling. EPRI's representative's conceded that these line problems were not caused by retail competition, but stated that retail competition may exacerbate them.

To address these and related load-flow issues, EPRI is participating in establishing an integrated, computerized regional communications network designated as the Open Access Same-time Information System, or OASIS. OASIS, currently in testing stages, will be used by system control centers to determine accurate system status, safe networking operating limits, network overload capabilities, and the impact of power transactions in near real-time. A related system under development (the Flexible Alternating Current Transmission System, or FACTS) is likely to replace generation control as a means of controlling flow over transmission lines. Computerized electronic "valves" will boost power flows on specified transmission lines as a means of ensuring transmission system integrity.

EPRI's representative also warned that regional power generation is essential to steady state voltage security. Large regions importing virtually all of their power will have, he said, extreme difficulty maintaining steady state voltage, which is essential to the safe and efficient operation of electrical equipment. Unstable voltage outside certain tolerances can result in damage to electrical systems and equipment.

SCC Staff Activities

Four members of the SCC public utilities staff appeared before the joint subcommittee to report on the work of staff-coordinated work groups examining five specific topics: (i) a model for a restructured industry, (ii) reliability issues from both a generation and transmission perspective, (iii) stranded costs and stranded margins associated with potential transition to a more

competitive generation market, (iv) the costs and benefits associated with the introduction of more competition into the generation sector, and (v) the potential impacts of a restructured industry on the environment.

The work groups, comprised of representatives of investor-owned utilities, electric cooperatives, independent power producers, major industrial electricity customers, environmental groups, and others with a stake in this issue met extensively in 1997. The groups recently concluded their meetings, and the staff will incorporate the groups' work into the SCC's report on a retail model for Virginia, scheduled for presentation to the joint subcommittee in November.

Models

The models work group examined and critiqued legislation or models proposed or implemented in other states (including Texas, Indiana, Pennsylvania, New Hampshire and California), and members were furnished opportunities to propose and explain models of their own design. Significant models-related issues included concern about price leveling in an open retail market, resulting in rate increases in regions currently served by low-cost utilities. Additionally, group members debated whether regulated local distribution companies (in contrast to generation companies) should be required to be a generation service supplier of last resort and whether any restructuring should be accomplished through pilot programs and transition periods.

Reliability

The reliability group focused on the challenging issues of reconciling customer choice with the physical realities of electrical flows—an issue highlighted in EPRI's presentation to the joint subcommittee. Power flows are dynamic and difficult to control. This group also identified critical ancillary services such as frequency control and voltage regulation—all essential to the provision of reliable electric service in any market, but particularly so in a competitive one. Mandatory generation reserves, a feature of the current, regulated generation system, proved to be a potentially contentious area. Transmission grid users can theoretically rely on the reserves of other generators to assure reliability and may have little incentive to individually provide for sufficient reserves. Reserve cost-sharing in a competitive market may be necessary to ensure generation reliability.

Environment

The environmental group was unable to reach consensus about the effects of retail competition on air pollution. Some members predicted that competition will cause older, more polluting coal plants to be run more often, while others asserted that the mandates of the federal Clean Air Act will minimize emissions. A related issue is the potential competitive disparity between new plants that must be built with expensive pollu-

tion control technologies and those plants built prior to 1978 that are subject to less stringent emissions standards. The group also addressed concerns about the impact of restructuring on the future of utilities' current conservation and load-management programs. Minimizing the construction of new generation and transmission facilities through such programs is thought by some to be at odds with the concept of retail competition, while others suggested that competition may promote energy efficiency.

Costs

Finally, the work of the stranded costs and costs/benefits groups was discussed. The latter group's work encompasses much of the activity of the other groups and will not be discussed in this article. The stranded costs group confronted one of the most difficult issues presented by retail competition. Stranded costs or margins are characterized as the differences between the market value of utilities' generation-related assets in a competitive environment and their book value. In a restructured market, older, high-cost nuclear plants, for example, may not be competitive with new, more efficient natural gas-fired generation units, and the nuclear units' value may be substantially reduced as a result.

The potential for substantial write-downs in generation asset values has resulted in some characterizing the difference between such plants' book values and their potential market value as a stranded cost. For some, like Virginia Power, numerous long-term purchased power contracts with non-utility generators (a byproduct of federal PURPA legislation) at prices currently above-market represent their stranded cost exposure. Such contracts have the same cost effect on a utility as undepreciated generation units. On the other hand, low-cost investor-owned utilities, such as AEP Virginia and Potomac Edison, have existing plants that are fully depreciated. These utilities may have net stranded margins or minimal stranded costs at most, the SCC staff reported.

Utility recovery of stranded costs from rate-payers was the key issue before this work group. The justification offered for this recovery is founded in the notion of a regulatory compact said to exist between franchised public utilities and their regulators. It suggests that stranded costs are essentially sunk investments, which the utilities made to fulfill their legal obligation to provide adequate service to all consumers within their service territories.

Some work group participants advocated full recovery from rate-payers, while others suggested that such costs should be shared fifty-fifty between rate-payers and utilities' shareholders. Those in the latter camp contended that shareholders have explicitly assumed the risk of potential regulatory and statutory reform within the industry. One important consensus: the difficulty of projecting stranded costs, a fact underscored by national estimates of utilities' potential stranded costs ranging from \$50 billion to over \$500 billion.

The work group apparently favored a time-specific, non-bypassable "wires charge" as a mechanism for recovering stranded costs, if they are to be recovered at all. Moreover, the group agreed that utilities should be obligated to mitigate the extent of their stranded costs. In that vein, the California and Pennsylvania restructuring legislation offers up stranded cost "securitization" as a means of mitigation. Securitization enables low-cost debt refinancing of potentially stranded utility assets, securing that debt with legislation establishing a rate-payer-produced stranded cost recovery income stream.

Future Joint Subcommittee Activities

The joint subcommittee will convene its next meeting on August 12, and is slated to receive a report from its task force examining the likely impact of restructuring on state and local tax revenues generated by electric utility taxation. An agreement was reached among the joint subcommittee members during the two-day meeting to request the SCC's assistance in modifying electric utilities' billing statements to itemize state and local taxes currently embedded in customers' monthly electric charges. Currently, state and local taxes paid by electric utilities are recovered, dollar for dollar, from their customers,

since taxes are included in utilities' rates. The taxation task force had recommended this action, suggesting that such information will be useful to electricity customers in the event a transition to retail competition results in direct customer payment of utility taxes in lieu of the indirect method described above.

Additionally, the subcommittee will use its next meeting to receive updates and briefings from the wide variety of groups interested in the subcommittee's work, including power producers, power customers, and others such as environmental groups. These groups will respond to some of the issues raised at the two-day workshop, and will update the joint subcommittee concerning their positions on the issues generated by potential transition to retail competition. The joint subcommittee has also made tentative plans for a meeting in September.

The Honorable Jackson E. Reasor, Jr., *Chairman*
Legislative Services contact: Arlen K. Bolstad



SJR 259

Task Force on State and Local Taxation of Electric Utilities

July 15, 1997, Richmond

The task force continued its study of the potential taxation and revenue implications associated with the introduction of competition in the electric utility industry. The task force was briefed on initiatives enacted by other states as well as the Virginia's tax changes resulting from restructuring in the telecommunications industry. Members also agreed to request assistance from the State Corporation Commission (SCC) in placing tax information on consumers' monthly billing statements and to provide federal tax data to the Department of Taxation.

Telecommunications Companies

Prior to the changes adopted in the late 1980s, telecommunications companies in Virginia were taxed on a gross receipts basis. The Department of Taxation provided an overview of the changes made in taxing these companies, primarily switching from a gross receipts tax to a corporate income tax. To cushion the impact of the change and prevent revenue shortfall, the Commonwealth phased in these changes over a 10-year period and initiated a minimum tax and a tax credit.

The minimum tax on telecommunications companies was based on the gross receipts certified by the SCC, and tax credits were awarded when the corporate income tax paid by a telecommunications company exceeded 1.3 percent of gross receipts. This tax credit was reduced by 10 percent each year and expires after taxable year 1998.

The Department of Taxation stated that it would need company-specific data, notably federal tax returns, in order to determine the revenue impacts that result if electric utilities switch from the present gross receipts tax to a corporate income tax. The department will use the data from these federal tax returns to prepare an analysis of the revenue impact of changing tax schemes. Members of the task force agreed to cooperate in furnishing the needed data, and the department will present its analysis at the next meeting of the task force.

Other States

Legislative activity in other states regarding taxation of electric utilities indicates that many tax and revenue issues are still unresolved. Several of the states that have enacted bills allowing retail competition have not decided on a corresponding change in tax policy. These states have established committees to study the most efficient way to keep tax revenues constant and avoid the creation of a business environment that treats local and out-of-state electric utility companies differently for taxation purposes.

Consumer Information

In a letter to the task force, the Virginia Association of Counties encouraged the task force to take steps to educate all consumers of the amount of tax currently paid by users of electricity. The task force agreed to ask the full joint subcommittee to request the SCC to work with Virginia's electric utilities to facilitate placing this information on monthly electric billing statements.

Next Meeting

The task force will meet again on August 5, 1997, to continue working on recommendations to the SJR 259 joint sub-

committee. The task force will hear about the current tax structure for electric cooperatives in the Commonwealth, receive a briefing on a study commissioned by Virginia Power on the potential tax and revenue consequences of restructuring, and hear analysis by the Department of Taxation on the revenue implications of switching from a gross receipts tax to a corporate income tax.

The Honorable Jackson E. Reasor, Jr., *Chairman*
Legislative Services contact: Rob Omberg



HJR 532

Commission on State and Local Government Responsibility and Taxing Authority

June 23, 1997, Richmond

At the commission's first 1997 meeting, staff presented a brief history of the commission, which began its work in 1995 as a result of HJR 487 and was continued in 1996 by HJR 108. Its original charge was to examine the services provided by state and local governments as well as the taxes and fees required to generate the revenues necessary to provide those services.

During the 1996 General Assembly Session, legislation establishing a model business, professional and occupational license (BPOL) ordinance for use by local governments was proposed by the commission and passed by the legislature. The purpose of the ordinance was to provide more uniformity in the application and administration of the BPOL tax.

Personal Property Tax

SJR 385 (1997) requests the commission to study the advisability of reducing or eliminating the tangible personal property tax and authorizing alternative methods of generating revenue. A bill (SB 750) was also introduced during the 1997 session, which would have increased the state portion of the sales and use tax from 3.5 percent to 5 percent with the revenue generated by the increase being distributed back to the localities in order for them to reduce their reliance on the tangible personal property tax. Each locality would be required to lower the amount of tangible personal property tax revenue it could

collect by the amount of its share of the increased sales tax revenues. The bill failed to come out of the Senate Finance Committee.

Gilmore Proposal

Delegate Thelma Drake presented former Attorney General Jim Gilmore's personal property tax proposal to exempt the first \$20,000 of assessed value of all personally owned vehicles from the tax. Local governments would continue to assess all vehicles and would bill the Commonwealth for the portion exempt from the tax. The state would then reimburse, from revenue growth, the local government, dollar-for-dollar, for the foregone amount. In the event the state could not meet its funding obligations, the localities could collect the tax themselves. Local government would continue to levy the tax on business property and non-vehicles, as well as on assessed values above the exempt amount. The plan would be phased in over a five-year period with the exemption amount starting at \$1,500, going to \$3,000 in year two, \$5,000 in year three, \$12,000 in year four, and \$20,000 in year five.

Localities' Reaction

Representatives of the Virginia Municipal League (VML) and the Virginia Association of Counties (VACo) discussed the importance of the personal property tax to localities' budgets. The tax has served as a healthy revenue source, which has often offset sluggish growth in the real estate tax or sales tax. The average annual growth in personal property tax revenue during the last ten years has been 9 percent. In addition, about 75 percent of the personal property tax revenue is attributable to vehicles, with the remainder coming from business personal property, boats, airplanes, etc. Of that amount, 85 percent of the vehicles are personally owned and would benefit from the exemption. According to VML and VACo, the estimated annual cost to the state of a \$20,000 exemption on personal ve-

hicles would be more than \$1.3 billion in 2003, when the plan is fully implemented. The total in state payments to localities for the first five years is estimated to be \$2.9 billion. Both VML and VACo expressed concerns about the state's being able to fund such amounts consistently.

General Fund Budget

Finally, the commission was briefed on the major general fund budget pressures for the 1998-2000 biennium. Local aid and aid to individuals make up about two-thirds of the general fund budget. Ninety percent of the general fund is spent for public education, sheriffs and jails, police departments and mental health/mental retardation community services boards. In the category of aid to individuals, Medicaid is by far the main recipient by accounting for over three-fourths of all such aid. The major areas that will require additional funding are public education, public safety, Medicaid, debt, and state em-

ployees' salaries and fringe benefits. The estimated increase in necessary funds for these areas is between \$1,009.7 million and \$1,044.7 million for the 1998-2000 biennium.

