
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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PUBLICATION DEADLINES AND SCHEDULES

This schedule is available on the *Register's* Internet home page (<http://legis.state.va.us/codecomm/register/regindex.htm>).

July 1998 through June 1999

<u>Volume:Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
14:22	July 1, 1998	July 20, 1998
14:23	July 15, 1998	August 3, 1998
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14:26	August 26, 1998	September 14, 1998
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15:3	October 7, 1998	October 26, 1998
15:4	October 21, 1998	November 9, 1998
15:5	November 4, 1998	November 23, 1998
15:6	November 17, 1998 (Tuesday)	December 7, 1998
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15:9	December 29, 1998 (Tuesday)	January 18, 1999
15:10	January 13, 1999	February 1, 1999
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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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2 VAC 5-180-10	Amended	14:19 VA.R. 2666	7/8/98
2 VAC 5-180-20	Amended	14:19 VA.R. 2667	7/8/98
2 VAC 5-180-30	Amended	14:19 VA.R. 2668	7/8/98
2 VAC 5-180-50	Amended	14:19 VA.R. 2668	7/8/98
2 VAC 5-180-60	Amended	14:19 VA.R. 2668	7/8/98
2 VAC 5-180-80	Amended	14:19 VA.R. 2668	7/8/98
2 VAC 5-180-90	Amended	14:19 VA.R. 2669	7/8/98
2 VAC 5-180-120	Amended	14:19 VA.R. 2669	7/8/98
2 VAC 5-205-10 through 2 VAC 5-205-110	Added	14:19 VA.R. 2670	7/8/98
2 VAC 5-390-180	Amended	14:14 VA.R. 2136	3/1/98
Title 4. Conservation and Natural Resources			
4 VAC 15-290-140	Amended	14:16 VA.R. 2357	7/1/98
4 VAC 20-260-20	Amended	14:15 VA.R. 2231	3/13/98
4 VAC 20-280-10	Amended	14:16 VA.R. 2357	3/31/98
4 VAC 20-345-10	Added	14:15 VA.R. 2236	3/1/98
4 VAC 20-345-20	Added	14:15 VA.R. 2236	3/1/98
4 VAC 20-345-20	Amended	14:18 VA.R. 2513	5/4/98
4 VAC 20-345-30	Added	14:15 VA.R. 2236	3/1/98
4 VAC 20-345-40	Added	14:15 VA.R. 2237	3/1/98
4 VAC 20-345-40	Amended	14:18 VA.R. 2513	5/4/98
4 VAC 20-380-30	Amended	14:16 VA.R. 2357	3/31/98
4 VAC 20-380-60	Amended	14:16 VA.R. 2358	3/31/98
4 VAC 20-500-40	Amended	14:14 VA.R. 2137	3/1/98
4 VAC 20-560-10	Amended	14:18 VA.R. 2514	5/1/98
4 VAC 20-560-20	Amended	14:18 VA.R. 2514	5/1/98
4 VAC 20-560-40	Amended	14:18 VA.R. 2515	5/1/98
4 VAC 20-560-50	Amended	14:18 VA.R. 2516	5/1/98
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4 VAC 20-880-40	Amended	14:14 VA.R. 2137	3/1/98
4 VAC 20-880-40	Amended	14:18 VA.R. 2516	5/1/98
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4 VAC 20-880-50	Amended	14:18 VA.R. 2517	5/1/98
4 VAC 20-910-45	Amended	14:12 VA.R. 1915	1/30/98
4 VAC 20-950-30	Amended	14:16 VA.R. 2358	4/1/98
4 VAC 20-950-45	Added	14:12 VA.R. 1915	1/30/98
4 VAC 20-950-45	Amended	14:16 VA.R. 2359	4/1/98
4 VAC 20-960-30	Amended	14:16 VA.R. 2359	4/1/98
4 VAC 20-960-45	Added	14:16 VA.R. 2359	4/1/98
4 VAC 20-1000-10	Added	14:12 VA.R. 1916	1/30/98
4 VAC 20-1000-20	Added	14:12 VA.R. 1916	1/30/98
4 VAC 20-1000-30	Added	14:12 VA.R. 1916	1/30/98

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4 VAC 25-40-10	Amended	14:17 VA.R. 2428	7/1/98
4 VAC 25-40-20	Repealed	14:17 VA.R. 2430	7/1/98
4 VAC 25-40-25	Added	14:17 VA.R. 2430	7/1/98
4 VAC 25-40-30	Repealed	14:17 VA.R. 2430	7/1/98
4 VAC 25-40-40	Amended	14:17 VA.R. 2430	7/1/98
4 VAC 25-40-50	Amended	14:17 VA.R. 2430	7/1/98
4 VAC 25-40-60	Repealed	14:17 VA.R. 2431	7/1/98
4 VAC 25-40-70	Amended	14:17 VA.R. 2431	7/1/98
4 VAC 25-40-80	Repealed	14:17 VA.R. 2431	7/1/98
4 VAC 25-40-90	Amended	14:17 VA.R. 2431	7/1/98
4 VAC 25-40-100	Amended	14:17 VA.R. 2431	7/1/98
4 VAC 25-40-110	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-120	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-130	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-140	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-145	Added	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-180	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-200	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-210	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-220	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-250	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-270	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-300	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-310	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-320	Repealed	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-350	Amended	14:17 VA.R. 2432	7/1/98
4 VAC 25-40-385	Added	14:17 VA.R. 2433	7/1/98
4 VAC 25-40-388	Added	14:17 VA.R. 2433	7/1/98
4 VAC 25-40-390	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-400	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-440	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-450	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-460	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-490	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-500	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-510	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-520	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-530	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-540	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-550	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-590	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-630	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-660	Amended	14:17 VA.R. 2434	7/1/98
4 VAC 25-40-670	Amended	14:17 VA.R. 2435	7/1/98
4 VAC 25-40-690	Amended	14:17 VA.R. 2435	7/1/98
4 VAC 25-40-710	Amended	14:17 VA.R. 2435	7/1/98
4 VAC 25-40-720	Amended	14:17 VA.R. 2435	7/1/98
4 VAC 25-40-730	Repealed	14:17 VA.R. 2435	7/1/98
4 VAC 25-40-750	Repealed	14:17 VA.R. 2435	7/1/98
4 VAC 25-40-770	Amended	14:17 VA.R. 2435	7/1/98
4 VAC 25-40-780	Amended	14:17 VA.R. 2435	7/1/98
4 VAC 25-40-790	Amended	14:17 VA.R. 2436	7/1/98
4 VAC 25-40-800	Amended	14:17 VA.R. 2436	7/1/98
4 VAC 25-40-810	Amended	14:17 VA.R. 2437	7/1/98

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4 VAC 25-40-820	Amended	14:17 VA.R. 2437	7/1/98
4 VAC 25-40-830	Amended	14:17 VA.R. 2438	7/1/98
4 VAC 25-40-870	Amended	14:17 VA.R. 2438	7/1/98
4 VAC 25-40-880	Amended	14:17 VA.R. 2438	7/1/98
4 VAC 25-40-890	Amended	14:17 VA.R. 2438	7/1/98
4 VAC 25-40-895	Added	14:17 VA.R. 2438	7/1/98
4 VAC 25-40-900	Amended	14:17 VA.R. 2438	7/1/98
4 VAC 25-40-910	Amended	14:17 VA.R. 2438	7/1/98
4 VAC 25-40-920	Amended	14:17 VA.R. 2439	7/1/98
4 VAC 25-40-930	Amended	14:17 VA.R. 2439	7/1/98
4 VAC 25-40-940	Repealed	14:17 VA.R. 2439	7/1/98
4 VAC 25-40-960	Repealed	14:17 VA.R. 2439	7/1/98
4 VAC 25-40-970	Amended	14:17 VA.R. 2439	7/1/98
4 VAC 25-40-1030	Amended	14:17 VA.R. 2439	7/1/98
4 VAC 25-40-1060	Amended	14:17 VA.R. 2439	7/1/98
4 VAC 25-40-1070	Amended	14:17 VA.R. 2439	7/1/98
4 VAC 25-40-1090	Amended	14:17 VA.R. 2439	7/1/98
4 VAC 25-40-1100	Amended	14:17 VA.R. 2439	7/1/98
4 VAC 25-40-1130	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1140	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1180	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1200	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1210	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1220	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1250	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1260	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1280	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1300	Repealed	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1310	Repealed	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1320	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1340	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1350	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1370	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1490	Repealed	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1540	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1550	Amended	14:17 VA.R. 2440	7/1/98
4 VAC 25-40-1560	Amended	14:17 VA.R. 2441	7/1/98
4 VAC 25-40-1580	Amended	14:17 VA.R. 2441	7/1/98
4 VAC 25-40-1590	Amended	14:17 VA.R. 2441	7/1/98
4 VAC 25-40-1670	Amended	14:17 VA.R. 2441	7/1/98
4 VAC 25-40-1685	Added	14:17 VA.R. 2441	7/1/98
4 VAC 25-40-1690	Amended	14:17 VA.R. 2441	7/1/98
4 VAC 25-40-1740	Amended	14:17 VA.R. 2441	7/1/98
4 VAC 25-40-1780	Amended	14:17 VA.R. 2441	7/1/98
4 VAC 25-40-1785	Added	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-1810	Amended	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-1880	Amended	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-1940	Repealed	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-2010	Amended	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-2015	Added	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-2040	Amended	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-2080	Amended	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-2100	Amended	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-2140	Amended	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-2170	Amended	14:17 VA.R. 2442	7/1/98

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4 VAC 25-40-2180	Amended	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-2210	Amended	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-2220	Amended	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-2250	Amended	14:17 VA.R. 2442	7/1/98
4 VAC 25-40-2260	Repealed	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2270	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2280	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2300	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2340	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2390	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2400	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2410	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2420	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2440	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2450	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2480	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2490	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2500	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2510	Repealed	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2530	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2540	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2550	Amended	14:17 VA.R. 2443	7/1/98
4 VAC 25-40-2590	Amended	14:17 VA.R. 2444	7/1/98
4 VAC 25-40-2610	Amended	14:17 VA.R. 2444	7/1/98
4 VAC 25-40-2650	Amended	14:17 VA.R. 2444	7/1/98
4 VAC 25-40-2660	Amended	14:17 VA.R. 2444	7/1/98
4 VAC 25-40-2680	Amended	14:17 VA.R. 2444	7/1/98
4 VAC 25-40-2700	Amended	14:17 VA.R. 2444	7/1/98
4 VAC 25-40-2720	Amended	14:17 VA.R. 2444	7/1/98
4 VAC 25-40-2750	Amended	14:17 VA.R. 2444	7/1/98
4 VAC 25-40-2760	Amended	14:17 VA.R. 2444	7/1/98
4 VAC 25-40-2770	Amended	14:17 VA.R. 2444	7/1/98
4 VAC 25-40-2790	Amended	14:17 VA.R. 2444	7/1/98
4 VAC 25-40-2800	Amended	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-2810	Amended	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-2820	Amended	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-2850	Amended	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-2870	Amended	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-2880	Amended	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-2910	Amended	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-2915	Added	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-2920	Amended	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-2930	Amended	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-2980	Amended	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-3000	Amended	14:17 VA.R. 2445	7/1/98
4 VAC 25-40-3030	Amended	14:17 VA.R. 2446	7/1/98
4 VAC 25-40-3050	Amended	14:17 VA.R. 2446	7/1/98
4 VAC 25-40-3070	Amended	14:17 VA.R. 2446	7/1/98
4 VAC 25-40-3080	Amended	14:17 VA.R. 2446	7/1/98
4 VAC 25-40-3110	Amended	14:17 VA.R. 2446	7/1/98
4 VAC 25-40-3120	Amended	14:17 VA.R. 2446	7/1/98
4 VAC 25-40-3160	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3170	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3220	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3230	Repealed	14:17 VA.R. 2447	7/1/98

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4 VAC 25-40-3240	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3280	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3290	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3300	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3310	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3320	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3325	Added	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3328	Added	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3330	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3340	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3350	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3420	Amended	14:17 VA.R. 2447	7/1/98
4 VAC 25-40-3430	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3450	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3460	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3475	Added	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3478	Added	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3590	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3595	Added	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3620	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3660	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3680	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3690	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3700	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3710	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3720	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3830	Amended	14:17 VA.R. 2448	7/1/98
4 VAC 25-40-3840	Amended	14:17 VA.R. 2449	7/1/98
4 VAC 25-40-3855	Added	14:17 VA.R. 2449	7/1/98
4 VAC 25-40-3890	Amended	14:17 VA.R. 2449	7/1/98
4 VAC 25-40-3930	Amended	14:17 VA.R. 2449	7/1/98
4 VAC 25-40-3955	Added	14:17 VA.R. 2449	7/1/98
4 VAC 25-40-3958	Added	14:17 VA.R. 2450	7/1/98
4 VAC 25-40-3980	Amended	14:17 VA.R. 2450	7/1/98
4 VAC 25-40-3990	Amended	14:17 VA.R. 2450	7/1/98
4 VAC 25-40-4060	Amended	14:17 VA.R. 2450	7/1/98
4 VAC 25-40-4090	Amended	14:17 VA.R. 2450	7/1/98
4 VAC 25-40-4100	Amended	14:17 VA.R. 2450	7/1/98
4 VAC 25-40-4110	Amended	14:17 VA.R. 2451	7/1/98
4 VAC 25-40-4140	Amended	14:17 VA.R. 2451	7/1/98
4 VAC 25-40-4160	Amended	14:17 VA.R. 2451	7/1/98
4 VAC 25-40-4220	Amended	14:17 VA.R. 2451	7/1/98
4 VAC 25-40-4230	Amended	14:17 VA.R. 2451	7/1/98
4 VAC 25-40-4260	Amended	14:17 VA.R. 2451	7/1/98
4 VAC 25-40-4280	Amended	14:17 VA.R. 2451	7/1/98
4 VAC 25-40-4290	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4320	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4330	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4350	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4430	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4440	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4460	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4540	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4590	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4650	Amended	14:17 VA.R. 2452	7/1/98

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4 VAC 25-40-4750	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4770	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4910	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4920	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4970	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-4980	Amended	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-5040	Repealed	14:17 VA.R. 2452	7/1/98
4 VAC 25-40-5050	Repealed	14:17 VA.R. 2453	7/1/98
4 VAC 25-40-5060	Amended	14:17 VA.R. 2453	7/1/98
4 VAC 25-40-5070	Amended	14:17 VA.R. 2453	7/1/98
4 VAC 25-40-5120	Amended	14:17 VA.R. 2453	7/1/98
4 VAC 25-40-5170	Amended	14:17 VA.R. 2453	7/1/98
4 VAC 25-40-5180	Amended	14:17 VA.R. 2453	7/1/98
4 VAC 25-40-5200	Amended	14:17 VA.R. 2453	7/1/98
4 VAC 25-40-5210	Amended	14:17 VA.R. 2453	7/1/98
4 VAC 25-40-5230	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5290	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5310	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5320	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5330	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5340	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5370	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5400	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5450	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5470	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5550	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5580	Amended	14:17 VA.R. 2454	7/1/98
4 VAC 25-40-5590	Amended	14:17 VA.R. 2455	7/1/98
4 VAC 25-40-5630	Amended	14:17 VA.R. 2455	7/1/98
4 VAC 25-40-5660	Amended	14:17 VA.R. 2455	7/1/98
4 VAC 25-40-5670	Amended	14:17 VA.R. 2455	7/1/98
4 VAC 25-40-5680	Repealed	14:17 VA.R. 2455	7/1/98
4 VAC 25-40-5690	Repealed	14:17 VA.R. 2455	7/1/98
4 VAC 25-40-5710	Amended	14:17 VA.R. 2455	7/1/98
4 VAC 25-40-5720	Repealed	14:17 VA.R. 2455	7/1/98
4 VAC 25-40-5730	Repealed	14:17 VA.R. 2455	7/1/98
4 VAC 25-40-5740	Repealed	14:17 VA.R. 2456	7/1/98
4 VAC 25-40-5750	Added	14:17 VA.R. 2456	7/1/98
4 VAC 25-40-5760	Added	14:17 VA.R. 2456	7/1/98
4 VAC 25-40-5770	Added	14:17 VA.R. 2457	7/1/98
4 VAC 25-40-5780	Added	14:17 VA.R. 2457	7/1/98
Title 6. Criminal Justice and Corrections			
6 VAC 15-60-10 through 6 VAC 15-60-100	Repealed	14:17 VA.R. 2457	9/1/98
6 VAC 15-61-10 through 6 VAC 15-61-300	Added	14:17 VA.R. 2457	9/1/98
Title 8. Education			
8 VAC 20-20-750	Repealed	14:20 VA.R. 2754	7/22/98
8 VAC 20-20-770	Repealed	14:20 VA.R. 2754	7/22/98
8 VAC 20-20-780	Repealed	14:20 VA.R. 2754	7/22/98
8 VAC 20-20-790	Repealed	14:20 VA.R. 2754	7/22/98
8 VAC 20-21-425	Added	14:20 VA.R. 2754	7/22/98
8 VAC 20-21-430	Added	14:20 VA.R. 2755	7/22/98
8 VAC 20-21-435	Added	14:20 VA.R. 2756	7/22/98
8 VAC 20-21-440	Added	14:20 VA.R. 2757	7/22/98

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 20-21-445	Added	14:20 VA.R. 2758	7/22/98
Title 9. Environment			
9 VAC 5-20-203	Amended	14:11 VA.R. 1804	4/1/98
9 VAC 5-20-204	Amended	14:11 VA.R. 1804	4/1/98
9 VAC 5-20-205	Amended	14:11 VA.R. 1805	4/1/98
9 VAC 5-20-220	Added	14:11 VA.R. 1812	4/1/98
9 VAC 5-20-230	Added	14:11 VA.R. 1812	4/1/98
9 VAC 5-50-400	Amended	14:11 VA.R. 1807	4/1/98
9 VAC 5-60-60	Amended	14:11 VA.R. 1807	4/1/98
9 VAC 5-60-90	Amended	14:11 VA.R. 1807	4/1/98
9 VAC 5-60-100	Amended	14:11 VA.R. 1808	4/1/98
9 VAC 5-80-40	Repealed	14:11 VA.R. 1813	4/1/98
9 VAC 5-80-800	Added	14:11 VA.R. 1820	4/1/98
9 VAC 5-80-810	Added	14:11 VA.R. 1820	4/1/98
9 VAC 5-80-820	Added	14:11 VA.R. 1822	4/1/98
9 VAC 5-80-830	Added	14:11 VA.R. 1823	4/1/98
9 VAC 5-80-840	Added	14:11 VA.R. 1823	4/1/98
9 VAC 5-80-850	Added	14:11 VA.R. 1823	4/1/98
9 VAC 5-80-860	Added	14:11 VA.R. 1825	4/1/98
9 VAC 5-80-870	Added	14:11 VA.R. 1825	4/1/98
9 VAC 5-80-880	Added	14:11 VA.R. 1825	4/1/98
9 VAC 5-80-890	Added	14:11 VA.R. 1826	4/1/98
9 VAC 5-80-900	Added	14:11 VA.R. 1826	4/1/98
9 VAC 5-80-910	Added	14:11 VA.R. 1826	4/1/98
9 VAC 5-80-920	Added	14:11 VA.R. 1826	4/1/98
9 VAC 5-80-930	Added	14:11 VA.R. 1826	4/1/98
9 VAC 5-80-940	Added	14:11 VA.R. 1826	4/1/98
9 VAC 5-80-950	Added	14:11 VA.R. 1826	4/1/98
9 VAC 5-80-960	Added	14:11 VA.R. 1826	4/1/98
9 VAC 5-80-970	Added	14:11 VA.R. 1827	4/1/98
9 VAC 5-80-980	Added	14:11 VA.R. 1827	4/1/98
9 VAC 5-80-990	Added	14:11 VA.R. 1828	4/1/98
9 VAC 5-80-1000	Added	14:11 VA.R. 1828	4/1/98
9 VAC 5-80-1010	Added	14:11 VA.R. 1828	4/1/98
9 VAC 5-80-1020	Added	14:11 VA.R. 1829	4/1/98
9 VAC 5-80-1030	Added	14:11 VA.R. 1830	4/1/98
9 VAC 5-80-1040	Added	14:11 VA.R. 1831	4/1/98
9 VAC 5-190-80	Erratum	14:12 VA.R. 1937	--
9 VAC 25-31-800	Erratum	14:12 VA.R. 1937	--
9 VAC 25-31-800	Erratum	14:17 VA.R. 2477	--
9 VAC 25-31-840	Erratum	14:12 VA.R. 1937	--
9 VAC 25-31-900	Erratum	14:17 VA.R. 2477	--
9 VAC 25-31-920	Amended	14:16 VA.R. 2360	5/27/98
9 VAC 25-90-10 through 9 VAC 25-90-70	Repealed	14:18 VA.R. 2517	6/24/98
9 VAC 25-91-10 through 9 VAC 25-91-220	Added	14:18 VA.R. 2518	6/24/98
9 VAC 25-100-10 through 9 VAC 25-100-70	Repealed	14:18 VA.R. 2547	6/24/98
9 VAC 25-101-10 through 9 VAC 25-101-70	Added	14:18 VA.R. 2547	6/24/98
9 VAC 25-130-10 through 9 VAC 25-130-100	Repealed	14:18 VA.R. 2517	6/24/98
9 VAC 25-140-10 through 9 VAC 25-140-110	Repealed	14:18 VA.R. 2518	6/24/98

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-196-50	Erratum	14:12 VA.R. 1937	--
9 VAC 25-196-70	Erratum	14:12 VA.R. 1937	--
9 VAC 25-260-20	Erratum	14:12 VA.R. 1937	--
9 VAC 25-260-110	Erratum	14:12 VA.R. 1937	--
9 VAC 25-260-140	Erratum	14:12 VA.R. 1937	--
9 VAC 25-260-350	Erratum	14:12 VA.R. 1937	--
9 VAC 25-260-370	Erratum	14:12 VA.R. 1937	--
9 VAC 25-260-390	Erratum	14:12 VA.R. 1937	--
9 VAC 25-260-400	Erratum	14:12 VA.R. 1937	--
9 VAC 25-260-450	Erratum	14:12 VA.R. 1937	--
9 VAC 25-260-540	Erratum	14:12 VA.R. 1937	--
Title 10. Finance and Financial Institutions			
10 VAC 5-60-40	Amended	14:14 VA.R. 2139	3/10/98
10 VAC 5-60-50	Amended	14:14 VA.R. 2139	3/10/98
10 VAC 5-70-20	Amended	14:14 VA.R. 2140	3/10/98
10 VAC 5-70-30	Amended	14:14 VA.R. 2140	3/10/98
10 VAC 5-70-50	Amended	14:14 VA.R. 2140	3/10/98
Title 11. Gaming			
11 VAC 10-70-20	Amended	14:11 VA.R. 1831	3/19/98
11 VAC 10-70-30	Amended	14:11 VA.R. 1831	3/19/98
11 VAC 10-70-40	Amended	14:11 VA.R. 1831	3/19/98
11 VAC 10-70-50	Amended	14:11 VA.R. 1831	3/19/98
11 VAC 10-70-60	Amended	14:11 VA.R. 1832	3/19/98
11 VAC 10-70-70	Amended	14:11 VA.R. 1832	3/19/98
11 VAC 10-70-80	Amended	14:11 VA.R. 1833	3/19/98
11 VAC 10-70-110	Amended	14:11 VA.R. 1833	3/19/98
11 VAC 10-70-170	Amended	14:11 VA.R. 1833	3/19/98
11 VAC 10-70-180	Amended	14:11 VA.R. 1833	3/19/98
11 VAC 10-90-10	Amended	14:11 VA.R. 1835	3/19/98
11 VAC 10-90-20	Amended	14:11 VA.R. 1835	3/19/98
11 VAC 10-90-30	Amended	14:11 VA.R. 1835	3/19/98
11 VAC 10-90-40	Amended	14:11 VA.R. 1835	3/19/98
11 VAC 10-90-50	Amended	14:11 VA.R. 1835	3/19/98
11 VAC 10-90-60	Amended	14:11 VA.R. 1836	3/19/98
Title 12. Health			
12 VAC 5-210-10	Amended	14:15 VA.R. 2237	6/1/98
12 VAC 5-210-20	Amended	14:15 VA.R. 2243	6/1/98
12 VAC 5-220-10	Amended	14:12 VA.R. 1917	4/2/98
12 VAC 5-220-105	Added	14:12 VA.R. 1920	4/2/98
12 VAC 5-220-150	Amended	14:12 VA.R. 1920	4/2/98
12 VAC 5-220-180	Amended	14:12 VA.R. 1920	4/2/98
12 VAC 5-220-200	Amended	14:12 VA.R. 1921	4/2/98
12 VAC 5-220-230	Amended	14:12 VA.R. 1923	4/2/98
12 VAC 5-220-280	Amended	14:12 VA.R. 1924	4/2/98
12 VAC 5-220-290	Amended	14:12 VA.R. 1925	4/2/98
12 VAC 5-220-385	Amended	14:12 VA.R. 1925	4/2/98
12 VAC 5-220-500	Amended	14:12 VA.R. 1926	4/2/98
12 VAC 30-20-170	Amended	14:21 VA.R. 2889	8/5/98
12 VAC 30-50-30	Amended	14:18 VA.R. 2568	7/1/98
12 VAC 30-50-70	Amended	14:18 VA.R. 2568	7/1/98
12 VAC 30-50-100	Amended	14:18 VA.R. 2571	7/1/98
12 VAC 30-50-105	Amended	14:18 VA.R. 2573	7/1/98
12 VAC 30-50-140	Amended	14:12 VA.R. 1926	4/1/98
12 VAC 30-50-140	Amended	14:18 VA.R. 2574	7/1/98
12 VAC 30-50-150	Amended	14:12 VA.R. 1927	4/1/98

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-50-160	Amended	14:18 VA.R. 2564	7/1/98
12 VAC 30-50-160	Amended	14:21 VA.R. 2890	8/5/98
12 VAC 30-50-200	Amended	14:18 VA.R. 2579	7/1/98
12 VAC 30-50-220	Amended	14:18 VA.R. 2569	7/1/98
12 VAC 30-50-229.1	Added	14:18 VA.R. 2581	7/1/98
12 VAC 30-50-540	Amended	14:18 VA.R. 2575	7/1/98
12 VAC 30-50-550	Added	14:18 VA.R. 2576	7/1/98
12 VAC 30-50-560	Added	14:18 VA.R. 2577	7/1/98
12 VAC 30-50-570	Added	14:18 VA.R. 2578	7/1/98
12 VAC 30-60-40	Amended	14:12 VA.R. 1928	4/1/98
12 VAC 30-60-40	Amended	14:21 VA.R. 2892	8/5/98
12 VAC 30-60-90	Repealed	14:17 VA.R. 2465	6/10/98
12 VAC 30-60-120	Amended	14:12 VA.R. 1929	4/1/98
12 VAC 30-60-320	Amended	14:21 VA.R. 2894	8/5/98
12 VAC 30-60-340	Amended	14:21 VA.R. 2897	8/5/98
12 VAC 30-70-440	Repealed	14:15 VA.R. 2248	6/1/98
12 VAC 30-70-441	Added	14:15 VA.R. 2248	6/1/98
12 VAC 30-80-30	Amended	14:12 VA.R. 1933	4/1/98
12 VAC 30-80-30	Amended	14:18 VA.R. 2582	7/1/98
12 VAC 30-90-264	Amended	14:21 VA.R. 2899	8/5/98
12 VAC 30-90-290	Amended	14:21 VA.R. 2902	8/5/98
12 VAC 30-100-120	Amended	14:18 VA.R. 2583	7/1/98
12 VAC 30-120-360	Amended	14:18 VA.R. 2584	7/1/98
12 VAC 30-120-370	Amended	14:18 VA.R. 2585	7/1/98
12 VAC 30-120-385	Added	14:18 VA.R. 2587	7/1/98
12 VAC 30-120-410	Amended	14:18 VA.R. 2587	7/1/98
12 VAC 30-120-420	Amended	14:18 VA.R. 2587	7/1/98
12 VAC 30-120-490 through 12 VAC 30-120-550	Added	14:18 VA.R. 2590	7/1/98
Title 13. Housing			
13 VAC 5-51-135 emer	Added	14:18 VA.R. 2605	4/27/98 - 4/26/99
13 VAC 5-61-440	Amended	14:18 VA.R. 2600	7/1/98
13 VAC 10-10-20	Amended	14:17 VA.R. 2466	5/1/98
13 VAC 10-20-20	Amended	14:17 VA.R. 2467	5/1/98
13 VAC 10-40-100	Amended	14:11 VA.R. 1838	1/28/98
13 VAC 10-40-110	Amended	14:11 VA.R. 1839	1/28/98
13 VAC 10-40-120	Amended	14:11 VA.R. 1839	1/28/98
13 VAC 10-40-130	Amended	14:11 VA.R. 1839	1/28/98
13 VAC 10-40-140	Amended	14:11 VA.R. 1841	1/28/98
13 VAC 10-40-190	Amended	14:11 VA.R. 1842	1/28/98
13 VAC 10-40-210	Amended	14:11 VA.R. 1843	1/28/98
13 VAC 10-40-230	Added	14:11 VA.R. 1843	1/28/98
13 VAC 10-130-30	Amended	14:17 VA.R. 2468	5/1/98
13 VAC 10-140-20	Amended	14:17 VA.R. 2469	5/1/98
13 VAC 10-180-50	Amended	14:14 VA.R. 2141	3/4/98
13 VAC 10-180-60	Amended	14:14 VA.R. 2142	3/4/98
Title 16. Labor and Employment			
16 VAC 10-20-10	Amended	14:20 VA.R. 2759	7/1/98
16 VAC 10-20-20	Amended	14:20 VA.R. 2760	7/1/98
16 VAC 10-20-30	Amended	14:20 VA.R. 2760	7/1/98
16 VAC 10-20-40	Amended	14:20 VA.R. 2760	7/1/98
16 VAC 10-20-50	Repealed	14:20 VA.R. 2760	7/1/98
16 VAC 10-20-60	Repealed	14:20 VA.R. 2760	7/1/98
16 VAC 10-20-70	Repealed	14:20 VA.R. 2760	7/1/98
16 VAC 10-20-80	Amended	14:20 VA.R. 2760	7/1/98

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16 VAC 10-20-90	Repealed	14:20 VA.R. 2761	7/1/98
16 VAC 10-20-100	Repealed	14:20 VA.R. 2761	7/1/98
16 VAC 10-20-110	Amended	14:20 VA.R. 2761	7/1/98
16 VAC 10-20-140	Amended	14:20 VA.R. 2761	7/1/98
16 VAC 10-20-150	Amended	14:20 VA.R. 2761	7/1/98
16 VAC 10-20-160	Amended	14:20 VA.R. 2761	7/1/98
16 VAC 10-20-170	Amended	14:20 VA.R. 2762	7/1/98
16 VAC 10-20-180	Repealed	14:20 VA.R. 2762	7/1/98
16 VAC 10-20-190	Amended	14:20 VA.R. 2762	7/1/98
16 VAC 10-20-200	Amended	14:20 VA.R. 2762	7/1/98
16 VAC 10-20-210	Repealed	14:20 VA.R. 2763	7/1/98
16 VAC 10-20-220	Repealed	14:20 VA.R. 2763	7/1/98
16 VAC 10-20-230	Repealed	14:20 VA.R. 2764	7/1/98
16 VAC 10-20-240	Amended	14:20 VA.R. 2764	7/1/98
16 VAC 10-20-250	Repealed	14:20 VA.R. 2765	7/1/98
16 VAC 10-20-260	Repealed	14:20 VA.R. 2765	7/1/98
16 VAC 10-20-270	Repealed	14:20 VA.R. 2766	7/1/98
16 VAC 10-20-275	Added	14:20 VA.R. 2766	7/1/98
16 VAC 10-20-280	Amended	14:20 VA.R. 2766	7/1/98
16 VAC 10-20-290	Repealed	14:20 VA.R. 2766	7/1/98
16 VAC 10-20-300	Amended	14:20 VA.R. 2766	7/1/98
16 VAC 10-20-310 through 16 VAC 10-20-460	Repealed	14:20 VA.R. 2767-2770	7/1/98
16 VAC 25-90-1910.94	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.111	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.134	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.139	Added	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.156	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.252	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.261	Erratum	14:17 VA.R. 2477	6/1/98
16 VAC 25-90-1910.1001	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1003	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1017	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1018	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1025	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1027	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1028	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1029	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1043	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1044	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1045	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1047	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1048	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1050	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1051	Amended	14:15 VA.R. 2250	6/1/98
16 VAC 25-90-1910.1052	Amended	14:14 VA.R. 2151	5/1/98
16 VAC 25-90-1910.1052	Amended	14:15 VA.R. 2250	6/1/98
Title 18. Professional and Occupational Licensing			
18 VAC 25-21-70	Amended	14:11 VA.R. 1845	4/1/98
18 VAC 30-20-10	Amended	14:14 VA.R. 2155	4/29/98
18 VAC 30-20-20	Repealed	14:14 VA.R. 2156	4/29/98
18 VAC 30-20-30	Repealed	14:14 VA.R. 2156	4/29/98
18 VAC 30-20-40	Repealed	14:14 VA.R. 2156	4/29/98
18 VAC 30-20-45	Added	14:14 VA.R. 2156	4/29/98
18 VAC 30-20-50	Amended	14:14 VA.R. 2156	4/29/98

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18 VAC 30-20-60	Repealed	14:14 VA.R. 2156	4/29/98
18 VAC 30-20-70	Amended	14:14 VA.R. 2156	4/29/98
18 VAC 30-20-80	Amended	14:14 VA.R. 2157	4/29/98
18 VAC 30-20-90	Repealed	14:14 VA.R. 2157	4/29/98
18 VAC 30-20-100	Repealed	14:14 VA.R. 2157	4/29/98
18 VAC 30-20-110	Repealed	14:14 VA.R. 2157	4/29/98
18 VAC 30-20-120	Repealed	14:14 VA.R. 2157	4/29/98
18 VAC 30-20-130	Repealed	14:14 VA.R. 2157	4/29/98
18 VAC 30-20-140	Repealed	14:14 VA.R. 2157	4/29/98
18 VAC 30-20-150	Amended	14:14 VA.R. 2157	4/29/98
18 VAC 30-20-160	Amended	14:14 VA.R. 2157	4/29/98
18 VAC 30-20-170	Amended	14:14 VA.R. 2157	4/29/98
18 VAC 30-20-180	Amended	14:14 VA.R. 2159	4/29/98
18 VAC 30-20-190	Repealed	14:14 VA.R. 2159	4/29/98
18 VAC 30-20-200	Repealed	14:14 VA.R. 2159	4/29/98
18 VAC 30-20-210	Repealed	14:14 VA.R. 2159	4/29/98
18 VAC 30-20-220	Repealed	14:14 VA.R. 2159	4/29/98
18 VAC 30-20-240	Amended	14:14 VA.R. 2159	4/29/98
18 VAC 30-20-250	Repealed	14:14 VA.R. 2160	4/29/98
18 VAC 30-20-260	Repealed	14:14 VA.R. 2160	4/29/98
18 VAC 30-20-270	Repealed	14:14 VA.R. 2160	4/29/98
18 VAC 30-20-280	Amended	14:14 VA.R. 2160	4/29/98
18 VAC 60-20-105	Added	14:18 VA.R. 2602	6/24/98
18 VAC 76-10-10	Amended	14:11 VA.R. 1845	1/22/98
18 VAC 85-20-10	Amended	14:21 VA.R. 2904	8/5/98
18 VAC 85-20-20	Amended	14:21 VA.R. 2904	8/5/98
18 VAC 85-20-21	Added	14:21 VA.R. 2904	8/5/98
18 VAC 85-20-22	Added	14:21 VA.R. 2904	8/5/98
18 VAC 85-20-30	Amended	14:21 VA.R. 2905	8/5/98
18 VAC 85-20-60	Repealed	14:21 VA.R. 2905	8/5/98
18 VAC 85-20-70	Repealed	14:21 VA.R. 2905	8/5/98
18 VAC 85-20-105	Added	14:21 VA.R. 2905	8/5/98
18 VAC 85-20-110	Repealed	14:21 VA.R. 2905	8/5/98
18 VAC 85-20-120	Amended	14:21 VA.R. 2905	8/5/98
18 VAC 85-20-121	Added	14:21 VA.R. 2906	8/5/98
18 VAC 85-20-122	Added	14:21 VA.R. 2906	8/5/98
18 VAC 85-20-131	Added	14:21 VA.R. 2908	8/5/98
18 VAC 85-20-140	Amended	14:21 VA.R. 2908	8/5/98
18 VAC 85-20-150	Amended	14:21 VA.R. 2909	8/5/98
18 VAC 85-20-160	Repealed	14:21 VA.R. 2909	8/5/98
18 VAC 85-20-170	Repealed	14:21 VA.R. 2910	8/5/98
18 VAC 85-20-180	Repealed	14:21 VA.R. 2910	8/5/98
18 VAC 85-20-190	Repealed	14:21 VA.R. 2911	8/5/98
18 VAC 85-20-200	Repealed	14:21 VA.R. 2911	8/5/98
18 VAC 85-20-210	Amended	14:21 VA.R. 2912	8/5/98
18 VAC 85-20-230	Amended	14:21 VA.R. 2912	8/5/98
18 VAC 85-20-240	Amended	14:21 VA.R. 2912	8/5/98
18 VAC 85-20-250	Repealed	14:21 VA.R. 2912	8/5/98
18 VAC 85-20-260	Repealed	14:21 VA.R. 2913	8/5/98
18 VAC 85-20-270	Repealed	14:21 VA.R. 2913	8/5/98
18 VAC 85-40-10	Amended	14:21 VA.R. 2915	8/5/98
18 VAC 85-40-20	Amended	14:21 VA.R. 2915	8/5/98
18 VAC 85-40-40	Amended	14:21 VA.R. 2915	8/5/98
18 VAC 85-40-50	Amended	14:21 VA.R. 2916	8/5/98
18 VAC 85-40-60	Amended	14:21 VA.R. 2916	8/5/98