Next Meeting

During the next meeting, the commission hopes to hear from a panel of economists concerning their revenue projections and expectations for the Commonwealth's economy during the next five years as well as information concerning what effect state actions regarding revenues could have on local governments' bond ratings.

Ms. Eva Tieg, *Chair*

Legislative Services contact: Joan E. Putney



Joint Agriculture Subcommittee Studying Industrial Hemp

July 15, 1997, Richmond

The joint subcommittee, comprised of members of the House Committee on Agriculture and the Senate Committee on Agriculture, Conservation and Natural Resources, is examining the potential benefits of, and barriers to, the production of industrial hemp in Virginia. At the joint subcommittee's first meeting, three individuals with expertise in the history, cultivation, processing, and marketing of industrial hemp provided members with a broad range of information.

Background and History

The history of hemp is a long one, going back centuries in Europe and Asia and to the Colonial era in this country. Both Washington and Jefferson, for example, cultivated hemp on their plantations for use in making rope, and at various times in U.S. history, notably the Civil War, hemp was a highly valued crop.

Hemp, however, is *cannabis sativa*, the same plant that produces marijuana. Since 1937, therefore, it has not been legally cultivated in this country (with the exception of a few years during World War II). The psychoactive ingredient in *cannabis sativa* is tetrahydrocannabinol (THC), and in varieties of hemp grown for commercial purposes, the THC content is so

low (less than one percent) as to render the hemp useless as a drug.

The potential value of industrial hemp, for production of fiber, pulp for paper, and hemp seed, among other uses, has sparked renewed interest in the cultivation and processing of hemp. In several other states (e.g., Kentucky, Missouri, Colorado, Wisconsin, and Vermont) a variety of initiatives to study, and in some cases to cultivate on an experimental basis, industrial hemp have been considered. Because of strong opposition from law-enforcement, most prominently the federal Drug Enforcement Administration (DEA), other states, like Virginia, are currently limited to studying industrial hemp.

Other Countries

Industrial hemp is currently grown legally in many countries, and in some countries has been for many years. China, Russia, eastern European countries, and France have long histories with industrial hemp, and they have been joined lately by the United Kingdom and Canada. These nascent initiatives in the UK and Canada are of particular interest in that they are so recent and are closely regulated by their respective governments.

Reports from both countries indicate success with the cultivation of the crop, albeit on a limited basis, and very little problem with a misguided public stealing the hemp for illicit purposes (for which it is essentially useless). Potential markets for hemp and the infrastructure needed to process the raw material remain areas of concern, especially when compared to countries with a longer history of cultivating, harvesting, and processing hemp.

Potential Markets for Hemp

One of the founders of Ecolution, a Northern Virginia company specializing in the wholesale market for hemp-related products, addressed the joint subcommittee concerning the potential markets for hemp in this country. Ecolution successfully markets hemp clothing made from eastern European hemp. A Maryland micro-brewer is experiencing surprising success with a beer made with hemp seeds, legally imported from China. A large potential market exists with American paper companies, widely rumored to be interested in industrial hemp as an easily renewable source of pulp.

The American market for hemp, while tiny, is growing. The extent to which this market could be served by legal American hemp producers is at present unknown and will likely remain so until experimental cultivation of the plant can begin. Reliable scientific data concerning the cultivation and processing of hemp in this country are old, in many cases pre-World War I. While of some value, this information necessarily omits widespread advances in agricultural technology over the past 70 years, and updated experimental data are badly needed.

Special Joint Courts of Justice Subcommittees

July 1, 1997, Richmond

During the 1997 Session, SJR 295 requested a study of alternative means of ensuring that attorneys fulfill their ethical obligations to provide legal services for the poor; HJR 474 requested a study of the process by which decisions of the juvenile courts are appealed; and HJR 594 requested a joint subcommittee to study the effects of divorce, particularly no-fault divorce, on the economic well being of the divorcing spouses and their children. Each of these resolutions failed, but upon request of the Speaker of the House or the Senate Rules Committee, the chairmen of the House and Senate Committees for Courts of Justice agreed to study the issues raised. Although the issues are clearly separate, because the membership of the committees is the same, it was agreed that one meeting would be held. On July 1 the committee convened for the purpose of initiating these three separate studies.

Pro Bono Legal Services

The number of people seeking to represent themselves in court is growing. This may be due to the high cost of lawyers, the lack of coordinated pro bono legal services, or simply a desire to control one's own destiny. This change, however, has

Next Meeting

The members of the joint subcommittee agreed to explore the possibility of establishing an experimental program to cultivate industrial hemp, probably at an experimental station at Virginia State University or at Virginia Tech. They further agreed to seek information from paper companies about their reported interest in industrial hemp as a source of pulp. Finally, the joint subcommittee will invite a representative of the DEA to explain the agency's position on the experimental cultivation of industrial hemp.

The next meeting of the joint subcommittee is tentatively scheduled for late August.

The Honorable Mitchell Van Yahres, *Chairman*
Legislative Services contact: Ken Patterson



imposed greater pressure on the court system to maintain efficiency and equity. The director of judicial planning for the Supreme Court of Virginia provided the committee with an overview of a pilot project recommended by the Judicial Council creating a district court services center for pro se litigants. The project is designed to help litigants who are representing themselves by providing them with information and assistance on the court system and how it relates to their particular case, user-friendly forms and instructions, referral to appropriate alternative dispute resolution services, and on-site assistance by staff or pro bono attorneys. Further information on the program and its costs will be presented at the next meeting of the committee.

The Virginia Code of Professional Responsibility imposes upon lawyers the obligation to "assist the legal profession in fulfilling its duty to make legal counsel available and [to] render pro bono publico legal services" (Canon 2, Virginia Code of Professional Responsibility). Senator Gartlan expressed concern that lawyers are not fulfilling this obligation. Lawyers are granted the exclusive right to represent others in the courts of the Commonwealth. Along with this right comes a duty to ensure that all persons needing a lawyer are afforded access to one. However, there is currently no mechanism in place to ensure that this ethical duty is being met. Senator Gartlan noted that the American Bar Association is moving in the direction of a "play or pay" pro bono system because of the lack of broad participation by the private bar in pro bono activities. Under such a system, lawyers who fail to meet uniform standards for annual individual pro bono services would have to pay into a fund to be used for publicly supported legal services.

The committee unanimously agreed that more could and should be done. To ensure an immediate response to the problem, staff was asked to prepare a letter to the State Bar encouraging efforts to increase participation of the private bar in pro bono activities. The bar currently asks new attorneys to complete a form indicating their willingness to participate in various pro bono functions. The committee recommends that the bar annually provide this or a similar form to every licensed attorney in the state as a reminder of the obligation and the alternative means available to fulfill the obligation. It was suggested that the form be circulated annually with the bill for mandatory bar dues or with the statement of mandatory continuing legal education (CLE) hours. Additionally, CLE programs should place greater emphasis on the pro bono obligation and alternative means of meeting the obligation. The committee also believes that every licensed attorney should submit an annual statement to the State Bar indicating the number of hours spent on pro bono legal services to allow a more realistic assessment of the degree to which attorneys are currently meeting this ethical obligation.

Finally, the committee agreed to prepare a resolution calling for an in-depth study by the State Bar of alternative means for ensuring compliance. At the next meeting, the committee will review both the letter and resolution and make their final recommendations.

De Novo Appeals

HJR 474 was recommended by the Boyd-Graves Conference of the Virginia Bar Association. The request for a study grew out of concerns over the confusion and delays caused by the current de novo appeals process, which requires a re-trial of a case appealed from the juvenile court to the circuit court. Several representatives of the bar were quick to remind the committee that these concerns were the impetus for creation of the family court system. Both the Virginia State Bar and the Virginia Bar Association are on record as supporting the creation of a family court. However, to date, funding has not been provided by the General Assembly.

Senator Norment has for several years introduced a bill to provide an alternative to the family court system as a solution for the problem. His bill would allow for removal of child custody, support and visitation cases from the juvenile court to the circuit court with a direct appeal provided from the circuit court to the Court of Appeals (see e.g., SB 1101, 1997). Members of

the bar expressed concern that the procedures specified in the bill would be too complicated for the litigants, many of whom who represent themselves in these types of cases. Alternatives such as direct appeal from the juvenile court to the Court of Appeals or a final appeal from juvenile court to the circuit court were discussed, and several problems with each solution were noted. The juvenile courts are not courts of record. Additional burdens would be placed not only on the litigants but also on the juvenile court clerks. It was agreed that further exploration of these issues is needed to formulate viable alternative solutions.

The Supreme Court has been working on a calendar management and delay reduction program for the juvenile courts. The committee was encouraged by reports that the program is working in the pilot jurisdictions where it is being tested.

Divorce

Following recently published documents linking divorce to reduced economic stability, Delegate McDonnell introduced a resolution to study the effects of no-fault divorce, particularly the effects on children. Many representatives of the bar expressed concern over the idea that no-fault divorce would be eliminated. It was noted that fault-based divorces are more costly, both financially and emotionally. Because there has been no in-depth study of the effects of no-fault divorce in Virginia, the committee agreed to authorize staff to make preliminary inquiries to determine whether such an economic analysis could be done based upon publicly available data and if so, who would be the appropriate person or group to conduct the study and at what cost.

The committee chairmen also agreed to take a closer look at HB 2131, which would authorize the courts to grant rehabilitative alimony for a discreet period of time upon divorce in certain circumstances. Representatives of the State Bar Committee, which recommended the bill, will be available at the committee's next meeting in September to discuss the study and specific provisions of the bill.

The Honorable James F. Almand, *Chairman*
Legislative Services contact: Mary P. Devine



HJR 519

Commission on the Future of Transportation in Virginia

June 16, 1997, Richmond

Aviation

The director of the Virginia Department of Aviation briefed the commission on his department's structure, financing, and responsibilities, stressing the close ties between aviation and Virginia's airport system and economic development. Virginia airports have produced 175,400 jobs with a total payroll of \$4.0 billion and produced \$13.9 billion in "economic activity." The amount of federal funding, the availability of which in future years is presently in doubt, makes predicting aviation's future state funding needs difficult. The director stated that future Virginia aviation programs would have to ensure

- Adequate capacity at Virginia's commercial airports to handle increased traffic volumes without compromising safety;
- Full use of latest technologies at Virginia's general aviation airports; and
- Redistribution of commercial air service (including service by discount carriers) in line with consumer demand.

He further stated that Virginia does not need to develop its own "superport" in order to complete successfully with such a facility in North Carolina.

Congestion and Sprawl

Three speakers, two transportation officials from Virginia and one from Maryland, addressed the commission on the gen-

eral topic of "avoiding and managing congestion and sprawl." The first drew a distinction between recurring congestion (occurring at predictable times at predictable locations) and non-recurring congestion (occurring at unpredictable times and locations) and pointed out ways in which new technologies are being used to permit "smart travel" that avoids or reduces recurring congestion. The second commented that while it was "nice to talk about what transit could do for congestion," few financial resources have been made available to support rail and public transit programs.

The third speaker, from Maryland, contrasted Virginia's "smart travel" program with Maryland's "smart growth program." Under this program, Maryland transportation agencies seek to educate the public on the true costs of "sprawl," while state law confines most state spending that supports or encourages economic development and growth to so-called "priority funding areas." While control of land use planning and growth stays at the local level, local government programs and initiatives that run counter to state policy will not be supported with state funds and must be paid for from local revenues. State transportation projects that add capacity are, with a few exceptions, limited to priority funding areas.

Next Meeting

The commission will meet again at 10 a.m. on August 11, 1997, in House Room D of the General Assembly Building.

The Honorable William P. Robinson, Jr., *Chairman*
Legislative Services contact: Alan B. Wambold



HJR 622

Joint Subcommittee to Study Noncredit Education for Workforce Training in Virginia

July 8, 1997, Chester

At its second meeting, the HJR 622 Joint Subcommittee received testimony from business and state agency representatives regarding workforce training needs and programs.

Virginia Power

According to its vice president of human resources, Virginia Power currently spends between \$14 million and \$15 million annually on its training facilities. Although none of its training programs is offered through collaborations with community colleges, Virginia Power occasionally uses programs offered through the University of Virginia or the University of Richmond in its workforce training efforts. Two-thirds of Virginia Power employees have a high school diploma; the remaining one-third possess advanced degrees. Included within the company's skills training in commercial operations are programs for the overhead and underground lineman, automotive mechanic, substation electrician, electrical equipment specialist, and control operations technician. Nuclear training is also provided. Other initiatives include leadership training and stu-

dent programs such as minority scholarships, the electric Vehicle Grand Prix, and cooperative education programs, the result of partnership with colleges and universities. A tuition refund program is available, as are payroll deductions for participation in the Commonwealth's prepaid tuition program and interest-free loans for employee computer purchases.

Timmons

The Timmons Co., an engineering firm employing over 190 individuals with five offices in the Richmond area, looks to community colleges to provide training in management, technical skills, and computer technology. The availability, flexibility, and timely response of the community college is essential in meeting workforce training needs. In cooperation with John Tyler Community College, Timmons has invested over \$100,000 in funding and time to establish a computer aided design and drafting (CADD) lab at the community college. The lab was created specifically to provide noncredit training for current and prospective employees of design firms and industries using CADD. Timmons' president urged finding new ways of funding these training efforts and stated that the commitment of the legislature to support noncredit training through community colleges would encourage businesses to work with the community colleges in meeting training needs.

Business Assistance Services

Two representatives of the Department of Business Assistance Services cited the department's mission to "strengthen the Commonwealth's economy by providing to Virginia businesses value-added services, such as workforce training, financing, and small business development; and by serving as state government's principal point of contact and communications with business and industry through an industry visitation program." In addition to the creation of the Virginia Economic Development Partnership and its duties in the recruitment of new industry, the department also develops existing industry and workforce services. Outreach efforts to existing businesses include site visits, which have increased from 732 in 1995 to 1,830 in 1997, and responding to requests for assistance, which have grown from 1,036 in 1995 to 2,436 in 1997. The department also assists with business incentives, financing, worker training, OSHA compliance, and technology.

Within the department, the Division of Workforce Services assists new and expanding businesses in developing and implementing the highest quality recruiting and training programs for new job creation. The division assists in Virginia's economic development marketing efforts and also designs and implements tailored recruiting and training programs; 43 percent of these training programs are offered through community colleges. While the division makes no distinction between new and existing businesses in granting assistance, eligible businesses must employ 25 new employees or make at least \$1 million in new investments within a one-year period. In the last five years (1992-1996), the division has addressed over 1,200 assistance projects (639 projects for new businesses, 499 for

expanding business, and 62 retraining projects). In fiscal year 1997, the division has supported 315 such assistance projects, of which 150 addressed new businesses, 146 targeted expanding businesses, and 19 supported retraining. About 20 to 30 percent of project funds—or about \$3 million—will support community college workforce training. The funds may be paid to the eligible businesses as a reimbursement for training services at community colleges. State funding for noncredit instruction at community colleges could increase the Commonwealth's competitiveness with border states and enhance Virginia's economic development "image" and business climate.

Community College

The director of the Business, Industry, and Government Center at John Tyler Community College cited the need for flexible workers with basic skills in areas such as applied math and technology, reading for content, computer literacy, listening, and team-building. Anticipated areas of job demand included machinists as well as HVAC, biotechnology, electronics, metal, and health care workers. He cited the need for two positions per community college to address business and industry needs. In addition, investment in new community college facilities or in the renovation of existing facilities for workforce training is needed. Other areas cited were support for student and full apprenticeship programs and additional efforts in quality control programs. Also noted was the need for incentives for business to work with community colleges, including tax credits for business and direct funding for community colleges.

Private Schools

Representatives of private career schools briefly noted their specific training initiatives. HB 2367, which passed in 1997, provides employers a tax credit in an amount equal to 30 percent of the expenditures made by the taxpayer for noncredit courses that promote worker retraining at Virginia community colleges or worker retraining programs registered with Virginia Apprenticeship Council. If the taxpayer uses a private school for such courses, the credit is equal to the cost of the course per student but may not exceed \$100 per student annually. The credit applies to taxable years beginning on or after January 1, 1999. The tax commissioner is to promulgate regulations providing for the allocation of credits among employers requesting credits in the event that the credits requested exceed the available amount of credits in any year (\$2,500,000).

Next Meeting

The next meeting of the joint subcommittee is scheduled for August 19 in Danville.

The Honorable Alan A. Diamonstein, *Chairman*
Legislative Services contact: Kathleen G. Harris



Uniform Unclaimed Property Act

July 9, 1997, Richmond

Representatives from the House Corporations, Insurance, and Banking committee and the Senate Commerce and Labor committee met jointly to consider the 1995 Uniform Unclaimed Property Act, which was approved by the National Conference of Commissioners on Uniform State Laws. This organization studies and reviews the laws of the states, drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. The conference drafts and proposes uniform laws, which become effective when adopted by a state legislature. Maine, New Mexico, West Virginia, and Montana have all enacted the Uniform Act.

Current Virginia Law

The director of the Division of Unclaimed Property presented an overview of how Virginia's present laws address unclaimed property. Virginia's Uniform Disposition of Unclaimed Property Act sets up a system for transferring intangible personal property and personal property in safe deposit accounts held by an entity or person other than the rightful owner to the Commonwealth upon abandonment. The types of property covered under the act include savings accounts, checking accounts, payroll checks, utility deposits, life insurance policy proceeds, refunds, unredeemed gift certificates, credit memos, credit balances, vendor payments, stocks, dividends, bonds, outstanding state warrants and safe deposit box contents.

The act protects the property rights of the absentee owner until he is reunited with his property. However, the Department of Treasury does convert tangible property to cash and liquidate stocks, bonds, and mutual funds. The Commonwealth holds the cash proceeds from such sales for the rightful owner in perpetuity. The Literary Fund receives use of the cash proceeds until the return of the proceeds to the owner.

A holder (the person who is in possession of the property belonging to another) is relieved of potential liability once the division receives the property. The act requires holders to report unclaimed property to the division. The act specifies various holding periods for property, and the holder is responsible for making one final attempt to contact the owner before turning the property over to the division.

After the division receives the property, it makes further attempts to locate the rightful owner and return the property. The division arranges for publication of an advertisement in a newspaper circulated at the owner's last known address. The division places all owners of property valued at more than \$50 on a database and arranges for annual publication of this database in a newspaper circulated at the owner's last known address. The division also provides lists to members of the General Assembly and has displays at local county fairs, festivals, and inside shopping malls. Virginia, through reciprocity agreements, shares information about unclaimed property with other states.

The dollar value of the unclaimed property managed by the division is significant. In fiscal year 1997, the division returned over \$8.4 million to over 11,100 rightful owners. Additionally, the Literary Fund received, after deductions for operating expenses of the division, over \$43.2 million.

Uniform Act

In addition to the presentation from the director, a representative from the Attorney General's office provided analysis of the Uniform Act. The main difference between Virginia's current law and the Uniform Act is the organization and numbering scheme. However, the director explained that the large number of holders who must report to multiple states justifies adopting the Uniform Act.

The Uniform Act does contain, unlike Virginia's act, provisions dealing with mineral rights and allows for the use of other forms of technology when attempting to contact owners of unclaimed property, including the use of electronic mail.

Next Meeting

In preparation for a second meeting in September, the subcommittee directed staff to draft the Uniform Act in a bill format, along with any recommended or necessary changes. Interested parties will receive copies of the draft prior to the next meeting and be given the opportunity to comment on the Uniform Act in detail at the next meeting.

The Honorable Gladys B. Keating, *Chair*
Legislative Services contact: Rob Omberg



Joint Commission on Technology and Science

July 1, 1997, Richmond

Created by the 1997 Virginia General Assembly as a permanent legislative agency, the Joint Commission on Technology and Science is charged with studying all aspects of technology and science and with stimulating, encouraging, promoting, and assisting in the development of technology and science in Virginia through sound public policies. Effective July 1, the commission replaced the Joint Subcommittee Studying Technology and Science (HJR 498), which has published its final report (House Document No. 81, 1997).

Work Plan

At its first meeting, the commission adopted its 1997 work plan, which identifies six issues for active study through the establishment and work of advisory committees, to be chaired by commission members. The issues are: the Federal Telecommunications Act of 1996, the Joint Legislative Audit and Review Commission's studies of Virginia's data processing and related services and "Year 2000" compatibility, implementation of digital signatures by the Council on Information Management, civil and criminal laws, and the Center for Innovative Technology's blueprint for technology-based economic development in Virginia.

The commission is currently seeking persons with expertise in these six issues to serve on its advisory committees. Upon official appointment by Chairman Plum, such persons will be entitled to vote in advisory committee meetings and receive the citizen per diem rate of \$50 plus reimbursement for reasonable and necessary expenses incurred in the performance of their duties. Due to the commission's budgetary constraints, Chairman Plum will be encouraging advisory committee members who are able to waive per diems and expense reimbursements.

The work plan also identifies six issues to be introduced at full commission meetings: cyber-legislatures, public records and

access, taxing electronic trade and commerce, the Council on Information Management's Geographic Information Network Division and Advisory Board, genetic testing, and alternative uses of tobacco.

Meeting Schedule

All commission and advisory committee meetings are open to the public. Additional information may be obtained from the commission's web site (<http://legis.state.va.us/agencies.htm>). To date, the commission's 1997 meeting schedule is as follows:

- **Thursday, August 28, 1997, 1 p.m., CIT Advisory Committee.** Briefing Room, The Center for Innovative Technology, 2214 Rock Hill Road, Herndon.
- **Monday, September 8, 1997, 1 p.m., Year 2000 Advisory Committee.** Senate Room A, General Assembly Building, 910 Capitol Street, Richmond. *Note:* This meeting has been planned to follow a morning meeting of the Joint Legislative Audit and Review Commission, where it is expected that JLARC will receive a report on its study of the Year 2000 problem. JLARC's meeting is open to the public.
- **Wednesday, September 24, 1997, 1:30 p.m., Joint Commission.** House Room C, General Assembly Building, 910 Capitol Street, Richmond.
- **Wednesday, October 22, 1997, 1:30 p.m., Joint Commission.** Briefing Room, The Center for Innovative Technology, 2214 Rock Hill Road, Herndon. *Note:* Plans are being finalized to videoconference this meeting to sites in Hampton, Halifax, and Lynchburg, all of which will be open to the public.
- **Wednesday, November 19, 1997, 1:30 p.m., Joint Commission.** House Room D, General Assembly Building, 910 Capitol Street, Richmond.

The Honorable Kenneth R. Plum, *Chairman*
Legislative Services contact: Diane E. Horvath



Filing Deadlines

By action of the 1995 General Assembly, three categories of bills now must be filed by the first day of the General Assembly Session.

Local Fiscal Impact (§ 30-19.03:1; Chapter 743, 1995 Acts of Assembly)

Any bill that mandates an additional expenditure by any county, city, or town must be filed on or before the first day of the session. A mandate has the effect of (i) requiring the performance of a new or expanded service or maintaining an existing service at a specific level, (ii) assuming administrative costs in support of state-related programs, or (iii) furnishing capital facilities for state-related activities. There is an exemption for bills requested by the Governor or "filed in accordance with the rules of the General Assembly."

Prison Impact (§ 30-19.1:6; Chapter 462, 1995 Acts of Assembly)

All bills requiring a statement of fiscal impact on the operating costs of state correctional facilities must be filed

on or before the first day of the session. A fiscal impact statement is required for any bill that would result in a net increase in periods of imprisonment in state correctional facilities, including those bills that (i) add new crimes for which imprisonment is authorized, (ii) increase the periods of imprisonment for existing crimes, (iii) impose minimum or mandatory terms of imprisonment, or (iv) modify the law governing the release of prisoners in such a way that the time served in prison will increase.

Virginia Retirement System (Chapter 610, 1997 Acts of Assembly)

Any bill that amends, repeals, or modifies any provision of the Virginia Retirement System, the State Police Officers' Retirement System, or the Judicial Retirement System must be filed on or before the first day of the session. The Board of Trustees of the Virginia Retirement System shall submit to the Clerks' offices, the Commission of Local Government, the House Committee on Appropriations, and the Senate Committee on Finance a statement of (i) the financial impact of the proposed bill on the general fund and on the local governments that have opted to be part of VRS and (ii) the policy implications of the bill on the various systems administered by the Board of Trustees.

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GENERAL NOTICES/ERRATA

Symbol Key

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

DEPARTMENT OF HEALTH

Abstinence Education Application under § 510 of Title V of the Social Security Act Maternal and Child Health Block Grant Application Fiscal Year 1998

The Virginia Department of Health (VDH) submitted on July 15, 1997, the application for Abstinence Education funds for the Commonwealth of Virginia. The application was presented to the federal Secretary of Health and Human Services as an appendix to the Maternal and Child Health Services Block Grant Application for the period October 1, 1997, through September 30, 1998, in order to be entitled to receive payments for the purpose of providing an abstinence education initiative on a statewide basis.

The Maternal and Child Health Services Block Grant Application makes assurance to the Secretary of Health and Human Services that the Virginia Department of Health will adhere to all the requirements of § 510, Title V, Maternal and Child Health Services Block Grant of the Social Security Act. To facilitate public comment, this notice is to announce a period from August 4, 1997, through September 4, 1997, for review and public comments on the Abstinence Education Application. Copies of the document will be available as of August 4, 1997, from the Division of Child and Adolescent Health in the Central Office of the Virginia Department of Health in Richmond. Individual copies of the document may be obtained by contacting Stephen Conley, PhC, Director of Adolescent Health Programs; written comments must be addressed to Mr. Conley and received by September 4, 1997, at the following address:

Virginia Department of Health
Child and Adolescent Health Division
Office of Family Health Services
1500 E. Main Street, Suite 105
P.O. Box 2448
Richmond, Virginia 23219
(804) 371-4098
FAX (804) 371-6031
e-mail: sconley@vdh.state.va.us

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: 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 may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page: <http://legis.state.va.us/codecomm/regindex.htm>

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

ERRATA

CHARITABLE GAMING COMMISSION

Title of Regulation: 11 VAC 15-21-10 et seq. Interim Charitable Gaming Rules and Regulations.