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18 VAC 85-40-70	Amended	14:21 VA.R. 2916	8/5/98
18 VAC 85-40-80	Amended	14:21 VA.R. 2916	8/5/98
18 VAC 85-50-10	Amended	14:21 VA.R. 2923	8/5/98
18 VAC 85-50-50	Amended	14:21 VA.R. 2924	8/5/98
18 VAC 85-50-55	Amended	14:21 VA.R. 2924	8/5/98
18 VAC 85-50-57	Amended	14:21 VA.R. 2924	8/5/98
18 VAC 85-50-101	Added	14:21 VA.R. 2924	8/5/98
18 VAC 85-50-115	Amended	14:21 VA.R. 2925	8/5/98
18 VAC 85-50-116	Added	14:21 VA.R. 2925	8/5/98
18 VAC 85-50-170	Amended	14:21 VA.R. 2925	8/5/98
18 VAC 85-80-10	Amended	14:21 VA.R. 2934	8/5/98
18 VAC 85-80-40	Amended	14:21 VA.R. 2934	8/5/98
18 VAC 85-80-50	Amended	14:21 VA.R. 2934	8/5/98
18 VAC 85-80-60	Amended	14:21 VA.R. 2935	8/5/98
18 VAC 85-80-70	Amended	14:21 VA.R. 2935	8/5/98
18 VAC 85-80-80	Amended	14:21 VA.R. 2935	8/5/98
18 VAC 85-80-120	Amended	14:21 VA.R. 2935	8/5/98
18 VAC 110-20-210	Amended	14:15 VA.R. 2253	5/13/98
18 VAC 120-30-100	Amended	14:11 VA.R. 1846	4/1/98
18 VAC 125-20-30	Amended	14:11 VA.R. 1851	4/1/98
18 VAC 135-20-10	Amended	14:20 VA.R. 2771	9/1/98
18 VAC 135-20-20	Amended	14:20 VA.R. 2771	9/1/98
18 VAC 135-20-30	Amended	14:20 VA.R. 2772	9/1/98
18 VAC 135-20-40	Amended	14:20 VA.R. 2773	9/1/98
18 VAC 135-20-45	Added	14:20 VA.R. 2773	9/1/98
18 VAC 135-20-50	Amended	14:20 VA.R. 2773	9/1/98
18 VAC 135-20-60	Amended	14:20 VA.R. 2774	9/1/98
18 VAC 135-20-80	Amended	14:20 VA.R. 2774	9/1/98
18 VAC 135-20-90	Amended	14:20 VA.R. 2775	9/1/98
18 VAC 135-20-100	Amended	14:20 VA.R. 2775	9/1/98
18 VAC 135-20-110	Amended	14:20 VA.R. 2776	9/1/98
18 VAC 135-20-120	Amended	14:20 VA.R. 2776	9/1/98
18 VAC 135-20-150	Amended	14:20 VA.R. 2776	9/1/98
18 VAC 135-20-160	Amended	14:20 VA.R. 2776	9/1/98
18 VAC 135-20-170	Amended	14:20 VA.R. 2777	9/1/98
18 VAC 135-20-180	Amended	14:20 VA.R. 2777	9/1/98
18 VAC 135-20-190	Amended	14:20 VA.R. 2778	9/1/98
18 VAC 135-20-200	Amended	14:20 VA.R. 2779	9/1/98
18 VAC 135-20-210	Amended	14:20 VA.R. 2779	9/1/98
18 VAC 135-20-220	Amended	14:20 VA.R. 2780	9/1/98
18 VAC 135-20-240	Amended	14:20 VA.R. 2780	9/1/98
18 VAC 135-20-250	Amended	14:20 VA.R. 2780	9/1/98
18 VAC 135-20-260	Amended	14:20 VA.R. 2780	9/1/98
18 VAC 135-20-270	Amended	14:20 VA.R. 2781	9/1/98
18 VAC 135-20-280	Amended	14:20 VA.R. 2781	9/1/98
18 VAC 135-20-290	Amended	14:20 VA.R. 2781	9/1/98
18 VAC 135-20-300	Amended	14:20 VA.R. 2782	9/1/98
18 VAC 135-20-310	Amended	14:20 VA.R. 2782	9/1/98
18 VAC 135-20-320	Amended	14:20 VA.R. 2783	9/1/98
18 VAC 135-20-350	Amended	14:20 VA.R. 2783	9/1/98
18 VAC 135-20-360	Amended	14:20 VA.R. 2783	9/1/98
18 VAC 135-20-370	Amended	14:20 VA.R. 2784	9/1/98
18 VAC 135-20-380	Amended	14:20 VA.R. 2784	9/1/98
18 VAC 135-20-390	Amended	14:20 VA.R. 2784	9/1/98
18 VAC 135-20-400	Amended	14:20 VA.R. 2785	9/1/98

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 135-20-410	Amended	14:20 VA.R. 2785	9/1/98
18 VAC 135-20-420	Repealed	14:20 VA.R. 2785	9/1/98
18 VAC 135-20-430	Repealed	14:20 VA.R. 2785	9/1/98
18 VAC 135-20-440	Repealed	14:20 VA.R. 2785	9/1/98
Title 19. Public Safety			
19 VAC 30-20-10	Amended	14:11 VA.R. 1853	3/18/98
19 VAC 30-20-70	Amended	14:11 VA.R. 1853	3/18/98
19 VAC 30-20-80	Amended	14:11 VA.R. 1854	3/18/98
19 VAC 30-20-140	Amended	14:11 VA.R. 1854	3/18/98
19 VAC 30-20-150	Amended	14:11 VA.R. 1854	3/18/98
19 VAC 30-20-160	Amended	14:11 VA.R. 1854	3/18/98
Title 20. Public Utilities and Telecommunications			
20 VAC 5-310-10	Amended	14:15 VA.R. 2253	3/24/98
Title 21. Securities and Retail Franchising			
21 VAC 5-85-10	Amended	14:13 VA.R. 1976	2/17/98
21 VAC 5-85-10	Amended	14:15 VA.R. 2259	3/24/98
Title 22. Social Services			
22 VAC 15-30-10	Amended	14:21 VA.R. 2942	9/1/98
22 VAC 15-30-20	Amended	14:21 VA.R. 2946	9/1/98
22 VAC 15-30-30	Amended	14:21 VA.R. 2946	9/1/98
22 VAC 15-30-40	Repealed	14:21 VA.R. 2946	9/1/98
22 VAC 15-30-50	Amended	14:21 VA.R. 2946	9/1/98
22 VAC 15-30-60	Repealed	14:21 VA.R. 2947	9/1/98
22 VAC 15-30-70	Amended	14:21 VA.R. 2948	9/1/98
22 VAC 15-30-80	Amended	14:21 VA.R. 2948	9/1/98
22 VAC 15-30-90	Amended	14:21 VA.R. 2948	9/1/98
22 VAC 15-30-100	Amended	14:21 VA.R. 2949	9/1/98
22 VAC 15-30-110	Amended	14:21 VA.R. 2949	9/1/98
22 VAC 15-30-120	Amended	14:21 VA.R. 2949	9/1/98
22 VAC 15-30-130	Amended	14:21 VA.R. 2950	9/1/98
22 VAC 15-30-140	Amended	14:21 VA.R. 2950	9/1/98
22 VAC 15-30-150	Amended	14:21 VA.R. 2950	9/1/98
22 VAC 15-30-160	Amended	14:21 VA.R. 2950	9/1/98
22 VAC 15-30-170	Amended	14:21 VA.R. 2951	9/1/98
22 VAC 15-30-180	Amended	14:21 VA.R. 2951	9/1/98
22 VAC 15-30-190	Amended	14:21 VA.R. 2952	9/1/98
22 VAC 15-30-200	Amended	14:21 VA.R. 2952	9/1/98
22 VAC 15-30-210	Repealed	14:21 VA.R. 2952	9/1/98
22 VAC 15-30-220	Repealed	14:21 VA.R. 2952	9/1/98
22 VAC 15-30-230	Amended	14:21 VA.R. 2953	9/1/98
22 VAC 15-30-240	Repealed	14:21 VA.R. 2953	9/1/98
22 VAC 15-30-250	Amended	14:21 VA.R. 2954	9/1/98
22 VAC 15-30-260	Amended	14:21 VA.R. 2954	9/1/98
22 VAC 15-30-270	Repealed	14:21 VA.R. 2955	9/1/98
22 VAC 15-30-280	Amended	14:21 VA.R. 2955	9/1/98
22 VAC 15-30-290	Amended	14:21 VA.R. 2955	9/1/98
22 VAC 15-30-300	Repealed	14:21 VA.R. 2955	9/1/98
22 VAC 15-30-310	Amended	14:21 VA.R. 2955	9/1/98
22 VAC 15-30-320	Amended	14:21 VA.R. 2956	9/1/98
22 VAC 15-30-330	Amended	14:21 VA.R. 2957	9/1/98
22 VAC 15-30-340	Amended	14:21 VA.R. 2958	9/1/98
22 VAC 15-30-350	Amended	14:21 VA.R. 2958	9/1/98
22 VAC 15-30-360	Amended	14:21 VA.R. 2959	9/1/98
22 VAC 15-30-370	Amended	14:21 VA.R. 2959	9/1/98
22 VAC 15-30-380	Amended	14:21 VA.R. 2959	9/1/98

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 15-30-390	Amended	14:21 VA.R. 2960	9/1/98
22 VAC 15-30-400	Repealed	14:21 VA.R. 2960	9/1/98
22 VAC 15-30-410	Amended	14:21 VA.R. 2961	9/1/98
22 VAC 15-30-420	Repealed	14:21 VA.R. 2961	9/1/98
22 VAC 15-30-430	Amended	14:21 VA.R. 2961	9/1/98
22 VAC 15-30-440	Amended	14:21 VA.R. 2962	9/1/98
22 VAC 15-30-450	Repealed	14:21 VA.R. 2963	9/1/98
22 VAC 15-30-451	Added	14:21 VA.R. 2965	9/1/98
22 VAC 15-30-460	Repealed	14:21 VA.R. 2963	9/1/98
22 VAC 15-30-461	Added	14:21 VA.R. 2965	9/1/98
22 VAC 15-30-470	Repealed	14:21 VA.R. 2964	9/1/98
22 VAC 15-30-471	Added	14:21 VA.R. 2966	9/1/98
22 VAC 15-30-480	Repealed	14:21 VA.R. 2964	9/1/98
22 VAC 15-30-481	Added	14:21 VA.R. 2966	9/1/98
22 VAC 15-30-484	Added	14:21 VA.R. 2966	9/1/98
22 VAC 15-30-487	Added	14:21 VA.R. 2966	9/1/98
22 VAC 15-30-490	Amended	14:21 VA.R. 2966	9/1/98
22 VAC 15-30-500	Amended	14:21 VA.R. 2967	9/1/98
22 VAC 15-30-510	Amended	14:21 VA.R. 2968	9/1/98
22 VAC 15-30-520	Amended	14:21 VA.R. 2968	9/1/98
22 VAC 15-30-530	Repealed	14:21 VA.R. 2969	9/1/98
22 VAC 15-30-540	Amended	14:21 VA.R. 2969	9/1/98
22 VAC 15-30-550	Amended	14:21 VA.R. 2969	9/1/98
22 VAC 15-30-560	Amended	14:21 VA.R. 2970	9/1/98
22 VAC 15-30-570	Amended	14:21 VA.R. 2970	9/1/98
22 VAC 15-30-575	Added	14:21 VA.R. 2970	9/1/98
22 VAC 15-30-580	Amended	14:21 VA.R. 2971	9/1/98
22 VAC 15-30-590	Amended	14:21 VA.R. 2971	9/1/98
22 VAC 15-30-600	Amended	14:21 VA.R. 2972	9/1/98
22 VAC 15-30-610	Amended	14:21 VA.R. 2972	9/1/98
22 VAC 15-30-620	Amended	14:21 VA.R. 2973	9/1/98
22 VAC 15-30-630	Amended	14:21 VA.R. 2973	9/1/98
22 VAC 15-30-640	Amended	14:21 VA.R. 2974	9/1/98
22 VAC 15-30-650	Amended	14:21 VA.R. 2975	9/1/98
22 VAC 15-30-660	Amended	14:21 VA.R. 2975	9/1/98
22 VAC 15-30-670	Amended	14:21 VA.R. 2975	9/1/98
22 VAC 15-30-680	Repealed	14:21 VA.R. 2976	9/1/98
22 VAC 15-30-690	Repealed	14:21 VA.R. 2976	9/1/98
22 VAC 15-30-700	Repealed	14:21 VA.R. 2977	9/1/98
22 VAC 15-30-710	Repealed	14:21 VA.R. 2977	9/1/98
22 VAC 15-30-720	Repealed	14:21 VA.R. 2978	9/1/98
22 VAC 15-30-730	Repealed	14:21 VA.R. 2978	9/1/98
22 VAC 15-40-10 through 22 VAC 15-40-730	Repealed	14:21 VA.R. 2990	9/1/98
Title 24. Transportation			
24 VAC 30-71-160	Erratum	14:13 VA.R. 2011	--
24 VAC 30-71-170	Erratum	14:13 VA.R. 2028	--
24 VAC 30-170-10	Amended	14:13 VA.R. 1992	4/15/98
24 VAC 30-380-10	Amended	14:13 VA.R. 1992	2/24/98
24 VAC 30-390-10	Amended	14:13 VA.R. 1992	2/24/98

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 8. EDUCATION

(804) 786-0809, toll-free 1-800-422-2083 or 1-800-422-1098/TTY ☎

VA.R. Doc. No. R98-277; Filed June 30, 1998, 12:01 p.m.

STATE BOARD OF EDUCATION

† 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 Education intends to consider amending regulations entitled: **8 VAC 20-80-10 et seq. Regulations Governing Special Education Programs for Children With Disabilities in Virginia.** The purpose of the proposed action is to revise the special education regulations in accordance with the 1997 amendments to the federal Individuals with Disabilities Education Act and incorporate the Special Education Program Standards, 8 VAC 20-570-10 et seq., into these regulations. The agency intends to hold a public hearing on the proposed regulations after publication.

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

Public comments may be submitted until August 20, 1998, to Cathy Pomfrey, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2402, FAX (804) 371-8796, toll-free 1-800-292-3820 or 1-800-422-1098 or 371-2822/TTY ☎

Contact: H. Douglas Cox, Director, Office of Special Education and Student Services, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2402, FAX (804) 371-8796, toll-free 1-800-292-3820 or 1-800-422-1098 or 371-2822/TTY ☎

VA.R. Doc. No. R98-276; Filed June 30, 1998, 12:01 p.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 State Board of Education intends to consider amending regulations entitled: **8 VAC 20-350-10 et seq. Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits.** The purpose of the proposed action is to (i) reorganize and simplify the regulations, (ii) respond to changes made in the Code of Virginia, and (iii) address conformity and compliance with current standards impacting the schools for children with disabilities. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 22.1-321 of the Code of Virginia.

Public comments may be submitted until August 21, 1998.

Contact: Carol Buchanan, Specialist, Department of Education, Proprietary Schools Unit, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2100, FAX

† 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 Education intends to consider repealing regulations entitled: **8 VAC 20-570-10 et seq. Special Education Program Standards.** The purpose of the proposed action is to repeal the current program standards and incorporate them, in revised form, into the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, 8 VAC 20-80-10 et seq. The agency intends to hold a public hearing on the proposed regulations after publication.

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

Public comments may be submitted until August 20, 1998, to Cathy Pomfrey, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2402, FAX (804) 371-8796, toll-free 1-800-292-3820 or 1-800-422-1098 or 371-2822/TTY ☎

Contact: H. Douglas Cox, Director, Office of Special Education and Student Services, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2402, FAX (804) 371-8796, toll-free 1-800-292-3820 or 1-800-422-1098 or 371-2822/TTY ☎

VA.R. Doc. No. R98-275; Filed June 30, 1998, 12:01 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION 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 State Air Pollution Control Board intends to consider **repealing** regulations entitled: **9 VAC 5-150-10 et seq. Regulation for Transportation Conformity and promulgating** regulations entitled: **9 VAC 5-151-10 et seq. (Rev. U97) Regulation for Transportation Conformity.** The purpose of the proposed action is to develop a new regulation (9 VAC 5 Chapter 151) which will streamline criteria and procedures for the transportation planning organization to determine whether federally-funded transportation plans, programs, and projects are in conformance with state plans for attaining and maintaining national ambient air quality standards in maintenance and

Notices of Intended Regulatory Action

nonattainment areas. These areas include Northern Virginia, Richmond, and Hampton Roads. The previous regulation (9 VAC 5 Chapter 150) concerning this matter is proposed for repeal.

Public Meeting: A public meeting will be held by the department in the Training Room, Department of Environmental Quality Central Office, 629 East Main Street, Richmond, Virginia, at 10 a.m. on Thursday, August 20, 1998, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue may be submitted until 4:30 p.m., Friday, August 21, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Public Hearing Plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: The contemplated regulation is essential (i) to protect the health, safety or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

One of the primary goals of the federal Clean Air Act (Act) is the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). These standards, designed to protect public health and welfare, apply to six pollutants, including ozone. Ozone is formed when volatile organic compounds and nitrogen oxides in the air react together in the presence of sunlight. The National Ambient Air Quality Standard for ozone was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. When concentrations of ozone in the ambient air exceed the federal standard, the area is considered to be out of compliance and is classified as "nonattainment." Numerous counties and cities within the Northern Virginia, Richmond, and Hampton Roads areas were initially identified as ozone nonattainment areas but since then localities in the Richmond and Hampton Roads areas have been reassigned as maintenance areas.

Virginia is required by the Act to develop a State Implementation Plan (SIP) to ensure that nonattainment areas will come into compliance with the federal ozone standard. Failure to develop adequate programs to meet the

ozone standard (i) will result in continued violations of the standard; (ii) may result in assumption of the program by EPA, at which time the Commonwealth would lose authority over matters affecting its citizens; and (iii) may result in the imposition of sanctions by EPA, such as more restrictive requirements on new major industrial facilities and loss of federal funds for highway construction. Furthermore, if a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements.

Section 176(c) of the Act states, "No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to a [State Implementation Plan]." This requires metropolitan planning organizations (MPOs) and the United States Department of Transportation (DOT) to make determinations that federally funded transportation plans, programs, and projects conform with Virginia's SIP. "Conformity" means that the activity conforms to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and will not (i) cause or contribute to any new violation of any standard in any area, (ii) increase the frequency or severity of any existing violation of any standard in any area, or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Act ties conformity to attainment and maintenance of the NAAQS. Thus, a transportation activity must not adversely affect implementation of the SIP or the timely attainment and maintenance of the NAAQS. The Act emphasizes reconciling the emissions from transportation activities with the SIP rather than simply providing for the implementation of SIP measures. This integration of transportation activities and air quality planning is intended to protect the integrity of the SIP by helping to ensure that SIP emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

EPA promulgated a rule (58 FR 62188, November 24, 1993) which established the criteria and procedures governing the determination of conformity for all federally funded transportation plans, programs, and projects in nonattainment areas. In response to this promulgation, the board adopted 9 VAC 5 Chapter 150 on August 13, 1996. On August 15, 1997, (62 FR 43779) EPA promulgated a new version of its transportation conformity rule which significantly restructures the program. This new rule requires Virginia to submit to EPA, by August 15, 1998, a revision to the SIP that establishes conformity criteria and procedures consistent with the new transportation conformity rule promulgated by EPA. The new EPA rule provides more clarity and flexibility to the existing transportation conformity program.

The transportation conformity rule requires MPOs and DOT to make conformity determinations on metropolitan

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transportation plans and transportation improvement programs (TIPs) before they are adopted, approved, or accepted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT or an MPO.

Alternatives: Alternatives to the proposed regulation are being considered by the department. The department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the department are discussed below.

1. Adopt a new regulation to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to provide clarity and additional flexibility to the existing transportation conformity program.
2. Make alternative regulatory requirements to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it would not provide for the additional flexibility and clarification of the existing program.
3. Take no action to adopt the new regulation and continue to process transportation conformity analysis according to the existing rule. This option is not being selected because it would not give states and local governments more authority in selecting the performance measures used as tests of conformity and more discretion when a transportation plan does not conform to a SIP.

Costs and Benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

Applicable Statutory Requirements: The contemplated regulation is mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below.

Section 176 of the federal Clean Air Act requires that transportation plans, programs and projects which are funded or approved under Title 23 USC or the Federal Transit Act conform with state or federal air quality implementation plans.

Section 176(c)(1) of the Act states, "No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to a [State Implementation Plan]." This requires metropolitan planning organizations (MPOs) and the United States Department of Transportation (DOT) to make determinations that federally funded transportation plans, programs, and projects conform with Virginia's SIP. "Conformity" means that the activity conforms to the SIP's purpose of eliminating or reducing the severity and number

of violations of the NAAQS and achieving expeditious attainment of such standards, and will not (i) cause or contribute to any new violation of any standard in any area, (ii) increase the frequency or severity of any existing violation of any standard in any area, or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Act ties conformity to attainment and maintenance of the NAAQS. Section 176(c)(2) requires that a transportation activity must not adversely affect implementation of the SIP or the timely attainment and maintenance of the NAAQS. The Act emphasizes reconciling the emissions from transportation activities with the SIP rather than simply providing for the implementation of SIP measures. This integration of transportation activities and air quality planning is intended to protect the integrity of the SIP by helping to ensure that SIP emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

Sections 176(c)(4)(A) and (B) require EPA to promulgate criteria and procedures for demonstrating and assuring conformity of federal actions to a SIP. Section 176(c)(4)(C) then requires states to submit a SIP revision containing the criteria and procedures.

40 CFR Part 51 subpart T of the Code of Federal Regulations establishes the criteria and procedures governing the determination of conformity for all federally funded transportation plans, programs, and projects in nonattainment areas. Virginia is required to submit to EPA a revision to the SIP that establishes conformity criteria and procedures consistent with the transportation conformity rule promulgated by EPA. DOT and MPOs are required to make conformity determinations on metropolitan transportation plans and transportation improvement programs (TIPs) before they are adopted, approved, or accepted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT or an MPO.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., Friday, August 21, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Mary E. Major, Environmental Program Manager, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TDD ☎

VA.R. Doc. No. R98-268; Filed June 30, 1998, 9:27 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 State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-**

Notices of Intended Regulatory Action

170-10 et seq. Regulation for General Administration.

The purpose of the proposed action is to establish requirements to govern the use of mediation and alternative dispute resolution in regulation development and permit issuance.

Public Meeting: A public meeting will be held by the department in the first floor training room, Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, at 9 a.m. on Monday, August 10, 1998, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee, or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee, or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue may be submitted until 4:30 p.m., Tuesday, August 11, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Public Hearing Plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: Beginning in the early 1970s, federal, state, and local governments have increasingly used mediation and other consensus-building tools as an alternative to more traditional means of resolving disputes. These consensus-building tools are intended to supplement, not replace, conventional legislative, judicial, administrative, or regulatory mechanisms. The benefits of alternative dispute resolution (ADR) are many:

1. ADR achieves results satisfactory to all parties. Since each party learns to search for common ground and to recognize similar interests in the other parties, the traditional "hero vs. villain" illusion of adversarial disputes is avoided. Because the eventual solution is beneficial to all parties rather than to only one, the process produces mutual satisfaction in all parties, rather than winners and losers. Studies by the American Arbitration Association show that 80% of participants were satisfied with their ADR programs regardless of process or outcome.
2. ADR saves money. For instance, a single mediation undertaken by the New Jersey Center for Public Dispute Resolution to settle a dispute with the federal government over the state's emergency transport system avoided a potential loss of \$20 million in federal funds.

3. ADR accelerates the decision-making process. Because the concerned parties have a vested interest in achieving a speedy settlement, resolutions are generally reached in much less time through ADR than is required for resolutions to be reached through more traditional means.

4. ADR decreases the load on the court system. For instance, Cincinnati's Institute of Justice Private Complaint Program has reduced the municipal court's caseload by a third every year since 1974, with nearly half of the referred cases settled out of court and others being referred to noncourt agencies. Government decision-makers sometimes perceive litigation as a politically safer option than ADR since the court can be blamed for any undesirable outcome. These decision-makers, however, have much more control over the outcome through ADR than through litigation. Furthermore, they can still exercise their right to a court settlement if ADR fails.

5. ADR is politically advantageous to the involved parties by enhancing their reputation for consensus building and problem solving. Because ADR has developed only over the course of the past two decades, some local government officials and other small-group representatives are unaware of its existence or question its legitimacy as a problem-solving tool appropriate to the inherently conservative atmosphere of government. But ADR is not the same as binding arbitration: its use is neither an admission of failure nor an abdication of authority, but a demonstration that the involved parties are sufficiently dedicated to the public good to be willing to compromise in order to reach a solution.

A large number of the issues settled through ADR are environmental ones. Dispute resolution centers in New Jersey, Massachusetts, Minnesota, New York, New Mexico, Georgia, Florida, and many other states have initiated important discussions and facilitated agreements involving complex and controversial issues like the establishment of regional sewage treatment facilities, the siting of solid waste disposal facilities, the disposal of hazardous waste, the cleanup of a Superfund site, the spraying of herbicides, the adoption of environmental standards, and the siting of underground storage tanks. A well-known example of the successful use of mediation to address an environmental problem is the decade-long public battle over the development of Hawaii's first state water code, which pitted developers against environmentalists, large landowners against small ones, and the counties against the state. This battle produced one legislative stalemate after another to the frustration of all parties but was finally resolved through mediation conducted by Hawaii's Program on Alternative Dispute Resolution.

An example of what happens without ADR is the case of the Hampton-Roads refinery in Virginia. The refinery was proposed in 1970, discussed for over a decade, but never built. Contributing to the failure of the project were badly timed changes in the permitting process, understaffing of the State Air Pollution Control Board, statutory vagueness, siting

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disagreements, lack of communication within the Army Corps of Engineers, angry citizens, gubernatorial dissatisfaction with the progress of the project, the involvement of the federal government through both the Department of the Interior and the military, and the expiration of the initially issued permits. At the end of the failed project, the company's expenses were over \$6 million, with about half of that in legal fees. The Army Corps of Engineers' bill for legal fees was at least that amount. This case is a good example of the many such environmental disputes which die of exhaustion rather than being settled fairly and thoughtfully. Millions of dollars and thousands of labor years were squandered without an equitable settlement.

One way for Virginia to avoid this situation in the future is to adopt regulations that enable it to implement § 10.1-1186.3 of the Code of Virginia.

Alternatives: Alternatives to the proposed regulation amendments being considered by the department are discussed below.

1. Amend the regulations to satisfy the provisions of the law. This option is being considered because it meets the stated purpose of the regulatory action: to comply with the mandate of § 10.1-1186.3 of the Code of Virginia that requires the adoption of regulations for the use of mediation or alternative dispute resolution in the development of a regulation or in the issuance of a permit.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being considered because it does not meet the stated purpose of the regulatory action.
3. Take no action to amend the regulations. This option is not being considered because it does not meet the stated purpose of the regulatory action.

Costs and Benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

Applicable Statutory Requirements: Section 10.1-1186.3 A of the Code of Virginia allows the State Air Pollution Control Board to use mediation and alternative dispute resolution to resolve underlying issues, to reach a consensus, or to compromise on contested issues related to the development of a regulation or to the issuance of a permit. Section 10.1-1186.3 D of the Code of Virginia specifies that the board shall adopt regulations in accordance with the Administrative Process Act for the implementation of § 10.1-1186.3. These regulations are to include (i) standards and procedures for the conduct of mediation and dispute resolution, (ii) the appointment and function of a neutral; and (iii) procedures to protect the confidentiality of papers, work product, or other materials.

Statutory Authority: § 10.1-1186.3 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., Tuesday, August 11, 1998, to the Director, Office of Program

Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Office of 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 ☎

VA.R. Doc. No. R98-254; Filed June 15, 1998, 2:26 p.m.

VIRGINIA WASTE MANAGEMENT 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 Virginia Waste Management Board intends to consider promulgating regulations entitled: **9 VAC 20-15-10 et seq. Mediation and Alternative Dispute Resolution.** The purpose of the proposed action is to establish requirements to govern the use of mediation and alternative dispute resolution in regulation development and permit issuance.

Public Meeting: A public meeting will be held by the department in the first floor training room, Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, at 9 a.m. on Monday, August 10, 1998, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee, or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee, or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue may be submitted until 4:30 p.m., Tuesday, August 11, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Public Hearing Plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: Beginning in the early 1970s, federal, state, and local governments have increasingly used mediation and other consensus-building tools as an alternative to more traditional means of resolving disputes. These consensus-building tools are intended to supplement, not replace, conventional legislative, judicial, administrative, or regulatory mechanisms. The benefits of alternative dispute resolution (ADR) are many:

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1. ADR achieves results satisfactory to all parties. Since each party learns to search for common ground and to recognize similar interests in the other parties, the traditional "hero vs. villain" illusion of adversarial disputes is avoided. Because the eventual solution is beneficial to all parties rather than to only one, the process produces mutual satisfaction in all parties, rather than winners and losers. Studies by the American Arbitration Association show that 80% of participants were satisfied with their ADR programs regardless of process or outcome.

2. ADR saves money. For instance, a single mediation undertaken by the New Jersey Center for Public Dispute Resolution to settle a dispute with the federal government over the state's emergency transport system avoided a potential loss of \$20 million in federal funds.

3. ADR accelerates the decision-making process. Because the concerned parties have a vested interest in achieving a speedy settlement, resolutions are generally reached in much less time through ADR than is required for resolutions to be reached through more traditional means.

4. ADR decreases the load on the court system. For instance, Cincinnati's Institute of Justice Private Complaint Program has reduced the municipal court's caseload by a third every year since 1974, with nearly half of the referred cases settled out of court and others being referred to noncourt agencies. Government decision-makers sometimes perceive litigation as a politically safer option than ADR since the court can be blamed for any undesirable outcome. These decision-makers, however, have much more control over the outcome through ADR than through litigation. Furthermore, they can still exercise their right to a court settlement if ADR fails.

5. ADR is politically advantageous to the involved parties by enhancing their reputation for consensus building and problem solving. Because ADR has developed only over the course of the past two decades, some local government officials and other small-group representatives are unaware of its existence or question its legitimacy as a problem-solving tool appropriate to the inherently conservative atmosphere of government. But ADR is not the same as binding arbitration: its use is neither an admission of failure nor an abdication of authority, but a demonstration that the involved parties are sufficiently dedicated to the public good to be willing to compromise in order to reach a solution.

A large number of the issues settled through ADR are environmental ones. Dispute resolution centers in New Jersey, Massachusetts, Minnesota, New York, New Mexico, Georgia, Florida, and many other states have initiated important discussions and facilitated agreements involving complex and controversial issues like the establishment of regional sewage treatment facilities, the siting of solid waste disposal facilities, the disposal of hazardous waste, the clean-up of a Superfund site, the spraying of herbicides, the

adoption of environmental standards, and the siting of underground storage tanks. A well-known example of the successful use of mediation to address an environmental problem is the decade-long public battle over the development of Hawaii's first state water code, which pitted developers against environmentalists, large landowners against small ones, and the counties against the state. This battle produced one legislative stalemate after another to the frustration of all parties but was finally resolved through mediation conducted by Hawaii's Program on Alternative Dispute Resolution.

An example of what happens without ADR is the case of the Hampton-Roads refinery in Virginia. The refinery was proposed in 1970, discussed for over a decade, but never built. Contributing to the failure of the project were badly timed changes in the permitting process, understaffing of the State Air Pollution Control Board, statutory vagueness, siting disagreements, lack of communication within the Army Corps of Engineers, angry citizens, gubernatorial dissatisfaction with the progress of the project, the involvement of the federal government through both the Department of the Interior and the military, and the expiration of the initially issued permits. At the end of the failed project, the company's expenses were over \$6 million, with about half of that in legal fees. The Army Corps of Engineers' bill for legal fees was at least that amount. This case is a good example of the many such environmental disputes which die of exhaustion rather than being settled fairly and thoughtfully. Millions of dollars and thousands of labor years were squandered without an equitable settlement.

One way for Virginia to avoid this situation in the future is to adopt regulations that enable it to implement § 10.1-1186.3 of the Code of Virginia.

Alternatives: Alternatives to the proposed regulation amendments being considered by the department are discussed below.

1. Amend the regulations to satisfy the provisions of the law. This option is being considered because it meets the stated purpose of the regulatory action: to comply with the mandate of § 10.1-1186.3 of the Code of Virginia that requires the adoption of regulations for the use of mediation or alternative dispute resolution in the development of a regulation or in the issuance of a permit.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being considered because it does not meet the stated purpose of the regulatory action.

3. Take no action to amend the regulations. This option is not being considered because it does not meet the stated purpose of the regulatory action.

Costs and Benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

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Applicable Statutory Requirements: Section 10.1-1186.3 A of the Code of Virginia allows the State Air Pollution Control Board to use mediation and alternative dispute resolution to resolve underlying issues, to reach a consensus, or to compromise on contested issues related to the development of a regulation or to the issuance of a permit. Section 10.1-1186.3 D of the Code of Virginia specifies that the board shall adopt regulations in accordance with the Administrative Process Act for the implementation of § 10.1-1186.3. These regulations are to include (i) standards and procedures for the conduct of mediation and dispute resolution, (ii) the appointment and function of a neutral; and (iii) procedures to protect the confidentiality of papers, work product, or other materials.

Statutory Authority: § 10.1-1186.3 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., Tuesday, August 11, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Office of 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/TTY ☎

VA.R. Doc. No. R98-253; Filed June 15, 1998, 2:26 p.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 Virginia Waste Management Board intends to consider promulgating regulations entitled: **9 VAC 20-170-10 et seq. Transportation of Solid and Medical Wastes on State Waters.** The purpose of the proposed action is to satisfy the provisions of § 10.1-1454.1 of the Code of Virginia. The cited provision is an amendment to the statutes as a result of House Bill No. 816 passed by the 1998 General Assembly.

Public Meeting: A public meeting will be held by the department in the first floor training room, Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, at 10 a.m. on August 11, 1998, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad Hoc Advisory Group: The department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be in the group, notify the agency contact in writing by 4:30 p.m. on August 14, 1998, and provide your name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. If you wish to be in the group, you are encouraged to attend the public meeting mentioned above. The primary function of the group is to develop the proposed regulation for department consideration through the collaborative approach of regulatory negotiation and consensus.

Public Hearing Plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on the proposed regulation.

Need: The proposed regulation will establish a permits by rule requirement for facilities receiving nonhazardous solid wastes and regulated medical waste from a ship, barge or other vessel. It will also establish specific requirements governing the commercial transport of nonhazardous solid wastes and regulated medical waste upon the navigable waters of the Commonwealth and the loading and off-loading of ships, barges and other vessels transporting such wastes. Ships, barges or vessels, and the containers holding wastes have to be designed, constructed, loaded, operated and maintained so as to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of waste in the event of accident.

Therefore, the proposed regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth. It is also essential to protect the Commonwealth's environment and natural resources from pollution, impairment or destruction.

Alternatives: The following alternatives to the proposed regulation are being considered by the department:

1. Adopt the proposed regulation. This option is being selected because it will satisfy the statutory mandates.
2. Take no action to adopt the regulation. Consequently, in the absence of the permitting program as required by the law, it could prohibit any solid waste management facilities from receiving nonhazardous solid wastes or regulated medical waste from a ship, barge and other vessel transporting such wastes upon the navigable waters of the Commonwealth. Further, in the absence of any specific requirements as mandated by the statutes, it could prohibit the commercial transport of nonhazardous solid wastes and regulated medical waste upon the navigable waters of the Commonwealth. This option is not being selected because it would not be constitutional and the statutory mandates would not be fulfilled.

Costs and Benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

Applicable Statutory Requirements: The contemplated regulation is mandated by state law. Specifically, § 10.1-1454.1 of the Code of Virginia charges the Virginia Waste Management Board to develop regulations governing the commercial transport, loading and off-loading of nonhazardous solid wastes (except scrap metal, dredged material and source-separated recyclables) and regulated medical waste by ship, barge or other vessel upon navigable waters of the Commonwealth. The statutes also require the regulation to include the following provisions: (i) to establish a permits by rule requirement for the receiving facilities; (ii) to establish specific requirements for ships, barges or other vessels, and containers to prevent the escape of wastes,

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liquids, and odors, and to prevent spillage in the event of an accident; (iii) to establish a fee, payable by the owner or operator of any ship, barge or other vessel, to recover the administrative and enforcement costs, and to assess a permit fee for the owner or operator of a receiving facility; and (iv) to require the owners and operators of ships, barges, and other vessels to demonstrate financial responsibility as a condition of operation.

Statutory Authority § 10.1-1454.1 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. on August 14, 1998.

Contact: Lily Choi, Environmental Engineer Senior, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4054 or FAX (804) 698-4032.

VA.R. Doc. No. R98-255; Filed June 15, 1998, 2:26 p.m.

STATE WATER 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 State Water Control Board intends to consider promulgating regulations entitled: **9 VAC 25-15-10 et seq. Mediation and Alternative Dispute Resolution**. The purpose of the proposed action is to establish requirements to govern the use of mediation and alternative dispute resolution in regulation development and permit issuance.

Public Meeting: A public meeting will be held by the department in the first floor training room, Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, at 9 a.m. on Monday, August 10, 1998, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee, or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee, or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue may be submitted until 4:30 p.m., Tuesday, August 11, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Public Hearing Plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: Beginning in the early 1970s, federal, state, and local governments have increasingly used mediation and other consensus-building tools as an alternative to more traditional means of resolving disputes. These consensus-building tools are intended to supplement, not replace, conventional legislative, judicial, administrative, or regulatory mechanisms. The benefits of alternative dispute resolution (ADR) are many:

1. ADR achieves results satisfactory to all parties. Since each party learns to search for common ground and to recognize similar interests in the other parties, the traditional "hero vs. villain" illusion of adversarial disputes is avoided. Because the eventual solution is beneficial to all parties rather than to only one, the process produces mutual satisfaction in all parties, rather than winners and losers. Studies by the American Arbitration Association show that 80% of participants were satisfied with their ADR programs regardless of process or outcome.
2. ADR saves money. For instance, a single mediation undertaken by the New Jersey Center for Public Dispute Resolution to settle a dispute with the federal government over the state's emergency transport system avoided a potential loss of \$20 million in federal funds.
3. ADR accelerates the decision-making process. Because the concerned parties have a vested interest in achieving a speedy settlement, resolutions are generally reached in much less time through ADR than is required for resolutions to be reached through more traditional means.
4. ADR decreases the load on the court system. For instance, Cincinnati's Institute of Justice Private Complaint Program has reduced the municipal court's caseload by a third every year since 1974, with nearly half of the referred cases settled out of court and others being referred to noncourt agencies. Government decision-makers sometimes perceive litigation as a politically safer option than ADR since the court can be blamed for any undesirable outcome. These decision-makers, however, have much more control over the outcome through ADR than through litigation. Furthermore, they can still exercise their right to a court settlement if ADR fails.
5. ADR is politically advantageous to the involved parties by enhancing their reputation for consensus building and problem solving. Because ADR has developed only over the course of the past two decades, some local government officials and other small-group representatives are unaware of its existence or question its legitimacy as a problem-solving tool appropriate to the inherently conservative atmosphere of government. But ADR is not the same as binding arbitration: its use is neither an admission of failure nor an abdication of authority, but a demonstration that the involved parties are sufficiently dedicated to the public good to be willing to compromise in order to reach a solution.