Publication: 13:22 VA.R. 2750-2769 July 21, 1997.

Correction to Final Regulation:

Page 2751, effective dates, line 2, change 11 VAC 15-21-120 to 11 VAC 15-21-90

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

GOVERNOR'S ADVISORY BOARD ON AGING

August 18, 1997 - 5 p.m. -- Open Meeting

August 19, 1997 - 8 a.m. -- Open Meeting

Department for the Aging, 700 East Franklin Street, 10th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss potential regulatory revisions and conduct other board business.

Contact: Kimlah Hyatt, Staff to the Board, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2801, FAX (804) 371-8381, toll-free 1-800-552-3402, or (804) 225-2271/TDD ☎

VIRGINIA AGRICULTURAL COUNCIL

August 25, 1997 - 1 p.m. -- Open Meeting

August 26, 1997 - 8 a.m. -- Open Meeting

Holiday Express, 165 Town Run Lane, Stephens City, Virginia. ♿ (Interpreter for the deaf provided upon request)

The annual meeting of the council. The agenda will consist of an annual review of finances, progress reports on approved projects, and general business matters. The council will allot 30 minutes at the conclusion of all other business for the public to appear before the council. Any person who needs special accommodations in order to participate at the meeting should contact Thomas R. Yates at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Thomas R. Yates, Assistant Secretary, Virginia Agricultural Council, Washington Bldg., 1100 Bank St., Room 906, Richmond, VA 23219, telephone (804) 786-6060.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

† **December 11, 1997 - 1:30 p.m.** -- Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

October 20, 1997 -- Public comments may be submitted until 8:30 a.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-180-10 et seq. Rules and Regulations Governing Pseudorabies in Virginia.** Pseudorabies is a disease that exacts a high death toll among the animals it infects, many of which are domesticated animals. Among the animals that can be infected with pseudorabies are cattle, sheep, dogs, cats, and notably, swine. There is no known evidence that humans can contract pseudorabies. Most kinds of animals infected with pseudorabies die before they can infect other animals (death usually occurs within 72 hours after infection). Swine are a different matter. Although pseudorabies can kill swine (the younger the swine, the higher the rate of mortality), they also can recover from the disease and spread it to other swine and to other kinds of animals. Virginia's regulations to eradicate pseudorabies from swine are part of a national program designed to rid the nation of pseudorabies.

This regulation provides rules to govern the program for the eradication of pseudorabies from swine in Virginia. The purpose of this action is to revise the regulation and increase its effectiveness, including but not limited to amending the regulation to allow Virginia to participate in the national program to eradicate pseudorabies at whatever stage its circumstance at a particular time would allow--whether Stage I or Stage V, or any stage in between.

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

Calendar of Events

Public comments may be submitted until 8:30 a.m. on October 20, 1997, to Dr. W. M. Sims, Jr., Division of Animal Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218-1163.

Contact: Thomas R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or FAX (804) 371-2380.

† **December 11, 1997 - 1:30 p.m.** -- Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

October 20, 1997 -- Public comments may be submitted until 8:30 a.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-205-10 et seq. Rules and Regulations Pertaining to Shooting Enclosures.** This regulation provides rules to govern shooting enclosures in Virginia. The purpose of this action is to promulgate regulations providing for licensing shooting enclosures, establishing a licensing fee, and establishing criteria for the operation and management of the enclosures to include the health status of the animals held in the enclosure. The regulation also establishes which animals can be held in the shooting enclosures: goats, sheep and swine.

Statutory Authority: § 3.1-763.5:5 of the Code of Virginia.

Public comments may be submitted until 8:30 a.m. on October 20, 1997, to Dr. W. M. Sims, Jr., Division of Animal Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218-1163.

Contact: Thomas R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or FAX (804) 371-2380.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Farmers' Market Board

August 19, 1997 - 1:30 p.m. -- Open Meeting
Tidewater Agricultural Research and Education Center, 6321 Holland Road, Suffolk, Virginia. (Interpreter for the deaf provided upon request)

The board will convene for the summer board meeting to hear reports from two shipping point farmers' markets, the Eastern Shore of Virginia Farmers' Market and the Southwest Virginia Farmers' Market. In addition, the

board will hear plans from interested producer organizations concerning the proposed construction of two additional shipping point markets in the system, the Southwest Virginia Farmers' Market and the Northern Neck of Virginia Farmers' Market. The two additional markets will bring the total to four markets in the Virginia Farmers' Market System. Board members will hear and approve minutes of the last meeting and the board's financial statement. 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 Susan K. Simpson at least five days before the meeting date so that suitable arrangements can be made.

Contact: Susan K. Simpson, Special Programs Manager, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 1002, Richmond, VA 23219, telephone (804) 786-2112 or FAX (804) 371-7786.

Virginia Horse Industry Board

August 26, 1997 - 10 a.m. -- Open Meeting
Virginia Cooperative Extension—Charlottesville/Albemarle Unit, 168 Spotnap Road, Lower Level Meeting Room, Charlottesville, Virginia.

The board will discuss current and future marketing plans and projects. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate in the meeting should contact the secretary to the board at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Andrea S. Heid, Equine Marketing Specialist, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 211, Richmond, VA 23219, telephone (804) 786-5842 or FAX (804) 371-7786.

Virginia Irish Potato Board

† **September 8, 1997 - 8 p.m.** -- Open Meeting
The Happy Crab Restaurant, 550 Laskin Road, Virginia Beach, Virginia.

A meeting to discuss programs (promotion, research and education), the annual budget, and other business that may come before the board. 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 J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Irish Potato Board, P.O. Box 26, Onley, VA 23419, telephone (757) 787-5867 or FAX (757) 787-1041.

Pesticide Control Board

† **September 25, 1997 - 10 a.m.** -- Open Meeting
Washington Building, 1100 Bank Street, Board Room, Room 400, Richmond, Virginia. ☎

A meeting to discuss the changes to the Regulations Governing Pesticide Applicator Certification. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558 or toll-free 1-800-552-9963.

STATE AIR POLLUTION CONTROL BOARD

August 25, 1997 -- 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 Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-20-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Provisions and 9 VAC 5-80-10 et seq. Regulations for the Control and Abatement of Air Pollution: Permits for Stationary Sources (Revision SS)**. The regulation amendments concern provisions covering state operating permits for stationary sources. Permits may be issued under this program at the request of either source owner or board to accomplish a variety of purposes: to designate a source as a synthetic minor, to combine a source's requirements under multiple permits into one permit, to implement emissions trading requirements, to cap the emissions of a source contributing to a violation of any air quality standard, to establish requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law. Changes to permits may be accomplished through administrative permit amendments, minor permit amendments, or significant permit amendments. The board may issue a general permit covering a source category containing numerous similar sources that meet certain criteria. New provisions (9 VAC 5-80-800 et seq.) are being proposed to replace existing provisions (9 VAC 5-80-40), which are proposed for repeal.

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

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 Office of Air Program Development, Eighth Floor, 629 East Main Street, 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
355 Deadmore Street
Abingdon, Virginia
Ph: (540) 676-4800

West Central Regional Office
Department of Environmental Quality
3019 Peters Creek Road
Roanoke, Virginia
Ph: (540) 562-6700

Lynchburg Satellite Office
Department of Environmental Quality
7705 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Valley Regional Office
Department of Environmental Quality
4411 Early Road
Harrisonburg, Virginia 22801
Ph: (540) 574-7800

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (540) 899-4600

Northern Regional Office
Department of Environmental Quality
13901 Crown Court
Woodbridge, Virginia
Ph: (703) 583-3800

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Glen Allen, Virginia
Ph: (804) 527-5020

Calendar of Events

Tidewater Regional Office
Department of Environmental Quality
5636 Southern Boulevard
Virginia Beach, Virginia
Ph: (757) 518-2000

Statutory Authority: §§ 10.1-1308 and 10.1-1322 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., Monday, August 25, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

ALCOHOLIC BEVERAGE CONTROL BOARD

August 18, 1997 - 9:30 a.m. -- Open Meeting
September 3, 1997 - 9:30 a.m. -- Open Meeting
September 15, 1997 - 9:30 a.m. -- Open Meeting
September 29, 1997 - 9:30 a.m. -- Open Meeting
October 15, 1997 - 9:30 a.m. -- Open Meeting
October 27, 1997 - 9:30 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports and activities of staff members. Other matters have not been determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409 or FAX (804) 213-4442.

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

Board for Architects

August 20, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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.

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 Interior Designers

† September 25, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Landscape Architects

† September 9, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Land Surveyors

† August 29, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ☎

Invited subject matter experts to conduct an exam workshop for the Virginia Land Surveyor "A" Examination. A public comment period will be held at the beginning of the workshop. After the public comment period, the workshop will be conducted in closed executive session under authority of § 2.1-344 A11 of the Code of Virginia due to the confidential nature of the examination. The public will not be admitted to the closed executive session.

Contact: George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

† **September 18, 1997 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Professional Engineers

August 28, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board 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: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

August 21, 1997 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎

A general board meeting. Public comment will be heard for 15 minutes prior to the beginning of the meeting. Informal conferences will take place at 1:30 p.m. No public comment will be heard.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VIRGINIA AVIATION BOARD

August 20, 1997 - 9:30 a.m. -- Open Meeting

August 22, 1997 - 9 a.m. -- Open Meeting

Omni Waterside Hotel, 777 Waterside Drive, Norfolk, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular bi-monthly meeting of the board to receive applications for state funding, announce funding allocations, and discuss other matters of interest to the Virginia aviation community. This meeting is being held in conjunction with the 24th Annual Virginia Aviation Conference. For further information on the conference contact Betty Wilson at (804) 225-3783. Persons requiring special accommodations or interpreter services should contact Cindy Waddell 10 days prior to the meeting so that suitable arrangements can be made.

Contact: Cindy Waddell, Department of Aviation, 5702 Gulfstream Rd., Richmond International Airport, VA 23250-2422, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

CHARITABLE GAMING COMMISSION

† **August 19, 1997 - 7 p.m.** -- Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, S.W., Roanoke, Virginia.

† **September 9, 1997 - 7 p.m.** -- Public Hearing
Old Dominion University, 5115 Hampton Boulevard, Webb Student Activity Center, Cafeteria, Norfolk, Virginia.

† **September 17, 1997 - 7 p.m.** -- Public Hearing
Northern Virginia Community College, Annandale Campus-Forum, 8333 Little River Turnpike, Annandale, Virginia.

† **September 23, 1997 - 7 p.m.** -- Public Hearing
John Tyler Community College, 13101 Jefferson Davis Highway, Nichols Center, Chester, Virginia.

October 17, 1997 - 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 Charitable Gaming Commission intends to adopt regulations entitled: **11 VAC 15-12-10 et seq. Public Participation Guidelines**. The purpose of the proposed action is to promulgate public participation guidelines for the formulation of charitable gaming regulations.

Statutory Authority: §§ 9-6.14:7.1 and 18.2-340.18 of the Code of Virginia.

Contact: James Ingraham, Administration Manager, Charitable Gaming Commission, P.O. Box 756, Richmond, VA 23218, telephone (804) 786-0238 or FAX (804) 786-1079.

Calendar of Events

† **August 19, 1997 - 7 p.m.** -- Public Hearing
Virginia Western Community College, 3095 Colonial Avenue,
S.W., Roanoke, Virginia.

† **September 9, 1997 - 7 p.m.** -- Public Hearing
Old Dominion University, 5115 Hampton Boulevard, Webb
Student Activity Center, Cafeteria, Norfolk, Virginia.

† **September 17, 1997 - 7 p.m.** -- Public Hearing
Northern Virginia Community College, Annandale Campus-
Forum, 8333 Little River Turnpike, Annandale, Virginia.

† **September 23, 1997 - 7 p.m.** -- Public Hearing
John Tyler Community College, 13101 Jefferson Davis
Highway, Nichols Center, Chester, Virginia.

October 17, 1997 - 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 Charitable Gaming
Commission intends to adopt regulations entitled: **11
VAC 15-22-10 et seq. Charitable Gaming
Regulations.** The purpose of the proposed action is to
promulgate regulations for the operation of charitable
gaming activities in Virginia.

Statutory Authority: §§ 18.2-340.15, 18.2-340.18, 18.2-
340.19, and 18.2-340.30 of the Code of Virginia.

Contact: James Ingraham, Administration Manager,
Charitable Gaming Commission, P.O. Box 756, Richmond,
VA 23218, telephone (804) 786-0238 or FAX (804) 786-1079.

† **August 19, 1997 - 7 p.m.** -- Public Hearing
Virginia Western Community College, 3095 Colonial Avenue,
S.W., Roanoke, Virginia.

† **September 9, 1997 - 7 p.m.** -- Public Hearing
Old Dominion University, 5115 Hampton Boulevard, Webb
Student Activity Center, Cafeteria, Norfolk, Virginia.

† **September 17, 1997 - 7 p.m.** -- Public Hearing
Northern Virginia Community College, Annandale Campus-
Forum, 8333 Little River Turnpike, Annandale, Virginia.

† **September 23, 1997 - 7 p.m.** -- Public Hearing
John Tyler Community College, 13101 Jefferson Davis
Highway, Nichols Center, Chester, Virginia.

October 17, 1997 - 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 Charitable Gaming
Commission intends to adopt regulations entitled: **11
VAC 15-31-10 et seq. Supplier Regulations.** The
purpose of the proposed action is to promulgate
regulations for vendors selling charitable gaming
equipment and supplies in Virginia.

Statutory Authority: §§ 18.2-340.15 and 18.2-340.18 of the
Code of Virginia.

Contact: James Ingraham, Administration Manager,
Charitable Gaming Commission, P.O. Box 756, Richmond,
VA 23218, telephone (804) 786-0238 or FAX (804) 786-1079.

VIRGINIA STATE CHILD FATALITY REVIEW TEAM

† **August 27, 1997 - 10 a.m.** -- Open Meeting
Tyler Building, 1300 East Main Street, 3rd Floor Conference
Room, Richmond, Virginia. ☎

A meeting to discuss the status of ongoing studies and
update the team on administrative matters. The second
part of the meeting will be closed for confidential case
review.

Contact: Suzanne J. Keller, Coordinator, Virginia State Child
Fatality Review Team, 9 N. 14th St., Richmond, VA 23219,
telephone (804) 786-1047, FAX (804) 371-8595, or toll-free
1-800-447-1706.

STATE BOARD FOR COMMUNITY COLLEGES

† **September 10, 1997 - Time to be announced** -- Open
Meeting
J. Sargeant Reynolds Community College, Parham Road
Campus, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

State board committee meetings.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public
Affairs, State Board for Community Colleges, James Monroe
Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219,
telephone (804) 225-2126, FAX (804) 371-0085, or (804)
371-8504/TDD ☎

COMPENSATION BOARD

August 28, 1997 - 11 a.m. -- Open Meeting
September 25, 1997 - 11 a.m. -- Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 9th Floor,
Room 913/913A, Richmond, Virginia. ☎ (Interpreter for the
deaf provided upon request)

A routine business meeting.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box
710, Richmond, VA 23218-0710, telephone (804) 786-0786,
FAX (804) 371-0235, or (804) 786-0786/TDD ☎

BOARD OF CONSERVATION AND RECREATION

† **September 4, 1997 - 7 p.m.** -- Public Hearing
Salem Civic Center Complex, 1001 Boulevard, Salem,
Virginia. ☎ (Interpreter for the deaf provided upon request)

† **September 9, 1997 - 7 p.m.** -- Public Hearing
Hampton Roads Planning District Commission, Regional Building, 723 Woodlake Drive, Chesapeake, Virginia. (Interpreter for the deaf provided upon request)

† **September 10, 1997 - 7 p.m.** -- Public Hearing
Richmond War Memorial, 621 South Belvidere Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

† **September 11, 1997 - 7 p.m.** -- Public Hearing
Prince William County Government Complex, One County Complex Court, James J. McCoart Administration Building, Prince William, Virginia. (Interpreter for the deaf provided upon request)

October 22, 1997 - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Conservation and Recreation intends to amend regulations entitled: **4 VAC 3-20-10 et seq. Stormwater Management Regulations.** The purpose of the proposed amendments is to protect life and property against the degradation of land and water resources in the form of water pollution, stream channel erosion, depletion of groundwater resources, and more frequent local flooding--impacts that adversely affect fish, aquatic life, recreation, shipping, property values and other uses of lands and waters. Amendments provide consistent criteria for state agency construction projects and greater flexibility for local government adoption of stormwater management ordinances.

Statutory Authority: § 10.1-603.4 of the Code of Virginia.

Contact: Leon E. App, Conservation and Development Programs Supervisor, 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

DEPARTMENT OF CONSERVATION AND RECREATION

† **September 29, 1997 - 7 p.m.** -- Open Meeting
Princess Anne Recreation Center, 1400 Ferrell Parkway, Room 3, Virginia Beach, Virginia. (Interpreter for the deaf provided upon request)

Actions by the 1997 General Assembly included passage of House Joint Resolution 555 which requests the Department of Conservation and Recreation (DCR), in coordination with other state agencies and local stakeholders, to perform a study of the effects of nonpoint source (NPS) pollution on the Back Bay and to determine the strategies and costs of implementing measures to improve the water quality of the Back Bay. As one component of the study, DCR will conduct a meeting open to the public to summarize the contents of

the agency's draft study report and receive comments from all interested parties. Written comments will be accepted if received by September 1, 1997. Direct written comments to DCR Back Bay Study, Mark Meador, 203 Governor Street, Suite 206, Richmond, VA 23219.

Contact: Mark Meador, Field Operations Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3999 or FAX (804) 787-1798.

Fall River Renaissance Committee

† **September 17, 1997 - 10 a.m.** -- Open Meeting

† **October 15, 1997 - 10 a.m.** -- Open Meeting
Department of Conservation and Recreation, 203 Governor Street, 2nd Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to plan the campaign for the second Fall River Renaissance to be held from September 20 to October 20, 1997. The campaign will promote and recognize voluntary acts of stewardship to improve and conserve water quality in Virginia.

Contact: Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 East Main St., Richmond, VA 23219, telephone (804) 698-4488.

Falls of the James Scenic River Advisory Board

September 4, 1997 - Noon -- Open Meeting

City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD

Board on Conservation and Development of Public Beaches

† **August 26, 1997 - 10 a.m.** -- Open Meeting

† **September 12, 1997 - 10 a.m.** -- Open Meeting
Thomas Nelson Community College, 99 Thomas Nelson Drive, Moore Hall, Small Conference Room, Hampton, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Committee on the Value of Public Beaches to discuss Senate Joint Resolution 338(1997) directing the board to determine (i) the economic impact of Virginia's public beaches on tourism in the localities in which such beaches are located and the jobs created by

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tourism and (ii) the amount of public investment in Virginia's public beaches needed to generate the optimal economic return. The committee is to develop a report for the 1998 General Assembly. Public comments will be accepted. Request for an interpreter for the deaf must be made to Carlton Lee Hill at least five days in advance.

Contact: Carlton Lee Hill, Public Beach Advisor, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3998 or FAX (804) 786-1798.

Shenandoah Scenic River Advisory Board

August 21, 1997 - 4 p.m. -- Open Meeting
Clarke County Courthouse, Board of Supervisors Meeting Room, Berryville, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD

BOARD FOR CONTRACTORS

Recovery Fund Committee

† September 10, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to consider claims against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in executive session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Pratt Stelly at least two weeks prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Pratt P. Stelly, Assistant Director, Enforcement Division, Post-Adjudication, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2683 or (804) 367-9753/TDD

Regulatory Review Committee

August 26, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4W, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to consider the public comments filed in regard to the Notice of Intended Regulatory Action published in the Virginia Register on June 23, 1997.

Contact: Eric L. Olson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2958 or FAX (804) 367-2474.

BOARD FOR COSMETOLOGY

† September 8, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least 10 days in advance.

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) 367-2475 or (804) 367-9753/TDD

BOARD OF DENTISTRY

Advertising Committee

August 22, 1997 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to hear informal conferences on disciplinary cases. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD

Continuing Education Committee

August 22, 1997 - 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 meeting to review requests for continuing education.
 Public comment will be taken at the beginning of the
 meeting.

Contact: Marcia J. Miller, Executive Director, Board of
 Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA
 23230-1717, telephone (804) 662-9906 or (804) 662-
 7197/TDD

August 22, 1997 - 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 meeting to hear informal conferences on disciplinary
 cases. This is a public meeting; however, no public
 comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of
 Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA
 23230-1717, telephone (804) 662-9906 or (804) 662-
 7197/TDD

DISABILITY SERVICES COUNCIL

October 14, 1997 - 11 a.m. -- Open Meeting
 Department of Rehabilitative Services, 8004 Franklin Farms
 Drive, Richmond, Virginia. (Interpreter for the deaf provided
 upon request)

A meeting to review the FY 1998 Rehabilitative Services
 Incentive Fund (RSIF) Competitive Proposals for
 approval and RSIF guidelines.

Contact: Kathryn Hayfield, Chief of Staff, Disability Services
 Council, 8004 Franklin Farms Dr., Richmond, VA 23288,
 telephone (804) 662-7134/Voice/TTY, toll-free 1-800-552-
 5019, 1-800-464-9950/TDD

**VIRGINIA ECONOMIC DEVELOPMENT
 PARTNERSHIP**

September 2, 1997 - 11 a.m. -- Open Meeting
 Department of Economic Development, 901 East Byrd Street,
 Riverfront Plaza, West Tower, 19th Floor, Board Room,
 Richmond, Virginia. (Interpreter for the deaf provided upon
 request)

A meeting of the Board of Directors.

Contact: Kimberly M. Ellett, Administrative Assistant,
 Virginia Economic Development Partnership, P.O. Box 798,
 Richmond, VA 23218-0798, telephone (804) 371-8108, FAX
 (804) 371-8112 or (804) 371-0327/TDD

Virginia Tourism Corporation

† August 22, 1997 - 9 a.m. -- Open Meeting
 Stratford Hall Plantation, Stratford, Virginia. (Interpreter for
 the deaf provided upon request)

A meeting of the Motion Picture Development Committee
 to discuss strategic planning related to the Virginia Film
 Office. Public comment will be taken at the beginning of
 the meeting.

Contact: Judy H. Bulls, Assistant to the President and CEO,
 Virginia Tourism Corporation, 901 E. Byrd St., Richmond, VA
 23219, telephone (804) 371-8174, FAX (804) 786-1919, or
 (804) 371-0327/TDD

† August 26, 1997 - 2 p.m. -- Open Meeting
 Norfolk Waterside Marriott, 235 East Main Street, Norfolk,
 Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Welcome Centers Task Force of the
 Virginia Tourism Corporation Board of Directors to
 review welcome center operation. Public comment will
 be taken at the beginning of the meeting.

Contact: Judy H. Bulls, Assistant to the President and CEO,
 Virginia Tourism Corporation, 901 E. Byrd St., Richmond, VA
 23219, telephone (804) 371-8174, FAX (804) 786-1919, or
 (804) 371-0327/TDD

† August 26, 1997 - 3:30 p.m. -- Open Meeting
 Norfolk Waterside Marriott, 235 East Main Street, Norfolk,
 Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Subcommittee to Develop an Incentive
 Program for the Tourism Accreditation Program for the
 Product Development Committee of the Virginia Tourism
 Corporation Board of Directors to discuss and develop
 an incentive program. Public comment will be taken at
 the beginning of the meeting.

Contact: Judy H. Bulls, Assistant to the President and CEO,
 Virginia Tourism Corporation, 901 E. Byrd St., Richmond, VA
 23219, telephone (804) 371-8174, FAX (804) 786-1919, or
 (804) 371-0327/TDD

† August 27, 1997 - 9 a.m. -- Open Meeting
 Norfolk Waterside Marriott, 235 East Main Street, Norfolk,
 Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Product Development Committee of the
 Virginia Tourism Corporation Board of Directors to
 discuss strategic planning. Public comment will be taken
 at the beginning of the meeting.

Contact: Judy H. Bulls, Assistant to the President and CEO,
 Virginia Tourism Corporation, 901 E. Byrd St., Richmond, VA
 23219, telephone (804) 371-8174, FAX (804) 786-1919, or
 (804) 371-0327/TDD

Calendar of Events

BOARD OF EDUCATION

† **September 4, 1997 - 9 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, 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 which is available upon request.

Contact: James E. Laws, Jr., Administrative Assistant to the Superintendent for Board Relations, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2540 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

† **September 10, 1997 - 6 p.m.** -- Open Meeting
INOVA Alexandria Hospital, 4320 Seminary Road, Alexandria, Virginia. ♿ (Interpreter for the deaf provided upon request)

An open meeting with committee members and facility emergency coordinators to conduct business in accordance with SARA Title III, Emergency Planning and Community Right-to-Know Act of 1986.

Contact: Charles McRorie, Emergency Preparedness Coordinator, 900 Second St., Alexandria, VA 22314, telephone (703) 838-3825 or (703) 838-5056/TDD ♿

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† **September 3, 1997 - 3 p.m.** -- Open Meeting
Shawnee Fire Company, 2333 Roosevelt Boulevard, Winchester, Virginia.