Notices of Intended Regulatory Action

A large number of the issues settled through ADR are environmental ones. Dispute resolution centers in New Jersey, Massachusetts, Minnesota, New York, New Mexico, Georgia, Florida, and many other states have initiated important discussions and facilitated agreements involving complex and controversial issues like the establishment of regional sewage treatment facilities, the siting of solid waste disposal facilities, the disposal of hazardous waste, the clean-up of a Superfund site, the spraying of herbicides, the adoption of environmental standards, and the siting of underground storage tanks. A well-known example of the successful use of mediation to address an environmental problem is the decade-long public battle over the development of Hawaii's first state water code, which pitted developers against environmentalists, large landowners against small ones, and the counties against the state. This battle produced one legislative stalemate after another to the frustration of all parties but was finally resolved through mediation conducted by Hawaii's Program on Alternative Dispute Resolution.

An example of what happens without ADR is the case of the Hampton-Roads refinery in Virginia. The refinery was proposed in 1970, discussed for over a decade, but never built. Contributing to the failure of the project were badly timed changes in the permitting process, understaffing of the State Air Pollution Control Board, statutory vagueness, siting disagreements, lack of communication within the Army Corps of Engineers, angry citizens, gubernatorial dissatisfaction with the progress of the project, the involvement of the federal government through both the Department of the Interior and the military, and the expiration of the initially issued permits. At the end of the failed project, the company's expenses were over \$6 million, with about half of that in legal fees. The Army Corps of Engineers' bill for legal fees was at least that amount. This case is a good example of the many such environmental disputes which die of exhaustion rather than being settled fairly and thoughtfully. Millions of dollars and thousands of labor years were squandered without an equitable settlement.

One way for Virginia to avoid this situation in the future is to adopt regulations that enable it to implement § 10.1-1186.3 of the Code of Virginia.

Alternatives: Alternatives to the proposed regulation amendments being considered by the department are discussed below.

1. Amend the regulations to satisfy the provisions of the law. This option is being considered because it meets the stated purpose of the regulatory action: to comply with the mandate of § 10.1-1186.3 of the Code of Virginia that requires the adoption of regulations for the use of mediation or alternative dispute resolution in the development of a regulation or in the issuance of a permit.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being considered because it does not meet the stated purpose of the regulatory action.

3. Take no action to amend the regulations. This option is not being considered because it does not meet the stated purpose of the regulatory action.

Costs and Benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

Applicable Statutory Requirements: Section 10.1-1186.3 A of the Code of Virginia allows the State Air Pollution Control Board to use mediation and alternative dispute resolution to resolve underlying issues, to reach a consensus, or to compromise on contested issues related to the development of a regulation or to the issuance of a permit. Section 10.1-1186.3 D of the Code of Virginia specifies that the board shall adopt regulations in accordance with the Administrative Process Act for the implementation of § 10.1-1186.3. These regulations are to include (i) standards and procedures for the conduct of mediation and dispute resolution, (ii) the appointment and function of a neutral; and (iii) procedures to protect the confidentiality of papers, work product, or other materials.

Statutory Authority: § 10.1-1186.3 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., Tuesday, August 11, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Office of 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/TTY ☎

VA.R. Doc. No. R98-259; Filed June 15, 1998, 2:26 p.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 State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-260-10 et seq. Water Quality Standards.** The purpose of the proposed action is to receive comments from the public on whether the board should (i) propose amendments to the numerical criteria for metals to include the Environmental Protection Agency's dissolved conversion factors for metals (9 VAC 25-260-140 B); (ii) propose amendments to the mixing zone section (9 VAC 25-260-20 B) of the regulation to provide specific protection to endangered and threatened species; (iii) propose updates to the listing of endangered species (9 VAC 25-260-110); and (iv) consider whether the requirements of the antidegradation policy (9 VAC 25-260-30) should apply to all state activities, including nonpoint source activities.

Intent: These issues may have a significant impact on activities in the Commonwealth and DEQ intends to provide the public every avenue of public participation, beginning with this Notice of Intended Regulatory Action, in order to ensure the amendments are necessary to protect aquatic life

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and provide for the maintenance of water quality in the Commonwealth of Virginia.

Public Hearing Plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: The Environmental Protection Agency submitted comments to the Department of Environmental Quality stating that recent amendments to the Water Quality Standards would not meet federal approval unless the subject matters listed above were addressed. At its meeting on September 25, 1997, the State Water Control Board directed the staff to publish this Notice of Intended Regulatory Action so that the issues could be presented to the public.

Alternatives: DEQ could allow the Environmental Protection Agency to promulgate amendments to Virginia's water quality standards to address the four issues. This is the least favorable alternative since it is preferable to promulgate regulations that are tailored to meet Virginia's needs. EPA has never had to promulgate water quality regulations for Virginia in the past.

There may be various alternatives to address the Environmental Protection Agency's concerns regarding endangered species. For example, smaller mixing zones (rather than no mixing zones) could be specified for endangered and threatened species waters or the regulation could "grandfather" existing mixing zones and only apply the new protection requirements for endangered species to new discharges. Regarding the listing of endangered and threatened species, the list could contain only federal species or both federal and state listed species. DEQ has technical concerns regarding the dissolved metals conversion factors. Therefore, one alternative to address this need would be for DEQ to do the necessary research to resolve these concerns before adopting the conversion factors.

Request for Comments: Comments are requested on the intended regulatory action, to include any ideas to assist the agency in the development of the proposal. Comments are requested on the costs and benefits of the stated alternatives or other alternatives. DEQ also requests comments as to whether the agency should use the participatory approach to assist the agency in the development of the proposal. The participatory approach is defined as a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof.

Public Meetings: Public meetings will be held on Wednesday, September 9, 1998, at 7 p.m. and Thursday, September 10, 1998, at 2 p.m. at the Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia 23220.

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

Public comments may be submitted until September 18, 1998, to Dr. Alan J. Anthony, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111.

VA.R. Doc. No. R98-266; Filed June 30, 1998, 9:27 a.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

† 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 promulgating regulations entitled: **12 VAC 5-212-10 et seq. Procedures and Policies for Administering the Commonwealth Neurotrauma Initiative Trust Fund.** The purpose of the proposed action is to carry out a 1997 legislative directive (Chapter 567 of the 1997 Acts of Assembly) by developing regulations that establish procedures and policies for soliciting and receiving applications for moneys in the Commonwealth Neurotrauma Initiative (CNI) Trust Fund, and criteria for reviewing and ranking such applications. The purpose of the CNI Trust Fund is to prevent traumatic spinal cord and brain injuries and to improve the treatment and care of Virginians with such injuries. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 32.1-12 and 32.1-73.4 of the Code of Virginia.

Public comments may be submitted until August 20, 1998.

Contact: Douglas R. Harris, Administrative Law Advisor, Department of Health, Office of the Commissioner, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3561, FAX (804) 786-4616 or toll-free 1-800-828-1120/TTY ☎

VA.R. Doc. No. R98-263; Filed June 25, 1998, 12:11 p.m.

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TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† 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 Housing and Community Development intends to consider amending regulations entitled: **13 VAC 5-21-10 et seq. Virginia Certification Standards.** The purpose of the proposed action is to review the regulations and amend provisions that are found to be no longer necessary or overly restrictive and to amend the regulations as required by General Assembly action and to put before the public for comment suggested changes submitted to the Board of Housing and Community Development. Those provisions may include, but are not limited to, amending the regulation regarding certificates of competence and training requirements for code officials and assistants. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-137 of the Code of Virginia.

Public comments may be submitted until August 21, 1998.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7170, FAX (804) 371-7092 or (804) 371-7089/TTY ☎

VA.R. Doc. No. R98-273; Filed July 1, 1998, 12:10 p.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 Board of Housing and Community Development intends to consider amending regulations entitled: **13 VAC 5-31-10 et seq. Virginia Amusement Device Regulations.** The purpose of the proposed action is to review the regulations and amend provisions that are found to be no longer necessary or overly restrictive and as required by General Assembly action and to put before the public for comment suggested changes submitted to the Board of Housing and Community Development. The proposed amendments may include, but are not limited to, amending the regulation by updating to more recent standards of the American National Standards Institute (ANSI) and the American Society for Testing and Materials (ASTM) relating to amusement devices. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-98.3 of the Code of Virginia.

Public comments may be submitted until August 21, 1998.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501

N. 2nd St., Richmond, VA 23219, telephone (804) 371-7170, FAX (804) 371-7092 or (804) 371-7089/TTY ☎

VA.R. Doc. No. R98-271; Filed July 1, 1998, 12:11 p.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 Board of Housing and Community Development intends to consider amending regulations entitled: **13 VAC 5-51-10 et seq. Virginia Statewide Fire Prevention Code.** The purpose of the proposed action is to review the regulations and amend provisions that are found to be no longer necessary or overly restrictive and as required by General Assembly action and to put before the public for comment suggested changes submitted to the Board of Housing and Community Development. The proposed amendments may include, but are not limited to: (i) amending the regulation to clarify the appointment procedures of local assistant (deputy) fire marshals as set forth in legislation, (ii) considering requiring the code official to enforce maintenance provisions of the code regarding replacement of smoke detectors in R-2 buildings, (iii) considering amending the time allowed to become certified by the board following appointment as a code official, and (iv) considering amending the regulation to address a potential safety problem with an already installed fire sprinkler device which may not function properly during a fire situation. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 27-97 of the Code of Virginia.

Public comments may be submitted until August 21, 1998.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7170, FAX (804) 371-7092 or (804) 371-7089/TTY ☎

VA.R. Doc. No. R98-270; Filed July 1, 1998, 12:12 p.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 Board of Housing and Community Development intends to consider amending regulations entitled: **13 VAC 5-61-10 et seq. Virginia Uniform Statewide Building Code.** The purpose of the proposed action is to review the regulations and amend provisions that are found to be no longer necessary or overly restrictive and as required by General Assembly action and to put before the public for comment suggested changes submitted to the Board of Housing and Community Development. The proposed amendments may include, but are not limited to: (i) requiring an additional sign for handicap parking stating the penalty as required by statute, (ii) amending and adding definitions to comport with legislation regarding farm structures and buildings, (iii) codifying the recommendations in the board's 1998 report to the Governor and the General Assembly (House Document No. 29) regarding exterior insulation and finish systems (EIFS), (iv) considering

Notices of Intended Regulatory Action

amending the building code regarding accessibility standards for renovation projects, (v) implementing expedited plan review as recommended by the board's ad hoc committee, (vi) considering requiring certain smoke detectors be replaced in R-2 buildings, (vii) considering adoption of the radon gas provisions in the CABO 1 & 2 Family Dwelling Code, and (viii) considering amending the time allowed to become certified by the board following appointment as a code official. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-98 of the Code of Virginia.

Public comments may be submitted until August 21, 1998.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7170, FAX (804) 371-7092 or (804) 371-7089/TTY ☎

VA.R. Doc. No. R98-274; Filed July 1, 1998, 12:12 p.m.

MANUFACTURED HOUSING 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 Manufactured Housing Board intends to consider amending regulations entitled: **13 VAC 6-20-10 et seq. Manufactured Housing Licensing and Transaction Recovery Fund Regulations.** The purpose of the proposed action is to review the regulations and amend provisions that are found to be no longer necessary or overly restrictive. The proposed amendments may include, but are not limited to: (i) amending the regulations to allow the Manufactured Housing Board to require tests/examinations for licensure as dealers, brokers, or salespersons; (ii) adding a provision which would allow a licensed regulant to obtain a temporary location license if needed; (iii) in 13 VAC 6-20-180, Penalties; notice to regulant, changing "Transaction Recovery Fund assessment" to "monetary penalty"; (iv) deleting unnecessary requirements from 13 VAC 6-20-210 and 13 VAC 6-20-220 concerning dealer/manufacture sales agreements; and (v) reviewing 13 VAC 6-20-250 for possible deletion as restriction of trade. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-85.18 of the Code of Virginia.

Public comments may be submitted until August 21, 1998.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092 or (804) 371-7089/TTY ☎

VA.R. Doc. No. R98-272; Filed July 1, 1998, 12:10 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

CEMETERY 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 Cemetery Board intends to consider promulgating regulations entitled: **18 VAC 47-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines for soliciting input of interested parties in the formation and development of the Cemetery Board's regulations. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2313 of the Code of Virginia (Chapter 721 of the 1998 Acts of Assembly).

Public comments may be submitted until August 6, 1998.

Contact: Karen O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-8548/TTY ☎

VA.R. Doc. No. R98-250; Filed June 15, 1998, 2:55 p.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 Cemetery Board intends to consider promulgating regulations entitled: **18 VAC 47-20-10 et seq. Cemetery Board Regulations.** The purpose of the proposed action is to implement the provisions of Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia (Cemetery Operators, Perpetual Care Trust Funds and Preened Burial Contracts) enacted by the 1998 General Assembly. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2313 of the Code of Virginia (Chapter 721 of the 1998 Acts of Assembly).

Public comments may be submitted until August 6, 1998.

Contact: Karen O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-8548/TTY ☎

VA.R. Doc. No. R98-260; Filed June 9, 1998, 11:23 a.m.



DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to consider amending regulations entitled: **18 VAC 120-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed action is to amend the regulation by removing the terms “employment counselors” and “polygraph examiner” to enable the regulation to apply to all regulatory programs administered by the Director of the Department of Professional and Occupational Regulation, including the Professional Boxing and Wrestling Events program mandated by Senate Bill 157 (Chapter 895 of the 1998 Session of the General Assembly). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-831 of the Code of Virginia (Chapter 895 of the 1998 Acts of Assembly).

Public comments may be submitted until August 6, 1998.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R98-251; Filed June 15, 1998, 2:29 p.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 Department of Professional and Occupational Regulation intends to consider promulgating regulations entitled: **18 VAC 120-40-10 et seq. Virginia Professional Boxing and Wrestling Events Regulations.** The purpose of the proposed action is to promulgate regulations for the newly created boxing and wrestling events regulatory program mandated by Senate Bill 157 (1998). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-831 of the Code of Virginia (Chapter 895 of the 1998 Acts of Assembly).

Public comments may be submitted until August 6, 1998.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R98-252; Filed June 15, 1998, 1:32 p.m.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

This section gives 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.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

September 10, 1998 - 9 a.m. – Public Hearing
Department of Environmental Quality, 629 East Main Street,
Training Room, 1st Floor, Richmond, Virginia.

September 28, 1998 – Public comments may be submitted
until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution Control (Rev. ZZ); 9 VAC 5-20-10 et seq. General Provisions; 9 VAC 5-40-10 et seq. Existing Stationary Sources; 9 VAC 5-50-10 et seq. New and Modified Stationary Sources.** The regulation amendments concern provisions covering municipal solid waste (MSW) landfills and are summarized below.

Facilities to which the rule applies are MSW landfills which commenced construction, reconstruction, or modification before May 30, 1991. In the Northern Virginia VOC Control Area, the design capacity applicability criteria is 1.0 million megagrams (Mg) or more; the emission rate applicability criteria is emissions of nonmethane organic compounds (NMOCs) greater than or equal to 23 Mg per year. In the remainder of the Commonwealth, the design capacity applicability criteria and the emissions rate applicability criteria are 2.5 million Mg in capacity and 50 Mg per year or more in emissions, respectively.

Landfills with a design capacity equal to or greater than the design capacity applicability criteria must determine their NMOC emissions. If the NMOC emission rate is less than the emission rate applicability criteria, the landfill must submit an emission report, and recalculate the NMOC emission rate until it is equal to or greater than the emission rate applicability criteria or the landfill is closed. If the calculated NMOC emission rate is equal to or greater than the emission rate applicability criteria, a collection and control system design plan must be submitted, followed by the installation of a collection and control system.

Active collection systems must be designed to handle the maximum expected gas flow rate at a sufficient extraction rate and be designed to minimize off-site gas migration. Passive collection systems must be installed with liners, then either destroy the collected gas or treat it for sale or use. Operational standards direct how landfills must operate collection systems in order to minimize emissions and operate safely. Test methods and procedures are provided in order for sources to calculate the NMOC emission rate. Once the NMOC emission rate is established, the landfill is classified as Tier 1, 2, or 3 depending on whether the NMOC emission rate is less than or greater than the emission rate applicability criteria; if the NMOC concentration is determined using a specific sampling procedure; or if the NMOC mass emission rate is determined using specific equations.

Compliance is determined through specific methods. Monitoring of operations is achieved through the installation of various sampling ports and devices. Reporting and recordkeeping requirements are delineated. Finally, installation of emission collection and control equipment capable of meeting the standards must be accomplished by 30 months after the rule's effective date.

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: Facilities located in the Northern Virginia VOC Control Area (Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, City of Alexandria, City of Fairfax, City of Falls Church, City of Manassas, City of Manassas Park) must meet more restrictive design capacity applicability criteria and emission rate applicability criteria. These special criteria are required in order to meet emission reduction requirements for serious nonattainment areas (as required by Part D of the federal Clean Air Act), rather than to meet requirements for designated pollutants (§ 111(d) of the federal Clean Air Act) and have been in place since 1996.

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

Public Comment Periods - Proposed Regulations

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 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

Tidewater Regional Office
Department of Environmental Quality
5636 Southern Boulevard
Virginia Beach, Virginia
Ph: (757) 518-2000

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., September 28, 1998, to the Director, Office of Program

Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TTY ☎

TITLE 12. HEALTH

STATE BOARD OF HEALTH

September 21, 1998 – 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 proposed amendments include additions to and deletions from the reportable disease list, changes to the list of conditions and laboratory tests reportable by directors of laboratories, and other changes to enhance disease surveillance and control in the Commonwealth.

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

Contact: Diane Woolard, Ph.D., M.P.H., Director, 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/TTY ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

September 18, 1998 – 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.** The proposed regulations clarify DMAS' coverage of breast reconstructive procedures and prostheses and establish parameters for the coverage of outpatient observation beds.

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

Public comments may be submitted until September 18, 1998, to Bonnie Winn, R.N., Manager, Division of Program Operations, 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 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.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

September 9, 1998 - 9 a.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

September 18, 1998 – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-110-10 et seq. Regulations Governing the Practice of Licensed Acupuncturists.** Amendments are proposed pursuant to Executive Order 15 (94) which called for agencies to simplify, clarify and reduce the burden of regulations. Proposed amendments would reduce the application fee from \$200 to \$150, eliminate the undergraduate education requirements, eliminate the requirement for an applicant from another state to have an approved tutorial, and specify that an applicant whose acupuncture education was in English is not required to take the Test of English as a Foreign Language. Another amendment changes the required time for examination by the referring doctor from six months to three months prior to referral.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.9 of the Code of Virginia.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

BOARD OF NURSING

August 12, 1998 - 10 a.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

September 18, 1998 – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **18 VAC 90-20-10 et seq. Regulations of the Board of Nursing.** Amendments are proposed pursuant to Executive Order 15 (94), which called for agencies to simplify and clarify regulations and eliminate unnecessary requirements. Amendments also include: (i) requirements for nurses to

wear identification indicating their name and type of licensure; (ii) establishment of a standard protocol for persons with prescriptive authority to operate adult vaccine clinics; and (iii) an increase in the renewal fee for certified nurse aides in order to operate the investigative and disciplinary functions related to that program.

Statutory Authority: § 54.1-2400 and Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

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 or FAX (804) 662-9943.

BOARDS OF NURSING AND MEDICINE

September 9, 1998 - 9 a.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

September 18, 1998 – 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 Boards of Nursing and Medicine intend to amend regulations entitled: **18 VAC 90-30-10 et seq. Regulations Governing the Licensure of Nurse Practitioners.** The proposed amendments are the board's response to the review of regulations pursuant to Executive Order 15 (94). The proposed amendments clarify several definitions, add a requirement for guidelines on "availability" in the protocol between the nurse practitioner and supervising physician, and eliminate the process for board approval of a nurse practitioner education program.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

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 or FAX (804) 662-9943.

BOARD OF NURSING HOME ADMINISTRATORS

August 5, 1998 - 9 a.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

September 18, 1998 – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing Home Administrators intends to amend regulations entitled: **18 VAC 95-20-10 et seq. Regulations of the Board of Nursing Home Administrators.** Pursuant to Executive Order 15 (94) to clarify, simplify and reduce the number of regulations, less restrictive requirements are

Public Comment Periods - Proposed Regulations

proposed for the definition of "full-time employment," for notification of a change of address, and for continuing education. Amendments also clarify application, licensure, and preceptorship requirements.

Statutory Authority: § 54.1-2400 and Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111 or FAX (804) 662-9943.

BOARD OF OPTOMETRY

September 16, 1998 - 9 a.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia.

September 18, 1998 – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled: **18 VAC 105-20-10 et seq. Regulations of the Virginia Board of Optometry.** Amendments are proposed pursuant to Executive Order 15 (94), which called agencies to simplify and clarify regulations and eliminate unnecessary requirements. Proposed amendments provide for a listing of approved providers of continuing education courses and eliminate the burden and expense of submitting for board approval all of the materials for each course offered.

Statutory Authority: § 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Contact: Elizabeth Carter, Executive Director, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or FAX (804) 662-9943.

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.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Title of Regulations: **Regulations for the Control and Abatement of Air Pollution (Rev. ZZ).**

9 VAC 5-20-10 et seq. General Provisions (amending 9 VAC 5-20-21).

9 VAC 5-40-10 et seq. Existing Stationary Sources (amending 9 VAC 5-40-5800, 9 VAC 5-40-5820, 9 VAC 5-40-5850, 9 VAC 5-40-5860, 9 VAC 5-40-5870, 9 VAC 5-40-5880, 9 VAC 5-40-5890, and 9 VAC 5-40-5920; adding 9 VAC 5-40-5822, 9 VAC 5-40-5824, and 9 VAC 5-40-5930).

9 VAC 5-50-10 et seq. New and Modified Stationary Sources (amending 9 VAC 5-50-410).

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public Hearing Date: September 10, 1998 - 9 a.m.

Public comments may be submitted until 4:30 p.m. on September 28, 1998.

(See Calendar of Events section for additional information)

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses, and has not exceeded, its statutory authority to promulgate the proposed regulation amendments is attached.

Purpose: The purpose of the regulation is to require the owners of Municipal Solid Waste (MSW) landfills to limit air emissions to a specified level necessary to protect public health and welfare. The proposed amendments are being made to meet emission control guidelines promulgated under § 111(d) of the federal Clean Air Act, and 40 CFR Part 60, Subpart Cc of federal regulations.

Substance: The major provisions of the proposal:

1. Facilities to which the rule applies are MSW landfills which commenced construction, reconstruction, or modification before May 30, 1991. In the Northern Virginia VOC Control Area, the design capacity applicability criteria is 1.0 million Mg or more; the emission rate applicability criteria is emissions of NMOC greater than or equal to 23 Mg per year. In the remainder of the Commonwealth, the design capacity applicability criteria and the emissions rate applicability

criteria are 2.5 million Mg in capacity and 50 Mg per year or more in emissions, respectively.

2. Landfills with a design capacity equal to or greater than the design capacity applicability criteria must determine their NMOC emissions. If the NMOC emission rate is less than the emission rate applicability criteria, the landfill must submit an annual emission report to the board, and recalculate the NMOC emission rate annually until the NMOC emission rate is equal to or greater than the emission rate applicability criteria or the landfill is closed. If the calculated NMOC emission rate is equal to or greater than the emission rate applicability criteria, a collection and control system design plan must be submitted to the board within one year, followed by the installation of a collection and control system that effectively captures the gas generated within the landfill.

3. An active collection system must be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control or treatment system equipment. The collection system must collect gas from each area, cell, or group of cells in the landfill, collect gas at a sufficient extraction rate, and be designed to minimize off-site migration of subsurface gas.

4. A passive collection system must be installed with liners on the bottom and all sides in all areas in which gas is to be collected; then either route all the collected gas to a control system such as an open flare, or route the collected gas to a treatment system that processes the collected gas for subsequent sale or use.

5. Operational standards direct how landfills must operate collection systems in order to minimize emissions and operate safely. These standards require the use of specific EPA test methods and procedures.

6. Test methods and procedures are provided in order for sources to calculate the NMOC emission rate, depending on whether the actual year-to-year solid waste acceptance rate is known. Once the NMOC emission rate is established, the landfill is designated as Tier 1, 2, or 3.

Tier 1 landfills compare the calculated NMOC mass emission rate to the emission rate applicability criteria. If the NMOC emission rate is less than the emission rate applicability criteria, then source must submit an emission rate report and recalculate the NMOC mass emission rate annually. If the calculated NMOC emission rate is equal to or greater than the emission rate applicability criteria, then the source must either install a collection system, or determine a site-specific

NMOC concentration and recalculate the NMOC emission rate.

Tier 2 landfills must determine the NMOC concentration using a specific sampling procedure. If the resulting emission rate is equal to or greater than the emission rate applicability criteria, then the source must either install a collection system or determine the site-specific methane generation rate constant and recalculate the NMOC emission rate. If the resulting NMOC mass emission rate is less than the emission rate applicability criteria, the source must submit a periodic estimate of the emission rate report and retest the site-specific NMOC concentration every five years.

Tier 3 landfills estimate the NMOC mass emission rate using specific equations, a site-specific methane generation rate, and the site-specific NMOC concentration. If the NMOC mass emission rate is equal to or greater than the emission rate applicability criteria, the source must install a collection system. If the NMOC mass emission rate is less than the emission rate applicability criteria, then the source must submit a periodic emission rate report and recalculate the NMOC mass emission rate annually.

7. After the installation of a collection and control system, the landfill must calculate the NMOC emission rate for purposes of determining when the system can be removed.

8. Specific methods must be used to determine whether the various components of the gas collection system are in compliance. Detailed equations and procedures are provided; a monitoring schedule is required for each component; and exceedances must be corrected within a certain time frame.

9. Monitoring of operations is achieved through the installation of various sampling ports and devices. Sources seeking to install alternative collection systems must describe the proposed design and operation, operating parameters that would indicate proper performance, and appropriate monitoring procedures. A closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring.

10. Information to be included as well as submission schedules and exemptions for initial design capacity reports, NMOC emission rate reports, and collection system reports are specified. Records must be maintained for certain time periods and in a particular format.

11. Specifications for active collection systems are provided. Landfills with this type of system must site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using certain specific procedures.

12. Planning, awarding of contracts, and installation of emission collection and control equipment capable of

meeting the standards must be accomplished by 30 months after the effective date of this rule. For landfills with an NMOC emission rate less than the emissions rate applicability criteria on the effective date of this regulation, installation of collection and control systems capable of meeting the standards must be accomplished within 30 months of the date of the first annual NMOC emission rate which equals or exceeds the emission rate applicability criteria.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department.

1. Public: A limited segment of the general public may experience a minor economic disadvantage in increased fees where affected landfills must install collection systems. However, the general public will experience a number of health and welfare advantages. Landfill emissions cause a number of serious health effects, including cancer. Therefore, reduction of these emissions will reduce disease and its related costs. Reduction of landfill emissions will also reduce the risk of explosion, odor, and damage to vegetation and property, which will in turn enhance property values, tax revenues, payroll, and other socioeconomic components.

A limited number of landfills may experience an economic disadvantage if they must install a collection system. Municipal waste landfills as well as industry in general will also benefit from the rule. If EPA lowers the national standard for ozone, overall ozone reductions may lessen the risk of current attainment areas being designated nonattainment, and current nonattainment areas being reclassified to a more serious classification. In addition, control of methane-related explosions will protect landfill property.

2. Department: The department will need to perform additional inspection, monitoring and recordkeeping to ensure that the emissions limitations are being met, which will require increased expenditure in personnel and equipment.

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.

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Summary of the proposed regulation. The materials disposed of in municipal solid-waste (MSW) landfills produce a wide variety of gases including carbon dioxide, methane and a number of nonmethane organic compounds (NMOC). As these gases migrate through and eventually escape from landfills, they generate a number of significant health and environmental risks.

This regulation requires the owners of municipal solid-waste (MSW) landfills to limit air emissions to a specified rate. The proposed amendments are being made to meet mandatory emission control guidelines promulgated under § 111(d) of the federal Clean Air Act and 40 CFR Part 60, Subpart Cc.

Landfills with a design capacity equal to or greater than the "design capacity applicability criteria" specified in the regulation must estimate their emissions of nonmethane organic compounds (NMOC). If the NMOC emission rate is less than the "emission rate applicability criteria", the landfill must submit an annual emission report to the board, and reestimate the NMOC emission rate annually until the NMOC emission rate is equal to or greater than the emission rate applicability criteria or until the landfill is closed. If the calculated NMOC emission rate is equal to or greater than the emission rate applicability criteria, a collection and control system design plan must be submitted to the board within one year, followed by the installation of a collection and control system that effectively captures the gas generated within the landfill.

This rule applies to MSW landfills which commenced construction, reconstruction, or modification before May 30, 1991. In the Northern Virginia VOC Control Area, landfills with a design capacity of greater than 1.0 million metric tons of waste or more are affected, and the emission rate applicability criteria is equal to 23 metric tons of NMOC per year. In the remainder of the Commonwealth, the design capacity applicability criteria and the emissions rate applicability criteria are 2.5 million metric tons in capacity and 50 metric tons per year of NMOC, respectively.

Gas collection systems must be designed to handle the maximum expected gas flow rate at a sufficient extraction rate, and be designed to minimize off-site gas migration. Landfill operators must either destroy the collected gas or treat it for sale or use. Operational standards direct how landfills must operate collection systems in order to minimize emissions and operate safely. Test methods and procedures are provided in order for sources to calculate the NMOC emission rate.

Compliance is determined by monitoring operations through various sampling ports and devices. The proposal delineates numerous reporting and recordkeeping requirements. Installation of emission collection and control equipment capable of meeting the standards must be accomplished by 30 months after the rule's effective date.

Estimated economic impact.

Costs: The costs of implementing the technologies for controlling the gases produced in landfills are reasonably well-known. The systems may be "active" or "passive."

Active systems use draw the gases out of the landfill for processing and/or disposal. Passive systems provide a path for the migration of gases out of the otherwise sealed landfill space so that most of the gas generated passes through controlled exit points where it is managed. The Environmental Protection Agency (EPA) has estimated that the net present value of costs to be \$1.3 billion to retrofit and operate controls at the 312 landfills that are expected to be subject to this regulation. The time profile of these costs is uncertain because the date at which controls must be installed will vary across landfills. EPA estimates that the annualized costs will be about \$90 million. This amounts to approximately \$290,000 per landfill per year. DEQ estimates that 20 landfills will be subject to these new requirements. This gives a total average annual cost of \$5.8 million for Virginia landfills.

There are two reasons why this figure may overstate the costs of compliance. First, three of the landfills covered by this new rule are already collecting the gas generated at the landfill. The costs associated with these controls cannot be assigned to this regulation. This reduces the annual cost of compliance with this regulation to \$4.9 million. That three landfills are collecting gas in the absence of this rule suggest that some other landfills may have done the same even in the absence of the regulation. Thus, the \$4.9 million would appear to be an upper estimate of the gas collection costs incurred due to this new requirement. How much below the \$4.9 million actual compliance costs will be cannot be readily assessed at this time.

Once collected and scrubbed, the landfill gas has a market value. The gas is primarily methane and is a substitute for natural gas extracted from geologic formations. Any revenue from gas generated by collection equipment required by this regulation must be subtracted from gross compliance costs to measure the net economic impact on landfills. Collecting the gas from landfills improves the safety of landfill operation. Together with the revenues from collected gas, these benefits may be sufficient to justify a gas collection system even in the absence of the regulation. While the potential magnitude of gas revenues is unknown, it could be large and it would not be unreasonable to expect the net compliance costs to be significantly lower than the \$4.9 million figure implied by EPA's analysis.

Whatever the net costs, most of these costs will ultimately be paid for by the consumers of waste services and by taxpayers in communities served by these landfills. On the basis of its original \$90 million dollar estimate, EPA estimated that the increased compliance costs would result in an average \$5.0 per year increase in disposal costs for households served by the affected landfills. Based on our earlier discussion, this may be taken as an upper estimate. The actual value could be substantially lower.

Benefits: The gas generated in MSW landfills presents a number of environmental risks of health effects, fire and explosion hazards, offensive odors, and contributions to global climate change. Reducing the emissions of these gases can produce simultaneous benefits in all of these areas. There is great uncertainty about the physical affect of

these emission reduction regulations on the environmental risks caused by landfill gases. First, while we can know how much gas is collected and disposed of from a landfill, we can only estimate what fraction this represents of the total amount of gas produced. Much of the analysis of the reductions in gas leaving landfills is based on assumed values for important parameters that may vary greatly from landfill to landfill. Also, the impact of the effluents will depend on local geologic and climatic conditions and on the physical distribution of the local population.

Additional uncertainty surrounds the magnitude of the health impacts associated with the many known and suspected carcinogens found in the raw gas. EPA has not been able to estimate the maximum individual risk associated with landfill gases because of the inadequate scientific data on the distribution and toxicity of the emissions. The risk of fire and explosion has not been estimated due to the difficulty in clearly establishing a causal link between emissions and these risks. Odor is, of course, extremely hard to measure. Finally, while methane is known to be a greenhouse gas significantly more potent than carbon dioxide, the magnitude of the impact of greenhouse gases on the global climate is still subject to great scientific uncertainty.

Beyond the uncertainty over physical effects is the difficulty of establishing a monetary value for whatever effects may occur. Reliable willingness-to-pay measures are simply not available for these impacts. We know from many studies that property values are affected by the risk of fire and explosion by the proximity to potentially toxic chemicals and by offensive odors. None of these effects are sufficiently well measured to allow a reliable economic valuation to be placed on the reduction in emissions although we know that the value would be positive and could potentially be large.

Uncertainty about the net economic impact: One comparison that may prove useful is the cost-effectiveness measure. EPA estimates that, on the basis of its \$90 million estimate discussed earlier, it will cost approximately \$1,147 on average per metric ton of NMOC emissions reduced. The incremental cost, or the cost of the last few tons removed is much higher at \$6,250 per ton. Again, given our earlier discussion of cost estimates, these figures may be substantially higher than actual net expenses. A cost of \$1,000 per ton is not substantially different from the cost of other control measures taken to address somewhat similar risks. However, a cost of \$6,250 per ton seems high relative to what we spend on some other risks.

It should be noted that the costs will be higher in Northern Virginia due to the relatively more stringent standards needed to reduce ambient ozone concentrations in the nonattainment area. While the costs will be higher, the benefits of controlling a ton of landfill gas will also be higher.

This leads to the question whether our money is better spent on removing the last increment of emissions required by this proposed regulation or on increasing controls in some other area where costs would be lower per ton removed. First, the uncertainties are so large that no conclusion can be drawn about whether the costs do or do not outweigh the benefits or even whether the relative cost effectiveness is low relative to

other regulatory efforts. There is simply not enough scientific information on which to draw any conclusion on these points. Second, the alternative of reallocating regulatory effort to an area where it would have a greater net benefit is not available to DEQ since these emissions reductions are required by EPA.

Administrative costs: In its discussion of the fiscal impact of this regulation, DEQ states that it will need to perform additional inspection, monitoring and recordkeeping to ensure that the emissions limitations are being met, which will require increased expenditure in personnel and equipment. However, in the same document, DEQ states that "[i]t is not expected that the regulation amendments will result in any cost to the Department of Environmental Quality beyond that currently in the budget."

These two assertions are inconsistent. If the regulation has associated with it new inspection, monitoring, and recordkeeping, then it has costs and DEQ should make clear how those costs will be paid. If there are no new revenues, then the increased responsibilities imply that resources are being reallocated away from some other function. It is important that policy makers and the public know where the resources are coming from and what impact this reallocation will have on agency operations and performance.

Businesses and entities affected. This regulation will affect approximately 20 landfills in Virginia. Seventeen of these already have gas collection and control systems in place and hence will face much lower compliance costs. Those using the waste disposal services of these landfills may experience an increase in costs. Although the increase will not be large for each customer, the aggregate impact is not insignificant although its magnitude is not estimable at this time.

Localities particularly affected. Only those localities served by these older landfills will feel any appreciable impact. These localities will receive most of the benefits of the emissions reductions and will pay most of the costs for those reductions.

Projected impact on employment. These new regulations will increase employment in the waste disposal sector because they require intensive monitoring and, eventually, significant capital expenditure on new equipment and facilities at the affected landfills. It cannot be known at this time whether this represents any increase in employment or simply a shift of jobs from other sectors where waste disposal costs are increased.

Effects on the use and value of private property. The owners and operators of older landfills will see an increase in costs and, depending on the elasticity of demand for their services, could see a reduction in demand and a reduction in profits. This would lower the value of the landfill operation.

Property owners living near landfills should see an increase in their property values. Property values are known to be quite sensitive to odors and to environmental hazards such as toxic air emissions. The reduction in the potential for methane gas seeping into buildings on nearby properties will also tend to increase the market value of these properties.

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Summary of analysis. Both the costs and benefits of this proposal are subject to great uncertainties. While the costs of complying with this regulation are high, there are substantial benefits of emissions reductions at MSW landfills. The uncertainties associated with this forecast do not allow us to draw any conclusions about whether this regulation has a positive or negative net economic benefit for Virginia.

In order to facilitate public comment on this proposal, DPB recommends that DEQ make an explicit account of the resources required to implement this regulation, describe where these resources will be coming from, and describe any impact that this will have on DEQ operations.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget prepared an economic impact analysis for the proposal as required by § 9-6.14:7.1 G of the Administrative Process Act. The Department of Environmental Quality takes issue with the economic impact analysis prepared by the Department of Planning and Budget.

DPB comments:

In its discussion of the fiscal impact of this regulation, DEQ states that it will need to perform additional inspection, monitoring, and recordkeeping to ensure that the emissions limitations are being met, which will require increased expenditure in personnel and equipment. However, in the same document, DEQ states that "[i]t is not expected that the regulation amendments will result in any cost to the Department beyond that currently in the budget."

These two assertions are inconsistent. If the regulation has associated with it new inspection, monitoring, and recordkeeping, then it has costs and DEQ should make clear how those costs are paid. If there are no new revenues, then the increased responsibilities imply that resources are being reallocated away from some other function.

While the department agrees that enforcement of the regulation will increase inspection, monitoring, and recordkeeping needs, the department also believes that these increases will have no measurable impact on department costs or resources. Municipal solid waste landfills have been regulated in Virginia (by the Virginia Waste Management Board) since 1971; the State Air Pollution Control Board has been regulating large sources of landfill gases in the Northern Virginia VOC Control Area since 1996. Since well-established systems for inspection, monitoring, and recordkeeping of these sources already exist, modification or increase in the amount and type of information to be inspected and tracked by the department will be negligible.

Summary:

The proposed amendments contain provisions related to the regulation of nonmethane organic compound emissions from municipal solid waste landfills. Included

in the amendments are provisions related to: standards for air emissions; collection and control system specifications and standards; methods for determining compliance; emission rate calculation methods; monitoring, reporting and recordkeeping requirements; and when permits might be required for certain specified activities.

9 VAC 5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (1994) in effect July 1, 1994. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the headquarters office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.
 - a. The provisions specified below from the Code of Federal Regulations (CFR) in effect as of July 1, 1994, are incorporated herein by reference.
 - (1) 40 CFR Part 50 - National Primary and Secondary Ambient Air Quality Standards.
 - (a) Appendix A - Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(b) Appendix B - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(c) Appendix C - Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(d) Appendix D - Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(e) Appendix E - Reference Method for Determination of Hydrocarbons Corrected for Methane.

(f) Appendix F - Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(g) Appendix G - Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(h) Appendix H - Interpretation of the National Ambient Air Quality Standards for Ozone.

(i) Appendix I - Reserved.

(j) Appendix J - Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere.

(k) Appendix K - Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(2) 40 CFR Part 51 - Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Appendix W - Guideline on Air Quality Models (Revised).

(3) 40 CFR Part 58 - Ambient Air Quality Surveillance.

Appendix B - Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

(4) 40 CFR Part 60 - Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9 VAC 5-50-400 et seq.) of Part II of Chapter 50, Rule 5-5, Environmental Protection Agency Standards of Performance for New Stationary Sources.

(5) 40 CFR Part 61 - National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1

(9 VAC 5-60-60 et seq.) of Part II of Chapter 60, Rule 6-1, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants.

(6) 40 CFR Part 63 - National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9 VAC 5-60-90 et seq.) of Part II of Chapter 60, Rule 6-2, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories.

b. Copies may be obtained from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; phone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following ~~document~~ *documents* from the U.S. Environmental Protection Agency ~~is~~ *are* incorporated herein by reference.

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) *Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, Publication No. PB95196028, 1995; Volume II: Supplement A, Publication No. PB96192497, 1996.*

b. Copies may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone (703) 487-4650.

3. U.S. government.

a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; phone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-94, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)" from Section 5, Volume 05.01 of the 1985 Annual Book of ASTM Standards.

(2) D97-93, "Standard Test Method for Pour Point of Petroleum Oils" from Section 5, Volume 05.01 of the 1989 Annual Book of ASTM Standards.

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(3) D129-91, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)," 1991.

(4) D388-95, "Standard Classification of Coals by Rank," 1995.

(5) D396-92, "Standard Specification for Fuel Oils," 1992.

(6) D975-94, "Standard Specification for Diesel Fuel Oils," 1994.

(7) D1072-90, "Standard Test Method for Total Sulfur in Fuel Gases," 1990, reapproved 1994.

(8) D1265-92, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)," 1992.

(9) D2622-94, "Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry," 1994.

(10) D4057-88, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products," 1988.

(11) D4294-90, "Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy," 1990.

b. Copies may be obtained from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; phone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: API Publication 2517, Evaporation Loss from External Floating Roof Tanks, Third Edition, 1989.

b. Copies may be obtained from: American Petroleum Institute, 2101 L Street, Northwest, Washington, D.C. 20037; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: Threshold Limit Values for Chemical Substances 1991-1992 and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from: ACGIH, 6500 Glenway Avenue, Building D-7, Cincinnati, Ohio 45211-4438; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 1990 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 1993 Edition.

(3) NFPA 30A, Automotive and Marine Service Station Code, 1993 Edition.

b. Copies may be obtained from the National Fire Prevention Association, Batterymarch Park, Quincy, Massachusetts 02269; phone (617) 770-3000.

CHAPTER 40.
EXISTING STATIONARY SOURCES.

PART II.
EMISSION STANDARDS.

Article 43.

Emission Standards for ~~Sanitary Municipal Solid Waste~~ Landfills (Rule 4-43).

9 VAC 5-40-5800. Applicability and designation of affected facility.

A. The affected facility to which the provisions of this article apply is each ~~sanitary municipal solid waste (MSW) landfill which has accepted waste at any time since November 8, 1987, or which has additional capacity for future waste deposition commenced construction, reconstruction, or modification before May 30, 1991.~~

B. The provisions of this article apply ~~only to sources of volatile organic compounds in the Northern Virginia Volatile Organic Compound Emissions Control Area designated in 9 VAC 5-20-206 throughout the Commonwealth of Virginia.~~

9 VAC 5-40-5810. Definitions.

A. For the purpose of ~~these regulations~~ *this chapter* and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Active collection system" means a gas collection system that uses gas mover equipment.

"Active landfill" means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

"Closed landfill" means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first obtaining a permit or permit amendment under Part VII (9 VAC 20-80-480 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations). Once such permit has been issued, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 9 VAC 20-80-250 E.

"Closure" means that point in time when a landfill becomes a closed landfill.

"Commercial waste" means all types of solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, offices, restaurants, warehouses, and shopping centers other than nonmanufacturing activities, excluding construction, household, and industrial wastes.

"Controlled landfill" means any landfill at which collection and control systems are required under this article as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time either (i) a notification of intent to install a collection and control system or (ii) a collection and control system design plan is submitted in compliance with 9 VAC 5-40-5820 C 2 a.

"Design capacity" means the maximum amount of solid waste a landfill can accept, including refuse on-site, within the permit limits of the entire facility as specified in a permit issued under Part VII (9 VAC 20-80-480 et seq.) of 9 VAC 20 Chapter 80 (Virginia Solid Waste Management Regulations) or as calculated using good engineering practices acceptable to the board.

"Disposal facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

"Emission rate cutoff" means the threshold annual emission rate to which a landfill compares its estimated emission rate to determine if control under the regulation is required.

"Enclosed combustor" means an enclosed firebox which maintains a relatively constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an enclosed combustor.

"Flare" means an open combustor without enclosure or shroud.

"Gas management system" means a method for the collection and destruction or use of landfill gases.

"Gas mover equipment" means the equipment (i.e., fan, blower, compressor) used to transport landfill gas through the header system.

"Household waste" means any solid waste material, including garbage, trash and refuse, derived from households. Households include (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreational areas). Household wastes do not include sanitary waste (septage) in septic tanks which are regulated by other state agencies.

"Industrial solid waste" means any solid waste generated by manufacturing or industrial processes that is not a regulated hazardous waste regulated under 9 VAC 20

Chapter 60 (9 VAC 20-60-10 et seq., Virginia Hazardous Waste Management Regulations). Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing and foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Interior well" means any well or similar collection component located inside the perimeter of the landfill. A perimeter well located outside the landfilled waste is not an interior well.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under Part I (9 VAC 20-80-10 et seq.) of 9 VAC 20 Chapter 80 (Virginia Solid Waste Management Regulations).

"Landfill gas" means any gas derived from the decomposition of organic waste deposited in a sanitary MSW landfill or from the evolution of volatile organic species in the waste. Emissions from sanitary MSW landfills is equivalent to landfill gas emissions.

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill.

"Municipal solid waste landfill" or "MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of solid wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and nonhazardous industrial solid waste as provided in 9 VAC 20-80-250 (Virginia Solid Waste Management Regulations). Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

"Municipal solid waste landfill emissions" or "MSW landfill emissions" means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

"NMOC" or "NMOCs" means nonmethane organic compounds, as measured according to the provisions of 9 VAC 5-40-5860.

"Nondegradable waste" means any waste that does not decompose through chemical breakdown or microbiological

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activity. Examples include, but are not limited to, concrete, municipal waste combustor ash, and metals.

"Passive collection system" means a gas collection system that solely uses positive pressure within the landfill to move the gas rather than using gas mover equipment.

"Offsite gas migration" means underground landfill gases detected at any point on the landfill perimeter.

"Refuse" means trash, rubbish, garbage, and other forms of solid or liquid waste, including, but not limited to, wastes resulting from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management, and emergency operations.

~~"Sanitary landfill" means an engineered land burial facility for the disposal of household waste which is located, designed, constructed, and operated according to Part V (9 VAC 20-80-240 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations) and in which waste is contained and isolated so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill may also receive commercial waste, sludges, and industrial solid waste.~~

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

~~"Solid waste" means any of those materials defined as "solid waste" in garbage, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under 33 USC § 1342, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC § 2011 et seq.). For more detail, see Part III (9 VAC 20-80-130 et seq.) of 9 VAC 20 Chapter 80 (Virginia Solid Waste Management Regulations).~~

"Sufficient density" means any number, spacing, and combination of collection system components, including vertical wells, horizontal collectors, and surface collectors, necessary to maintain emission and migration control as determined by measures of performance set forth in this part.

"Sufficient extraction rate" means a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

9 VAC 5-40-5820. Standard for ~~volatile organic compounds~~ air emissions.

A. This section shall apply to affected facilities ~~meeting the following conditions: that have accepted waste any time since November 8, 1987, or have additional design capacity available for future waste deposition, and meet the design capacity and emission rate applicability criteria in subdivisions A 1 or A 2 of this section.~~

~~1. The design capacity is 1.1 million tons (1 million Mg) or greater; and~~

~~2. The nonmethane organic compound (NMOC) emission rate is 25 tons of NMOC or greater per year.~~

B. ~~Affected facilities meeting the provisions of subsection A of this section shall install and operate a well-designed gas management system that employs one of the following control devices:~~

~~1. An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18;~~

~~2. An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 ppmvd at 3.0% oxygen;~~

~~3. A control device that is designed and operated so as to reduce NMOC by 98% or more; or~~

~~4. A system having a control efficiency equal to or greater than that of the systems in subdivisions 1, 2 and 3 of this subsection, provided such system is approved by the board.~~

C. ~~Affected facilities meeting the provisions of subsection A of this section shall install and operate a well-designed gas management system in which the gas collection systems shall:~~

~~1. Be designed to handle the maximum expected gas flowrate over the lifetime of the gas control or treatment system equipment from the entire area of the landfill that warrants control over the equipment lifetime;~~

~~2. Collect gas from each area, cell, or group of cells in the landfill in which refuse has been placed for one year or more;~~

~~3. Collect gas at a sufficient extraction rate, maximizing the amount of gas extracted while preventing fires or damage to the collection system; and~~

~~4. Be in compliance with Part V (9 VAC 20-80-240 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations).~~

D. ~~Affected facilities required to meet the provisions of subdivision A 1 of this section shall install and operate a gas management system within 30 months after April 1, 1996. For each affected facility meeting the conditions of subdivision A 1 of this section whose NMOC emission rate on April 1, 1996, is less than that stated in subdivision A 2 of this section, the installation and operation of a gas management system capable of meeting the requirements of~~

~~subsection B of this section shall be accomplished within 30 months of the date of the first annual NMOC emission rate which equals or exceeds the rate stated in subdivision A 2 of this section.~~

1. For affected facilities located in the Northern Virginia Volatile Organic Compound Emissions Control Area as designated in 9 VAC 5-20-206:

- a. A design capacity greater than or equal to 1.0 million megagrams or 1.0 million cubic meters; and
- b. A nonmethane organic compound emission rate of 23 megagrams per year or more as determined using test procedures under 9 VAC 5-40-5860.

2. For affected facilities located in the remaining areas of the Commonwealth:

- a. A design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters; and
- b. A nonmethane organic compound emission rate of 50 megagrams per year or more as determined using test procedures under 9 VAC 5-40-5860.

B. Each owner of an MSW landfill having a design capacity less than the design capacity applicability criteria in subsection A of this section shall submit an initial design capacity report to the board as provided in 9 VAC 5-40-5880 C. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the design capacity applicability criteria in subsection A of this section. Any density conversions shall be documented and submitted with the report. Submittal of the initial design capacity report shall fulfill the requirements of this article except as provided for in subdivisions B 1 and B 2 of this section.

1. The owner shall submit to the board an amended design capacity report, as provided for in 9 VAC 5-40-5880 C 3, when there is any increase in the design capacity of a landfill subject to the provisions of this article, whether the increase results from an increase in the area or depth of the landfill, a change in the operating procedures of the landfill, or any other means.

2. If any increase in the maximum design capacity of a landfill exempted from the provisions of 9 VAC 5-40-5820 C, 9 VAC 5-40-5822, 9 VAC 5-40-5824, 9 VAC 5-40-5850, 9 VAC 5-40-5860, 9 VAC 5-40-5870, 9 VAC 5-40-5880, and 9 VAC 5-40-5890 on the basis of the design capacity applicability criteria in subsection A of this section results in a revised maximum design capacity that meets the design capacity applicability criteria in subsection A of this section, the owner shall comply with the provisions of subsection C of this section.

C. Each owner of an MSW landfill having a design capacity that meets the design capacity applicability criteria in subsection A of this section on (the effective date of this article) shall either comply with subdivision C 2 of this section or calculate an NMOC emission rate for the landfill using the procedures specified in 9 VAC 5-40-5860. The NMOC

emission rate shall be recalculated annually, except as provided in 9 VAC 5-40-5880 D 1 b.

1. If the calculated NMOC emission rate is less than the emission rate applicability criteria in subsection A of this section, the owner shall:

- a. Submit an annual emission report to the board, except as provided for in 9 VAC 5-40-5880 D 1 b; and
- b. Recalculate the NMOC emission rate annually using the procedures specified in 9 VAC 5-40-5860 B 1 until such time as the calculated NMOC emission rate meets the emission rate applicability criteria in subsection A of this section, or the landfill is closed.

(1) If the NMOC emission rate, upon recalculation required in subdivision C 1 b of this section, meets the emission rate applicability criteria in subsection A of this section, the owner shall install a collection and control system in compliance with subdivision C 2 of this section.

(2) If the landfill is permanently closed, a closure notification shall be submitted to the board as provided for in 9 VAC 5-40-5880 F.

2. If the calculated NMOC emission rate meets the emission rate applicability criteria in subsection A of this section, the owner shall:

a. Submit a collection and control system design plan prepared by a professional engineer to the board within one year:

(1) The collection and control system as described in the plan shall meet the design requirements of subdivision C 2 b of this section.

(2) The collection and control system design plan shall include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of 9 VAC 5-40-5822, 9 VAC 5-40-5850, 9 VAC 5-40-5860, 9 VAC 5-40-5870, 9 VAC 5-40-5880, and 9 VAC 5-40-5890 proposed by the owner.

(3) The collection and control system design plan shall either conform with specifications for active collection systems in 9 VAC 5-40-5824 or include a demonstration to the board's satisfaction of the sufficiency of the alternative provisions to 9 VAC 5-40-5824.

(4) The board shall review the information submitted under subdivisions C 2 a (1), (2) and (3) of this section and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection

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systems, or horizontal trenches only, leachate collection components, and passive systems.

b. Install a collection and control system within 18 months of the submittal of the design plan under subdivision C 2 a of this section that effectively captures the gas generated within the landfill.

(1) An active collection system shall:

(a) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control or treatment system equipment;

(b) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of:

(i) Five years or more if active; or

(ii) Two years or more if closed or at final grade;

(c) Collect gas at a sufficient extraction rate;

(d) Be designed to minimize off-site migration of subsurface gas.

(2) A passive collection system shall:

(a) Comply with the provisions specified in subdivisions C 2 b (1) (a), (1) (b), and (1) (c) of this section.

(b) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners shall be installed as required under 9 VAC 20-80-250 B.

c. Route all the collected gas to a control system that complies with the requirements in either subdivision C 2 c (1), (2) or (3) of this section.

(1) An open flare designed and operated in accordance with 40 CFR 60.18;

(2) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight-percent or reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis at 3.0% oxygen, or less. The reduction efficiency or parts per million by volume shall be established by an initial compliance test using the test methods specified in 9 VAC 5-40-5860 E.

(a) If a boiler or process heater is used as the control device, the landfill gas stream shall be introduced into the flame zone.

(b) The control device shall be operated within the parameter ranges established during the initial or most recent compliance test. The operating parameters to be monitored are specified in 9 VAC 5-40-5870;

(3) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or use. All emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of subdivision C 2 c (1) or (2) of this section.

d. Operate the collection and control device installed to comply with this article in accordance with the provisions of 9 VAC 5-40-5822, 9 VAC 5-40-5850, and 9 VAC 5-40-5870.

e. The collection and control system may be capped or removed provided that all the conditions of subdivisions C 2 e (1), (2), and (3) of this section are met:

(1) The landfill shall be no longer accepting solid waste and be permanently closed under the requirements of 9 VAC 20-80-250 E. A closure report shall be submitted to the board as provided in 9 VAC 5-40-5880;

(2) The collection and control system shall have been in operation a minimum of 15 years; and

(3) Following the procedures specified in 9 VAC 5-40-5860 C, the calculated NMOC gas produced by the landfill shall be less than the emission rate applicability criteria in subsection A of this section on three successive test dates. The test dates shall be no less than 90 days apart, and no more than 180 days apart.

9 VAC 5-40-5822. Operational standards for collection and control systems.

Each owner of an MSW landfill gas collection and control system used to comply with the provisions of 9 VAC 5-40-5820 C 2 b shall:

A. Operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for:

1. Five years or more if active; or

2. Two years or more if closed or at final grade;

B. Operate the collection system with negative pressure at each wellhead except under the following conditions:

1. A fire or increased well temperature. The owner shall record instances when positive pressure occurs in efforts to avoid a fire. These records shall be submitted with the annual reports as provided in 9 VAC 5-40-5880 H 1;

2. Use of a geomembrane or synthetic cover. The owner shall develop acceptable pressure limits in the design plan;

3. A decommissioned well. A well may experience a static positive pressure after shut down to accommodate

for declining flows. All design changes shall be approved by the board;

C. Operate each interior wellhead in the collection system with a landfill gas temperature less than 55-C and with either a nitrogen level less than 20% or an oxygen level less than 5.0%. The owner may establish a higher operating temperature, nitrogen, or oxygen value at a particular well. A higher operating value demonstration shall show supporting data that the elevated parameter does not cause fires or significantly inhibit anaerobic decomposition by killing methanogens.

1. The nitrogen level shall be determined using Reference Method 3C in Appendix A of 40 CFR Part 60, unless an alternative test method is established as allowed by 9 VAC 5-40-5820 C 2 a.

2. Unless an alternative test method is established as allowed by 9 VAC 5-40-5820 C 2 a, the oxygen shall be determined by an oxygen meter using Reference Method 3A in Appendix A of 40 CFR Part 60 except that:

a. The span shall be set so that the regulatory limit is between 20 and 50% of the span;

b. A data recorder is not required;

c. Only two calibration gases are required, a zero and span, and ambient air may be used as the span;

d. A calibration error check is not required;

e. The allowable sample bias, zero drift, and calibration drift are $\pm 10\%$.

D. Operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill. To determine if this level is exceeded, the owner shall conduct surface testing around the perimeter of the collection area along a pattern that traverses the landfill at 30 meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. The owner may establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan shall be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30 meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

E. Operate the system such that all collected gases are vented to a control system designed and operated in compliance with 9 VAC 5-40-5820 C 2 c. In the event the collection or control system is inoperable, the gas mover system shall be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere shall be closed within one hour; and

F. Operate the control or treatment system at all times when the collected gas is routed to the system.

G. If monitoring demonstrates that the operational requirement in subsections B, C, or D of this section are not met, corrective action shall be taken as specified in 9 VAC 5-40-5850 B 3 through 5 or 9 VAC 5-40-5850 E. If corrective actions are taken as specified in 9 VAC 5-40-5850, the monitored exceedance is not a violation of the operational requirements in this section.

9 VAC 5-40-5824. Specifications for active collection systems.

A. Each owner seeking to comply with 9 VAC 5-40-5820 C 2 a shall site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using the following procedures unless alternative procedures have been approved by the board as provided in 9 VAC 5-40-5820 C 2 a (3) and (4):

1. The collection devices within the interior and along the perimeter areas shall be certified to achieve comprehensive control of surface gas emissions by a professional engineer. The following issues shall be addressed in the design: depths of refuse, refuse gas generation rates and flow characteristics, cover properties, gas system expandability, leachate and condensate management, accessibility, compatibility with filling operations, integration with closure end use, air intrusion control, corrosion resistance, fill settlement, and resistance to the refuse decomposition heat.

2. The sufficient density of gas collection devices determined in subdivision A 1 of this section shall address landfill gas migration issues and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior.

3. The placement of gas collection devices determined in subdivision A 1 of this section shall control all gas producing areas, except as provided by subdivisions A 3 a and A 3 b of this section.

a. Any segregated area of asbestos or nondegradable material may be excluded from collection if documented as provided under 9 VAC 5-40-5890 F. The documentation shall provide the nature, date of deposition, location and amount of asbestos or nondegradable material deposited in the area, and shall be provided to the board upon request.

b. Any nonproductive area of the landfill may be excluded from control, provided that the total of all excluded areas can be shown to contribute less than 1.0% of the total amount of NMOC emissions from the landfill. The amount, location, and age of the material shall be documented and provided to the board upon request. A separate NMOC emissions estimate shall be made for each section proposed for exclusion, and the sum of all such sections shall be compared to the NMOC emissions estimate for the entire landfill. Emissions from each section shall be computed using the following equation:

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$$Q_i = 2kL_0M_i (e^{-kt_i}) (C_{NMOC}) (3.6 \times 10^{-9})$$

where

Q_i = NMOC emission rate from the i^{th} section, megagrams per year

k = methane generation rate constant, year⁻¹

L_0 = methane generation potential, cubic meters per megagram solid waste

M_i = mass of the degradable solid waste in the i^{th} section, megagram

t_i = age of the solid waste in the i^{th} section, years

C_{NMOC} = concentration of nonmethane organic compounds, parts per million by volume

3.6×10^{-9} = conversion factor

The values for k , L_0 , and C_{NMOC} determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence. If field testing has not been performed, the default values for k , L_0 and C_{NMOC} provided in 9 VAC 5-40-5860 B 1 shall be used. The mass of nondegradable solid waste contained within the given section may be subtracted from the total mass of the section when estimating emissions provided the nature, location, age, and amount of the nondegradable material is documented as provided in subdivision A 3 a of this section.

B. Each owner seeking to comply with 9 VAC 5-40-5820 C 2 a (1) shall construct the gas collection devices using the following equipment or procedures:

1. The landfill gas extraction components shall be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other nonporous, corrosion-resistant material of suitable dimensions to: convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system shall extend as necessary to comply with emission and migration standards. Collection devices such as wells and horizontal collectors shall be perforated to allow gas entry without head loss sufficient to impair performance across the intended extent of control. Perforations shall be situated with regard to the need to prevent excessive air infiltration.

2. Vertical wells shall be placed so as not to endanger underlying liners and shall address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors shall be of sufficient cross section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices shall be designed so as not to allow indirect short circuiting of air into the cover or refuse into

the collection system or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

3. Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly shall include a positive closing throttle valve, any necessary seals and couplings, access couplings and at least one sampling port. The collection devices shall be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

C. Each owner seeking to comply with 9 VAC 5-40-5820 C 2 a (1) shall convey the landfill gas to a control system in compliance with 9 VAC 5-40-5820 C 2 c through the collection header pipe(s). The gas mover equipment shall be sized to handle the maximum gas generation flow rate expected over the intended use period of the gas moving equipment using the following procedures:

1. For existing collection systems, the flow data shall be used to project the maximum flow rate. If no flow data exists, the procedures in subdivision C 2 of this section shall be used.

2. For new collection systems, the maximum flow rate shall be in accordance with 9 VAC 5-40-5850 C 1.

9 VAC 5-40-5850. Compliance.

A. The provisions of 9 VAC 5-40-20 (Compliance) apply.

B. Owners subject to 9 VAC 5-40-5820 shall comply with the provisions of Part V (9 VAC 20-80-240 et seq.) of 9 VAC 20 Chapter 80 (Virginia Solid Waste Management Regulations) pertaining to the control of landfill gases.

~~C. Owners required to install a gas collection system and control device shall use the following methods to determine whether the gas collection system is in compliance with 9 VAC 5-40-5820 C:~~

~~1. For the purposes of calculating the maximum expected gas generation flowrate from the landfill to determine compliance with 9 VAC 5-40-5820 C 1, the following equation shall be used:~~

~~$$Q_M = 2L_0R(1 - \exp(-kt))$$~~

~~where:~~

~~Q_M = maximum expected gas generation flow rate, m³/Mg-refuse.~~

~~L_0 = refuse methane generation potential, m³/Mg refuse.~~

~~R = average annual acceptance rate, Mg/yr.~~

~~k = methane generation rate, 1/yr.~~

~~t = age of the landfill plus the gas mover equipment life or active life of the landfill, whichever is less, in years.~~

A value of $170 \text{ m}^3/\text{Mg}$ shall be used for L_0 . If Reference Method 2E has been performed, the value of k determined from the test shall be used; if not, a value of 0.05 years^{-1} shall be used. A value of 15 years shall be used for gas mover equipment life. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

2. For the purposes of calculating the area of influence of the gas collection system to determine compliance with 9 VAC 5-40-5820 C 2, the owner should use Reference Method 2E in Appendix A of 40 CFR Part 60.

3. For the purpose of demonstrating whether the gas collection system flowrate is sufficient to determine compliance with 9 VAC 5-40-5820 C 3, the owner shall measure gauge pressure in the gas collection header. If a positive pressure exists, the gas collection system flowrate shall be increased until a negative pressure is measured.

4. If the gauge pressure at a wellhead is positive, the valve shall be opened to restore negative pressure. If negative pressure cannot be achieved, an additional well shall be added.

D. To determine whether the control device designed and operated according to the parameters established in 40 CFR 60.18 (for open flares), or for other control devices the parameters in the performance test to reduce NMOCs by 98 weight percent, is in compliance with 9 VAC 5-40-5820 B, the parameters shall be monitored as provided in 9 VAC 5-40-5870.

C. Except as provided in 9 VAC 5-40-5820 C 2 a (2), the specified methods in subdivisions C 1 through C 6 of this section shall be used to determine whether the gas collection system is in compliance with 9 VAC 5-40-5820 C 2 b.

1. For the purposes of calculating the maximum expected gas generation flow rate from the landfill to determine compliance with 9 VAC 5-40-5820 C 2 b (1) (a), one of the following equations shall be used. The k and L_0 kinetic factors should be those published in the "Compilation of Air Pollutant Emission Factors (AP-42)" (see 9 VAC 5-20-21) or other site-specific values demonstrated to be appropriate and approved by the board. If k has been determined as specified in 9 VAC 5-40-5860 B 4, the value of k determined from the test shall be used. A value of no more than 15 years shall be used for the intended use period of the gas mover equipment. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

a. For sites with unknown year-to-year solid waste acceptance rate:

$$Q_M = 2L_0R (e^{-kc} - e^{-kt})$$

where

Q_M = maximum expected gas generation flow rate, cubic meters per year

L_0 = methane generation potential, cubic meters per megagram solid waste

R = average annual acceptance rate, megagrams per year

k = methane generation rate constant, year^{-1}

t = age of the landfill at equipment installation plus the time the owner or operator intends to use the gas mover equipment or active life of the landfill, whichever is less. If the equipment is installed after closure, t is the age of the landfill at installation, years

c = time since closure, years (for an active landfill $c = 0$ and $e^{-kc} = 1$)

b. For sites with known year-to-year solid waste acceptance rate:

$$Q_M = \sum_{i=1}^n 2kL_0M_i (e^{-kt_i})$$

where

Q_M = maximum expected gas generation flow rate, cubic meters per year

k = methane generation rate constant, year^{-1}

L_0 = methane generation potential, cubic meters per megagram solid waste

M_i = mass of solid waste in the i^{th} section, megagrams

t_i = age of the i^{th} section, years

c. If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead of, or in conjunction with, the equations in subdivisions C 1 a and b of this section. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations using the equations in subdivisions C 1 a or b of this section or other methods acceptable to the board shall be used to predict the maximum expected gas generation rate over the intended period of use of the gas control system equipment.

2. For the purposes of determining sufficient density of gas collectors for compliance with 9 VAC 5-40-5820 C 2 b (1) (b), the owner shall design a system of vertical wells, horizontal collectors, or other collection devices, acceptable to the board, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

3. For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with 9 VAC 5-40-5820 C 2 b (1) (c), the owner shall measure gauge pressure in the gas

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collection header at each individual well, monthly. If a positive pressure exists, action shall be initiated to correct the exceedance within five calendar days, except for the three conditions allowed under 9 VAC 5-40-5822 B. If negative pressure cannot be achieved without excess air infiltration within 15 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial measurement of positive pressure. Any attempted corrective measure shall not cause exceedances of other operational or performance standards.

4. Owners are not required to install additional wells as required in subdivision C 3 of this section during the first 180 days after gas collection system startup.

5. For the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner shall monitor each well monthly for temperature and nitrogen or oxygen as provided in 9 VAC 5-40-5822. If a well exceeds one of these operating parameters, action shall be initiated to correct the exceedance within five calendar days. If correction of the exceedance cannot be achieved within 15 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial exceedance. Any attempted corrective measure shall not cause exceedances of other operational or performance standards.

6. An owner seeking to demonstrate compliance with 9 VAC 5-40-5820 C 2 b (1) (d) through the use of a collection system not conforming to the specifications provided in 9 VAC 5-40-5824 shall provide information acceptable to the board as specified in 9 VAC 5-40-5820 C 2 a (3) demonstrating that off-site migration is being controlled.

D. For purposes of compliance with 9 VAC 5-40-5822 A, each owner of a controlled landfill shall place each well or design component as specified in the approved design plan as provided in 9 VAC 5-40-5820 C 2 a. Each well shall be installed within 60 days of the date in which the initial solid waste has been in place for a period of:

1. Five years or more if active; or
2. Two years or more if closed or at final grade.

E. The following procedures shall be used for compliance with the surface methane operational standard as provided in 9 VAC 5-40-5822 D.

1. After installation of the collection system, the owner shall monitor surface concentrations of methane along the entire perimeter of the collection area and along a serpentine pattern spaced 30 meters apart (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in subsection F of this section.

2. The background concentration shall be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.

3. Surface emission monitoring shall be performed in accordance with § 4.3.1 of Reference Method 21 of Appendix A of 40 CFR Part 60, except that the probe inlet shall be placed within 5 to 10 centimeters of the ground. Monitoring shall be performed during typical meteorological conditions.

4. Any reading of 500 parts per million or more above background at any location shall be recorded as a monitored exceedance and the actions specified in subdivisions E 4 a through e of this section shall be taken. As long as the specified actions are taken, the exceedance is not a violation of the operational requirements of 9 VAC 5-40-5822 D.

a. The location of each monitored exceedance shall be marked and the location recorded.

b. Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance shall be made and the location shall be remonitored within 10 calendar days of detecting the exceedance.

c. If the remonitoring of the location shows a second exceedance, additional corrective action shall be taken and the location shall be monitored again within 10 days of the second exceedance. If the remonitoring shows a third exceedance for the same location, the action specified in subdivision E 4 e of this section shall be taken, and no further monitoring of that location is required until the action specified in subdivision E 4 e of this section has been taken.

d. Any location that initially showed an exceedance but has a methane concentration less than 500 parts per million methane above background at the 10-day remonitoring specified in subdivision E 4 b or c of this section shall be remonitored one month from the initial exceedance. If the one-month remonitoring shows a concentration less than 500 parts per million above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1-month remonitoring shows an exceedance, the actions specified in subdivision E 4 c or e of this section shall be taken.

e. For any location where monitored methane concentration equals or exceeds 500 parts per million above background three times within a quarterly period, a new well or other collection device shall be installed within 120 calendar days of the initial exceedance. An alternative remedy to the exceedance, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation may be submitted to the board for approval.

5. The owner shall implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

F. Each owner seeking to comply with the provisions in subsection E of this section shall comply with the following instrumentation specifications and procedures for surface emission monitoring devices:

1. The portable analyzer shall meet the instrument specifications provided in § 3 of Reference Method 21 of Appendix A of 40 CFR Part 60, except that "methane" shall replace all references to VOC.
2. The calibration gas shall be methane, diluted to a nominal concentration of 500 parts per million in air.
3. To meet the performance evaluation requirements in § 3.1.3 of Reference Method 21 of Appendix A of 40 CFR Part 60, the instrument evaluation procedures of § 4.4 of Reference Method 21 of Appendix A of 40 CFR Part 60 shall be used.
4. The calibration procedures provided in § 4.2 of Reference Method 21 of Appendix A of 40 CFR Part 60 shall be followed immediately before commencing a surface monitoring survey.

G. The provisions of this article apply at all times, except during periods of startup, shutdown, or malfunction, provided that the duration of startup, shutdown, or malfunction shall not exceed five days for collection systems and shall not exceed one hour for treatment or control devices.

9 VAC 5-40-5860. Test methods and procedures.

A. The owner shall estimate the NMOC emission rate according to the schedule as provided in 9 VAC 5-40-5890 B using either of the equations provided in subdivision 1 or 2 of this subsection.

1. a. The following equation shall be used if the actual year-to-year acceptance rate is known.

$$Q_T = \sum_{i=1}^n 2kL_0 M_i \exp(-kt_i) C_{NMOC} * 3.595 \times 10^{-9}$$

where:

Q_T = Total NMOC emission rate from the landfill, Mg/yr.

k = landfill gas generation constant, 1/yr.

L_0 = methane generation potential, m^3/Mg .

t_i = age of i^{th} section, yrs.

C_{NMOC} = concentration of NMOC, ppmv.

3.595×10^{-9} = conversion factor.

The NMOC emission rate is the sum of each NMOC emission rate for each year/mass.

b. The following equation shall be used if the actual year-by-year refuse acceptance rate is unknown.

$$M_{NMOC} = 2L_0 R(1 - \exp(-kt)) C_{NMOC} * 3.595 \times 10^{-9}$$

where:

M_{NMOC} = Mass emission rate of NMOC, Mg/yr.

L_0 = refuse methane generation potential, m^3/Mg .

R = average annual acceptance rate, Mg/yr.

k = methane generation rate constant, 1/yr.

t = age of landfill, yrs.

C_{NMOC} = concentration of NMOC, ppmv as hexane.

3.595×10^{-9} = conversion factor.

In the absence of site-specific data, the values to be used for k , L_0 , and NMOC concentration are 0.05/yr, 170 m^3/Mg , and 4,000 ppmv as hexane, respectively.

2. The owner shall compare the calculated NMOC mass emission rate to the standard of 25 tpy.

a. If the calculated NMOC emission rate is less than 25 tpy, then the owner shall submit an emission rate report as provided in 9 VAC 5-40-5890 1 and shall recalculate the NMOC mass emission rate annually.

b. If the calculated NMOC emission rate is equal to or greater than 25 tpy, then the owner shall either install controls in compliance with 9 VAC 5-40-5820 B or determine a site-specific NMOC concentration using the procedures provided below in subdivision 3 of this subsection.

3. The owner shall estimate the NMOC mass emission rate using the following sampling procedure. The owner shall install a minimum of five sample probes. The owner shall collect and analyze at least one sample of landfill gas from each probe for NMOC concentration using Reference Method 25C in Appendix A of 40 CFR Part 60. The owner shall recalculate the NMOC mass emission rate using the average NMOC concentration from the collected samples instead of the default value in the equation provided in subsection A of this section.

a. If the resulting mass emission rate is equal to or greater than 25 tpy, then the owner shall install controls in compliance with 9 VAC 5-40-5820, or determine the site-specific gas generation rate constant using the procedure provided below in subdivision 4 of this subsection.

b. If the resulting NMOC mass emission rate is less than 25 tpy, then the owner shall demonstrate that the NMOC mass emission rate is below the level of the standard with 80% confidence.

(1) The owner shall use the following equation to determine the number of samples required to show 80% confidence:

$$n = \frac{(t_{.20})^2 S^2}{D^2}$$

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where:

n = number of samples required to demonstrate 80% confidence.

$t_{.20}$ = Student's t value for a two-tailed confidence interval and a probability of .20.

s = standard deviation of the initial set of samples, ppmv.

D = difference between resulting NMOC mass emission rate as determined in 9 VAC 5-40-5860 A 3 b and the regulatory emissions limit of 25 tons per year.

The owner shall install the required number of probes or 50 probes, whichever is less. At least one sample of landfill gas from each probe must be collected and analyzed using Reference Method 25 C in Appendix A of 40 CFR Part 60.

(2) The owner shall recalculate the NMOC mass emission rate using the new average NMOC concentration in the formula provided in subsection A of this section.

c. The owner shall compare the NMOC mass emission rate obtained above in subdivision 3 b (2) of this subsection to the standard of 25 tpy.

(1) If the NMOC mass emission rate is equal to or greater than 25 tpy, then the owner shall install controls in compliance with 9 VAC 5-40-5820 B, or proceed to subdivision 4 of this subsection.

(2) If the NMOC emission rate is less than 25 tpy, the owner shall submit an annual or a five-year estimate of the emission rate report as provided in 9 VAC 5-40-5880 B 1 b and shall update the site-specific NMOC concentration using the procedures provided in 9 VAC 5-40-5870 A 3 every five or 10 years. If the average NMOC mass emission rate plus two standard deviations is less than 25 tpy, the owner shall update the site-specific NMOC concentration every 10 years. If the average NMOC mass emission rate plus two standard deviations is greater than 25 tpy, then the owner shall update the site-specific NMOC concentration every five years.

4. The owner shall estimate the NMOC mass emission rate using a site-specific landfill gas generation rate constant, k . The site-specific landfill gas generation rate constant and the resulting NMOC mass emission rate shall be determined using the procedures provided in Reference Method 2E in Appendix A of 40 CFR Part 60. The owner shall compare the resulting NMOC mass emission rate to the standard of 25 tpy.

a. If the NMOC mass emission rate is equal to or greater than 25 tpy, then the owner shall install controls in compliance with 9 VAC 5-40-5820 B.

b. If the NMOC mass emission rate is less than 25 tpy, then the owner shall submit an annual emission

rate report as provided in 9 VAC 5-40-5880 B and shall recalculate the NMOC mass emission rate annually, using the site-specific landfill gas generation rate constant and NMOC concentration obtained in subdivision 2 of this subsection. The calculation of the landfill gas generation rate constant is performed only once, and the value obtained is used in all subsequent annual NMOC emission rate calculations.

B. After the installation of a collection and control system in compliance with 9 VAC 5-40-5820, the owner shall estimate the NMOC emission rate using the equation below.

$$M_{\text{NMOC}} = 1.89 \times 10^{-3} Q_{\text{LFG}} C_{\text{NMOC}}$$

where:

M_{NMOC} = mass emission rate of NMOC, Mg/yr.

Q_{LFG} = flowrate of landfill gas, m^3/min .

C_{NMOC} = NMOC concentration, ppmv.

1. The flowrate of landfill gas, Q_{LFG} , shall be obtained by measuring the total landfill gas flowrate at the common header pipe that leads to the control device using an orifice meter as described in Reference Method 2E in Appendix A of 40 CFR Part 60.