A meeting to discuss U.S. Department of Transportation HMEP (Hazardous Materials Emergency Preparedness) grant.

Contact: L. A. Miller, Fire Chief, Winchester Fire and Rescue Dept., 126 N. Cameron St., Winchester, VA 22601, telephone (540) 662-2298 or (540) 665-5645.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **August 26, 1997 - 7 p.m.** -- Public Hearing
Roanoke County Public Library, 800 East Wave, Meeting Room, Vinton, Virginia.

A public hearing to receive comment on the proposed reissuance of a Resource Conservation and Recovery Act permit for Safety Kleen Corporation located in Vinton.

Contact: Yen Bao, Environment Engineer Senior, Department of Environmental Quality, Office of Permitting Management, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4403.

† **September 3, 1997 - 9:30 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, 4th Floor, Room 405, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A working meeting of the regulatory ad hoc group engaged in the development of revisions to regulations governing emission standards for toxic pollutants.

Contact: Dr. Kathleen Sands, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TDD ♿

† **September 4, 1997 - 7 p.m.** -- Public Hearing
Greenbrier Library, 1214 Volvo Parkway, Chesapeake, Virginia.

A public hearing to receive comment on the proposed reissuance of a permit under the Resource Conservation and Recovery Act permit for Safety Kleen Corporation's Chesapeake facility.

Contact: Debra A. Miller, Department of Environmental Quality, Office of Permitting Management, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4206.

Virginia Ground Water Protection Steering Committee

September 16, 1997 - 9 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ♿

A general business meeting. Anyone interested in ground water protection issues is encouraged to attend. To obtain a meeting agenda contact Mary Ann Massie at (804) 698-4042.

Contact: Mary Ann Massie, Environmental Program Planner, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4042 or FAX (804) 698-4032.

FAMILY AND CHILDREN'S TRUST FUND

September 19, 1997 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Richmond, Virginia. ♿

A regular monthly meeting of the Board of Directors. Contact the trust fund for more information or for a copy of the agenda.

Contact: Margaret Ross Schultze, Executive Director, Family and Children's Trust Fund, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1823.

VIRGINIA FIRE SERVICES BOARD

August 21, 1997 - 6 p.m. -- Public Hearing
Holiday Inn, U.S. Route 11, I-81 and I-77 Exit #73,
Wytheville, Virginia.

A public hearing to discuss fire training and policies as part of the State Fire Marshal Study. The hearing is open to the public for input and comments will be heard at the beginning of the meeting. This public hearing is tentative. Please call to confirm.

Contact: Michael Cline, Acting Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220.

August 22, 1997 - 9 a.m. -- Open Meeting
Holiday Inn, U.S. Route 11, I-81 and I-77 Exit #73,
Wytheville, Virginia.

October 24, 1997 - 9 a.m. -- Open Meeting
Massanutten, Harrisonburg, Virginia.

A business meeting to discuss training and policies. The hearing is open to the public for comments and input.

Contact: Michael Cline, Acting Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220.

Fire/EMS Education and Training Committee

August 21, 1997 - 8:30 a.m. -- Open Meeting
Holiday Inn, U.S. Route 11, I-81 and I-77 Exit #73,
Wytheville, Virginia.

October 23, 1997 - 8:30 a.m. -- Open Meeting
Massanutten, Harrisonburg, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for input and comments.

Contact: Michael Cline, Acting Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220.

Fire Prevention and Control Committee

August 21, 1997 - 1 p.m. -- Open Meeting
Holiday Inn, U.S. Route 11, I-81 and I-77 Exit #73,
Wytheville, Virginia.

October 23, 1997 - 1 p.m. -- Open Meeting
Massanutten, Harrisonburg, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for input and comments.

Contact: Michael Cline, Acting Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N.

14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220.

Legislative/Liaison Committee

August 21, 1997 - 10 a.m. -- Open Meeting
Holiday Inn, U.S. Route 11, I-81 and I-77 Exit #73,
Wytheville, Virginia.

October 23, 1997 - 10 a.m. -- Open Meeting
Massanutten, Harrisonburg, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Michael Cline, Acting Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

August 28, 1997 - 9 a.m. -- Open Meeting
† **September 9, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
4th Floor, Richmond, Virginia ☎

A meeting of the Special Conference Committee. No public comment will be received.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

† **September 10, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
4th Floor, Richmond, Virginia ☎

A board meeting to discuss general business. Public comment will be received for 15 minutes during the first part of the meeting.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD OF GAME AND INLAND FISHERIES

† **August 21, 1997 - 9 a.m.** -- Open Meeting
† **August 22, 1997 - 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 1997-1998 hunting season lengths and bag limits for migratory waterfowl (ducks and coots, geese and brant, swan, gallinules and moorhens) and

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falconry, based on the framework provided by the U.S. Fish and Wildlife Service. The board will also address regulation amendments to two regulations proposed at its July 17, 1997, meeting. The first amendments are to 4 VAC 15-40-60, Hunting with dogs or possession of weapons in certain locations during closed season, pertaining to the possessing or carrying of cased or concealed weapons in the national forests, on department-owned lands, and on lands managed by the department under cooperative agreement, during the closed season. The second proposed regulations are to 4 VAC 15-330, Fish: Trout fishing, pertaining to the establishment of a creel limit and a size limit for taking of trout from that portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington. The board will solicit comments from the public during the public hearing portion of the meeting, at which time any interested citizen present shall be heard, and will determine whether the proposed regulation amendments will be adopted as final regulations. The board reserves the right to adopt final amendments which may be more liberal than or more stringent than the regulations currently in effect or the regulation amendments proposed at the July 17, 1997, board meeting, as necessary for the proper management of wildlife resources. The board will also review possible proposals for legislation for the 1998 Session of the General Assembly and will select meeting dates for 1998 board meetings. General and administrative issues may be discussed by the board. The board may hold an executive session before the public session begins on August 21. If the board completes its entire agenda on August 21, it may not convene on August 22, the second of the scheduled two days of the meeting.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 West Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

GEORGE MASON UNIVERSITY

Board of Visitors

† **August 20, 1997 - 6 p.m.** -- Open Meeting
George Mason University, Mason Hall, Room D23, Fairfax, Virginia. ☎

A special meeting to approve the appointment of additional faculty hired to teach beginning with the fall semester and to act on the Educational Facilities Revenue Bond Resolution-Pooled Bond Program for construction of Prince William academic organizations who request it.

Contact: Larry Czarda, Chief of Staff, or Carole Richardson, Administrative Staff Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8700.

† **September 24, 1997 - 2 p.m.** -- Open Meeting
George Mason University, Prince William Campus, Building 1, Manassas, Virginia. ☎

A meeting to hear reports of the standing committees of the board and to act on any recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals or organizations who request it.

Contact: Larry Czarda, Chief of Staff, or Carole Richardson, Administrative Staff Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8700.

STATE BOARD OF HEALTH

October 20, 1997 - 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 Health intends to amend regulations entitled: **12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control.** The purpose of the proposed amendments is to mandate the testing of gamete donors for HIV and the rejection of donors who test HIV positive and to establish a standard protocol for HIV testing for gamete donors.

Statutory Authority: §§ 32.1-12, 32.1-45.3, and 54.1-297.1 of the Code of Virginia.

Contact: Casey W. Riley, Director, Division of STD/AIDS, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23218, telephone (804) 786-6267 or FAX (804) 225-3517.

BOARD OF HEALTH PROFESSIONS

Ad Hoc Committee on Criteria

† **August 26, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to discuss and make recommendations regarding the study on appropriate criteria to be applied in determining the need for regulation of any health care occupation or profession. Brief public comments will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

BOARD FOR HEARING AID SPECIALISTS

September 8, 1997 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 3, Richmond,
Virginia. ☎

A routine business meeting. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department 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.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

September 2, 1997 - 9 a.m. -- Open Meeting
October 7, 1997 - 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.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

August 19, 1997 - 11 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☎

A regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting, (ii) consider for approval and ratification mortgage loan commitments under its various programs, (iii) review the authority's operations for the prior month, and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the board may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

COUNCIL ON INFORMATION MANAGEMENT

Task Force on Land Records Management

† **August 27, 1997 - 10 a.m.** -- Open Meeting
Washington Building, 1100 Bank Street, Suite 901,
Richmond, Virginia. ☎

A meeting to develop plans to upgrade land records management technology and to prepare to report to the 1998 General Assembly.

Contact: Linda Hening, Administrative Assistant, Council on Information Management, Washington Bldg., 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or toll-free 1-800-828-1120/TDD ☎

VIRGINIA INTERAGENCY COORDINATING COUNCIL

† **September 10, 1997 - 9 a.m.** -- Open Meeting
Henrico Area Mental Health/Mental Retardation Services,
10299 Woodman Road, Glen Allen, VA 23060. ☎ (Interpreter for the deaf provided upon request)

The Virginia Interagency Coordinating Council meets quarterly to advise and assist the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency for Part H (of IDEA), early intervention for infants and toddlers with disabilities and their families. Discussion focuses on issues related to Virginia's implementation of the Part H program.

Contact: Nicole Corey, Part H Office Services Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention 10th Floor, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3710 or FAX (804) 371-7959.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

September 18, 1997 - 10 a.m. -- Open Meeting
Valley Vocational Technical Center, Highway 250,
Fishersville, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular quarterly meeting.

Contact: Fred T. Yontz, Apprenticeship Program Manager, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-0295, FAX (804) 786-8418 or (804) 786-2376/TDD ☎

Calendar of Events

Migrant and Seasonal Farmworkers Board

† **September 10, 1997 - 1:30 p.m.** -- Open Meeting
Danville Community College, 1008 South Main Street,
Temple Building, Auditorium, Danville, Virginia.  (Interpreter
for the deaf provided upon request)

A regular meeting of the board.

Contact: Patti C. Bell, Board Administrator, Department of
Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St.,
Richmond, VA 23219, telephone (804) 225-3083, FAX (804)
786-8418 or (804) 786-2376/TDD 

STATE LAND EVALUATION ADVISORY COUNCIL

September 23, 1997 - 10 a.m. -- Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond,
Virginia. 

A meeting to adopt suggested ranges of values for
agricultural, horticultural, forest and open-space land use
and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager,
Department of Taxation, Office of Customer Services,
Property Tax Unit, 2220 W. Broad St., Richmond, VA 23220,
telephone (804) 367-8020.

COMMISSION ON LOCAL GOVERNMENT

August 18, 1997 - 10:30 a.m. -- Open Meeting
Bedford area; site to be determined.

Oral presentations regarding the City of Bedford -
Bedford County Voluntary Settlement Agreement.
Persons desiring to participate in the proceedings and
requiring special accommodations or interpreter services
should contact the commission.

Contact: Barbara Bingham, Administrative Assistant,
Commission on Local Government, 702 8th Street Office
Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508,
FAX (804) 371-7999 or (804) 786-1860/TDD 

August 18, 1997 - 7 p.m. -- Public Hearing
Bedford area; site to be determined.

A public hearing regarding City of Bedford - Bedford
County Voluntary Settlement Agreement. Persons
desiring to participate in the proceedings and requiring
special accommodations or interpreter services should
contact the commission.

Contact: Barbara Bingham, Administrative Assistant,
Commission on Local Government, 702 8th Street Office
Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508,
FAX (804) 371-7999 or (804) 786-1860/TDD 

August 19, 1997 - 10 a.m. -- Public Hearing
Municipal Building, 215 East Main Street, Bedford City
Council Chambers, Bedford, Virginia.

A public hearing regarding the commission's study
examining the problems confronted by local
governments resulting from abandoned or neglected
private cemeteries. The commission is conducting this
study pursuant to SJR 319. Persons desiring to
participate in the proceedings and requiring special
accommodations or interpreter services should contact
the commission.

Contact: Barbara Bingham, Administrative Assistant,
Commission on Local Government, 702 8th Street Office
Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508,
FAX (804) 371-7999 or (804) 786-1860/TDD 

September 2, 1997 - 10 a.m. -- Open Meeting
Richmond, Virginia area. Site to be determined.

A regular meeting to consider such matters as may be
presented. Persons desiring to participate in the meeting
and requiring special accommodations or interpreter
services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant,
Commission on Local Government, 702 8th Street Office
Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508,
FAX (804) 371-7999 or (804) 786-1860/TDD 

VIRGINIA MANUFACTURED HOUSING BOARD

† **August 20, 1997 - 2 p.m.** -- Open Meeting
The Williamsburg Lodge, 310 South England Street,
Williamsburg, Virginia.  (Interpreter for the deaf provided
upon request)

A regular monthly meeting of the board to be held in
conjunction with the Virginia Manufactured Housing
Association's annual convention.