2. The average NMOC concentration, C_{NMOC} , shall be determined by collecting and analyzing landfill gas sampled from the common header pipe using Reference Method 25C in Appendix A of 40 CFR Part 60.

A. The provisions of 9 VAC 5-40-30 (Emission Testing) apply.

B. 1. The owner shall calculate the NMOC emission rate using either the equation provided in subdivision B 1 a of this section or the equation provided in subdivision B 1 b of this section. The values to be used in both equations are 0.05 per year for k , 170 cubic meters per megagram for L_0 , and 4,000 parts per million by volume as hexane for the C_{NMOC} .

a. The following equation shall be used if the actual year-to-year solid waste acceptance rate is known.

$$M_{\text{NMOC}} = \sum_{i=1}^n 2kL_0M_i(e^{-kt_i})(C_{\text{NMOC}})(3.6 \times 10^{-9})$$

where

M_{NMOC} = Total NMOC emission rate from the landfill, megagrams per year

k = methane generation rate constant, year^{-1}

L_0 = methane generation potential, cubic meters per megagram solid waste

M_i = mass of solid waste in the i^{th} section, megagrams

t_i = age of the i^{th} section, years

C_{NMOC} = concentration of NMOC, parts per million by volume as hexane

3.6×10^{-9} = conversion factor

The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value for M_i if the documentation provisions of 9 VAC 5-40-5890 F 2 are followed.

b. The following equation shall be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{NMOC} = 2L_0R(e^{-kc} - e^{-kt})(C_{NMOC})(3.6 \times 10^{-9})$$

where

M_{NMOC} = mass emission rate of NMOC, megagrams per year

L_0 = methane generation potential, cubic meters per megagram solid waste

R = average annual acceptance rate, megagrams per year

k = methane generation rate constant, year⁻¹

t = age of landfill, years

C_{NMOC} = concentration of NMOC, parts per million by volume as hexane

c = time since closure, years. For active landfill $c = 0$ and $e^{-kc} = 1$

3.6×10^{-9} = conversion factor

The mass of nondegradable solid waste may be subtracted from the average annual acceptance rate when calculating a value for R , if the documentation provisions of 9 VAC 5-40-5890 F 2 are followed.

2. Tier 1. The owner shall compare the calculated NMOC mass emission rate to the emission rate applicability criteria in 9 VAC 5-40-5820 A.

a. If the NMOC emission rate calculated in subdivision B 1 of this section is less than the emission rate applicability criteria in 9 VAC 5-40-5820 A, then the owner shall submit an emission rate report as provided in 9 VAC 5-40-5880 D 1, and shall recalculate the NMOC mass emission rate annually as required under 9 VAC 5-40-5820 C 1.

b. If the calculated NMOC emission rate meets the emission rate applicability criteria in 9 VAC 5-40-5820 A, then the owner shall either comply with 9 VAC 5-40-5820 C 2, or determine a site-specific NMOC concentration and recalculate the NMOC emission rate using the procedures provided in subdivision B 3 of this section.

3. Tier 2. The owner shall determine the NMOC concentration using the following sampling procedure. The owner shall install at least two sample probes per hectare of landfill surface that has retained waste for at least two years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The sample probes should be located to avoid known areas of nondegradable solid waste. The owner shall collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using Reference Method 25C of Appendix A of 40 CFR Part 60 or Reference Method 18 of Appendix A of 40 CFR Part 60. If using Reference Method 18 of Appendix A of 40 CFR Part 60, the minimum list of compounds to be tested shall be those published in the "Compilation of Air Pollutant Emission Factors (AP-42)" (see 9 VAC 5-20-21). If composite sampling is used, equal volumes shall be taken from each sample probe. If more than the required number of samples are taken, all samples shall be used in the analysis. The owner shall divide the NMOC concentration from Reference Method 25C of Appendix A of 40 CFR Part 60 by six to convert from CNMOC as carbon to NMOC as hexane.

a. The owner shall recalculate the NMOC mass emission rate using the equations provided in subdivision B 1 a or B 1 b of this section and using the average NMOC concentration from the collected samples instead of the default value in the equation provided in subdivision B 1 of this section.

b. If the resulting mass emission rate calculated using the site-specific NMOC concentration meets the emission rate applicability criteria in 9 VAC 5-40-5820 A, then the owner shall either comply with 9 VAC 5-40-5820 C 2, or determine the site-specific methane generation rate constant and recalculate the NMOC emission rate using the site-specific methane generation rate using the procedure specified in subdivision B 4 of this section.

c. If the resulting NMOC mass emission rate is less than the emission rate applicability criteria in 9 VAC 5-40-5820 A, the owner shall submit a periodic estimate of the emission rate report as provided in 9 VAC 5-40-5880 D 1 and retest the site-specific NMOC concentration every five years using the methods specified in this section.

4. Tier 3. The site-specific methane generation rate constant shall be determined using the procedures provided in Reference Method 2E of Appendix A of 40 CFR Part 60. The owner shall estimate the NMOC mass emission rate using equations in subdivision B 1 a or B 1 b of this section and using a site-specific methane generation rate constant k , and the site-specific NMOC concentration as determined in subdivision B 3 of this section instead of the default values provided in subdivision B 1 of this section. The owner shall compare the resulting NMOC mass emission rate to the emission rate applicability criteria in 9 VAC 5-40-5820 A.

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a. If the NMOC mass emission rate as calculated using the site-specific methane generation rate and concentration of NMOC meets the emission rate applicability criteria in 9 VAC 5-40-5820 A, the owner shall comply with 9 VAC 5-40-5820 C 2.

b. If the NMOC mass emission rate is less than the emission rate applicability criteria in 9 VAC 5-40-5820 A, then the owner shall submit a periodic emission rate report as provided in 9 VAC 5-40-5880 D 1 and shall recalculate the NMOC mass emission rate annually, as provided in 9 VAC 5-40-5880 D 1 using the equations in subdivision B 1 of this section and using the site-specific methane generation rate constant and NMOC concentration obtained in subdivision B 3 of this section. The calculation of the methane generation rate constant is performed only once, and the value obtained is used in all subsequent annual NMOC emission rate calculations.

5. The owner may use other methods to determine the NMOC concentration or a site-specific k as an alternative to the methods required in subdivisions B 3 and B 4 of this section if the method has been approved by the board as provided in 9 VAC 5-40-5820 C 2 a (2).

C. After the installation of a collection and control system in compliance with 9 VAC 5-40-5850, the owner shall calculate the NMOC emission rate for purposes of determining when the system can be removed as provided in 9 VAC 5-40-5820 C 2 e, using the following equation:

$$M_{NMOC} = 1.89 \times 10^{-3} Q_{LFG} C_{NMOC}$$

where

M_{NMOC} = mass emission rate of NMOC, megagrams per year

Q_{LFG} = flow rate of landfill gas, cubic meters per minute

C_{NMOC} = NMOC concentration, parts per million by volume as hexane

1. The flow rate of landfill gas, Q_{LFG} , shall be determined by measuring the total landfill gas flow rate at the common header pipe that leads to the control device using a gas flow measuring device calibrated according to the provisions of § 4 of Reference Method 2E of Appendix A of 40 CFR Part 60.

2. The average NMOC concentration, C_{NMOC} , shall be determined by collecting and analyzing landfill gas sampled from the common header pipe before the gas moving or condensate removal equipment using the procedures in Reference Method 25C or Reference Method 18 of Appendix A of 40 CFR Part 60. If using Reference Method 18 of Appendix A of 40 CFR Part 60, the minimum list of compounds to be tested shall be those published in the "Compilation of Air Pollutant Emission Factors (AP-42)" (see 9 VAC 5-20-21). The sample location on the common header pipe shall be before any condensate removal or other gas refining

units. The owner shall divide the NMOC concentration from Reference Method 25C of Appendix A of 40 CFR Part 60 by six to convert from C_{NMOC} as carbon to C_{NMOC} as hexane.

3. The owner may use another method to determine landfill gas flow rate and NMOC concentration if the method has been approved by the board as provided in 9 VAC 5-40-5820 C 2 a (2).

D. The owner of each MSW landfill subject to the provisions of this article shall estimate the NMOC emission rate for comparison to the prevention of significant deterioration major source and significance levels in Article 8 (9 VAC 5-80-1700 et seq.) of 9 VAC 5 Chapter 80 using the "Compilation of Air Pollutant Emission Factors (AP-42)" (see 9 VAC 5-20-21) or other measurement procedures acceptable to the board. If a collection system, which complies with the provisions in 9 VAC 5-40-5820 C 2 is already installed, the owner shall estimate the NMOC emission rate using the procedures provided in subsection C of this section.

E. For the compliance test required in 9 VAC 5-40-5820 C 2 c (2), Reference Method 25 or Reference Method 18 of Appendix A of 40 CFR Part 60 shall be used to determine compliance with 98 weight-percent efficiency or the 20 ppmv outlet concentration level, unless another method to demonstrate compliance has been approved by the board as provided by 9 VAC 5-40-5820 C 2 a (2). If using Reference Method 18 of Appendix A of 40 CFR Part 60, the minimum list of compounds to be tested shall be those published in the "Compilation of Air Pollutant Emission Factors (AP-42)" (see 9 VAC 5-20-21). The following equation shall be used to calculate efficiency:

$$\text{Control Efficiency} = (NMOC_{in} - NMOC_{out}) / (NMOC_{in})$$

where

$NMOC_{in}$ = mass of NMOC entering control device

$NMOC_{out}$ = mass of NMOC exiting control device

9 VAC 5-40-5870. Monitoring.

A. The provisions of 9 VAC 5-40-40 (Monitoring) apply.

~~B. Each owner seeking to comply with 9 VAC 5-40-5820 C for the gas collection system shall install a sampling port at each well and measure the gauge pressure in the gas collection header on a monthly basis.~~

~~C. Each owner seeking to comply with 9 VAC 5-40-5820 B using an enclosed combustion device shall monitor the residence time and temperature established during the initial performance test to reduce NMOCs by 98%. Each owner shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:~~

~~1. A temperature monitoring device equipped with a continuous recorder and having an accuracy of $\pm 1.0\%$ of the temperature being measured, expressed in degrees Celsius or $\pm 0.5^\circ\text{C}$, whichever is greater.~~

~~2. A flow indicator that provides a record of gas flow to the control device at intervals of every 15 minutes.~~

~~D. Each owner seeking to comply with 9 VAC 5-40-5820 B using an open flare shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:~~

~~1. A heat sensing device, such as an ultraviolet beam sensor or thermocouple, to indicate the continuous presence of a flame.~~

~~2. A flow indicator that provides a record of gas flow to the flare at intervals of every 15 minutes.~~

~~E. Each owner seeking to demonstrate compliance with 9 VAC 5-40-5820 B using a device other than an open flare or a closed combustion device shall provide to the board information describing the operation of the control device and the operating parameters that would indicate proper performance. The board will specify appropriate monitoring procedures.~~

~~B. Except as provided in 9 VAC 5-40-5820 C 2 a (2), the provisions of subsections C through H of this section apply.~~

~~C. Each owner seeking to comply with 9 VAC 5-40-5820 C 2 b (1) for an active gas collection system shall install a sampling port and a thermometer or other temperature measuring device at each wellhead and:~~

~~1. Measure the gauge pressure in the gas collection header on a monthly basis as provided in 9 VAC 5-40-5850 C 3; and~~

~~2. Monitor nitrogen or oxygen concentration in the landfill gas on a monthly basis as provided in 9 VAC 5-40-5850 C 5; and~~

~~3. Monitor temperature of the landfill gas on a monthly basis as provided in 9 VAC 5-40-5850 C 5.~~

~~D. Each owner seeking to comply with 9 VAC 5-40-5820 C 2 c using an enclosed combustor shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment.~~

~~1. A temperature monitoring device equipped with a continuous recorder and having an accuracy of ± 1.0 percent of the temperature being measured expressed in degrees Celsius or $\pm 0.5^{\circ}\text{C}$, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity greater than 44 megawatts.~~

~~2. A gas flow rate measuring device that provides a measurement of gas flow to or bypass of the control device. The owner shall either:~~

~~a. Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device at least every 15 minutes; or~~

~~b. Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism~~

shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

E. Each owner seeking to comply with 9 VAC 5-40-5820 C 2 c using an open flare shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

1. A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light or the flame itself to indicate the continuous presence of a flame.

2. A device that records flow to or bypass of the flare. The owner shall either:

a. Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device at least every 15 minutes; or

b. Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

F. Each owner seeking to demonstrate compliance with 9 VAC 5-40-5820 C 2 c using a device other than an open flare or an enclosed combustor shall provide information acceptable to the board as provided in 9 VAC 5-40-5820 C 2 a (2) describing the operation of the control device, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The board shall review the information and either approve it, or request that additional information be submitted. The board may specify additional appropriate monitoring procedures.

G. Each owner seeking to install a collection system that does not meet the specifications in 9 VAC 5-40-5824 or seeking to monitor alternative parameters to those required by 9 VAC 5-40-5822, 9 VAC 5-40-5850, 9 VAC 5-40-5860, and 9 VAC 5-40-5870 shall provide information acceptable to the board as provided in 9 VAC 5-40-5820 C 2 a (2) and (3) describing the design and operation of the collection system, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The board may specify additional appropriate monitoring procedures.

H. Each owner seeking to demonstrate compliance with 9 VAC 5-40-5850 E, shall monitor surface concentrations of methane according to the instrument specifications and procedures provided in 9 VAC 5-40-5850 F. Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring. Any methane reading of 500 parts per million or more above background detected during the annual monitoring returns the frequency for that landfill to quarterly monitoring.

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9 VAC 5-40-5880. Reporting.

A. The provisions of 9 VAC 5-40-5840 (Notification, records and reporting) apply.

~~B. Each owner shall submit an initial design capacity report to the board within 90 days of April 1, 1996.~~

~~1. The initial design capacity report shall contain the following information:~~

~~a. A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where refuse may be landfilled according to the provisions of the permit issued in accordance with Part VII (9 VAC 20-80-480 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations);~~

~~b. The maximum design capacity of the landfill, where the maximum design capacity is specified in the permit issued pursuant to Part VII (9 VAC 20-80-480 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations); A copy of the permit specifying the maximum design capacity may be submitted. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering principles. The calculations must be provided, along with such parameters as depth of refuse, refuse acceptance rate, and compaction practices. The board may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.~~

~~2. An amended design capacity report must be submitted to the board, providing notification of any increase in the size of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill. The amended design capacity report must be submitted within 90 days of the issuance of an amended construction or operating permit, or the actual use of additional land, or the change in operating procedures which will result in an increase in maximum design capacity, whichever comes first.~~

~~C. Each owner shall submit an annual NMOC emission rate report to the board, except as provided for below in subdivision C 1 b of this section. The board may request such additional information as may be reasonably necessary to verify the reported NMOC emission rate.~~

~~1. The annual, or five-year estimate of the NMOC emission rate shall be calculated using the formula and procedures provided in 9 VAC 5-40-5860.~~

~~a. The initial NMOC emission rate report shall be submitted within 90 days of the date waste acceptance commences and may be combined with the initial design capacity report required in subsection B of this section. Subsequent NMOC emission rate reports shall be submitted annually~~

~~thereafter, except as provided for below in subdivisions 1 b and 1 c of this subsection.~~

~~b. The owner may elect to submit an estimate of the NMOC emission rate for the next five years in lieu of the annual report, provided that the estimated NMOC emission rate in each of the five years is less than 25 tpy. This estimate must include the current amount of refuse in place and the estimated waste acceptance rate for each of the five years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided. This estimate must be revised at least every five years.~~

~~c. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the five-year estimate, a revised five-year estimate must be submitted. The revised estimate shall cover the five years beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.~~

~~2. The annual, or five-year estimate of the NMOC emission rate report shall include all the data, calculations, sample reports, and measurements used.~~

~~3. Each owner is exempted from the requirements of subsection C of this section after the installation of collection and control systems in compliance with 9 VAC 5-40-5820 during such time as the collection and control system is in continuous operation and in compliance with 9 VAC 5-40-5850.~~

~~D. Each owner shall submit a closure report to the board. For the purposes of this article, closure means that refuse is no longer being placed in the landfill and that no additional wastes will be placed into the landfill without filing a notification or modification as prescribed under 40 CFR 60.14. The board may request such additional information as may be reasonably necessary to verify that permanent closure has taken place.~~

~~E. Each owner shall submit an equipment removal report to the board prior to removal or cessation of operation of the control equipment.~~

~~1. The equipment removal report shall contain the following items:~~

~~a. A copy of the closure report submitted in accordance with subsection D of this section;~~

~~b. A copy of the initial performance test report demonstrating the 15 year minimum control period has expired;~~

~~c. Dated copies of the three successive NMOC emission rate reports demonstrating that the landfill is no longer emitting above the level of the standard.~~

~~2. The board may request such additional information as may be reasonably necessary to verify that all of the following conditions for removal have been met:~~

~~a. The landfill must no longer be accepting waste and must be permanently closed. A closure report must be submitted to the board as provided for in 9 VAC 5-40-5880 D;~~

~~b. The collection and control system must have been in continuous operation a minimum of 15 years; and~~

~~c. Following the procedures in 9 VAC 5-40-5860 B, the calculated NMOC emission rate must be less than 25 tpy on three successive test dates. The test dates must be no closer than three months apart, and no longer than six months apart.~~

~~F. Each owner shall submit to the board semiannual reports of the following recorded information. The initial report shall be submitted within 90 days of installation and startup of the collection and control system and shall include the initial performance test report required under 40 CFR 60.8.~~

~~1. Exceedance of parameters monitored under 9 VAC 5-40-5870 B and C 1.~~

~~2. All periods when the gas stream is diverted from the control device or has no flowrate.~~

~~3. All periods when the control device was not operating.~~

~~4. For control devices using open or enclosed flares, all periods when the pilot flame of the flare was absent.~~

B. Except as provided in 9 VAC 5-40-5820 C 2 a (2), the provisions of subsections C through I of this section apply.

C. Each owner subject to the requirements of this article shall submit an initial design capacity report to the board.

1. The initial design capacity report shall be submitted no later than (90 days after the effective date of this article).

2. The initial design capacity report shall contain the following information:

a. A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the provisions of a permit issued under Part VII (9 VAC 20-80-480 et seq.) of 9 VAC 20 Chapter 80 (Virginia Solid Waste Management Regulations);

b. The maximum design capacity of the landfill. Where the maximum design capacity is specified in a permit issued under Part VII (9 VAC 20-80-480 et seq.) of 9 VAC 20 Chapter 80 (Virginia Solid Waste Management Regulations), a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity shall be calculated using good engineering practices acceptable to the board. The calculations shall be provided, along with such parameters as depth of solid

waste, solid waste acceptance rate, and compaction practices as part of the report. The board may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

3. An amended design capacity report shall be submitted to the board providing notification of any increase in the design capacity of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill that meets the design capacity applicability criteria in 9 VAC 5-40-5820 A. The amended design capacity report shall be submitted within 90 days of the issuance of an amended permit issued under Part VII (9 VAC 20-80-480 et seq.) of 9 VAC 20 Chapter 80 (Virginia Solid Waste Management Regulations), or the placement of waste in additional land, or the change in operating procedures which will result in an increase in maximum design capacity, whichever occurs first.

D. Each owner subject to the requirements of this article shall submit an NMOC emission rate report to the board initially and annually thereafter, except as provided for in subdivisions D 1 b or D 3 of this section. The board may request such additional information as may be necessary to verify the reported NMOC emission rate.

1. The NMOC emission rate report shall contain an annual or five-year estimate of the NMOC emission rate calculated using the formula and procedures provided in 9 VAC 5-40-5860 B or C, as applicable.

a. The initial NMOC emission rate report shall be submitted by (90 days after the effective date of this article) and may be combined with the initial design capacity report required in subsection C of this section. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in subdivisions D 1 b and D 3 of this section.

b. If the estimated NMOC emission rate as reported in the annual report to the board is less than the emission rate applicability criteria in 9 VAC 5-40-5820 A, in each of the next five consecutive years, the owner may elect to submit an estimate of the NMOC emission rate for the next five-year period in lieu of the annual report. This estimate shall include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the five years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based shall be provided to the board. This estimate shall be revised at least once every five years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the five-year estimate, a revised five-year estimate shall be submitted to the board. The revised estimate shall

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cover the five-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

2. The NMOC emission rate report shall include all the data, calculations, sample reports and measurements used to estimate the annual or five-year emissions.

3. Each owner subject to the requirements of this article is exempted from the requirements of subdivisions D 1 and 2 of this section, after the installation of a collection and control system in compliance with 9 VAC 5-40-5820 C 2, during such time as the collection and control system is in operation and in compliance with 9 VAC 5-40-5822 and 9 VAC 5-40-5850.

E. Each owner subject to the provisions of 9 VAC 5-40-5820 C 2 a shall submit a collection and control system design plan to the board within one year of the first report, required under subdivision D of this section, in which the emission rate exceeds the emission rate applicability criteria in 9 VAC 5-40-5820 A, except as follows:

1. If the owner elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in 9 VAC 5-40-5860 B 3 and the resulting rate is less than the emission rate applicability criteria in 9 VAC 5-40-5820 A, annual periodic reporting shall be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated emission rate meets the emission rate applicability criteria in 9 VAC 5-40-5820 A or the landfill is closed. The revised NMOC emission rate report, with the recalculated emission rate based on NMOC sampling and analysis, shall be submitted within 180 days of the first calculated exceedance of the emission rate applicability criteria in 9 VAC 5-40-5820 A.

2. If the owner elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant (k), as provided in Tier 3 in 9 VAC 5-40-5860 B 4, and the resulting NMOC emission rate is less than the emission rate applicability criteria in 9 VAC 5-40-5820 A, annual periodic reporting shall be resumed. The resulting site-specific methane generation rate constant (k) shall be used in the emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of 9 VAC 5-40-5860 B 4 and the resulting site-specific methane generation rate constant (k) shall be submitted to the board within one year of the first calculated emission rate exceeding the emission rate applicability criteria in 9 VAC 5-40-5820 A.

F. Each owner of a controlled landfill shall submit a closure report to the board within 30 days of waste acceptance cessation. The board may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of 40 CFR 258.60. If a closure report has been submitted to the board, no additional wastes may be placed into the landfill without obtaining a permit under Part VII (9 VAC 20-80-480 et seq.)

of 9 VAC 20 Chapter 80 (Virginia Solid Waste Management Regulations).

G. Each owner of a controlled landfill shall submit an equipment removal report to the board 30 days prior to removal or cessation of operation of the control equipment.

1. The equipment removal report shall contain all of the following items:

a. A copy of the closure report submitted in accordance with subsection F of this section;

b. A copy of the initial compliance test report demonstrating that the 15-year minimum control period has expired; and

c. Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer meeting the emission rate applicability criteria in 9 VAC 5-40-5820 A.

2. The board may request such additional information as may be necessary to verify that all of the conditions for removal in 9 VAC 5-40-5820 C 2 e have been met.

H. Each owner of a landfill seeking to comply with 9 VAC 5-40-5820 C 2 using an active collection system designed in accordance with 9 VAC 5-40-5820 C 2 b shall submit to the board annual reports of the recorded information in subdivisions H 1 through H 6 of this section. The initial annual report shall be submitted within 180 days of installation and startup of the collection and control system, and shall include the initial compliance test report. For enclosed combustion devices and flares, reportable exceedances are defined under 9 VAC 5-40-5890 E.

1. Value and length of time for exceedance of applicable parameters monitored under 9 VAC 5-40-5870 C, D, E, and F.

2. Description and duration of all periods when the gas stream is diverted from the control device through a bypass line or the indication of bypass flow as specified under 9 VAC 5-40-5870.

3. Description and duration of all periods when the control device was not operating for a period exceeding one hour and length of time the control device was not operating.

4. All periods when the collection system was not operating in excess of five days.

5. The location of each exceedance of the 500 parts per million methane concentration as provided in 9 VAC 5-40-5822 D and the concentration recorded at each location for which an exceedance was recorded in the previous month.

6. The date of installation and the location of each well or collection system expansion added pursuant to subdivisions C 3, D, and E 4 of 9 VAC 5-40-5850.

1. Each owner seeking to comply with 9 VAC 5-40-5820 C 2 a shall include the following information with the initial compliance test report:

1. A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;
2. The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;
3. The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;
4. The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area; and
5. The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and
6. The provisions for the control of off-site migration.

9 VAC 5-40-5890. Recordkeeping.

A. The provisions of 9 VAC 5-40-50 (Notification, records and reporting) apply.

~~B. Each owner subject to the provisions of 9 VAC 5-40-5820 A 2 shall keep up-to-date, readily accessible records of the maximum design capacity, the current amount of refuse in place, and the year-by-year waste acceptance rate.~~

~~C. Each owner shall keep up-to-date, readily accessible records of the following data measured during the initial performance test/compliance determination for the life of the control equipment. Records of subsequent tests must be maintained for a minimum of two years.~~

- ~~1. Where an owner seeks to demonstrate compliance with 9 VAC 5-40-5820 B:~~
 - ~~a. The calculated maximum expected gas generation flow rate using Reference Method 2E in Appendix A of 40 CFR Part 60.~~
 - ~~b. The calculated area of influence of the extraction wells.~~
 - ~~c. Gauge pressure in the gas collection header at the point where each well is connected to the gas collection header pipe.~~

~~2. Where an owner seeks to demonstrate compliance with 9 VAC 5-40-5820 B 2 through use of an enclosed combustion device:~~

- ~~a. The average combustion temperature measured every 15 minutes and averaged over the same time period of the performance testing; and~~
- ~~b. The percent reduction of NMOC determined as specified in 9 VAC 5-40-5850 B achieved by the control device.~~

~~3. Where an owner seeks to demonstrate compliance with 9 VAC 5-40-5820 B 3 through use of a boiler:~~

- ~~a. A description of the location at which the process vent stream is introduced into the boiler or process heater; and~~
- ~~b. The average combustion temperature of the boiler or process heater with a design heat input capacity of less than 44 MW (150 million Btu/hr) measured at least every 15 minutes and averaged over the same time period of the performance testing.~~

~~4. Where an owner seeks to demonstrate compliance with 9 VAC 5-40-5820 B 1 through use of an open flare, the flare type (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flowrate measurements, and exit velocity determinations made during the performance test continuous records of the flare pilot flame monitoring, and records of all periods of operations during which the pilot flame is absent.~~

~~D. Each owner shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under 9 VAC 5-40-5870, as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.~~

- ~~1. For enclosed combustion devices except for boilers and process heaters with design heat input capacity of 150 million Btu/hour (44 MW) or greater and nonenclosed flares, all three-hour periods of operation during which the average combustion temperature was more than 50° F (28°C) below the average combustion temperature during the most recent performance test at which compliance with 9 VAC 5-40-5820 B was determined.~~
- ~~2. For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under subsection C 3 a of this section.~~
- ~~3. Each owner shall keep up-to-date, readily accessible continuous records of the indication of flow specified under 9 VAC 5-40-5870, as well as up-to-date, readily accessible records of all periods when the gas stream is diverted from the control device or has no flowrate.~~
- ~~4. Each owner who uses a boiler or process heater with a design heat input capacity of 150 million Btu/hour (44~~

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~~MW) or greater to comply with 9 VAC 5-40-5820 B shall keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. Such records shall include but not be limited to records of steam use, fuel use, or monitoring data collected pursuant to other state or federal regulatory requirements.~~

~~5. Each owner shall keep up-to-date, readily accessible continuous records of the flare pilot flame monitoring specified under 9 VAC 5-40-5870 D 1, as well as up-to-date, readily accessible records of all periods of operation in which the pilot flame is absent.~~

B. Except as provided in 9 VAC 5-40-5820 C 2 a (2), the provisions of subsections C through G of this section apply.

C. Each owner of an MSW landfill subject to the provisions of 9 VAC 5-40-5820 C shall keep for at least five years up-to-date, readily accessible, on-site records of the maximum design capacity, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Off-site records may be maintained if they are retrievable within four hours. Either paper copy or electronic formats are acceptable.

D. Each owner of a controlled landfill shall keep up-to-date, readily accessible records for the life of the control equipment of the data listed in subdivisions D 1 through D 4 of this section as measured during the initial compliance test or compliance determination. Records of subsequent tests or monitoring shall be maintained for a minimum of five years. Records of the control device vendor specifications shall be maintained until removal.

1. Where an owner subject to the provisions of this article seeks to demonstrate compliance with 9 VAC 5-40-5820 C 2 b:

a. The maximum expected gas generation flow rate as calculated in 9 VAC 5-40-5850 C 1. The owner may use another method to determine the maximum gas generation flow rate, if the method has been approved by the board.

b. The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in 9 VAC 5-40-5824 A 1.

2. Where an owner subject to the provisions of this article seeks to demonstrate compliance with 9 VAC 5-40-5820 C 2 c through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity greater than 44 megawatts:

a. The average combustion temperature measured at least every 15 minutes and averaged over the same time period of the compliance test.

b. The percent reduction of NMOC determined as specified in 9 VAC 5-40-5820 C 2 c (2) achieved by the control device.

3. Where an owner subject to the provisions of this article seeks to demonstrate compliance with 9 VAC 5-40-5820 C 2 c (2) (a) through use of a boiler or process heater of any size: a description of the location at which the collected gas vent stream is introduced into the boiler or process heater over the same time period of the compliance testing.

4. Where an owner subject to the provisions of this article seeks to demonstrate compliance with 9 VAC 5-40-5820 C 2 c (1) through use of an open flare, the flare type (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations made during the compliance test; continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame of the flare flame is absent.

E. Each owner of a controlled landfill subject to the provisions of this article shall keep for five years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored in 9 VAC 5-40-5870 as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent compliance test are exceeded.

1. The following constitute exceedances that shall be recorded and reported under 9 VAC 5-40-5880 H:

a. For enclosed combustors except for boilers and process heaters with design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater, all three-hour periods of operation during which the average combustion temperature was more than 28°C below the average combustion temperature during the most recent compliance test at which compliance with 9 VAC 5-40-5820 C 2 c was determined.

b. For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under subdivision D 3 a of this section.

2. Each owner subject to the provisions of this article shall keep up-to-date, readily accessible continuous records of the indication of flow to the control device or the indication of bypass flow or records of monthly inspections of car-seals or lock-and-key configurations used to seal bypass lines, specified under 9 VAC 5-40-5870.

3. Each owner subject to the provisions of this article who uses a boiler or process heater with a design heat input capacity of 44 megawatts or greater to comply with 9 VAC 5-40-5820 C 2 c shall keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring

data collected pursuant to other state or federal regulatory requirements.)

4. Each owner seeking to comply with the provisions of this article by use of an open flare shall keep up-to-date, readily accessible continuous records of the flame or flare pilot flame monitoring specified under 9 VAC 5-40-5870 E, and up-to-date, readily accessible records of all periods of operation in which the flame or flare pilot flame is absent.

F. Each owner subject to the provisions of this article shall keep for the life of the collection system an up-to-date, readily accessible plot map showing each existing and planned collector in the system and providing a unique identification location label for each collector.

1. Each owner subject to the provisions of this article shall keep up-to-date, readily accessible records of the installation date and location of all newly installed collectors as specified under 9 VAC 5-40-5850 D.

2. Each owner subject to the provisions of this article shall keep readily accessible documentation of the nature, date of deposition, amount, and location of asbestos-containing or nondegradable waste excluded from collection as provided in 9 VAC 5-40-5824 A 3 a as well as any nonproductive areas excluded from collection as provided in 9 VAC 5-40-5824 A 3 b.

G. Each owner subject to the provisions of this article shall keep for at least five years up-to-date, readily accessible records of all collection and control system exceedances of the operational standards in 9 VAC 5-40-5822, the reading in the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.

9 VAC 5-40-5920. Permits.

A. A permit may be required prior to beginning any of the activities specified below ~~and~~ if the provisions of 9 VAC 5 Chapter 50 (90 VAC 5-50-10 et seq.) and 9 VAC 5 Chapter 80 (~~9 VAC 5-80-10 et seq.~~) ~~may~~ 60 (9 VAC 5-60-10 et seq.) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (restart-up) of a facility.
6. Operation of a facility.

B. ~~Sanitary~~ MSW landfills required to install a gas management system according to the provisions of 9 VAC 5-40-5820 shall apply for a permit amendment in accordance with Part VII (9 VAC 20-80-480 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations).

C. Physical or operational changes made to an MSW landfill solely to comply with this article are not considered construction, reconstruction, or modification for the purposes of 40 CFR 60 subpart WWW.

D. The owner of an MSW landfill subject to this article with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters is subject to Article 1 (9 VAC 5-80-50 et seq.) of 9 VAC 5 Chapter 80. When a landfill is closed, and either never needed control or meets the conditions for control system removal specified in 9 VAC 5-40-5820 C 2 e, an operating permit under Article 1 (9 VAC 5-80-50 et seq.) of 9 VAC 5 Chapter 80 is no longer required.

E. A landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters does not require an operating permit under Article 1 (9 VAC 5-80-50 et seq.) of 9 VAC 5 Chapter 80.

9 VAC 5-40-5930. Review and evaluation of this article.

A. Prior to (three years after the effective date of this article), the department shall perform an analysis of this article and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the article, (ii) alternatives which would achieve the stated purpose of this article in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this article, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this article which are more stringent than federal requirements, and (v) the results of a review as to whether this article is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this article without amendment, (ii) repeal of this article, or (iii) amend this article. If the board's decision is to repeal or amend this article, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

9 VAC 5-50-410. Designated standards of performance.

Subpart A - General Provisions.

40 CFR 60.1, 40 CFR 60.2, 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11, 40 CFR 60.13 through 40 CFR 60.15, 40 CFR 60.18
(applicability, definitions, notification and record keeping, performance tests, compliance, monitoring requirements, modification, reconstruction, and general control device requirements)

Subpart B - Not applicable.

Subpart C - Not applicable.

Subpart D - Fossil-Fuel Fired Steam Generators for which Construction is Commenced after August 17, 1971.

40 CFR 60.40 through 40 CFR 60.46
(fossil-fuel fired steam generating units of more than 250 million Btu per hour heat input rate, and fossil-fuel fired and wood-residue fired steam

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generating units capable of firing fossil fuel at a heat input rate of more than 250 million Btu per hour)

Subpart Da - Electric Utility Steam Generating Units for which Construction is Commenced after September 18, 1978.

40 CFR 60.40a through 40 CFR 60.49a
(electric utility steam generating units capable of combusting more than 250 million Btu per hour heat input of fossil fuel (either alone or in combination with any other fuel); electric utility combined cycle gas turbines capable of combusting more than 250 million Btu per hour heat input in the steam generator)

Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40b through 40 CFR 60.49b
(industrial-commercial- institutional steam generating units which have a heat input capacity from combusted fuels of more than 100 million Btu per hour)

Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40c through 60.48c
(industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour)

Subpart E - Incinerators.

40 CFR 60.50 through 40 CFR 60.54
(incinerator units of more than 50 tons per day charging rate)

Subpart Ea - Municipal Waste Combustors.

40 CFR 60.50a through 60.59a
(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart F - Portland Cement Plants.

40 CFR 60.60 through 40 CFR 60.64
(kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems)

Subpart G - Nitric Acid Plants.

40 CFR 60.70 through 40 CFR 60.74
(nitric acid production units)

Subpart H - Sulfuric Acid Plants.

40 CFR 60.80 through 40 CFR 60.85
(sulfuric acid production units)

Subpart I - Hot Mix Asphalt Facilities.

40 CFR 60.90 through 40 CFR 60.93
(dryers; systems for screening, handling, storing and weighing hot aggregate; systems for loading, transferring and storing mineral filler; systems for mixing asphalt concrete; and the loading, transfer and

storage systems associated with emission control systems)

Subpart J - Petroleum Refineries.

40 CFR 60.100 through 40 CFR 60.106
(fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers and fuel gas combustion devices)

Subpart K - Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and Prior to May 19, 1978.

40 CFR 60.110 through 40 CFR 60.113
(storage vessels with a capacity greater than 40,000 gallons)

Subpart Ka - Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984.

40 CFR 60.110a through 40 CFR 60.115a
(storage vessels with a capacity greater than 40,000 gallons)

Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.

40 CFR 60.110b through 40 CFR 60.117b
(storage vessels with capacity greater than or equal to 10,566 gallons)

Subpart L - Secondary Lead Smelters.

40 CFR 60.120 through 40 CFR 60.123
(pot furnaces of more than 550 pound charging capacity, blast (cupola) furnaces and reverberatory furnaces)

Subpart M - Secondary Brass and Bronze Production Plants.

40 CFR 60.130 through 40 CFR 60.133
(reverberatory and electric furnaces of 2205 pound or greater production capacity and blast (cupola) furnaces of 550 pounds per hour or greater production capacity)

Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced after June 11, 1973.

40 CFR 60.140 through 40 CFR 60.144
(basic oxygen process furnaces)

Subpart Na - Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced after January 20, 1983.

40 CFR 60.140a through 40 CFR 60.145a
(facilities in an iron and steel plant: top-blown BOPFs and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPFs)

Subpart O - Sewage Treatment Plants.

40 CFR 60.150 through 40 CFR 60.154
(incinerators that combust wastes containing more than 10% sewage sludge (dry basis) produced by municipal sewage treatment plants or incinerators that

charge more than 2205 pounds per day municipal sewage sludge (dry basis))

Subpart P - Primary Copper Smelters.

40 CFR 60.160 through 40 CFR 60.166
(dryers, roasters, smelting furnaces, and copper converters)

Subpart Q - Primary Zinc Smelters.

40 CFR 60.170 through 40 CFR 60.176
(roasters and sintering machines)

Subpart R - Primary Lead Smelters.

40 CFR 60.180 through 40 CFR 60.186
(sintering machines, sintering machine discharge ends, blast furnaces, dross reverberatory furnaces, electric smelting furnaces and converters)

Subpart S - Primary Aluminum Reduction Plants.

40 CFR 60.190 through 40 CFR 60.195
(potroom groups and anode bake plants)

Subpart T - Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.

40 CFR 60.200 through 40 CFR 60.204
(reactors, filters, evaporators, and hot wells)

Subpart U - Phosphate Fertilizer Industry: Superphosphoric Acid Plants.

40 CFR 60.210 through 40 CFR 60.214
(evaporators, hot wells, acid sumps, and cooling tanks)

Subpart V - Phosphate Fertilizer Industry: Diammonium Phosphate Plants.

40 CFR 60.220 through 40 CFR 60.224
(reactors, granulators, dryers, coolers, screens, and mills)

Subpart W - Phosphate Fertilizer Industry: Triple Superphosphate Plants.

40 CFR 60.230 through 40 CFR 60.234
(mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate)

Subpart X - Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.

40 CFR 60.240 through 40 CFR 60.244
(storage or curing piles, conveyors, elevators, screens and mills)

Subpart Y - Coal Preparation Plants.

40 CFR 60.250 through 40 CFR 60.254
(plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems)

Subpart Z - Ferroalloy Production Facilities.

40 CFR 60.260 through 40 CFR 60.266
(electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon,

silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon or calcium carbide; and dust-handling equipment)

Subpart AA - Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.

40 CFR 60.270 through 40 CFR 60.276
(electric arc furnaces and dust-handling systems that produce carbon, alloy or specialty steels)

Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 17, 1983.

40 CFR 60.270a through 40 CFR 60.276a
(electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems that produce carbon, alloy, or specialty steels)

Subpart BB - Kraft Pulp Mills.

40 CFR 60.280 through 40 CFR 60.285
(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers and kraft pulping operations)

Subpart CC - Glass Manufacturing Plants.

40 CFR 60.290 through 40 CFR 60.296
(glass melting furnaces)

Subpart DD - Grain Elevators.

40 CFR 60.300 through 40 CFR 60.304
(grain terminal elevators/grain storage elevators: truck unloading stations, truck loading stations, barge and ship unloading stations, barge and ship loading stations, railcar unloading stations, railcar loading stations, grain dryers, and all grain handling operations)

Subpart EE - Surface Coating of Metal Furniture.

40 CFR 60.310 through 40 CFR 60.316
(metal furniture surface coating operations in which organic coatings are applied)

Subpart FF - (Reserved)

Subpart GG - Stationary Gas Turbines.

40 CFR 60.330 through 40 CFR 60.335
(stationary gas turbines with a heat input at peak load equal to or greater than 10 million Btu per hour, based on the lower heating value of the fuel fired)

Subpart HH - Lime Manufacturing Plants.

40 CFR 60.340 through 40 CFR 60.344
(each rotary lime kiln)

Subparts II through JJ - (Reserved)

Subpart KK - Lead-Acid Battery Manufacturing Plants.

40 CFR 60.370 through 40 CFR 60.374
(lead-acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to

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or greater than 6.5 tons: grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations)

Subpart LL - Metallic Mineral Processing Plants.

40 CFR 60.380 through 40 CFR 60.386
(each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator with the following exceptions. All facilities located in underground mines are exempted from the provisions of this subpart. At uranium ore processing plants, all facilities subsequent to and including the beneficiation of uranium ore are exempted from the provisions of this subpart)

Subpart MM - Automobile and Light Duty Truck Surface Coating Operations.

40 CFR 60.390 through 40 CFR 60.397
(prime coat operations, guide coat operations, and top-coat operations)

Subpart NN - Phosphate Rock Plants.

40 CFR 60.400 through 40 CFR 60.404
(phosphate rock plants which have a maximum plant production capacity greater than 4 tons per hour: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorous production)

Subpart OO - (Reserved)

Subpart PP - Ammonium Sulfate Manufacture.

40 CFR 60.420 through 40 CFR 60.424
(ammonium sulfate dryer within an ammonium sulfate manufacturing plant in the caprolactum by-product, synthetic, and coke oven by-product sectors of the ammonium sulfate industry)

Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.

40 CFR 60.430 through 40 CFR 60.435
(publication rotogravure printing presses, except proof presses)

Subpart RR - Pressure Sensitive Tape and Label Surface Coating Operations.

40 CFR 60.440 through 40 CFR 60.447
(pressure sensitive tape and label material coating lines)

Subpart SS - Industrial Surface Coating: Large Appliances.

40 CFR 60.450 through 40 CFR 60.456
(surface coating operations in large appliance coating lines)

Subpart TT - Metal Coil Surface Coating.

40 CFR 60.460 through 40 CFR 60.466

(metal coil surface coating operations: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously)

Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.

40 CFR 60.470 through 40 CFR 60.474
(each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants)

Subpart VV - Equipment Leaks of Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry.

40 CFR 60.480 through 40 CFR 60.489
(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart WW - Beverage Can Surface Coating Industry.

40 CFR 60.490 through 40 CFR 60.496
(beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation)

Subpart XX - Bulk Gasoline Terminals.

40 CFR 60.500 through 40 CFR 60.506
(total of all loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks)

Subparts YY through ZZ - (Reserved)

Subpart AAA - New Residential Wood Heaters.

40 CFR 60.530 through 40 CFR 60.539b
(wood heaters)

Subpart BBB - Rubber Tire Manufacturing Industry.

40 CFR 60.540 through 40 CFR 60.548
(each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation)

Subpart CCC - (Reserved)

Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

40 CFR 60.560 through 40 CFR 60.566
(For polypropylene and polyethylene manufacturing using a continuous process that emits continuously or intermittently: all equipment used in the manufacture of these polymers. For polystyrene manufacturing using a continuous process that emits continuously: each material recovery section. For poly(ethylene terephthalate) manufacturing using a continuous process that emits continuously: each polymerization reaction section; if dimethyl terephthalate is used in the process, each material recovery section is also an affected facility; if terephthalic acid is used in the

process, each raw materials preparation section is also an affected facility. For VOC emissions from equipment leaks: each group of fugitive emissions equipment within any process unit, excluding poly(ethylene terephthalate) manufacture.)

Subpart EEE - (Reserved)

Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.

40 CFR 60.580 through 40 CFR 60.585
(each rotogravure printing line used to print or coat flexible vinyl or urethane products)

Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries.

40 CFR 60.590 through 40 CFR 60.593
(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart HHH - Synthetic Fiber Production Facilities.

40 CFR 60.600 through 40 CFR 60.604
(each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year)

Subpart III - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.

40 CFR 60.610 through 40 CFR 60.618
(each air oxidation reactor not discharging its vent stream into a recovery system and each combination of an air oxidation reactor or two or more air oxidation reactors and the recovery system into which the vent streams are discharged)

Subpart JJJ - Petroleum Dry Cleaners.

40 CFR 60.620 through 40 CFR 60.625
(facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 84 pounds: petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks)

Subpart KKK - Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.

40 CFR 60.630 through 40 CFR 60.636
(each compressor in VOC service or in wet gas service; each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart)

Subpart LLL - Onshore Natural Gas Processing: Sulfur Dioxide Emissions.

40 CFR 60.640 through 40 CFR 60.648
(facilities that process natural gas: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit)

Subpart MMM - (Reserved)

Subpart NNN - Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.

40 CFR 60.660 through 40 CFR 60.668
(each distillation unit not discharging its vent stream into a recovery system, each combination of a distillation unit or of two or more units and the recovery system into which their vent streams are discharged)

Subpart OOO - Nonmetallic Mineral Processing Plants.

40 CFR 60.670 through 40 CFR 60.676
(facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station)

Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.

40 CFR 60.680 through 40 CFR 60.685
(each rotary spin wool fiberglass insulation manufacturing line)

Subpart QQQ - VOC Emissions from Petroleum Refinery Wastewater Systems.

40 CFR 60.690 through 40 CFR 60.699
(individual drain systems, oil-water separators, and aggregate facilities in petroleum refineries)

Subpart RRR - Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.

40 CFR 60.700 through 40 CFR 60.708
(each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, and each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged)

Subpart SSS - Magnetic Tape Coating Facilities.

40 CFR 60.710 through 40 CFR 60.718
(each coating operation and each piece of coating mix preparation equipment)

Subpart TTT - Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.

40 CFR 60.720 through 40 CFR 60.726
(each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats)

Subpart UUU - Calciners and Dryers in Mineral Industries.

40 CFR 60.730 through 40 CFR 60.737
(each calciner and dryer at a mineral processing plant)

Subpart VVV - Polymeric Coating of Supporting Substrates Facilities.

40 CFR 60.740 through 40 CFR 60.748
(each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates)

Subpart WWW - Municipal Solid Waste Landfills.

40 CFR 60.750 through 40 CFR 60.759

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(municipal solid waste landfills for the containment of household and RCRA Subtitle D wastes)

Appendix A - Test methods

Method 1 - Sample and velocity traverses for stationary sources.

Method 1A - Sample and velocity traverses for stationary sources with small stacks or ducts.

Method 2 - Determination of stack gas velocity and volumetric flow rate (type S pitot tube).

Method 2A - Direct measurement of gas volume through pipes and small ducts.

Method 2B - Determination of exhaust gas volume flow rate from gasoline vapor incinerators.

Method 2C - Determination of stack gas velocity and volumetric flow rate in small stacks or ducts (standard pitot tube).

Method 2D - Measurement of gas volumetric flow rates in small pipes and ducts.

Method 2E - Determination of landfill gas; gas production flow rate.

Method 3 - Gas analysis for carbon dioxide, oxygen, excess air, and dry molecular weight.

Method 3A - Determination of oxygen and carbon dioxide concentrations in emissions from stationary sources (instrumental analyzer procedure).

Method 3B - Gas analysis for the determination of emission rate correction factor or excess air.

Method 3C - Determination of carbon dioxide, methane, nitrogen, and oxygen from stationary sources.

Method 4 - Determination of moisture content in stack gases.

Method 5 - Determination of particulate emissions from stationary sources.

Method 5A - Determination of particulate emissions from the asphalt processing and asphalt roofing industry.

Method 5B - Determination of nonsulfuric acid particulate matter from stationary sources.

Method 5C - (Reserved)

Method 5D - Determination of particulate matter emissions from positive pressure fabric filters.

Method 5E - Determination of particulate emissions from the wool fiberglass insulation manufacturing industry.

Method 5F - Determination of nonsulfate particulate matter from stationary sources.

Method 5G - Determination of particulate emissions from wood heaters from a dilution tunnel sampling location.

Method 5H - Determination of particulate emissions from wood heaters from a stack location.

Method 6 - Determination of sulfur dioxide emissions from stationary sources.

Method 6A - Determination of sulfur dioxide, moisture, and carbon dioxide emissions from fossil fuel combustion sources.

Method 6B - Determination of sulfur dioxide and carbon dioxide daily average emissions from fossil fuel combustion sources.

Method 6C - Determination of sulfur dioxide emissions from stationary sources (instrumental analyzer procedure).

Method 7 - Determination of nitrogen oxide emissions from stationary sources.

Method 7A - Determination of nitrogen oxide emissions from stationary sources - ion chromatographic method.

Method 7B - Determination of nitrogen oxide emissions from stationary sources (ultraviolet spectrophotometry).

Method 7C - Determination of nitrogen oxide emissions from stationary sources - alkaline-permanganate/colorimetric method.

Method 7D - Determination of nitrogen oxide emissions from stationary sources - alkaline-permanganate/ion colorimetric method.

Method 7E - Determination of nitrogen oxides emissions from stationary sources (instrumental analyzer procedure).

Method 8 - Determination of sulfuric acid mist and sulfur dioxide emissions from stationary sources.

Method 9 - Visual determination of the opacity of emissions from stationary sources.

Alternate Method 1 - Determination of the opacity of emissions from stationary sources remotely by lidar.

Method 10 - Determination of carbon monoxide emissions from stationary sources.

Method 10A - Determination of carbon monoxide emissions in certifying continuous emission monitoring systems at petroleum refineries.

Method 10B - Determination of carbon monoxide emissions from stationary sources.

Method 11 - Determination of hydrogen sulfide content of fuel gas streams in petroleum refineries.

Method 12 - Determination of inorganic lead emissions from stationary sources.

Method 13A - Determination of total fluoride emissions from stationary sources - SPADNS zirconium lake method.

Method 13B - Determination of total fluoride emissions from stationary sources - specific ion electrode method.

Method 14 - Determination of fluoride emissions from potroom roof monitors of primary aluminum plants.

Method 15 - Determination of hydrogen sulfide, carbonyl sulfide, and carbon disulfide emissions from stationary sources.

Method 15A - Determination of total reduced sulfur emissions from sulfur recovery plants in petroleum refineries.

Method 16 - Semicontinuous determination of sulfur emissions from stationary sources.

Method 16A - Determination of total reduced sulfur emissions from stationary sources (impinger technique).

Method 16B - Determination of total reduced sulfur emissions from stationary sources.

Method 17 - Determination of particulate emissions from stationary sources (in-stack filtration method).

Method 18 - Measurement of gaseous organic compound emissions by gas chromatography.

Method 19 - Determination of sulfur dioxide removal efficiency and particulate, sulfur dioxide and nitrogen oxides emission rates.

Method 20 - Determination of nitrogen oxides, sulfur dioxide, and diluent emissions from stationary gas turbines.

Method 21 - Determination of volatile organic compounds leaks.

Method 22 - Visual determination of fugitive emissions from material processing sources and smoke emissions from flares.

Method 23 - Determination of polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans from stationary sources.

Method 24 - Determination of volatile matter content, water content, density, volume solids, and weight solids of surface coatings.

Method 24A - Determination of volatile matter content and density of printing inks and related coatings.

Method 25 - Determination of total gaseous nonmethane organic emissions as carbon.

Method 25A - Determination of total gaseous organic concentration using a flame ionization analyzer.

Method 25B - Determination of total gaseous organic concentration using a nondispersive infrared analyzer.

Method 25C - Determination of nonmethane organic compounds (NMOC) in MSW landfill gases.

Method 26 - Determination of hydrogen chloride emissions from stationary sources.

Method 27 - Determination of vapor tightness of gasoline delivery tank using pressure-vacuum test.

Method 28 - Certification and auditing of wood heaters.

Method 28A - Measurement of air to fuel ratio and minimum achievable burn rates for wood-fired appliances.

Appendix B - Performance specifications.

Performance Specification 1 - Specifications and test procedures for opacity continuous emission monitoring systems in stationary sources.

Performance Specification 2 - Specifications and test procedures for sulfur dioxide and nitrogen oxides continuous emission monitoring systems in stationary sources.

Performance Specification 3 - Specifications and test procedures for oxygen and carbon dioxide continuous emission monitoring systems in stationary sources.

Performance Specification 4 - Specifications and test procedures for carbon monoxide continuous emission monitoring systems in stationary sources.

Performance Specification 4A - Specifications and test procedures for carbon monoxide continuous emission monitoring systems in stationary sources.

Performance Specification 5 - Specifications and test procedures for TRS continuous emission monitoring system in stationary sources.

Performance Specification 6 - Specifications and test procedures for continuous emission rate monitoring systems in stationary sources.

Performance Specification 7 - Specifications and test procedures for hydrogen sulfide continuous emission monitoring systems in stationary sources.

Appendix C - Determination of Emission Rate Change.

Appendix D - Required Emission Inventory Information.

Appendix E - (Reserved)

Appendix F - Quality Assurance Procedures.

Procedure 1 - Quality assurance requirements for gas continuous emission monitoring systems used for compliance determination.

Appendix G - (Not applicable)

Appendix H - (Reserved)

Appendix I - Removable label and owner's manual.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Title of Regulation: 12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control (amending 12 VAC 5-90-10, 12 VAC 5-90-40, 12 VAC 5-90-50, 12 VAC 5-90-70, 12 VAC 5-90-80, 12 VAC 5-90-90, 12 VAC 5-90-100, 12 VAC 5-90-110, 12 VAC 5-90-130, 12 VAC 5-90-150, 12 VAC 5-90-160, 12 VAC 5-90-170 and 12 VAC 5-90-180; repealing 12 VAC 5-90-60, 12 VAC 5-90-120, 12 VAC 5-90-190, 12 VAC 5-90-210 and 12 VAC 5-90-220).

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

Public Hearing Date: N/A -- Public comments may be submitted until September 21, 1998.

(See Calendar of Events section for additional information)

Basis: Section 32.1-12 of the Code of Virginia empowers the Board of Health with the authority to make, adopt, and promulgate regulations protective of public health. Section 32.1-35 directs the board to promulgate regulations specifying which diseases occurring in the Commonwealth are to be reportable and the method by which they are to be reported.

Purpose: The regulations are designed to protect citizens from diseases of public health importance by requiring notification of the health department when certain diseases are diagnosed. This allows the institution of appropriate control measures to interrupt the transmission of disease. Some conditions that are currently reportable to the health department are no longer needed and others have emerged

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or become more important since 1993, when the regulations were last amended. The amendments to the regulations are needed to protect the public from the threat of newly emerging diseases by adding to the reportable disease list, to remove the requirement to report where the burden of doing so outweighs any public health benefit by deleting from the reportable disease list, and to make provisions that enhance disease surveillance and control in the Commonwealth, such as by strengthening the reporting requirement for laboratories, which have been the most consistent source of disease information.

Substance: The regulations specify which conditions need to be reported to the health department, what types of professionals are responsible for such reporting, what information has to be included in the reports, and the time limits for reporting. Specifically, physicians, directors of medical care facilities, and directors of laboratories are required to report conditions of public health importance to the local health department; cancer is reported directly to the Virginia Cancer Registry in the central office of the Virginia Department of Health.

The substance of the amendments includes additions to the reportable disease list, deletions from the reportable disease list, increased laboratory-based disease surveillance, and other changes of note, each of which is described below.

Additions: Reasons for adding conditions to the list of reportable diseases include the need to monitor the emergence of a new disease (especially if there is person-to-person transmission, sizeable morbidity/mortality, and/or the possibility of lessening the community impact through public health efforts), intervention/prevention methods are available, more information is desired on the epidemiology of the disease (to identify risk factors or prevention strategies), an existing disease has changed in some way or become more significant in Virginia, or information on that condition may yield information on related conditions.

Conditions being proposed for addition to the reportable disease list include: cryptosporidiosis, cyclosporiasis, ehrlichiosis, *E. coli* O157:H7 infection, Hantavirus pulmonary syndrome, hemolytic uremic syndrome (HUS), invasive Group A streptococcal disease, tuberculosis infection in young children, and vancomycin-resistant *Staphylococcus aureus* infection. Outbreaks of cyclosporiasis and *E. coli* O157:H7 infection have occurred in Virginia. The addition of HUS and tuberculosis infection in children are proposed in order to allow the health department to identify active cases of *E. coli* O157:H7 and tuberculosis disease, respectively. The potential exists in Virginia for the occurrence of serious conditions caused by ehrlichiosis, Hantavirus and vancomycin-resistant *S. aureus*.

In addition, the reporting level for childhood lead poisoning has been decreased from 15 µg/dl to 10, the definition of lead poisoning has been expanded to also include adults, and the reporting of typhus has been changed to include all cases of typhus, not limited to flea-borne disease. More comprehensive surveillance of these conditions is needed to understand the extent of the problem in Virginia and to

ensure that children and other citizens are adequately protected from exposures that may be harmful to their health.

Deletions: Conditions are considered for deletion from the list of reportable conditions when they cannot be positively impacted by public health response, risk factors are known and the epidemiology of the disease is no longer under study, the urgency of the need for disease surveillance has decreased, the validity of statistics is questionable, or the condition is very rare and not very severe. Conditions being proposed for deletion include: aseptic (viral) meningitis, certain bacterial meningitides, certain encephalitides, hepatitis unspecified, histoplasmosis, leptospirosis, sporadic occupational illnesses, phenylketonuria, Q fever, Reye syndrome, smallpox, and tularemia. These diseases have been determined to be less of a public health threat than they were previously, or else other mechanisms for gathering information regarding their occurrence exists.

Increased Laboratory-based Disease Surveillance: Expansion of the list of conditions reportable to the health department by directors of laboratories is being proposed. Conditions proposed for addition to the list of diseases reportable by laboratories include: amebiasis, arboviral infection, botulism, brucellosis, chancroid, cryptosporidiosis, cyclosporiasis, *E. coli* O157:H7, giardiasis, hepatitis B, malaria, measles, mumps, rubella, invasive Group A streptococcal disease, and vancomycin-resistant *Staphylococcus aureus* infection. The amendments also allow that laboratories will rapidly notify the health department of the detection of certain conditions and that laboratories operating in medical care facilities will forward certain specimens to the state laboratory. In the past, the rapid reporting requirement has not applied to laboratories, and this led to delays in the application of disease control procedures. The requirement to forward specimens to the state laboratory has been included in the hospital licensure regulations, and it has been confusing to many involved in disease surveillance for that list to not be included in the disease reporting regulations.

Other changes of note are the requirement that physicians test pregnant women for hepatitis B surface antigen, expansion of the reporting requirement for cancer, and deletion of the section on memory loss disorder reporting. Hepatitis B may be transmitted from mother to newborn, and determination of the infected status of the mother prior to delivery will enable the public health community to prepare for the administration of necessary preventive therapies at the time of birth. The changes relative to cancer reporting are in response to a change in the Code of Virginia or standards that have been established since 1993 for central cancer registries. These changes are designed to improve cancer surveillance in Virginia. A new reporting form for cancer reporting has also been developed, and the form for reporting other reportable diseases (the Epi-1 form) has been modified. Finally, the law requiring the establishment of the Statewide Alzheimer's Disease and Related Disorders Registry was repealed in 1994, so that section is no longer needed in the regulations.

Issues: The primary advantage to the public is that, with these amendments, the Commonwealth will be monitoring newly emerging diseases of public health importance and better able to institute measures to minimize the impact of these diseases. Additionally, the burden of reporting on physicians, facilities, and laboratories will be lessened by removing other conditions from the list of diseases for which reporting is required.

By adding more diseases to the list of conditions reportable to the health department by directors of laboratories, surveillance for these conditions will be enhanced. Laboratories have consistently been a reliable source of information, i.e., they consistently comply with the requirements of the regulations. The amendments that require laboratories to notify the health department rapidly when certain conditions are detected will allow the health department to more quickly implement measures to prevent the spread of disease in Virginia's communities. By increasing the reporting requirement for laboratories and making the other proposed amendments, the public's health will be protected better.

There are no disadvantages to the public, the agency or the Commonwealth for implementing these amendments.

Estimated impact: These regulations affect all physicians, directors of medical care facilities, and directors of laboratories. The changes will have an impact on laboratories more than any other group. The primary impact will be the requirement that they forward more paperwork to the health department, telephone (or otherwise rapidly notify) the health department when certain conditions are confirmed, and forward some additional cultures to the state laboratory.

The health department will maintain databases that include the additional reportable conditions and provide appropriate follow-up to persons reported with these diagnoses, but no additional funding requirement is anticipated.

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 seeks to enhance disease surveillance and control in the Commonwealth of Virginia by revising the Regulations for Disease Reporting and Control. Substantive changes include the following:

1. Updating the list of reportable diseases,
2. Deleting memory-loss disorder reporting requirements,
3. Applying the rapid reporting requirement to directors of laboratories,
4. Expanding the list of reportable conditions for directors of laboratories,
5. Requiring directors of laboratories to submit reports to the health department when a culture is sent to the state laboratory,
6. Adding hepatitis B to the list of required childhood vaccines,
7. Requiring physicians to test pregnant women for the hepatitis B surface antigen,
8. Expanding cancer reporting requirements,
9. Requiring physicians to report cases of cancer in instances when it has been determined that a medical care facility, clinic, or instate pathology laboratory has not reported, and
10. Making other clarifications and/or minor changes to the existing regulation.

Estimated economic impact. These proposed changes update the list of reportable diseases to include new and emerging diseases and delete those now determined to be less of a public threat than previously thought. This results in a more efficient use of resources. The addition of the hepatitis B vaccine to the list of childhood vaccines and the requirement that hepatitis B be tested for in all pregnant women reflect what is currently standard practice and therefore results in no additional costs or benefits. The expanded cancer reporting requirements are expected to affect 3,000 of the 30,000 cases reported each year. This additional information can be taken right off the patient's medical chart and will not be cause for increased doctor's time. The Department of Health estimates that approximately 4,000 cancer cases are not reported each year. The default physician reporting requirement is aimed at capturing those cases.

The majority of costs will fall on laboratories that now must forward more paperwork to the health department, send additional cultures to the state laboratory, and telephone (or otherwise rapidly notify) the health department when certain conditions are confirmed. Physicians will also incur additional costs as they will have to individually evaluate all cancer cases they treat to determine if the case falls under the reporting requirement for physicians.

Since the board already maintains databases that include the additional reportable conditions and provide appropriate follow-up procedures, there will be no additional administrative costs associated with these changes. Complying with these additional requirements will result in increased costs for laboratories, physicians, and other medical facilities and, consequently, patients. Although the magnitude of these costs is difficult to measure, historically

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disease reporting costs are small relative to the public health benefits resulting from the improved tracking and control of diseases.

Businesses and entities affected. The amendments to this regulation will affect all physicians licensed to practice medicine in Virginia (approximately 26,500), directors of medical care facilities (approximately 400), and directors of laboratories (approximately 150). The estimated magnitude of the affects are minimal with the exception of directors of laboratories who will now have to complete additional paperwork, follow more rapid reporting measures, and forward more specimens to the state laboratory. The magnitude of these additional costs cannot be accurately measured at this time but they are expected to be small relative to current total reporting costs.

Localities particularly affected. No localities will be disproportionately affected by this regulation.

Projected impact on employment. This regulation is not expected to have any measurable impact on employment in Virginia.

Effects on the use and value of private property. This regulation is not expected to have any effect on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Health concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments include (i) the addition of newly emerging diseases to the list of reportable conditions; (ii) the deletion of conditions for which public health surveillance is no longer necessary; (iii) additions to the list of conditions reportable by directors of laboratories; (iv) an updated list of laboratory tests, a requirement for laboratories to report certain conditions rapidly, and additional requirements for laboratories to forward certain cultures to the state laboratory; and (v) several other updates including new and modified definitions, a provision for the health department to conduct temporary surveillance in special circumstances, a requirement for perinatal testing for hepatitis B infection, additional items to be included in reports of persons with cancer and encouragement of electronic reporting of cancer, deletion of the section on memory loss disorder reporting, and a requirement for child care centers to report outbreaks.

12 VAC 5-90-10. Definitions.

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

"Board" means the State Board of Health.

"Cancer" means all carcinomas, sarcomas, melanomas, leukemias, and lymphomas excluding localized basal and

squamous cell carcinomas of the skin, except for lesions of the mucous membranes.

"Carrier" means a person who, with or without any apparent symptoms of a communicable disease, harbors a specific infectious agent and may serve as a source of infection.

"Child care center" means a child day center, child day center system, child day program, family day home, family day system, or registered family day home as defined by § 63.1-195 of the Code of Virginia, or a similar place providing day care of children by such other name as may be applied.

"Clinic" means any facility, freestanding or associated with a hospital, that provides preventive, diagnostic, therapeutic, rehabilitative, or palliative care or services to outpatients.

"Commissioner" means the State Health Commissioner, his duly designated officer or agent.

"Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod or through the agency of an intermediate host or a vector or through the inanimate environment.

"Condition" means any adverse health event that is not technically a disease, such as an infection, a syndrome, or a procedure indicating that an exposure of public health importance has occurred.

"Contact" means a person or animal known to have been in such association with an infected person or animal as to have had an opportunity of acquiring the infection.

"Contact tracing" means the process by which an infected person or health department employee notifies others that they may have been exposed to the infected person in a manner known to transmit the infectious agent in question.

"Department" means the State Department of Health.

~~"Designee" or "designated officer or agent" means any person, or group of persons, designated by the State Health Commissioner, to act on behalf of the commissioner or the board.~~

"Epidemic" means the occurrence in a community or region of cases of an illness clearly in excess of normal expectancy.

~~"Foodborne outbreak" means a group manifestation of two or more cases of a similar illness acquired through the consumption of food or water contaminated with chemicals or an infectious agent or its toxic products. One case of foodborne botulism is considered an outbreak.~~ Such illnesses include but are not limited to heavy metal intoxications, staphylococcal food poisoning, botulism, salmonellosis, shigellosis, Clostridium perfringens food poisoning, hepatitis A, and Escherichia coli O157:H7 illness.

"Immunization" means a ~~treatment procedure~~ which renders an individual less susceptible to the pathologic effects of a disease or provides a measure of protection against the disease (e.g., inoculation, vaccination).

"Independent pathology laboratory" means a nonhospital or a hospital laboratory performing surgical pathology, including fine needle aspiration biopsy and bone marrow examination services, which reports the results of such tests directly to physician offices, without reporting to a hospital or accessioning the information into a hospital tumor registry.

"Investigation" means an inquiry into the incidence, prevalence, extent, source, mode of transmission, and causation of a disease occurrence.

"Isolation" means separation for the period of communicability of infected persons or animals from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of an infectious agent from those infected to those who are susceptible. The means of isolation shall be the least restrictive means appropriate under the facts and circumstances as determined by the commissioner.

"Laboratory director" means any person in charge of supervising a laboratory conducting business in the Commonwealth of Virginia.

"Lead-elevated blood levels in children" means a child or children 15 years of age and younger with a confirmed venous blood level greater than or equal to ~~45~~ 10 micrograms of lead per deciliter ($\mu\text{g}/\text{dL}$) of whole blood, a person older than 15 years of age with a venous blood lead level greater than or equal to 25 $\mu\text{g}/\text{dL}$, or such lower blood lead level as may be recommended for individual intervention by the department or the United States Department of Health and Human Services, Public Health Services, Centers for Disease Control and Prevention.

"Medical care facility" means any hospital or nursing home licensed in the Commonwealth, or any hospital operated by or contracted to operate by an entity of the United States government or the Commonwealth of Virginia.

~~"Memory loss disorder" means any progressive dementia caused by AIDS, alcohol abuse, probable Alzheimer's disease, cerebral vascular disease, Croutzfolt-Jakob disease, depression, head trauma, normal pressure hydrocephalus, Parkinson's disease, space-occupying lesion, toxic or metabolic disorder, or other known cause.~~

"Midwife" means any person who is licensed as a nurse midwife by the Virginia Boards of Nursing and Medicine or who possesses a midwife permit issued by the State Health Commissioner.

"Nosocomial outbreak" means any group of illnesses of common etiology occurring in patients of a medical care facility acquired by exposure of those patients to the disease agent while confined in such a facility.

"Nurse" means any person licensed as a professional nurse or as a licensed practical nurse by the Virginia Board of Nursing.

"Occupational outbreak" means a cluster of illness or disease that is indicative of an occupational health problem. Such diseases include but are not limited to silicosis, asbestosis, byssinosis, and tuberculosis.

"Outbreak" means the occurrence of more cases of a disease than expected.

"Period of communicability" means the time or times during which the etiologic agent may be transferred directly or indirectly from an infected person to another person, or from an infected animal to a person.

"Physician" means any person licensed to practice medicine by the Virginia Board of Medicine.

"Quarantine" means generally, a period of detention for persons or domestic animals that may have been exposed to a reportable, contagious disease for purposes of observation or treatment.

1. Complete quarantine. The formal limitation of freedom of movement of well persons or animals exposed to a reportable disease for a period of time not longer than the longest incubation period of the disease in order to prevent effective contact with the unexposed. The means of complete quarantine shall be the least restrictive means appropriate under the facts and circumstances, pursuant to 12 VAC 5-90-90 E or as determined by the commissioner.

2. Modified quarantine. A selective, partial limitation of freedom of movement of persons or domestic animals, determined on the basis of differences in susceptibility, or danger of disease transmission. Modified quarantine is designed to meet particular situations and includes but is not limited to, the exclusion of children from school and the prohibition or restriction of those exposed to or suffering from a communicable disease from engaging in a particular occupation. The means of modified quarantine shall be the least restrictive means appropriate under the facts and circumstances, pursuant to 12 VAC 5-90-90 E or as determined by the commissioner.

3. Segregation. The separation, for special control, or observation, of one or more persons or animals from other persons or animals to facilitate control or surveillance of a reportable disease. The means of segregation shall be the least restrictive means available under the facts and circumstances, as determined by the commissioner.

"Reportable disease" means an illness due to a specific toxic substance, occupational exposure, or infectious agent, which affects a susceptible individual, either directly, as from an infected animal or person, or indirectly through an intermediate host, vector, or the environment, as determined by the board.

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"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within the Commonwealth; (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12; (iii) any private or parochial nursery school or preschool, or any private or parochial child care center licensed by the Commonwealth; and (iv) any preschool handicapped classes or Head Start classes.

~~"Surveillance" means the continuing scrutiny of all aspects of occurrence and spread of a disease relating to effective control of that disease. Included in the process of surveillance are the collection and evaluation of:~~

- ~~1. Morbidity and mortality reports.~~
- ~~2. Special reports of field investigations of epidemics and individual cases.~~
- ~~3. Isolation and identification of infectious agents by laboratories.~~
- ~~4. Data concerning the availability, use, and untoward side effects of the substances used in disease control.~~
- ~~5. Information regarding immunity levels in segments of the population.~~

"Surveillance" means the ongoing systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation and evaluation of public health practice. A surveillance system includes the functional capacity for data analysis as well as the timely dissemination of these data to persons who can undertake effective prevention and control activities.

"Toxic substance" means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a commercial establishment, that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of death or impairment either immediately or over time, to the normal functions of humans, aquatic organisms, or any other animal but not including any pharmaceutical preparation which deliberately or inadvertently is consumed in such a way as to result in a drug overdose.

"Tuberculosis disease" means bacteriological confirmation of *Mycobacterium tuberculosis* or, in the absence of such confirmation, a significant reaction to a Mantoux tuberculin skin test accompanied by an improvement in the chest radiograph and/or clinical course of disease while on multiple anti-tuberculosis medications.

"Tuberculosis infection in children ages 0-5 years" means a significant reaction resulting from a 0.1 ml intradermal injection of a 5 tuberculin unit (TU) dose of PPD-S (Mantoux tuberculin skin test) with no chest x-ray or clinical indication of active tuberculosis disease in children ages 0-5 years. A significant reaction is 5 mm induration in known contacts to tuberculosis disease and HIV seropositive persons and 10 mm in all others.

"Vancomycin-resistant *Staphylococcus aureus*" means any *Staphylococcus aureus* culture that demonstrates intermediate or greater resistance to vancomycin.

~~"Waterborne outbreak" means a group manifestation of two or more cases of a similar illness acquired through the consumption ingestion of or exposure to water contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to giardiasis, viral gastroenteritis, cryptosporidiosis, hepatitis A, cholera, and shigellosis. A single case of laboratory-confirmed primary amebic meningoencephalitis or of waterborne chemical poisoning is considered an outbreak.~~

12 VAC 5-90-40. Administration.

A. The State Board of Health ("board") has the responsibility for promulgating regulations pertaining to the reporting and control of diseases of public health importance.

B. The State Health Commissioner ("commissioner") is the executive officer for the State Board of Health with the authority of the board when it is not in session, subject to the rules and regulations of and review by the board.

C. The local health director is responsible for the surveillance and investigation of those diseases specified by this chapter which occur in his jurisdiction. He is further responsible for reporting all such surveillance and investigations to the ~~State Department of Health~~ department. In cooperation with the commissioner, he is responsible for instituting measures for disease control, which may include quarantine or, isolation, or segregation as required by the commissioner.

D. The Office of Epidemiology, an organizational part of the department, is responsible for the statewide surveillance of those diseases specified by this chapter, for coordinating the investigation of those diseases with the local health director ~~and operations director~~, and for providing direct assistance where necessary. The Director of the Office of Epidemiology acts as the commissioner's designee in reviewing reports and investigations of diseases and recommendations by local health directors for quarantine or isolation. However, authority to order quarantine or isolation resides solely with the commissioner, unless otherwise expressly provided by him.

E. All persons responsible for the administration of this chapter shall ensure that the anonymity of patients and practitioners is preserved, according to the provisions of §§ 32.1-38, 32.1-41, 32.1-71, and 32.1-71.4 of the Code of Virginia.

12 VAC 5-90-50. Application of chapter Applicability.

A. This chapter has general application throughout the Commonwealth.

~~12 VAC 5-90-60. Application of the Administrative Process Act.~~

B. The provisions of the Virginia Administrative Process Act, which is codified as Chapter 1.1:1 (§ 9-6.14:1 et seq.) of

Title 9 of the Code of Virginia, shall govern the adoption, amendment, modification, and revision of this chapter, and the conduct of all proceedings and appeals hereunder. All hearings on such regulations shall be conducted in accordance with § 9-6.14:7.1 of the Code of Virginia.

12 VAC 5-90-70. Powers and procedures of chapter not exclusive.

The board reserves the right to authorize a procedure for enforcement of this chapter which is not inconsistent with the provisions set forth herein and the provisions of Chapter 2 (§ 32.1-35 et seq.) of Title 32.1 of the Code of Virginia.