Contact: Curtis L. McIver, Associate Director, Department of
Housing and Community Development, Manufactured
Housing Office, 501 N. 2nd St., Richmond, VA 23219,
telephone (804) 371-7160 or (804) 371-7089/TDD 

MARINE RESOURCES COMMISSION

August 26, 1997 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue,
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 will be taken
under oath from parties addressing agenda items on

permits and licensing. Public comments will be 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: LaVerne Lewis, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2261, toll-free 1-800-541-4646 or (757) 247-2292/TDD

BOARD OF MEDICAL ASSISTANCE SERVICES

September 16, 1997 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia.

The board will discuss matters of policy relating to the Medicaid program.

Contact: Cynthia Klisz Morton, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

August 22, 1997 -- 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 consider amending regulations entitled: **12 VAC 30-120-360 et seq. Part VI. Medallion II.** Federal regulations at 42 CFR 434.67 require the State Plan for Medical Assistance to include provisions for monitoring HMOs for violations specified in the federal regulations. This regulation adds a provision for monitoring physician incentive plans developed by HMOs.

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

Contact: Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

October 17, 1997 - 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 amend regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services and 12 VAC 30-60-10 et seq. Standards**

Established and Methods Used to Assure High Quality Care. The purpose of the proposed amendments is to make permanent the agency's temporary requirements regarding the prior authorization of all inpatient hospital services.

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

Public comments may be submitted until October 17, 1997, to Cindy Tyler, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

October 17, 1997 - 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 amend regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, 12 VAC 30-120-10 et seq. Waivered Services, and 12 VAC 30-130-10 et seq. Amount Duration and Scope of Selected Services.** The purpose of the proposed amendments is to recommend changes to the permanent regulations controlling rehabilitation services, specifically community mental retardation services. The expansion of these services creates a payment source for the local community service boards in support of a wider range of mental services to Medicaid eligible persons, which draws on federal funding.

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

Public comments may be submitted until October 17, 1997, to Ann Cook, Division of Policy and Budget, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 371-4981.

October 17, 1997 - 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 amend regulations

Calendar of Events

entitled: 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, and 12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services. The purpose of this proposal is to recommend changes to the permanent regulations controlling rehabilitation services, i.e., community mental health and mental retardation services. The expansion of these services creates a payment source for the local community services boards, in support of a wider range of mental health services to Medicaid eligible persons, which draws on federal funding thereby reducing the demand for General Fund and local dollars. The purpose of this proposed regulation is to make permanent the provisions of the emergency regulations while also addressing issues raised by the Health Care Financing Administration in response to DMAS' State Plan amendment. A description of the expansion services follows:

1. Mental Health Intensive Community Treatment provides outpatient mental health services outside the traditional clinic setting. It is designed to bring services to individuals who will not or cannot be served in the clinic setting.

2. Mental Health Crisis Stabilization Services provide direct mental health care to individuals experiencing acute crisis of a psychiatric nature that may jeopardize their current community living situation. It will provide less medical mental health services independently of or in conjunction with Intensive Community Treatment.

3. Mental Health Support Services provide training and support services to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment.

Used singly or as a package, these services will provide comprehensive treatment and support services to persons with serious and persistent mental illness.

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

Public comments may be submitted until October 17, 1997, to Ann Cook, Division of Policy and Budget, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 371-4981.

October 17, 1997 - 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 amend regulations entitled: 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, and 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care. The purpose of the proposed amendments is to establish policies for Medicaid coverage of licensed clinical psychologists, licensed clinical social workers and licensed professional counselors.

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

Public comments may be submitted until October 17, 1997, to Sally Rice, Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

October 17, 1997 - 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 amend regulations entitled: 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, and 12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services. The purpose of the proposed amendments is to provide for substance abuse treatment for pregnant women.

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

Public comments may be submitted until October 17, 1997, to Ann Cook, Division of Policy and Budget, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 371-4981.

Pharmacy Liaison Committee

August 25, 1997 - 1 p.m. -- Open Meeting
September 22, 1997 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia.

A meeting to conduct routine business and consider pharmacy issues relative to Medicaid and industry communication.

Contact: David Shepherd, R.Ph., Supervisor, Pharmacy Unit, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 225-2773.

HJR 630 Special Task Force

† August 20, 1997 - 8:30 a.m. -- Open Meeting
† September 17, 1997 - 8:30 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☎

A meeting to study the effects of therapeutic interchange on the health care of Virginians. Therapeutic interchange is the use of chemically dissimilar pharmacological products as contrasted against generic substitution (use of the same chemically active ingredient made by different manufacturers).

Contact: David Shepherd, R.Ph., Pharmacy Supervisor, Pharmacy Unit, Division of Program Operations, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2773.

BOARD OF MEDICINE

† September 4, 1997 - 9 a.m. -- Open Meeting
Patrick Henry Hotel, 617 South Jefferson Street, Roanoke, Virginia.

A panel of the board will convene, pursuant to §§ 54.1-2400 and 9-6.14:12 of the Code of Virginia, to inquire into allegations that certain practitioners may have violated laws governing the practice of medicine. The panel 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, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Committee on Acupuncturists

† September 10, 1997 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the committee to discuss regulatory review of 18 VAC 85-110-10 et seq., Licensed Acupuncturists, and such other issues which may be presented. The committee will entertain public comments during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Informal Conference Committee

August 21, 1997 - 9:30 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

† September 16, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, 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, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Board on Occupational Therapy

† September 11, 1997 - 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 18 VAC 85-80-10 et seq., Regulations for Certification of Occupational Therapists, and such other issues which may be presented. The board will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Calendar of Events

Advisory Board on Physical Therapy

† **September 12, 1997 - 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 18 VAC 85-30-10 et seq., Regulations Governing the Practice of Physical Therapy, and such other issues which may be presented. The board will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD

Advisory Committee on Physician Assistants

† **September 10, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 3, Richmond, Virginia. (Interpreter
for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of 18 VAC 85-50-10 et seq. Regulations Governing the Practice of Physician Assistants, and such other issues which may be presented. The committee will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD

Advisory Committee on Radiologic Technologists

† **September 5, 1997 - 2 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, 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 18 VAC 85-101-10 et seq., Regulations Governing the Practice of Radiologic Technologist Practitioners and Radiologic Technologist-Limited, and such other issues which may be presented. The board will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA

23230-1717, telephone (804) 662-9960, FAX (804) 662-9943
or (804) 662-7197/TDD

Advisory Board on Respiratory Therapy

† **September 11, 1997 - 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 review public comments and make recommendations to the Board of Medicine regarding the regulatory review of 18 VAC 85-40-10 et seq., Regulations Governing the Practice of Respiratory Therapy Practitioners, and such other issues which may be presented. The board will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

August 27, 1997 - 10 a.m. -- Public Hearing
James Madison Building, 109 Governor Street, 5th Floor
Conference Room, Richmond, Virginia. (Interpreter for the
deaf provided upon request)

A public hearing to receive comments on the Virginia Substance Abuse Prevention and Treatment and Community Mental Health Services Block Grant Applications for Federal Fiscal Year 1998. Copies of these applications are available for review at the Office of Mental Health, Mental Retardation and Substance Abuse Services, 12th Floor, James Madison Building and at each community services board office. Comments may be made at the hearing or in writing by no later than August 27, 1997, to the Office of the Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact Sterling G. Deal, Ph.D. Copies of oral presentations should be filed at the time of the hearing.

Contact: Sterling G. Deal, Ph.D., Resource Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23238, telephone (804) 371-2148, FAX (804) 371-0091, or (804) 371-8977/TDD

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Human Rights Study Group

† August 22, 1997 - 10 a.m. -- Public Hearing
The Hyatt Richmond, West Broad Street, Richmond,
Virginia. (Interpreter for the deaf provided upon request)

A meeting to review policies and procedures of the Department of Mental Health, Mental Retardation and Substance Abuse Services as they relate to human rights and the human rights program.

Contact: Marlene Butler, State Board Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-7945 or FAX (804) 371-2308.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

August 30, 1997 - 8:30 a.m. -- Open Meeting
Virginia Military Institute, Smith Hall Board Room, Lexington,
Virginia. (Interpreter for the deaf provided upon request)

A regular meeting to elect the president, vice president and secretary, and to hear committee reports. The Board of Visitors provides an opportunity for public comment at this meeting immediately after the superintendent's comments.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206 or (540) 464-7660/TDD

STATE MILK COMMISSION

August 27, 1997 - 10:30 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, 2nd
Floor Board Room, Charlottesville, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting to (i) discuss industry issues, distributor licensing, Virginia base transfers, Virginia baseholding license amendments, regulations, and fiscal matters and (ii) review reports from the staff of the Milk Commission. The commission will consider the proposed agency regulations 2 VAC 15-11-10 et seq., Public Participation Guidelines and 2 VAC 15-20-10 et seq., Regulations for the Control, Regulation and Supervision of Virginia Milk Industry. The commission may consider other matters pertaining to its responsibilities. Any persons who require accommodations in order to participate in the meeting should contact Edward C. Wilson, Jr., at least five days

prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 N. 9th St., Suite 1015, Richmond, VA 23219-3414, telephone (804) 786-2013 or (804) 786-2013/TDD

DEPARTMENT OF MINES, MINERALS AND ENERGY

† October 8, 1997 - 10 a.m. -- Public Hearing
Department of Mines, Minerals and Energy, Keen Mountain
Office, Route 460, Keen Mountain, Virginia.

October 24, 1997 - 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 Mines, Minerals and Energy intends to amend regulations entitled: **4 VAC 25-150-10 et seq. Virginia Gas and Oil Regulation**. The purpose of the proposed amendment is to oversee the permitting, operations, plugging, and site restoration of gas and oil exploration and development wells, gathering pipelines, and associated facilities.

Statutory Authority: §§ 45.1-361.27 and 45.1-161.3 of the Code of Virginia.

Contact: B. Thomas Fulmer, Division Director, Division of Gas and Oil, Department of Mines, Minerals and Energy, 230 Charwood Dr., P.O. Box 1416, Abingdon, VA 24212, telephone (540) 676-5423, FAX (540) 676-5459, or toll-free 1-800-828-1120 (VA Relay Center).

VIRGINIA MUSEUM OF FINE ARTS

† September 18, 1997 - 12:30 p.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue,
Auditorium, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The first meeting of the season to receive reports from the director and staff, conduct budget review, and approve art acquisitions recommended by the Collections Committee. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Finance Committee

† September 18, 1997 - 11 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue,
Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review the budget. Public comment will not be received.

Calendar of Events

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

BOARD OF NURSING

Special Conference Committee

† August 19, 1997 - 9 a.m. -- Open Meeting
† August 20, 1997 - 9 a.m. -- Open Meeting
† August 28, 1997 - 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 will conduct informal conferences with licensees and certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, 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 29, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

An open meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases. All meetings are subject to cancellation or change. Call the board office 24 hours in advance of the meeting to confirm date and time. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. 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, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD

BOARD OF PHARMACY

August 19, 1997 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

A meeting to conduct informal conferences. Public comment will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911 or FAX (804) 662-9313.

August 19, 1997 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

A general business meeting. Public comments will be received at the beginning of the meeting.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911 or FAX (804) 662-9313.

GOVERNOR'S COMMISSION ON PHYSICAL FITNESS AND SPORTS

† September 4, 1997 - 10 a.m. -- Open Meeting
Department of Social Services, Theater Row Building, 730 East Broad Street, Lower Level Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The second meeting of the commission created by Governor's Executive Order No. 75 (97).

Contact: Loretta Petty, Special Assistant for Community Affairs, Office of the Governor, State Capitol, 3rd Floor, Richmond, VA 23219, telephone (804) 786-2211.

BOARD OF PSYCHOLOGY

September 23, 1997 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A regular meeting to discuss general board business, establish meeting dates for 1998, and make committee assignments. Proposed amendments to the Regulations Governing the Practice of Psychology pursuant to Executive Order 15(94) will be adopted. Public comment will be received at the beginning of the meeting.

Contact: Janet Delorme, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD

VIRGINIA RACING COMMISSION

† September 17, 1997 - 9:30 a.m. -- Public Hearing
Tyler Building, 1300 East Main Street, Richmond, Virginia.

October 17, 1997 - 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 Virginia Racing Commission intends to amend regulations entitled: **11 VAC 10-130-10 et seq. Virginia Breeders Fund**. The purpose of the

amendment is to establish the operating procedures for the distribution of awards and incentives from the Virginia Breeders Fund to horse owners and breeders of racehorses.

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

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200.

RECYCLING MARKETS DEVELOPMENT COUNCIL

† **August 18, 1997 - 10 a.m.** -- Open Meeting
Central Virginia Waste Management Authority, 2104 West Laburnum Avenue, Board Room, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A regular quarterly meeting to discuss legislation from the 1997 Session of the General Assembly which impacted the council. The council was established by the General Assembly in 1993 to develop strategies to enhance the markets for recyclables. Meetings are dependent on a quorum of 10. Subcommittee meetings may be held prior to or after the general council meeting. Call or e-mail Paddy Katzen for details.

Contact: Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488, FAX (804) 698-4453 or e-mail pmkatzen@deq.state.va.us.