12 VAC 5-90-80. Reportable disease list.

A. The board declares the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in 12 VAC 5-90-90. *Conditions identified by an asterisk (*) require rapid communication as defined in subsection B of this section:*

~~A. List of reportable diseases:~~

- Acquired Immunodeficiency Syndrome (AIDS)
- Amebiasis
- *Anthrax
- Arboviral infections
- Aseptic meningitis
- Bacterial meningitis (specify etiology)
- *Botulism
- Brucellosis
- Campylobacter infections (~~excluding C. pylori~~)
- Chancroid
- Chickenpox
- Chlamydia trachomatis infections
- ~~Congenital rubella syndrome~~
- *Cholera
- Cryptosporidiosis
- Cyclosporiasis
- *Diphtheria
- Encephalitis
 - ~~primary~~
 - ~~(specify etiology)~~
 - ~~post infectious~~
- ~~Foodborne outbreaks~~
- Ehrlichiosis
- Escherichia coli* O157:H7 and other enterohemorrhagic *E. coli* infections
- Giardiasis

- Gonorrhea
- Granuloma inguinale
- *Haemophilus influenzae ~~infections~~ infection, invasive
- Hantavirus pulmonary syndrome
- Hemolytic uremic syndrome (HUS)
- Hepatitis, acute viral
 - *Hepatitis A
 - Hepatitis B
 - ~~Non-A, Non-B~~
 - Unspecified
- ~~Histoplasmosis~~
- Hepatitis C
 - Other acute viral Hepatitis
- Human immunodeficiency virus (HIV) infection
- Influenza
- ~~Kawasaki~~ Kawasaki syndrome
- ~~Lead-elevated blood levels~~
- Legionellosis
- ~~Lead-elevated levels in children~~
- Leprosy (*Hansen disease*)
- ~~Leptospirosis~~
- Listeriosis
- Lyme disease
- Lymphogranuloma venereum
- Malaria
- *Measles (Rubeola)
- *Meningococcal infections
- Mumps
- ~~Nosocomial outbreaks~~
- ~~Occupational illnesses~~
- Ophthalmia neonatorum
- *Outbreaks, all (including foodborne, nosocomial, occupational, toxic substance-related, waterborne, and other outbreaks)
- *Pertussis (Whooping cough)
- ~~Phenylketonuria (PKU)~~
- *Plague
- *Poliomyelitis
- *Psittacosis
- ~~Q fever~~
- ~~Rabies in animals~~

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~~Rabies in man~~

~~*Rabies, human and animal~~

Rabies treatment, post-exposure

~~Reye syndrome~~

Rocky Mountain spotted fever

Rubella (German measles), *including congenital rubella syndrome*

Salmonellosis

Shigellosis

Smallpox

Streptococcal disease, Group A, invasive

Syphilis (*report *primary and *secondary syphilis by rapid means*)

Tetanus

Toxic shock syndrome

Toxic substance-related illness

Trichinosis (*Trichinellosis*)

~~*Tuberculosis disease~~

Tuberculosis infection in children ages 0-5 years (Mantoux tuberculin skin test reaction > 10 mm)

~~Tularemia~~

Typhoid fever

~~Typhus, flea-borne~~

Vancomycin-resistant Staphylococcus aureus

~~Vibrio infections including cholera~~

~~Waterborne outbreaks~~

~~*Yellow fever~~

B. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases, because of their extremely contagious nature or their potential for greater harm, or both, require immediate identification and control. Reporting of *persons confirmed or suspected of having* these diseases, listed below *and identified by asterisks in subsection A of this section and 12 VAC 5-90-90 B*, shall be made *within 24 hours* by the most rapid means available, preferably that of telecommunication (e.g., telephone, telephone transmitted facsimile, telegraph, teletype, etc.) to the local health director or other professional employee of the department:

Anthrax

Botulism

Cholera

Diphtheria

~~Foodborne outbreaks~~

~~Haemophilus influenza infections infection, invasive~~

Hepatitis A

Measles (Rubeola)

~~Meningococcal infections infection~~

Outbreaks, all

Pertussis

Plague

Poliomyelitis

Psittacosis

Rabies in man *and animals*

~~Smallpox~~

Syphilis, primary and secondary

Tuberculosis *disease*

~~Waterborne outbreaks~~

Yellow Fever

C. Diseases to be reported by number of cases. The following disease in the list of reportable diseases shall be reported as number-of-cases only:

Influenza (by type, if available)

D. Human immunodeficiency virus (HIV) infection. Every physician practicing in this Commonwealth shall report to the local health department any patient of his who has tested positive for human immunodeficiency virus (HIV). Every person in charge of a medical care facility shall report the occurrence in or admission to the facility of a patient with HIV infection unless there is evidence that the occurrence has been reported by a physician. When such a report is made, it shall include the information required in 12 VAC 5-90-90 A. Only individuals who have ~~positive blood tests for laboratory results which indicate the presence of HIV antigen, nucleic acid, or antibodies (such as demonstrated by~~ at least two enzyme-linked immunosorbent assays (done in duplicate at the same time or singly at different times), and a supplemental test such as the western blot *or by rapid tests with confirmation*) are considered to have HIV infection.

E. ~~Toxic substances related~~ *substance-related* diseases or illnesses. ~~Diseases or illnesses resulting from exposure to a toxic substance, shall include, but not be limited to the following:~~

~~Occupational Lung Diseases~~

~~silicosis
asbestosis
byssinosis~~

~~Occupationally-Related Cancers~~

~~mesothelioma~~

~~Furthermore, All toxic substances-related substance-related diseases or illnesses, including pesticide poisonings, and heavy metal poisoning or illness or disease resulting from exposure to a an occupational dust or fiber or~~

radioactive substance, ~~or any illness or disease that is indicative of an occupational health, public health, or environmental problem~~ shall be reported.

If such disease or illness is verified, or suspected, and presents an emergency, or a serious threat to public health or safety, the report of such disease or illness shall be by rapid communication as in subsection B of this section.

F. ~~Unusual or ill-defined diseases, illnesses, or outbreaks.~~ The occurrence of outbreaks or clusters of any illness which may represent an ~~unusual~~ or group expression of an illness which may be of public health concern shall be reported to the local health department by the most rapid means available.

G. *Unusual or ill-defined diseases or emerging or reemerging pathogens. Unusual or emerging conditions of public health concern shall be reported to the local health department by the most rapid means available. In addition, the commissioner or his designee may establish temporary surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.*

~~G.~~ H. Contact tracing. When notified about a disease specified in subsection A of this section, the local health department shall perform contact tracing for *HIV infection, infectious syphilis, and HIV-infection tuberculosis*, and may perform contact tracing for the other diseases if deemed necessary to protect the public health. The local health director shall have the responsibility to accomplish contact tracing by either having patients inform their potential contacts directly or through obtaining pertinent information such as names, descriptions, and addresses to enable the health department staff to inform the contacts. All contacts of HIV infection shall be afforded the opportunity for *appropriate counseling, testing, and individual face-to-face disclosure of the their test results and appropriate counseling*. In no case shall names of informants or *infected persons* be revealed to contacts by the health department. All information obtained shall be kept strictly confidential.

12 VAC 5-90-90. Those required to report.

A. Physicians. Each physician who treats or examines any person who is suffering from or who is suspected of having a reportable disease, ~~or who is suspected of being a carrier of a reportable disease or condition~~ shall report that person's name, address, age, sex, race, name of disease diagnosed or suspected, and the date of onset of illness, except that influenza should be reported by number of cases only (and type of influenza, if available). Reports are to be made to the local health department serving the jurisdiction where the physician practices. *A physician may designate*

someone to report on his behalf. Provider organizations, such as health maintenance organizations, may assume the responsibility for reporting on behalf of their member physicians. Any physician, designee, or organization making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

Such reports shall be made on a form to be provided by the department (Epi-1), a computer generated facsimile of Form Epi-1, or a Centers for Disease Control and Prevention (CDC) surveillance form that provides the same information and shall be made within seven days *of the identification of disease unless the disease in question requires rapid reporting under 12 VAC 5-90-80 B or 12 VAC 5-90-80 F.*

B. Directors of laboratories. Any person who is in charge of a laboratory conducting business in the Commonwealth shall report any laboratory examination of any specimen derived from the human body, *whether performed in-house or referred to an out-of-state laboratory, which yields evidence, by the laboratory method(s) indicated or any other confirmatory test, of a disease listed below:*

Amebiasis - by microscopic examination or antigen detection method or serology

**Anthrax - by culture*

Arboviral infection - by viral isolation

**Botulism - by identification of toxin in stool or serum or by culture*

Brucellosis - by culture or serology or immunofluorescence of Brucella spp. in a clinical specimen

Campylobacter infections (excluding C. pylori) infection - by culture

Chancroid - by culture

Chlamydia trachomatis infections - by culture or antigen or nucleic acid detection methods

**Cholera - by culture*

Cryptosporidiosis - by microscopic examination of stool or biopsy specimens or by antigen detection method

Cyclosporiasis - by microscopic examination of stool

**Diphtheria - by culture or histopathologic diagnosis*

Escherichia coli O157:H7 - by isolation of E. coli O157:H7 or other enterohemorrhagic E. coli from a specimen or isolation of Shiga toxin-producing E. coli O157 nonmotile (unable to detect flagellar factor) from a clinical specimen

Giardiasis - by microscopic examination or antigen detection method

Gonococcal infections - by culture or microscopic examination or by antigen or nucleic acid detection method

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~~*Haemophilus influenzae infections~~ *infection* - by culture or ~~antigen detection assay of blood or cerebrospinal fluid~~ *polymerase chain reaction of a normally sterile site*

*Hepatitis A - by serology specific for ~~IgM~~ *IgM* antibodies

Hepatitis B - by serology specific for IgM antibodies

Human immunodeficiency virus (HIV) infection - by ~~positive blood tests for laboratory results which indicate the presence of HIV antigen, nucleic acid, or antibodies (such as demonstrated by at least two enzyme-linked immunosorbent assays (done in duplicate at the same time or singly at different times), and a supplemental test such as the western blot- or by rapid tests with confirmation)~~

Influenza - by culture or serology

Lead-elevated ~~blood levels in children~~ - venous blood lead level greater than or equal to ~~45~~ *10* µg/dL in children ~~age ages 0-15 or greater than or equal to 25~~ *µg/dL in persons older than 15 years of age*

Legionellosis - by culture ~~or, direct fluorescent antibody test, serology, urine antigen detection method or polymerase chain reaction~~

Listeriosis - by culture

Malaria - by microscopic examination *or polymerase chain reaction*

*Measles - by serology specific for *IgM* antibodies *or paired sera results indicating a significant rise in antibody level or by culture*

*Meningococcal ~~infections~~ *infection* - by culture of ~~blood or cerebrospinal fluid a normally sterile site~~

Mumps - by serology specific for *IgM* antibodies *or paired sera results indicating a significant rise in antibody level or by culture*

*Mycobacterial diseases - *Report any of the following:*

1. *Acid fast bacilli - on smear*
2. *Mycobacterial identification - preliminary identification by rapid methodologies and/or by culture*
3. *Drug susceptibility test results for M. tuberculosis*

*Pertussis - *confirmed by culture or polymerase chain reaction or suspected by direct fluorescent antibody test*

*Plague - by culture or direct fluorescent antibody test

*Poliomyelitis - by culture or serology

*Rabies in animals - by ~~microscopic or immunologic examination~~ *direct fluorescent antibody test*

Rubella - by serology specific for *IgM* antibodies *or paired sera results indicating a significant rise in antibody level or by culture*

Salmonella infections - by culture

Shigella infections - by culture

Streptococcal disease, Group A - by culture from a normally sterile site

*Syphilis - by serology or dark field examination

Trichinosis - by *serology or microscopic examination of a muscle biopsy*

Vancomycin-resistant Staphylococcus aureus - by antimicrobial susceptibility testing conducted on culture

Vibrio infection - by culture

Each report shall give *the source of the specimen and the laboratory method and result; the name, age, race, sex, and address of the person from whom the specimen was obtained; and, when available, the person's age, race and sex; the name and address of the physician or medical facility for whom the examination was made shall also be provided.* When the influenza virus is isolated, the type should be reported, if available. Reports shall be made within seven days of identification of evidence of disease, *except that those identified by an asterisk shall be reported within 24 hours by the most rapid means available,* to the local health department serving the jurisdiction in which the laboratory is located ~~and~~. Reports shall be made on Form Epi-1 or on the laboratory's own form if it includes the required information. *Computer generated reports containing the required information may be submitted.* Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

~~Exceptions: With the exception of reporting laboratory evidence of gonococcal infections and syphilis, laboratories operating within a medical care facility shall be considered to be in compliance with the regulations when the director of that medical care facility assumes the reporting responsibility.~~

A laboratory ~~may~~ *operating within a medical care facility shall* fulfill its responsibility to report ~~mycobacterial diseases anthrax, cholera, diphtheria, E. coli O157:H7, H. influenzae infection, meningococcal infection, Mycobacterium tuberculosis, pertussis, plague, poliomyelitis, Salmonella infection, Shigella infection, invasive Group A streptococcal infection, and other diseases as may be requested by the health department by sending a positive culture for identification or confirmation, or both, both notifying the health department of the positive culture and submitting the initial culture to the Virginia Division of Consolidated Laboratory Services. The culture must be identified with the patient and physician information required ~~above~~ *in this subsection.* *At times, other laboratories may also be requested to submit specimens to the Virginia Division of Consolidated Laboratory Services.*~~

Laboratories operating within a medical care facility shall be considered to be in compliance with the requirement to report to the health department when the director of that medical care facility assumes the reporting responsibility.

C. Person in charge of a medical care facility. Any person in charge of a medical care facility shall make a report to the local health department serving the jurisdiction where the facility is located of the occurrence in or admission to the facility of a patient with a reportable disease listed in 12 VAC 5-90-80 A unless he has evidence that the occurrence has been reported by a physician. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. The requirement to report shall include all inpatient, outpatient and emergency care departments within the medical care facility. Such report shall contain the patient's name, age, address, sex, race, name of disease being reported, the date of admission, hospital chart number, date expired (when applicable), and attending physician. Influenza should be reported by number of cases only (and type of influenza, if available). Reports shall be made within seven days of the *identification of disease* unless the disease in question requires rapid reporting under 12 VAC 5-90-80 B or 12 VAC 5-90-80 F and shall be made on Form Epi-1-, a computer generated facsimile of Form Epi-1, or a Centers for Disease Control and Prevention (CDC) surveillance form that provides the same information.

~~(Note: See subsection B of this section "Exceptions")~~ A person in charge of a medical care facility may assume the reporting responsibility on behalf of the director of the laboratory operating within the facility.

D. Person in charge of a school or child care center. Any person in charge of a school or child care center shall report immediately to the local health department the presence or suspected presence in his school or child care center of children who have common symptoms suggesting an epidemic or outbreak situation. Any person so reporting shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

E. Local health directors. The local health director shall forward within seven days of receipt to the Office of Epidemiology of the State Health Department any report of a disease or report of evidence of a disease which has been made on a resident of his jurisdiction. This report shall be by telecommunication if the disease is one requiring rapid communication, as required in 12 VAC 5-90-80 B or 12 VAC 5-90-80 F. All such rapid reporting shall be confirmed in writing and submitted to the Office of Epidemiology within seven days. Furthermore, the local health director shall immediately forward to the appropriate local health director any disease reports on individuals residing in the latter's jurisdiction or to the Office of Epidemiology on individuals residing outside Virginia. The local health director shall review reports of diseases received from his jurisdiction and follow up follow up such reports, when indicated, with an appropriate investigation in order to evaluate the severity of the problem. He shall determine, in consultation with the operations director, the Director of the Office of Epidemiology, and the commissioner, if further investigation is required and if complete or modified quarantine will be necessary.

Modified quarantine shall apply to situations in which the local health director on the scene would be best able to judge the potential threat of disease transmission. Such situations shall include, but are not limited to, the temporary exclusion of a child with a communicable disease from school and the temporary prohibition or restriction of any individual(s), exposed to or suffering from a communicable disease, from engaging in an occupation such as foodhandling that may pose a threat to the public. Modified quarantine shall also include the exclusion, under § 32.1-47 of the Code of Virginia, of any unimmunized child from a school in which an outbreak, potential epidemic, or epidemic of a vaccine preventable disease has been identified. In these situations, the local health director may be authorized as the commissioner's designee to order the least restrictive means of modified quarantine.

Where modified quarantine is deemed to be insufficient and complete quarantine or isolation is necessary to protect the public health, the local health director, in consultation with the operations director and the Director of the Office of Epidemiology, shall recommend to the commissioner that a quarantine order or isolation order be issued.

F. Persons in charge of hospitals, nursing homes, homes for adults, and correctional facilities. In accordance with § 32.1-37.1 of the Code of Virginia, any person in charge of a hospital, nursing home, home for adults or correctional facility shall, at the time of transferring custody of any dead body to any person practicing funeral services, notify the person practicing funeral services or his agent if the dead person was known to have had, immediately prior to death, an infectious disease which may be transmitted through exposure to any bodily fluids. These include any of the following infectious diseases:

- Creutzfeldt-Jakob disease
- Human immunodeficiency virus infection
- Hepatitis B
- Hepatitis C
- Other Hepatitis Non-A, Non-B
- Rabies
- Infectious syphilis

12 VAC 5-90-100. Methods.

The "Methods of Control" sections of the ~~Fifteenth~~ *Sixteenth* Edition of the Control of Communicable Diseases in ~~Man~~ *Manual* (1990 1995) published by the American Public Health Association shall be complied with by the board and commissioner in controlling the diseases listed in 12 VAC 5-90-80 A, except to the extent that the requirements and recommendations therein are outdated, inappropriate, inadequate, or otherwise inapplicable. The board and commissioner reserve the right to use any legal means to control any disease which is a threat to the public health.

Proposed Regulations

PART V. IMMUNIZATION OF CHILDREN.

12 VAC 5-90-110. Dosage and age requirements for immunizations; obtaining immunizations.

A. Every child in Virginia shall be immunized against the following diseases by receiving the specified number of doses of vaccine by the specified ages:

1. Diphtheria, Tetanus, and Pertussis (Whooping cough) Vaccine - ~~three~~ four doses by ~~age one year~~ 18 months of age of toxoids of diphtheria and tetanus, combined with pertussis vaccine.
2. Poliomyelitis Vaccine, trivalent type - three doses by age 18 months of attenuated (live) trivalent oral polio virus vaccine or inactivated poliomyelitis vaccine or combination.
3. Measles (Rubeola) Vaccine - one dose at 12-15 months of age, ~~or by age two years~~, of further ~~attenuated~~ attenuated (live) measles virus vaccine (~~Schwartz or Moraten~~). A second dose shall also be required at the time of initial entry to school. For those children who did not receive a second dose at initial school entry, a second dose shall be required at the time of entry to grade six.
4. Rubella (German measles) Vaccine - one dose at 12-15 months of age ~~or by age two years~~ of attenuated (live) rubella virus vaccine.
5. Mumps Vaccine - one dose at 12-15 months of age or by age two years of mumps virus vaccine (live).
6. Haemophilus influenzae type b (Hib) vaccine - a maximum of four doses of Hib vaccine for children up to 30 months of age as appropriate for the child's age and in accordance with current recommendations of either the American Academy of Pediatrics or the U.S. Public Health Services.
7. Hepatitis B Vaccine - three doses by 18 months of age.

~~12 VAC 5-90-120. Obtaining immunization.~~

B. The required immunizations may be obtained from a physician licensed to practice medicine or from the local health department.

12 VAC 5-90-130. Prenatal testing.

Every physician attending a pregnant woman during gestation shall examine and test such woman for syphilis and hepatitis B surface antigen (HBsAg) within 15 days after beginning such attendance. A second prenatal test for syphilis and HBsAg shall be conducted at the beginning of the third trimester (28 weeks) for women who are at higher risk for ~~syphilis~~ these diseases. Persons at higher risk for syphilis include those who have had multiple sexual partners within the previous year and those with any prior history of a sexually transmitted disease. *Persons at higher risk for hepatitis B virus infection include injecting drug users and*

those with personal contact with a hepatitis B patient, multiple sexual partners, and/or occupational exposure to blood. If the patient first seeks care during the third trimester, only one test shall be required. Every physician should also examine and test a pregnant woman for any sexually transmitted disease as clinically indicated.

12 VAC 5-90-150. Authority.

Article 9 (§ 32.1-70 *et seq.*) of Title 32.1 (~~§ 32.1-70~~) of the Code of Virginia authorizes the establishment of a statewide cancer registry.

12 VAC 5-90-160. Reportable cancers and tumors.

~~Newly~~ Clinically or pathologically diagnosed malignant tumors or cancers, as defined in ~~Part 4~~ 12 VAC 5-90-10, and benign brain tumors shall be reported to the Virginia Cancer Registry in the department.

12 VAC 5-90-170. Those required to report.

Any person in charge of a medical care facility, clinic, or independent pathology laboratory which diagnoses or treats cancer patients is required to report. *Physicians are required to report cases of cancer in those instances when it has been determined that a medical care facility, clinic, or in-state pathology laboratory has not reported.* Any person making such report shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

12 VAC 5-90-180. Data ~~which must~~ to be reported.

Each report shall include the patient's name, address (*including county or independent city of residence*), age, date of birth, sex, date of diagnosis, date of admission or first contact, primary site of cancer, histology (*including type, behavior, and grade*), basis of diagnosis, ~~and history of service in the Vietnam war and exposure to dioxin-containing compounds.~~ ~~Medical care facility reports shall also include~~ social security number, date of birth, race, ethnicity, marital status, usual occupation, and usual industry, sequence number, laterality, stage, treatment, recurrence information (*when applicable*), name of reporting facility, vital status, cause of death (*when applicable*), date of last contact, history of tobacco and alcohol use, and history of service in Vietnam and exposure to dioxin-containing compounds.

~~The reporting requirement may be met by submitting a copy of the hospital facesheet and pathology report to the Virginia Cancer Registry. Reports shall be made within four months of the diagnosis of cancer.~~

Reporting shall be by electronic means where possible. Output file formats shall conform to the most recent version of the North American Association of Central Cancer Registries' standard data file layout. Facilities without electronic reporting means and physicians shall submit the required information on the Virginia Cancer Registry Reporting Form. A copy of the pathology report(s) should accompany each completed reporting form, when available. Medical care facilities and clinics reporting via the reporting form should also submit a copy of the admission form and discharge summary.

Reports shall be made within six months of the diagnosis of cancer and submitted to the Virginia Cancer Registry on a monthly basis. Cancer programs conducting annual follow-up on patients shall submit follow-up data monthly in an electronic format approved by the Virginia Cancer Registry.

12 VAC 5-90-190. ~~Additional data which may be reported. (Repealed.)~~

~~Any person in charge of a medical care facility may also elect to provide more extensive clinical information as required for cancer programs approved by the American College of Surgeons. These additional data may include staging, treatment, and recurrence information and may be reported by submitting a hospital abstract to the Virginia Cancer Registry within six months of the diagnosis of cancer. Annual follow-up may be conducted on persons reported in this manner.~~

PART X.

MEMORY LOSS DISORDER REPORTING.

12 VAC 5-90-210. ~~Authority. (Repealed.)~~

~~Article 9.1 (§ 32.1-71.1 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia authorizes the establishment of a statewide Alzheimer's Disease and related disorders registry.~~

12 VAC 5-90-220. ~~Provisions. (Repealed.)~~

~~Each nursing facility, hospital, clinic, individual practitioner or other agency or facility providing health care shall report to the registry, on forms provided by the registry or other forms approved by the Registry Director, information regarding persons who are in the care of the provider and who have been diagnosed as having a memory loss disorder, as defined in Part I. Any person making such report shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.~~

DOCUMENTS INCORPORATED BY REFERENCE

~~Control of Communicable Diseases in *Man Manual*, 15th 16th Edition, American Public Health Association, 1990 1995.~~

NOTICE: The forms used in administering 12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

~~Virginia Department of Health *Office of Epidemiology Confidential Morbidity Report, Epi-1 (eff. 1993 rev. 1998).*~~

~~Virginia Tumor Registry Abstract, VTR-1a (eff. 7/89).~~

~~Virginia Tumor Registry Cancer Registry Reporting Incidence Only, VTR form #2 Form (rev. 1/98).~~

Proposed Regulations

MAIL THE TOP TWO COPIES TO YOUR <u>LOCAL HEALTH DEPARTMENT</u>		Epi-1 Form - Front	
VIRGINIA DEPARTMENT OF HEALTH Confidential Morbidity Report			
Patient's Name (Last, First, Middle Initial):		SSN: _____	
Patient's Address (Street, City or Town, State, Zip Code):		Home #: () _____	
		Work #: () _____	
Date of Birth:		City or County of Residence:	
		Age:	
Race: <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> White		Hispanic: <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> Black <input type="checkbox"/> Other (specify):		Sex: <input type="checkbox"/> F <input type="checkbox"/> M	
DISEASE OR CONDITION:			Date of Onset:
Date of Diagnosis:		Influenza: (Report # and type only. No patient identification).	
Death: <input type="checkbox"/> Yes <input type="checkbox"/> No		Number of Cases: Type, if known:	
Death Date:		Physician's Name: Phone: ()	
Address:			
Hospital Admission? <input type="checkbox"/> Yes <input type="checkbox"/> No		Hospital Name:	
Dates of Admission/Discharge:		Chart ID No:	
Laboratory Information and Results			
Source of Specimen:		Date Collected:	
Laboratory Test:			
Results:			
Name/Address of Lab:			
CLIA Number:			
Other Information			
Comments: (E.g., Risk Situation [Food Handling, Patient Care, Day Care], Treatment [including dates], Immunization Status [including dates], Signs/Symptoms, Exposure, Outbreak Associated, etc.)			
For Health Department Use:			Date Received:
Name, Address, and Phone Number of Person Completing This Form:		Date Reported:	
		Check here if you need more of these forms, or call your local health department. (Be sure your address is complete.) <input type="checkbox"/>	

Please enter as much information as possible.

Form Epi-1, 1998

MAIL THE TOP TWO COPIES TO YOUR LOCAL HEALTH DEPARTMENT

Please report the following diseases (and any other disease or outbreak of public health importance) in the manner required by Section 32.1-36 of the Health Laws of Virginia and 12 VAC 5-90-80 of the Board of Health *Regulations for Disease Reporting and Control*. Enter as much information as possible on the reporting form.

Epi-1 Form - Back

- | | |
|---|--|
| Acquired immunodeficiency syndrome (AIDS) | Lyme disease |
| Amebiasis * | Lymphogranuloma venereum |
| ANTHRAX * | Malaria * |
| Arboviral infection* | MEASLES (Rubeola) * |
| Aseptic meningitis | MENINGOCOCCAL INFECTION * |
| Bacterial meningitis (specify etiology) | Mumps * |
| BOTULISM * | Ophthalmia neonatorum |
| Brucellosis * | OUTBREAKS, ALL (including foodborne, nosocomial, occupational, toxic substance-related, waterborne, and other outbreaks) |
| <i>Campylobacter</i> infection * | PERTUSSIS (Whooping cough) * |
| Chancroid * | PLAGUE * |
| Chickenpox | POLIOMYELITIS * |
| <i>Chlamydia trachomatis</i> infection * | PSITTACOSIS |
| CHOLERA * | RABIES, HUMAN AND ANIMAL * |
| Cryptosporidiosis * | Rabies treatment, post-exposure |
| Cyclosporiasis * | Rocky Mountain spotted fever |
| DIPHTHERIA * | Rubella (German measles), including congenital rubella syndrome * |
| Ehrlichiosis | Salmonellosis * |
| <i>Escherichia coli</i> O157:H7 and other enterohemorrhagic <i>E. coli</i> infections * | Shigellosis * |
| Giardiasis * | Streptococcal disease, Group A, invasive * |
| Gonorrhea * | Syphilis (report PRIMARY and SECONDARY syphilis by rapid means) * |
| Granuloma inguinale | Tetanus |
| HAEMOPHILUS INFLUENZAE INFECTION, INVASIVE * | Toxic shock syndrome |
| Hantavirus pulmonary syndrome | Toxic substance related illnesses |
| Hemolytic uremic syndrome (HUS) | Trichinosis * |
| Hepatitis, Acute Viral | TUBERCULOSIS DISEASE (MYCOBACTERIA *-) |
| HEPATITIS A * | Tuberculosis infection in children age 0-5 years (Mantoux skin test reaction > 10 mm) |
| Hepatitis B * | Typhoid fever |
| Hepatitis C | Typhus |
| Other Acute Viral Hepatitis | Vancomycin-resistant <i>Staphylococcus aureus</i> * |
| Human immunodeficiency virus (HIV) infection * | <i>Vibrio</i> infection * |
| influenza * ¶ | YELLOW FEVER |
| Kawasaki syndrome | |
| Lead - elevated blood levels * | |
| Legionellosis * | |
| Leprosy (Hansen disease) | |
| Listeriosis * | |

UPPER CASE indicates conditions that must be reported rapidly to the local health director via telecommunication. Report all other diseases within seven days of diagnosis.

* These conditions are reportable by directors of laboratories. These and all other conditions are reportable by physicians and directors of medical care facilities as well.

¶ Physicians and directors of medical care facilities should report influenza by number of cases only (and type of influenza, if available).

- AFB on smear, speciation, and drug susceptibility

Virginia Department of Health, Office of Epidemiology
 P. O. Box 2448, Room 113
 Richmond, Virginia 23218-2448

Proposed Regulations

Virginia Cancer Registry Reporting Form P.O. Box 2448, Room 114 - Richmond, VA 23218

Facility Name: _____

Patient's Last Name _____ First Name _____ Middle Initial _____ Suffix _____

Number of Previous Primary Cancers _____ Date Admitted _____ SS#: _____

Street Address (at DX) _____

City _____ State _____ Zip Code _____ City/Co. of Residence _____

Please indicate with a check whether residence is in a county ___ or independent city ___

Race

- | | |
|----------------------|-----------------------------|
| 01 = White | 20 = Micronesian, NOS* |
| 02 = Black | 21 = Chamorroan |
| 03 = American Indian | 22 = Guamanian, NOS |
| Aleutian, Eskimo | 25 = Polynesian, NOS |
| 04 = Chinese | 26 = Tahitian |
| 05 = Japanese | 27 = Samoan |
| 06 = Filipino | 28 = Tongan |
| 07 = Hawaiian | 30 = Melanesian, NOS |
| 08 = Korean | 31 = Fiji Islander |
| 09 = Asian Indian, | 32 = New Guinean, NOS |
| Pakistani | 96 = Other Asian (including |
| 10 = Vietnamese | Asian, NOS and Oriental, |
| 11 = Laotian | NOS) |
| 12 = Hmong | 97 = Pacific Islander, NOS |
| 13 = Kampuchean | 98 = Other |
| 14 = Thai | 99 = Unknown |

Ethnic Type

- | | |
|------------------|------------------------|
| 0 = Non Spanish | 4 = South American |
| 1 = Mexican | 5 = Other Spanish |
| 2 = Puerto Rican | 6 = Spanish, NOS |
| 3 = Cuban | 9 = Unknown if Spanish |

Sex

- | | |
|------------|-----------------|
| 1 = Male | 4 = Transsexual |
| 2 = Female | 9 = Not stated |
| 3 = Other | |

Age at Diagnosis

Date of Birth

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M	M	D	D	Y	Y	Y	Y

Usual Occupation

Company or Industry

Marital Status at Dx

- | | |
|--------------------------------|--------------|
| 1 = Single (never married) | 4 = Divorced |
| 2 = Married (incl. common law) | 5 = Widowed |
| 3 = Separated | 9 = Unknown |

Date of Initial Diagnosis

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M	M	D	D	Y	Y	Y	Y

Revised 1/98

Primary Site of Cancer

Paired Organ

- | | |
|----------------------|--------------------------------|
| 0 = not paired organ | 3 = one side, NOS |
| 1 = right side | 4 = both sides, single primary |
| 2 = left side | 9 = unknown |

Diagnostic Confirmation

- 1 = positive histology
- 2 = positive exfoliative cytology - no positive histology
- 4 = positive microscopic confirmation - method not specified
- 5 = positive laboratory test or marker study
- 6 = direct visualization without microscopic confirmation
- 7 = radiography and other imaging techniques without microscopic confirmation
- 8 = clinical diagnosis only (other than 5, 6 or 7)
- 9 = unknown whether or not microscopically confirmed

Histology

Behavior Code

- 0 = Benign
- 1 = Uncertain whether benign or malignant, Borderline malignancy, Low malignant potential
- 2 = Carcinoma in-situ, Intraepithelial, Noninfiltrating, Noninvasive
- 3 = Malignant, primary site

Grade

- 1 = Grade I - Well differentiated, Differentiated, NOS
- 2 = Grade II - Moderately differentiated, Moderately well differentiated, Intermediate differentiation
- 3 = Grade III - Poorly differentiated
- 4 = Grade IV - Undifferentiated Anaplastic
- 9 = Grade or differentiation not determined, not stated or not applicable

Summary Stage

- 0 = Carcinoma in-situ
- 1 = Localized
- 2 = Regional, direct extension only
- 3 = Regional, nodes only
- 4 = Regional, direct extension & nodes
- 5 = Regional, NOS
- 7 = Distant
- 9 = Unstaged, unknown or unspecified

Treatment (type)

Surgery Date _____

Type _____

Radiation Date

Type

Chemotherapy Date

Type

Other Treatments (specify date and type for each)

Date of Last Contact or Death

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M	M	D	D	Y	Y	Y	Y

Status of Patient

- 0 = Dead
- 1 = Alive

Tobacco History

Y N

Alcohol History

Y N

Vietnam Veteran

Y N

Dioxin Exposure

Y N

Hospital Referred from

Hospital Referred to

Person Completing Form:

Date _____

*NOS - Not Otherwise Specified

VA.R. Doc. No. R97-685; Filed June 25, 1998, 12:11 p.m.

**DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES**

Title of Regulation: 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-110, 12 VAC 30-50-140 and 12 VAC 30-50-210).

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

Public Hearing Date: N/A -- Public comments may be submitted until September 18, 1998.

(See Calendar of Events section for additional information)

Basis: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements.

42 CFR Part 440 sets out the federal parameters and requirements of all Medicaid covered services. These two services, breast reconstruction/prosthetics and outpatient observation beds, are controlled by this section of the CFR.

Purpose: The purpose of this proposal is to establish limits for the coverage of these services so that they will be provided consistently, adequately, and appropriately to all Medicaid eligible persons presenting for these services. Consistent and appropriate service delivery is essential to protect the health and welfare of the Medicaid recipients who are served. The purpose of this proposal is also to respond to mandates of the 1998 General Assembly as contained in House Bill 1084 and Senate Bill 679.

Substance: This action proposes to incorporate into the existing regulation, Narrative for the Amount, Duration, and Scope of Services, DMAS's policies for coverage of breast reconstruction/prosthetics and coverage of outpatient (hospital) observation beds. Incorporating these policies into the State Plan for Medical Assistance is intended to clarify these policies' coverages for providers and recipients and set out specific parameters within which the services will be paid and outside of which the services will be denied.

Breast Reconstruction/Prosthetics: DMAS proposes to restrict reimbursement for breast reconstruction/prosthetics to cover it only when the breast has been removed due to disease or lost due to trauma for reasons of medical necessity. This amendment also proposes to exclude from coverage breast reconstructions which are requested solely for cosmetic purposes.

Outpatient Observation Beds: DMAS proposes to restrict coverage of outpatient observation beds only in situations when the attending physician needs additional time to determine if the patient's admission to a general acute care inpatient hospital is indicated. DMAS must promulgate these parameters as regulation in order to deny claims which fall outside the parameters.

Issues: Advantages and disadvantages to the public: There are no advantages or disadvantages to the public in this

regulatory action. The agency projects no negative issues involved in implementing this proposed change.

Estimated Fiscal/Budget Impact: DMAS anticipates very little fiscal impact from incorporating these two amendments into the existing regulations of the Narrative for the Amount, Duration, and Scope of Services. Therefore, the costs of this regulatory action are expected to be accommodated within current appropriations. There are no localities which are uniquely affected by these regulations as they apply statewide.

Breast Reconstruction/Prosthetics. DMAS analyzed physician and inpatient hospital claims for the mastectomy procedure. Since DMAS does not cover the reconstruction procedure, it had to analyze the surgical procedure which most typically precedes it.

Some women who have had the mastectomy procedure will elect to have the additional surgical breast reconstruction procedure. For purposes of this impact, DMAS has estimated that approximately 50% of the women who need mastectomies will choose to undergo the further surgery of reconstruction. The Current Procedural Terminology code for the most frequently billed mastectomy procedure (19240) was considered. This procedure was billed 119 times during calendar years 1995 and 1996 and the allowed physician payment per procedure was \$1,200 (covering the pre-operative exam, surgery, post-operative care, x-rays, and necessary laboratory procedures).

The average length of stay in an inpatient hospital for the reconstructive procedure is five days. Under the current Diagnosis Related Grouping (DRG) inpatient hospital reimbursement methodology (the table of relative weights and values), the cost of inpatient care for the reconstruction procedure (if DMAS covered it) would have been slightly more than \$12,000 for a total (when added to the physician payment above) of slightly more than \$13,000 per woman.

By applying the frequency of occurrence for the mastectomy procedure to the new proposed reconstruction procedure, the following costs can be expected: DMAS anticipates expending approximately \$397,740 (\$205, 234 NGF; \$192, 506 GF) if 50% of the women who have mastectomies elect to undergo this additional surgical reconstructive procedure (estimated to be approximately 30 women in the span of a year). Those women who do not elect to have this additional surgery will have various prosthetic services covered by Medicaid to choose from.

The 1998 General Assembly modified § 32.1-325 of the Code of Virginia to add two provisions for coverage of breast reconstruction and breast prostheses. HB 1084 requires the provision under medical assistance of prostheses following the medically necessary complete or partial removal of the breast for any medical reason. SB 679 requires the provision under medical assistance of breast reconstructive surgery following the medically necessary removal of a breast for any medical reason. It further states that "breast reductions shall be covered, if prior authorization has been obtained, for all medically necessary indications. Such procedures shall be considered noncosmetic." This

Proposed Regulations

regulation has been modified as proposed in response to these two 1998 bills.

Outpatient Observation Beds. DMAS analyzed inpatient hospital and outpatient hospital invoices for revenue codes 760, 761, and 769 which are the three codes for billing observation bed services. From July 1, 1995, through June 30, 1997, DMAS approved total payments for this service in the amount of \$19,209,223. During the same time period, DMAS denied claims for this service in the total amount of \$4,434,877. The reason for these denials was the lack of medical necessity for this service based on the patients' medical needs. With the implementation of the criteria and standards proposed in this regulatory action, DMAS may experience a small increase in denied claims.

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 changes incorporate policies for coverage of breast reconstruction/prosthetics and coverage of outpatient hospital observation beds into DMAS regulations. The changes clarify the coverage policies and set out the specific parameters within which the services will be paid.

Estimated economic impact.

Breast reconstruction/prosthetics: The language of the proposed changes provides for the coverage of breast reconstruction but restricts the procedure to cases where the breast has been removed for reasons of medical necessity. It is likely that there will be a net economic gain from having Medicaid cover breast reconstruction after medically necessary surgery because of the very high value placed on this procedure by the recipient. There is no assurance that this will be true for reconstruction of normal breasts for cosmetic reasons. DMAS estimates that adding coverage for this procedure will cost approximately \$400,000 annually.

Outpatient hospital beds: Outpatient hospital observation beds are expensive. DMAS expenditures on these services in FY97 amounted to nearly \$20 million. The proposed changes restrict somewhat those cases where the use of outpatient beds will be covered. The regulation specifies a number of circumstances where the use of observation beds is not medically indicated and will not be covered. Since observation beds are a relatively high cost service and the newly restricted uses listed are circumstances where the

beds have little or no additional value relative to a less expensive alternative, then these restrictions would appear to be justified by considerations of economic efficiency.

Businesses and entities affected. There are 99 hospitals in Virginia and approximately 2,175 physicians who provide the services that are the subject of this regulation who will be directly affected. There may be a small reduction in the use of observation beds. This will affect mostly outpatient hospital service providers.

Localities particularly affected. No particular localities will be affected.

Projected impact on employment. There may be an increase in breast reconstruction surgery. Since approximately half of the cost of these procedures will be paid for with federal funds, there could be some small, albeit unmeasurable, increase in employment in Virginia.

Effects on the use and value of private property. The value of some medical practices that perform breast reconstructive surgery may be increased by a small amount.

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 Amount, Duration, and Scope of Services: Breast Reconstruction/Prosthetics and Coverage of Outpatient Hospital Observation Beds.

Summary:

The proposed amendments clarify DMAS' policy for the coverage of breast reconstruction procedures and prostheses and establish parameters for the coverage of outpatient observation beds.

12 VAC 30-50-110. Outpatient hospital and rural health clinic services.

A. Outpatient hospital services.

1. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

- a. Are furnished to outpatients;
- b. Except in the case of nurse-midwife services, as specified in § 42 CFR 440.165, are furnished by or under the direction of a physician or dentist; and
- c. Are furnished by an institution that:
 - (1) Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and
 - (2) Except in the case of medical supervision of nurse-midwife services, as specified in § 42 CFR 440.165, meets the requirements for participation in Medicare.