BOARD OF REHABILITATIVE SERVICES

September 25, 1997 - 10 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.

A quarterly business meeting of the board.

Contact: John R. Vaughn, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice or (804) 662-9040/TDD ♿

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

August 28, 1997 - 5 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, 700 E. Main St., Suite 904, Richmond, VA 23219-0548, telephone (804) 782-1938.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

August 20, 1997 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room A, Richmond, Virginia.

A meeting to hear appeals of the Department of Health's denials of septic tank permits.

Contact: Gary L. Hagy, Acting Secretary, Department of Health, 1500 E. Main St., Room 115, P.O. Box 2448, Richmond, VA 23218, telephone (804) 225-4022 or FAX (804) 225-4003.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

Loan Committee

† **August 26, 1997 - 10 a.m.** -- Open Meeting
† **September 23, 1997 - 10 a.m.** -- Open Meeting
Department of Business Assistance, 901 East Byrd Street, 19th Floor, Main Board Room, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A meeting to review applications for loans submitted to the authority for approval. Meeting time is subject to change.

Contact: Cathleen M. Surface, Executive Director, Virginia Small Business Financing Authority, 901 E. Byrd St., 19th Floor, Richmond, VA 23219, telephone (804) 371-8254, FAX (804) 225-3384, or (804) 371-0327/TDD ♿

STATE BOARD OF SOCIAL SERVICES

† **August 27, 1997 - 9 a.m.** -- Open Meeting
† **August 28, 1997 - 9 a.m.** -- Open Meeting
Colonial Inn, 2809 Atlantic Avenue, Virginia Beach, Virginia. ♿

A work session and formal business meeting of the board.

Contact: Pat Rengnerth, Administrative Staff Specialist, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1900 or (804) 692-1826, FAX (804) 692-1949 or (804) 786-0531, toll-free 1-800-552-3431 or 1-800-552-7096/TDD ♿

September 5, 1997 - 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 Social Services intends to amend regulations entitled: **22 VAC 40-680-10 et seq. Virginia Energy Assistance**

Calendar of Events

Program. The proposed amendments contain several clarifications, add the phrase "energy burden" to the list of factors used in determining the benefit amount for fuel assistance, add the purchase of primary fuel to the crisis assistance component, and delete the requirement of meeting 100% energy burden for weatherization assistance.

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

Contact: Charlene H. Chapman, Program Manager, Energy and Emergency Assistance, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1751 or FAX (804) 692-1709.

COMMONWEALTH TRANSPORTATION BOARD

August 20, 1997 - 2 p.m. -- Open Meeting
Kiptopeke Elementary School, 24023 Fairfax Road, Cape Charles, Virginia. (Interpreters for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

August 21, 1997 - 10 a.m. -- Open Meeting
Kiptopeke Elementary School, 24023 Fairfax Road, Cape Charles, Virginia. (Interpreters for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

TRANSPORTATION SAFETY BOARD

September 25, 1997 - 9 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting to discuss and review transportation safety issues in Virginia.

Contact: Angelisa C. Jennings, Senior Management Analyst, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-2026.

TREASURY BOARD

† **August 20, 1997 - 9 a.m. -- Open Meeting**
† **September 17, 1997 - 9 a.m. -- Open Meeting**
† **October 15, 1997 - 9 a.m. -- Open Meeting**
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

DEPARTMENT FOR THE VISUALLY HANDICAPPED (BOARD FOR)

† **October 22, 1997 - 1:30 p.m. -- Open Meeting**
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board is responsible for advising the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly on the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budgets and requests for appropriations for the department. At this regular quarterly meeting, the board members will receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

Contact: Katherine C. Proffitt, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD

Vocational Rehabilitation Advisory Council

September 13, 1997 - 10 a.m.-- Open Meeting
Department for the Visually Handicapped, Administrative
Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A quarterly business meeting to discuss matters related to vocational rehabilitation services for blind and visually impaired citizens of the Commonwealth. Recommendations to the Department for the Visually Handicapped will be made if appropriate.

Contact: James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3111, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

VIRGINIA VOLUNTARY FORMULARY BOARD

September 4, 1997 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

A meeting to review public hearing records and product data for products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

STATE WATER CONTROL BOARD

† **August 19, 1997 - 9:30 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A regular meeting.

Contact: Cindy Berndt, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

September 4, 1997 - 1 p.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, 1st Floor Training Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board published the final regulation for 9 VAC 25-193-10 et seq., General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Ready-Mixed Concrete Plants, in the Virginia Register, pages 2423-2443 of Volume 13, Issue 19 on June 9, 1997. Requests from more than 25 persons for an opportunity to submit oral and written comments on the changes made to the proposed regulation have been received by the board. In accordance with § 9-6.14:7.1 K of the Administrative Process Act, the board is now seeking additional public comments. The Department of Environmental Quality

staff will convene an informal public meeting to receive comments. Written comments must be received no later than 4 p.m. on September 8, 1997, and should be submitted to Lily Chol.

Contact: Lily Chol, Environmental Engineer Senior, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4054.

† **September 23, 1997 - 7 p.m.** -- Public Hearing
Arcadia High School Auditorium, 8210 Lankford Highway, Oak Hall, Virginia.

October 17, 1997 - 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 Water Control Board intends to amend regulations entitled: **9 VAC 25-260-10 et seq. Water Quality Standards**. The purpose of the proposed amendment is to establish a site-specific ammonia standard for Sandy Bottom Branch.

Statutory Authority: §§ 62.1-44.15(3a) and 62.1-44.15(10) of the Code of Virginia.

Contact: Alex Barron, Environmental Program Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4119 or FAX (804) 698-4522.

INDEPENDENT

STATE LOTTERY BOARD

† **September 24, 1997 - 9:30 a.m.** -- Open Meeting
State Lottery Department, 900 East Main Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting of the board. Public comment will be received at the beginning of the meeting.

Contact: Barbara L. Robertson, Board, Legislative, and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774 or FAX (804) 692-7775.

CHRONOLOGICAL LIST

OPEN MEETINGS

August 18

Aging, Governor's Advisory Board on
Alcoholic Beverage Control Board
Local Government, Commission on
† Recycling Markets Development Council, Virginia

Calendar of Events

August 19

Aging, Governor's Advisory Board on
Agriculture and Consumer Services, Department of
- Virginia Farmers' Market Board
† Gaming Commission, Charitable
Housing Development Authority, Virginia
† Nursing, Board of
† Outdoors Foundation, Virginia
- Board of Trustees
Pharmacy, Board of
† Water Control Board, State

August 20

Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
- Board for Architects
Aviation Board, Virginia
† George Mason University
- Board of Visitors
† Manufactured Housing Board, Virginia
† Nursing, Board of
Sewage Handling and Disposal Appeal Review Board
Transportation Board, Commonwealth
† Treasury Board

August 21

Audiology and Speech-Language Pathology, Board of
Conservation and Recreation, Department of
- Shenandoah Scenic River Advisory Board
Fire Services Board, Virginia
- Fire/EMS Education and Training Committee
- Fire Prevention and Control Committee
- Legislative/Liaison Committee
Game and Inland Fisheries, Board of
Medicine, Board of
- Informal Conference Committee
Transportation Board, Commonwealth

August 22

Aviation Board, Virginia
Dentistry, Board of
- Advertising Committee
- Continuing Education Committee
† Economic Development Partnership, Virginia
- Virginia Tourism Corporation
Fire Services Board, Virginia
Game and Inland Fisheries, Board of
† Mental Health, Mental Retardation and Substance
Abuse Services Board, State
- Human Rights Study Group

August 25

Agricultural Council, Virginia
Medical Assistance Services, Department of
- Pharmacy Liaison Committee

August 26

Agricultural Council, Virginia
Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
† Conservation and Recreation, Department of

- Board on Conservation and Development of Public
Beaches
Contractors, Board for
- Regulatory Review Committee
† Economic Development Partnership, Virginia
- Virginia Tourism Corporation
† Environmental Quality, Department of
† Health Professions, Department of
- Ad Hoc Committee on Criteria
Marine Resources Commission
† Small Business Financing Authority, Virginia
- Loan Committee

August 27

† Child Fatality Review Team, Virginia State
† Economic Development Partnership, Virginia
- Virginia Tourism Corporation
† Information Management, Council on
- Task Force on Land Records Management
Milk Commission, State
† Social Services, State Board of

August 28

Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
- Board for Professional Engineers
Compensation Board
Funeral Directors and Embalmers, Board of
† Nursing, Board of
† Social Services, State Board of

August 29

† Architects, Professional Engineers, Land Surveyors
and Landscape Architects, Board for
- Board for Land Surveyors
Opticians, Board for

August 30

Military Institute, Virginia
- Board of Visitors

September 2

Economic Development Partnership, Virginia
- Board of Directors
Hopewell Industrial Safety Council
Local Government, Commission on

September 3

Alcoholic Beverage Control Board
† Emergency Planning Committee, Local - Winchester
† Environmental Quality, Department of

September 4

Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
† Education, Board of
† Environmental Quality, Department of
† Medicine, Board of
† Physical Fitness and Sports, Governor's Commission
on
Voluntary Formulary Board, Virginia
Water Control Board, State

September 5

- † Medicine, Board of
 - Advisory Committee on Radiologic Technologists

September 8

- † Agriculture and Consumer Services, Department of
 - Virginia Irish Potato Board
- † Cosmetology, Board for
- Hearing Aid Specialists, Board for

September 9

- † Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Landscape Architects
- † Funeral Directors and Embalmers, Board of

September 10

- † Contractors, Board for
 - Recovery Fund Committee
- Emergency Planning Committee, Local - Alexandria
- † Funeral Directors and Embalmers, Board of
- † Interagency Coordinating Council, Virginia
- † Labor and Industry, Department of
 - Migrant and Seasonal Farmworkers Board/Interagency Migrant Worker Policy Committee
- † Medicine, Board of
 - Advisory Committee on Acupuncturists
 - Advisory Committee on Physician Assistants

September 11

- † Community Colleges, State Board for
- † Medicine, Board of
 - Advisory Board on Occupational Therapy
 - Advisory Board on Respiratory Therapy

September 12

- † Conservation and Recreation, Department of
 - Board on Conservation and Development of Public Beaches
- † Medicine, Board of
 - Advisory Board on Physical Therapy

September 13

- Visually Handicapped, Department for the
 - Vocational Rehabilitation Advisory Council

September 15

- Alcoholic Beverage Control Board

September 16

- Environmental Quality, Department of
 - Virginia Groundwater Protection Steering Committee
- Medical Assistance Services, Department of
- † Medicine, Board of
 - Informal Conference Committee

September 17

- † Conservation and Recreation, Department of
 - Fall River Renaissance Committee
- † Treasury Board

September 18

- Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Land Surveyors
- Labor and Industry, Department of
 - Virginia Apprenticeship Council
- † Medical Assistance Services, Department of
 - Virginia Medicaid Drug Utilization Review Board
- † Museum of Fine Arts, Virginia
 - Finance Committee
 - Board of Trustees

September 19

- Family and Children's Trust Fund

September 22

- Medical Assistance Services, Department of
 - Pharmacy Liaison Committee

September 23

- Land Evaluation Advisory Council, State
- Psychology, Board of
- † Small Business Financing Authority, Virginia
 - Loan Committee

September 24

- † George Mason University
 - Board of Visitors
- † Lottery Board, State

September 25

- † Agriculture and Consumer Services, Department of
 - Pesticide Control Board
- Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Interior Designers
- Compensation Board
- Rehabilitative Services, Board of
- Transportation Safety Board

September 29

- Alcoholic Beverage Control Board
- † Conservation and Recreation, Department of

October 7

- Hopewell Industrial Safety Council

October 14

- Disability Services Council

October 15

- Alcoholic Beverage Control Board
- † Conservation and Recreation, Department of
 - Fall River Renaissance Committee
- † Treasury Board

October 22

- † Visually Handicapped, Board for the

October 23

- Fire Services Board, Virginia
 - Fire/EMS Education and Training Committee
 - Fire Prevention and Control Committee
 - Legislative/Liaison Committee

Calendar of Events

October 24

Fire Services Board, Virginia

October 27

Alcoholic Beverage Control Board

PUBLIC HEARINGS

August 18

Local Government, Commission on

August 19

† Charitable Gaming Commission
Local Government, Commission on

August 21

Fire Services Board, Virginia

August 27

Mental Health, Mental Retardation and Substance Abuse
Services, Department of

September 4

† Conservation and Recreation, Board of

September 9

† Conservation and Recreation, Board of
† Charitable Gaming Commission

September 10

† Conservation and Recreation, Board of

September 11

† Conservation and Recreation, Board of

September 17

† Charitable Gaming Commission
† Racing Commission, Virginia

September 23

† Charitable Gaming Commission
† Water Control Board, State

October 8

† Mines, Minerals and Energy, Department of

December 11

† Agriculture and Consumer Services, Board of