2. Reimbursement for induced abortions is provided in only those cases in which there would be substantial

endangerment of health or life to the mother if the fetus were carried to term.

3. ~~Repealed.~~ *The following limits and requirements shall apply to DMAS coverage of outpatient observation beds.*

a. *Observation bed services shall be covered when they are reasonable and necessary to evaluate a medical condition to determine appropriate level of treatment.*

b. *Nonroutine observation for underlying medical complications, as explained in documentation attached to the provider's claim for payment, after surgery or diagnostic services shall be covered. Routine use of an observation bed shall not be covered. Noncovered routine use shall be:*

(1) *Routine preparatory services and routine recovery time for outpatient surgical or diagnostic testing services (e.g., services for routine post-operative monitoring during a normal recovery period (four to six hours)).*

(2) *Observation services provided in conjunction with emergency room services, unless, following the emergency treatment, there are clear medical complications which must be managed by a physician other than the original emergency physician.*

(3) *Any substitution of an outpatient observation service for a medically appropriate inpatient admission.*

c. *These services must be billed as outpatient care and may be provided for up to 23 hours. A patient stay of 24 hours or more shall require inpatient precertification, where applicable.*

d. *When inpatient admission is required following observation services and prior approval has been obtained for the inpatient stay, observation charges must be combined with the appropriate inpatient admission and be shown on the inpatient claim for payment. Observation bed charges and inpatient hospital charges shall not be reimbursed for the same day.*

B. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

The same service limitations apply to rural health clinics as to all other services.

C. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA-Pub. 45-4).

The same service limitations apply to FQHCs as to all other services.

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 DMAS' approval) 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 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 or by a licensed clinical social worker or licensed professional counselor under the direct supervision of a psychiatrist.*

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 by a licensed clinical social worker or licensed professional counselor under the direct supervision of a psychiatrist.*

* Licensed clinical social workers and licensed professional counselors may also directly enroll or be supervised by psychologists as provided for in 12 VAC 30-50-150.

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

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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 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 shall be limited to medically necessary inpatient hospital days.

H. (Reserved).

I. Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.

J. (Reserved.)

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. High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma or breast cancer. Transplant services for liver, heart, 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/stem cell 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/stem cell 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. If the actual charges are lower than the fee, the agency shall reimburse actual charges. 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 through 12 VAC 30-50-570.

L. *Breast reconstruction/prostheses following mastectomy and breast reduction.*

1. *If prior authorized, breast reconstruction surgery and prostheses may be covered following the medically necessary complete or partial removal of a breast for any medical reason. Breast reductions shall be covered, if prior authorized, for all medically necessary indications. Such procedures shall be considered noncosmetic.*

2. *Breast reconstruction or enhancements for cosmetic reasons shall not be covered. Cosmetic reasons shall be defined as those which are not medically indicated or are intended solely to preserve, restore, confer, or enhance the aesthetic appearance of the breast.*

12 VAC 30-50-210. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

A. Prescribed drugs.

1. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered.

2. Nonlegend drugs shall be covered by Medicaid in the following situations:

- a. Insulin, syringes, and needles for diabetic patients;
- b. Diabetic test strips for Medicaid recipients under 21 years of age;
- c. Family planning supplies;

d. Designated categories of nonlegend drugs for Medicaid recipients in nursing homes;

e. Designated drugs prescribed by a licensed prescriber to be used as less expensive therapeutic alternatives to covered legend drugs.

3. Legend drugs are covered with the exception of anorexiants prescribed for weight loss and the drugs or classes of drugs identified in 12 VAC 30-50-520. Anorexiants, when preauthorized, will be covered for recipients who meet the strict disability standards for obesity established by the Social Security Administration, and whose condition is certified as life threatening, consistent with Department of Medical Assistance Services' medical necessity requirements, by the treating physician.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR 447.332 shall be filled with generic drug products unless the physician or other practitioner so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

5. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

6. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

7. Drug prior authorization.

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

"Board" means the Board for Medical Assistance Services.

"Committee" means the Medicaid Prior Authorization Advisory Committee.

"Department" means the Department of Medical Assistance Services.

"Director" means the Director of Medical Assistance Services.

"Drug" shall have the same meaning, unless the context otherwise dictates or the board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

b. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 11 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a

significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; one member shall be a consumer of mental health services; and one shall be a Medicaid recipient.

(1) A quorum for action of the committee shall consist of six members.

(2) The members shall serve at the pleasure of the board; vacancies shall be filled in the same manner as the original appointment.

(3) The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion Medical Society, the Psychiatric Society of Virginia, the Virginia Pharmaceutical Association, the Virginia Alliance for the Mentally Ill, and the Virginia Mental Health Consumers Association when making appointments to the committee.

(4) The committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the board, the director, or any two members of the committee. The department shall provide appropriate staffing to the committee.

c. Duties of the committee.

(1) The committee shall make recommendations to the board regarding drugs or categories of drugs to be subject to prior authorization, prior authorization requirements for prescription drug coverage and any subsequent amendments to or revisions of the prior authorization requirements. The board may accept or reject the recommendations in whole or in part, and may amend or add to the recommendations, except that the board may not add to the recommendation of drugs and categories of drugs to be subject to prior authorization.

(2) In formulating its recommendations to the board, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 9-6.14:1 et seq.). The committee shall, however, conduct public hearings prior to making recommendations to the board. The committee shall give 30 days written notice by mail of the time and place of its hearings and meetings to any manufacturer whose product is being reviewed by the committee and to those manufacturers who request of the committee in writing that they be informed of such hearings and meetings. These persons shall be afforded a reasonable opportunity to be heard and present information. The committee shall give 30 days notice of such public hearings to the public by publishing its intention to conduct hearings and meetings in the Calendar of Events of The Virginia Register of Regulations and a newspaper of general circulation located in Richmond.

Proposed Regulations

(3) In acting on the recommendations of the committee, the board shall conduct further proceedings under the Administrative Process Act.

d. Prior authorization of prescription drug products; coverage.

(1) The committee shall review prescription drug products to recommend prior authorization under the state plan. This review may be initiated by the director, the committee itself, or by written request of the board. The committee shall complete its recommendations to the board within no more than six months from receipt of any such request.

(2) Coverage for any drug requiring prior authorization shall not be approved unless a prescribing physician obtains prior approval of the use in accordance with regulations promulgated by the board and procedures established by the department.

(3) In formulating its recommendations to the board, the committee shall consider the potential impact on patient care and the potential fiscal impact of prior authorization on pharmacy, physician, hospitalization and outpatient costs. Any proposed regulation making a drug or category of drugs subject to prior authorization shall be accompanied by a statement of the estimated impact of this action on pharmacy, physician, hospitalization and outpatient costs.

(4) The committee shall not review any drug for which it has recommended or the board has required prior authorization within the previous 12 months, unless new or previously unavailable relevant and objective information is presented.

(5) Confidential proprietary information identified as such by a manufacturer or supplier in writing in advance and furnished to the committee or the board according to this subsection shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia). The board shall establish by regulation the means by which such confidential proprietary information shall be protected.

e. Immunity. The members of the committee and the board and the staff of the department shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.

f. Annual report to joint commission. The committee shall report annually to the Joint Commission on Health Care regarding its recommendations for prior authorization of drug products.

B. Dentures. Dentures are provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

C. Prosthetic devices.

1. ~~Prosthetics~~ Prosthetic services shall mean the replacement of missing arms ~~and~~ legs, ~~and~~ breasts ~~and~~ the provision of any internal (implant) body part. Nothing in this regulation shall be construed to refer to orthotic services or devices or organ transplantation services.

2. Prosthetic devices (artificial arms ~~and~~ legs, ~~and~~ breasts and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

D. Eyeglasses. Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

VA.R. Doc. No. R98-18; Filed July 1, 1998, 11:35 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-110-10 et seq. Regulations Governing the Practice of Licensed Acupuncturists (amending 18 VAC 85-110-10, 18 VAC 85-110-20, 18 VAC 85-110-30, 18 VAC 85-110-50, 18 VAC 85-110-60, 18 VAC 85-110-70, 18 VAC 85-110-80, 18 VAC 85-110-90, 18 VAC 85-110-100, 18 VAC 85-110-150 and 18 VAC 85-110-160; adding 18 VAC 85-110-35; repealing 18 VAC 85-110-40, 18 VAC 85-110-120 and 18 VAC 85-110-170).

Statutory Authority: §§ 54.1-2400 and 54.1-2956.9 of the Code of Virginia.

Public Hearing Date: September 9, 1998 - 9 a.m.

Public comments may be submitted until September 18, 1998.

(See Calendar of Events section for additional information)

Basis: Chapters 24 (§ 54.1-2400 et seq.) and 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia provide the basis for this regulation.

Chapter 24 establishes the general powers and duties of the health regulatory boards including the power to establish

qualifications for licensure and the responsibility to promulgate regulations.

Chapter 29 establishes the definitions and requirements for the practice of these regulated professions and specifies the powers and duties of the Board of Medicine. Section 54.1-2956.9 mandates licensure of acupuncturists by the board.

Purpose: The purpose of these regulations is to protect the public health, safety, and welfare by establishing educational, experiential, and examination requirements for those seeking licensure in acupuncture and by setting standards of professional conduct for practice. Amendments are proposed to implement the recommendations of the Board of Medicine in its report pursuant to Executive Order 15 (94), which were to simplify, clarify, and eliminate redundancy and unnecessary requirements.

Substance:

18 VAC 85-110-10. Proposed amendments eliminate definitions which are unnecessary because they are found in the Code of Virginia or are not used in the regulations. The names for the accreditation bodies have also been changed to reflect current identification.

18 VAC 85-110-20. Amendments are editorial.

18 VAC 85-110-30. Proposed amendment conforms the regulation to current statutory provisions which include chiropractors among those doctors who may be licensed as physician acupuncturists.

18 VAC 85-110-35. Fees are currently set in another section of this chapter but will now be included under general provisions. Three changes are proposed: (i) the application fee for licensure is reduced from \$200 to \$150; (ii) a fee of \$25 is added for providing a duplicate wall certificate; and (iii) a fee of \$10 is added for providing a duplicate renewal license.

18 VAC 85-110-40. The board proposes to repeal this section as unnecessary since requirements are stated in the Code of Virginia or elsewhere in regulation.

18 VAC 85-110-50. Proposed amendments eliminate the undergraduate education requirements and correctly identify the certifying agency for acupuncture education. Other amendments eliminate redundancy.

18 VAC 85-110-60. The proposed amendments make the requirements applicable to all persons who graduate from nonapproved educational programs (either inside or outside the U.S.); reduce the requirement for practice as a licensed acupuncturist in another state from five to four years; and eliminate the need for an approved tutorial in another state. Another proposed amendment requires the practice in another state to have occurred within the preceding seven years and to be without disciplinary action.

18 VAC 85-110-70. The requirements of subsections A and B are incorporated into 18 VAC 85-110-60, and the current requirement on part-time study is made applicable to all educational programs.

18 VAC 85-110-80. An amendment clarifies that the applicant must not only pass the national certifying examination but must also obtain certification from the NCCAOM.

18 VAC 85-110-90. Proposed amendments specify that an applicant whose acupuncture education was in English is not required to take the English comprehension examinations (TSE and TOEFL) and eliminate the specification in regulation of a numerical passing score.

18 VAC 85-110-100. The proposed amendments: (i) establish that a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dentistry may make the referral to a licensed acupuncturist and (ii) change the required time for the examination prior to the referral from six to three months.

18 VAC 85-110-120. The board proposes to repeal this section as repetitive of the Code of Virginia.

18 VAC 85-110-150 and 18 VAC 85-110-160. Proposed amendments allow a person who is currently licensed to have his license renewed if he can provide evidence of continuing competency substantially equivalent to requirements for NCCAOM recertification, which is the updated requirement for renewal of licensure.

18 VAC 85-110-170. This section on fees is repealed because proposed amendments establish fees in Part I, General Provisions.

Issues:

Issue #1: Amendments to educational and experiential requirements.

During the regulatory review, the advisory committee recommended a relaxation in regulatory requirements by reducing the number of hours of biological sciences in undergraduate education and by allowing the applicant to obtain those hours in some other graduate program or acupuncture school. During this promulgation of proposed regulations, the advisory committee recommended and the board approved the complete elimination of undergraduate requirements. In no other profession licensed by the Board of Medicine are there undergraduate requirements stated; graduate professional education and passage of a national examination are considered to be sufficient measures of minimal competency.

The board also has reduced the number of years of licensed practice in another state which a person who graduated from an unapproved U.S. school must have in order to be qualified for licensure in Virginia. Current regulations require four years for graduates of foreign programs and five years for graduates of unapproved programs in the U.S. Proposed regulations make it four years for all graduates of unapproved programs.

Advantage or disadvantages to the licensees: The proposed change eliminates barriers that have existed for some applicants who would be otherwise qualified for licensure. There are no disadvantages to less stringent requirements.

Issue #2: Recertification by NCCAOM.

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The board addressed a problem which arose when a current licensee took the examination solely for licensure purposes and did not subsequently become certified. Current regulations require passage of the certification examination but do not require certification by the NCCAOM. Therefore, it is not possible for him to be recertified as is currently required for renewal. A proposed amendment permits the renewal of a license if a licensee was not originally certified but has obtained the continuing education which would have been necessary for recertification. The board has also remedied the problem by clarifying that an applicant must pass the NCCAOM examination and then become certified in order to qualify for initial licensure.

Advantages or disadvantages to the licensees: The clarification of the requirement on certification by the NCCAOM at the time of initial licensure should benefit licensees who are already required to take the examination leading to certification and to maintain continuing education as necessary for recertification. There are no disadvantages to the proposed changes.

Issue #3: Practice and referral requirements.

The advisory committee and the board considered no alternatives to the scope of practice for licensed acupuncturists and the requirement for a referral as it is prescribed by provisions in the Code of Virginia. But the board recommends three changes to general requirements for practice: (i) an amendment to specify doctors of medicine, osteopathy, chiropractic, podiatry or dentistry as practitioners who can make referrals to licensed acupuncturists (current regulations require a referral from a "physician"); (ii) an amendment to stipulate that a referral must be within the scope of the referring doctor's practice; and (iii) an amendment to reduce the length of time following an examination within which a referral may be made from six months to three months.

Advantage or disadvantages to the licensees: There is an advantage to the licensed acupuncturist because under the proposed amendment, he may receive patients by written referral from a wider range of practitioners.

Advantages or disadvantages to the public: The public is better protected by a change in the referral regulation requiring the referring practitioner to have examined the patient within the past three months, rather than the current requirement of six months. The proposed change will ensure that the referral for acupuncture treatment is appropriate to the patient's current disease or condition. Changes in educational and experiential requirements may allow some otherwise qualified acupuncturists to become licensed in Virginia and thereby increase the supply of available practitioners. Proposed changes continue to provide assurance that acupuncture education and training requirements are sufficient to protect health and safety of the public. There are no discernible disadvantages of the proposed amended regulations to the public.

Estimated Impact:

A. Projected number of persons affected and their cost of compliance:

The approximate number of licensees affected by these regulations are 25 licensed acupuncturists. There will be no cost for compliance by regulated entities or their employers. Renewal fees (\$85 per biennium) are not changed, and there are no additional requirements which would add to the cost of providing health care services. Approximately five persons currently apply for licensure and pay a fee of \$200 each year. For those persons, there will be a decrease in application costs of \$50.

B. Cost to the agency for implementation:

The board will incur approximately \$1,000 in cost for printing and mailing final amended regulations to licensees and other interested parties. There will be no additional cost for conducting a public hearing, which will be held in conjunction with a scheduled committee or board meeting. The board does not anticipate any additional costs for investigations or administrative proceedings against physicians for violations of these regulations.

C. Cost to local governments:

There will be no impact of these regulations on local government.

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. Most of the proposed changes to this regulation have the effect of clarifying the language and improving the organization of the rules. There are a few substantive, albeit minor, changes. These will be discussed in detail in the next section.

Estimated economic impact.

1. Initial licensing fees are reduced.

The fee reduction is consistent with the statutory mandate that fee revenues be set at a level that covers costs but does not produce any significant net revenues. Having fees cover the costs of professional licensing programs is generally consistent with economic efficiency.

2. Chiropractors may be licensed as physician acupuncturists.

There is no data available to evaluate the impact of adding chiropractors to the list of those medical practitioners who may become licensed acupuncturists. This change does expand the range of consumer choice of providers, and it would seem doubtful that this change would result in any physical harm to consumers.

3. An undergraduate education requirement is eliminated.

This change is unlikely to have much of an impact at the margin as most people who obtain national certification will have an undergraduate degree. This change makes the acupuncture regulations consistent with those of a number of other professions regulated by the department. These rules do not require an undergraduate education, only a successful completion of the professional education and certification requirements.

4. The proposal combines the requirements applicable to persons graduating from nonapproved programs either inside or outside the United States.

An arbitrary distinction between applicants based on whether their nonapproved training was obtained inside or outside the United States is not justified since, on its face, the distinction is not directly related to the qualities of the program or the applicant.

5. The experience requirement for those with out-of-state licenses is reduced from five to four years out of the previous seven years, and this period must be without disciplinary action.

The disciplinary action provision is generally defensible and appropriate since in many health professions, prior disciplinary actions are a reasonable predictor of future problems.

6. Applicants must obtain certification from NCCAOM in addition to the current requirement that applicants pass the national certifying exam.

This is a clarifying change that ensures that those applying for re-licensing need only demonstrate their re-certification by the national accrediting agency. The department reports cases where re-licensing was problematic due to candidates having passed the required examination but not having obtained certification. This is largely an administrative change and does not have any significant economic impact.

7. An applicant whose training was in English need not take the English comprehension examination.

For applicants who have received training and achieved certification through English language programs, the English language comprehension exam would rarely provide any useful information about the ability of the practitioner to offer services in Virginia. Thus, the English comprehension exam would be superfluous.

8. The proposed language specifies which licensed medical practitioners may refer patients for an initial acupuncture visit. The examination on which the referral is based must be within three months of the initial request for acupuncture

services rather than the six months specified in the current regulations.

The first part of this change simply clarifies the language determining who may make referrals. The change does not appear to change substantially the availability of referrals to consumers. The requirement that referrals must be closer in time to treatment than required in the current regulations places a limit on consumer choice about when to receive treatment. If it were demonstrated that a delay may result in actual harm to consumers, then there may be some justification for this provision. In the absence of such evidence, this restriction on consumer choice would not be expected to produce a net economic benefit.

Businesses and entities affected. At present, there are only 25 licensed acupuncturists in Virginia. This number may increase slightly due to the proposed changes. This proposal should result in a small net increase in income to these businesses.

Localities particularly affected. These changes will not have a disproportionate affect on any locality.

Projected impact on employment. There could be some small increase in the number of licensed practitioners of acupuncture in Virginia due to these changes. However, this does not imply that there will be a net increase in employment in Virginia. It is not likely that this proposal will have any significant impact on employment in Virginia.

Effects on the use and value of private property. These changes will have the effect of increasing the value of a license to practice acupuncture and may increase marginally the value of acupuncture practices in Virginia. The magnitude of this impact will almost certainly be too small to measure.

Summary of analysis. Except as noted above, there is a reasonable likelihood that these changes will result in a small net gain to Virginia's economy.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The board concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments are in response to Executive Order 15 (94) which called for simplification, clarification and elimination of unnecessary regulations. Proposed amendments reduce the application fee from \$200 to \$150, eliminate the undergraduate education requirements, eliminate the requirement for an applicant from another state to have an approved tutorial, and specify that an applicant whose acupuncture education was in English is not required to take the Test of English as a Foreign Language. A proposed amendment also changes the required time for examination by the referring doctor from six months to three months prior to referral.

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CHAPTER 110.
REGULATIONS GOVERNING THE PRACTICE OF
LICENSED ACUPUNCTURISTS.

18 VAC 85-110-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia.

Acupuncturist

Board

Licensed acupuncturist

Physician acupuncturist

Practice of acupuncture

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

"ACAOM" means the Accreditation Commission for Acupuncture and Oriental Medicine.—ACAOM replaces the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

"Acupuncture" means the practice of stimulating certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain ailments or conditions of the body. The practice of acupuncture does not include the use of physical therapy, chiropractic, osteopathic manipulative techniques, surgery, the use or prescribing of any drugs, medications, herbal preparations, nutritional supplements, serums, or vaccines.

"Acupuncture training" means training in a school or program accredited by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine which confers a diploma, certificate, or a graduate degree in acupuncture or other board approved credentialing organizations.

"Advisory committee" means the Advisory Committee on Acupuncture appointed by the board to assist it in the regulation and licensure of licensed acupuncturists.

"Affidavit" means a sworn statement in writing made under oath before an authorized magistrate or officer.

"Authenticated translation" means a translation prepared by a translation bureau or a language instructor in a university within the United States or a translation whose accuracy is verified by a consulate official.

"Board" means the Virginia Board of Medicine.

"Certified copy" means a written statement verifying a document to be a true copy of the original by a legally registered notary public.

"Certification examination" means the national examination of competency in acupuncture theory and practice approved

and prescribed by the National Commission for the Certification of Acupuncturists.

"CCAOM" means the Council of Colleges of Acupuncture and Oriental Medicine, and replaces the "NCASC" designation for the National Council of Acupuncture Schools and Colleges.

"COPA" means the Council on Postsecondary Accreditation which recognizes those agencies or commissions responsible for the accreditation of postsecondary educational programs in the United States.

"CNT course" means a Clean Needle Technique Course as administered by the National Council of Acupuncture Schools and Colleges CCAOM.

"Lic.Ac." or "L.Ac." means the titles approved for use by licensed acupuncturists.

"Licensed acupuncturist" means an individual other than a doctor of medicine, osteopathy or podiatry, who has completed the requirements for licensure and has been approved by the board to practice acupuncture.

"NACSCAOM" means the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

"NCCA" means the National Commission for the Certification of Acupuncturists.

"PEPLS" means the Practical Examination of Point Location Skills which is a required portion of the certification examination.

"Physician" means a person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

"Physician acupuncturist" means an individual who is a doctor of medicine, osteopathy, or podiatry who has met the requirements for licensure in acupuncture.

"Referral" means referral by a physician as that term is defined in this section.

"TOEFL" means the Test of English as a Foreign Language, administered by the Educational Testing Service.

"TSE" means the Test of Spoken English administered by the Educational Testing Service.

"NCCAOM" means the National Certification Commission for Acupuncture and Oriental Medicine. NCCAOM replaces the National Commission for the Certification of Acupuncturists.

18 VAC 85-110-20. Public participation.

A separate board regulation, 18 VAC 85-10-10 et seq., which provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine, is incorporated by reference in this chapter.

18 VAC 85-110-30. Nonrestriction of licensed physician acupuncturists.

Nothing in this chapter shall be construed to prohibit or restrict the licensure and practice of doctors of medicine, osteopathy, *chiropractic* or podiatry who are also licensed as physician acupuncturists.

18 VAC 85-110-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as an acupuncturist shall be \$150.
2. The fee for biennial license renewal shall be \$85.
3. The additional fee for processing a late renewal shall be \$25.
4. The fee for reinstatement of a license which has expired for two or more years shall be \$200.
5. The fee for a letter of good standing/verification of a license to another state shall be \$10.
6. The fee for reinstatement of a revoked license shall be \$500.
7. The fee for a duplicate wall certificate shall be \$25.
8. The fee for a duplicate renewal license shall be \$10.

PART II.
REQUIREMENTS FOR LICENSURE.

18 VAC 85-110-40. General requirements. (Repealed.)

~~A. No person shall practice as a licensed acupuncturist in the Commonwealth except as provided in this chapter.~~

~~B. Licensure by the board to practice as a licensed acupuncturist shall be by examination as prescribed in this chapter.~~

~~C. Every applicant for initial licensure by the board shall:~~

- ~~1. Submit evidence of being 18 years of age or more.~~
- ~~2. Submit evidence of good moral character.~~
- ~~3. Meet the educational requirements as prescribed in 18 VAC 85-110-50, 18 VAC 85-110-60, and 18 VAC 85-110-70 of this chapter.~~
- ~~4. Meet the examination requirements as prescribed in 18 VAC 85-110-80 and 18 VAC 85-110-90 of this chapter.~~
- ~~5. Submit the required application and credentials to the board along with the licensure fee required in subdivision 1 of 18 VAC 85-110-170.~~

~~D. An applicant for initial licensure by the board shall submit evidence of successful completion of an acupuncture course of study equal to not less than 1,000 hours of schooling. The course of study shall be equal to not less~~

~~than 700 didactic hours and not less than 250 clinical hours with the remaining hours as didactic or clinical.~~

18 VAC 85-110-50. Educational requirements: graduates of approved institutions or programs in the United States.

~~A. Undergraduate education requirements are as follows:~~

- ~~1. An applicant applying for licensure to practice as a licensed acupuncturist shall present evidence of successful completion of two full academic years of not less than 60 semester credit hours or 90 quarter accredited hours of undergraduate education at an accredited college or university in the United States that is recognized by the board.~~
- ~~2. An applicant's undergraduate education shall include not less than 18 semester or 24 quarter hours in biological sciences, to include not less than three hours each in anatomy and physiology. Home study courses do not meet the requirements of this section.~~

~~B. A. Requirements for acupuncture education obtained prior to July 1, 1990, requirements in the United States are as follows: shall be as provided in this subsection.~~

1. An applicant applying for licensure to practice as an acupuncturist on the basis of successful completion of education in a school or college of acupuncture accredited by the NACSCAOM ACAOM or other accrediting agencies approved by the Board of Medicine, which confers a degree or certificate in acupuncture in the United States, shall submit evidence of successful completion of an acupuncture course of study in an accredited school or college for acupuncture, providing evidence of not less than 1,000 hours of schooling in not less than a continuous 18-month period.

2. The studies shall include not less than 700 didactic hours and not less than 250 clinical hours. Additional hours may be in either didactic or clinical hours based upon the school or college curriculum.

~~Part-time study of more than five years or correspondence courses in acupuncture are excluded and do not meet the requirements of this section as acceptable for the acupuncture study curriculum.~~

~~C. B. Requirements for acupuncture education obtained after July 1, 1990, requirements in the United States are described shall be as provided in this subsection.~~

An applicant applying for licensure to practice as a licensed acupuncturist on the basis of successful completion of education in a school or college for acupuncture accredited by NACSCAOM ACAOM or any other accrediting agency approved by the Board of Medicine, which confers a degree or certificate in acupuncture in the United States, shall submit evidence of having a minimum of three academic years in length equivalent to 90 semester credit hours or 135 quarter credit hours that consist of full-time study in an acupuncture program accredited by NACSCAOM

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~~or any other accrediting agency approved by the Board of Medicine.~~

One academic year means full-time study completed in three quarters, two semesters, or three trimesters. A full-time continuous study program shall be a concentrated educational process in acupuncture which requires individual study with assigned materials in a classroom or clinical setting.

~~Part-time study of more than five years or correspondence courses in acupuncture are excluded and do not meet the requirements of this section as acceptable for the acupuncture study curriculum.~~

18 VAC 85-110-60. Supplemental training prior to July 1, 1990, or study required of certain Requirements of graduates of nonapproved educational programs in acupuncture in the United States.

A. An applicant who has completed an educational course of study in a school or college that is not approved or accredited by NACSCAOM ACAOM or any other board approved accrediting agency shall:

1. Submit evidence of successful completion of not less than two years of acupuncture study ~~in a school or college which confers a degree in acupuncture in the United States recognized by the board.~~
2. Have not less than ~~five~~ four years of practice *in the previous seven years* as a licensed acupuncturist in another state *without evidence of disciplinary action.*
3. Meet the examination requirements as prescribed in 18 VAC 85-110-80 and 18 VAC 85-110-90.

~~Part-time study of more than five years or correspondence courses in acupuncture are excluded and do not meet the requirements of this section as acceptable for the acupuncture study curriculum.~~

B. All documents submitted to the board which are not in English must be translated into English and certified by the embassy of the issuing government.

18 VAC 85-110-70. Graduates of foreign colleges or schools of acupuncture Part-time study.

A. ~~All foreign documents submitted to the board for consideration must be translated into English and be certified by the embassy of the issuing government.~~

~~B. Applicants shall:~~

- ~~1. Submit evidence of completing an approved tutorial or internship program in another state of not less than one year;~~
- ~~2. Submit proof of licensure and practice of acupuncture in another state of not less than four years; and~~
- ~~3. Meet the examination requirements as prescribed in 18 VAC 85-110-80 and 18 VAC 85-110-90 of this chapter.~~

Part-time study of more than five years or correspondence courses in acupuncture are excluded and do not meet the requirements ~~of this section as acceptable~~ for the acupuncture study curriculum.

18 VAC 85-110-80. Examination requirements for licensure.

The examination requirements for licensure shall consist of:

1. Passing of the NCGA NCCAOM comprehensive written examination, *resulting in certification by the NCCAOM;*
2. Passing the Practical Examination of Point Location Skills (PEPLS) test; *and*
3. Completing the CNT course as administered by the CCAOM.

18 VAC 85-110-90. Test of spoken English requirements.

~~A.~~ An applicant applying for licensure to practice as an acupuncturist whose native language is not English *and whose acupuncture education was also not in English* shall submit: ~~1. evidence of having achieved 240 a passing score as acceptable to the board on the Test of Spoken English (TSE); or 2. Evidence of having achieved 560 on the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Services.~~

PART III. SCOPE OF PRACTICE.

Article 1. General Requirements.

18 VAC 85-110-100. General requirements.

A. ~~A~~ An initial request for acupuncture services shall be accompanied by a written referral *from a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dentistry and diagnosis of the ailment or condition to be treated by the licensed acupuncturist from a physician shall be within the scope of his practice and* based on his examination of the patient within the past ~~six~~ three months.

B. Treatment provided by the acupuncturist shall be periodically reviewed as determined by the referring physician.

C. The licensed acupuncturist shall report the patient's condition back to the referring physician after three months or 10 treatments, whichever occurs first.

Article 2. Individual Requirements.

18 VAC 85-110-120. Limitation of practice. (Repealed.)

~~The practice of acupuncture by a licensed acupuncturist does not include the use of physical therapy, chiropractic, osteopathic manipulative techniques, surgery, nor the use or prescribing of any drugs, medications, herbal preparations, nutritional supplements, serums or vaccines.~~

18 VAC 85-110-150. Biennial renewal of certification.

A. A licensed acupuncturist shall renew his certification biennially during his birth month in each odd-numbered year by:

1. Paying to the board the renewal fee as prescribed in subdivision 2 of ~~18 VAC 85-110-170 of this chapter~~ 18 VAC 85-110-35; and
2. Providing proof of recertification by the ~~NCCA~~ NCCAOM. *If the licensee was not originally NCCAOM certified, his license may be renewed by providing evidence of continuing competency which is substantially equivalent to requirements for NCCAOM recertification and which is satisfactory to the board.*

B. A licensed acupuncturist whose license has not been renewed by the first day of the month following the month in which renewal is required shall be dropped from the registration roll.

C. An additional fee to cover administrative costs for processing a late application *renewal* shall be imposed by the board as prescribed by subdivision 4 3 of ~~18 VAC 85-110-170~~ 18 VAC 85-110-35.

18 VAC 85-110-160. Reinstatement.

A. A licensed acupuncturist who allows his license to lapse for a period of two years or more and chooses to resume his practice shall submit to the board a new application, proof of recertification by the ~~NCCA~~ NCCAOM or, *if not originally NCCAOM certified, other evidence of continuing competency satisfactory to the board*, and the fee for reinstatement of his license as prescribed in subdivision 3 4 of ~~18 VAC 85-110-170~~ 18 VAC 85-110-35.

B. A licensed acupuncturist whose license has been revoked by the board and who wishes to be reinstated must make a new application to the board, be *certified or recertified* by the ~~NCCA~~ NCCAOM, and pay the fee for reinstatement of his license as prescribed in subdivision 6 of ~~18 VAC 85-110-170~~ 18 VAC 85-110-35.

**PART V.
FEES.**

18 VAC 85-110-170. Fees. (Repealed.)

The following fees for licensed acupuncturists have been established by the board:

- ~~1. The initial fee for a license to practice as an acupuncturist shall be \$200.~~
- ~~2. The fee for biennial license renewal shall be \$85 and shall be due in the birth month of the licensed acupuncturist in each odd-numbered year.~~
- ~~3. The fee for reinstatement of a lapsed license shall be \$200.~~
- ~~4. The additional fee to cover administrative costs for processing a late application shall be \$25 for each renewal cycle.~~

~~5. The fee for a letter of good standing or verification of a license to another state shall be \$10.~~

~~6. The fee for reinstatement of a revoked license shall be \$500.~~

NOTICE: The forms used in administering 18 VAC 85-110-10 et seq., Regulations Governing the Practice of Licensed Acupuncturists, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

~~Application for a License to Practice as an Acupuncturist, DHP-18-079 (eff. 1/94).~~

~~Verification of Licensed Acupuncturist Practice, DHP-18-079 (eff. 1/94).~~

~~Verification of State Licensure, DHP-18-079 (eff. 1/94).~~

~~Verification of NCAA Certification, DHP-18-079K (eff. 1/94).~~

~~Licensure Registration, DHP-18-079 (eff. 1/94).~~

~~Instructions for Completing NCAA Endorsement Application.~~

~~Instructions for Completing NCAA Endorsement Application: Graduates of Foreign Colleges of Schools of Acupuncture.~~

~~Instructions for Completing the Application for Licensed Acupuncturist, American Graduates, (rev. 1/98).~~

~~Instructions for Completing the Application for Licensed Acupuncturist, Non-American Graduates (rev. 1/98).~~

~~Application for a License to Practice as an Acupuncturist (rev. 7/98).~~

~~Form #A, Claims History Sheet (rev. 1/98).~~

~~Form #B, Activity Questionnaire (rev. 1/98).~~

~~Form #C, Clearance from Other State Boards (rev. 1/98).~~

~~Verification of NCCAOM Certification (rev. 7/98).~~

~~Renewal Notice and Application (rev. 7/97).~~

Proposed Regulations

Rev. 1/98

INSTRUCTIONS FOR COMPLETING THE APPLICATION FOR LICENSED ACUPUNCTURIST - AMERICAN GRADUATES

(This form has been designed for you to use as a checklist for processing your application)

The applicant is responsible for forwarding all of the required forms to the appropriate institutions, states and other agencies.

DO NOT COPY APPLICATION. WE ONLY ACCEPT ORIGINALS. Do not submit copies of completed forms. We must have originals. Faxed information is not acceptable.

- Application and Fee** - The completed 4 page application must be returned to this office with the statutory licensure fee of \$200.00, made payable to the Treasurer of Virginia. **Fees sent before the receipt of an application will be returned; applications sent without the fee will also be returned. Passport-type photograph must be full face and current (no older than 6 months). If not acceptable to the board it will be returned.**
- Examination Scores** - Send enclosed form requesting the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) to show evidence of certification, evidence of successful completion of the Practical Examination of Point Location Skills (PEPLS) and evidence of successful completion of the Clean Needle Technique (CNT) course.
- Transcripts** - Provide this office with official transcript of grades from your undergraduate and professional schools. This should be requested specifically from your school.
- Form #B** - Activity Questionnaire - List activities on the chronological page of the application, (p.2) to include all activities since graduation from your professional school to the present. Forward form #B (activity questionnaire) to those places of practice/employment listed for the last five years or since graduation, whichever applies. If engaged in private practice, have another acupuncturist submit a letter attesting to your practice. **CV'S ARE NOT ACCEPTABLE. IF SUBMITTED IN LIEU OF PAGE 2, YOUR APPLICATION WILL BE RETURNED FOR COMPLETION. (Page 2 may be copied for additional activities and attached to application.)**
- Form #C** - Clearance from Other State Boards - Follow instructions as directed on form #C. This form should be sent to all jurisdictions in which you have been issued a license: active, inactive or expired.

FORMS #B AND #C MAY BE COPIED FOR YOUR CONVENIENCE.

- Military Service** - If you have been discharged from the United States Military Service within the past ten years, submit a photostatic notarized copy of your discharge papers.

Each licensee shall furnish the board his current business address. Any change of address shall be furnished in writing to the board within 30 days of such change.

Applications will remain in process no longer than six months. If, at the end of that time, a license is not issued, your file will be placed in an inactive status for a period of approximately two years, after which it will be destroyed. If after six months you choose to reactivate your file, you will need to update certain materials.

No application will be considered by the board until the entire file is complete. Therefore, you should not make any firm commitment to begin working until you have received notification of licensure from this office.

(1/98)

**INSTRUCTIONS FOR COMPLETING THE APPLICATION FOR LICENSED ACUPUNCTURIST -
NON-AMERICAN GRADUATES**

(This form has been designed for you to use as a checklist for processing your application)

The applicant is responsible for forwarding all of the required forms to the appropriate institutions, states and other agencies.

DO NOT COPY APPLICATION. WE ONLY ACCEPT ORIGINALS. Do not submit copies of completed forms. We must have originals. Faxed information is not acceptable.

- Application and Fee** - The completed 4 page application must be returned to this office with the statutory licensure fee of \$200.00, made payable to the Treasurer of Virginia. **Fees sent before the receipt of an application will be returned; applications sent without the fee will also be returned. Passport-type photograph must be full face and current (no older than 6 months). If not acceptable to the board it will be returned.**
- Examination Scores** - Send enclosed form requesting the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) to show evidence of certification, evidence of successful completion of the Practical Examination of Point Location Skills (PEPLS) and evidence of successful completion of the Clean Needle Technique (CNT) course.
- Transcripts** - Provide this office with a photocopy of transcript of grades from your professional school. This must be translated into English and certified by the embassy of the issuing government.
- Form #B** - Activity Questionnaire - List activities on the chronological page of the application, (p.2) to include all activities since graduation from your professional school to the present. Forward form #B (activity questionnaire) to those places of practice/employment listed for the last five years or since graduation, whichever applies. If engaged in private practice, have another acupuncturist submit a letter attesting to your practice. **CV'S ARE NOT ACCEPTABLE. IF SUBMITTED IN LIEU OF PAGE 2, YOUR APPLICATION WILL BE RETURNED FOR COMPLETION. (Page 2 may be copied for additional activities and attached to application.)**
- Form #C** - Clearance from Other State Boards - Follow instructions as directed on form #C. This form should be sent to all jurisdictions in which you have been issued a license: active, inactive or expired.

FORMS #B AND #C MAY BE COPIED FOR YOUR CONVENIENCE

- Tutorial/Internship** - Provide evidence of completing an approved tutorial or internship program in another state of not less than one year. (You may use form #B or have a letter submitted)
- TOEFL/TSE scores** - An applicant whose native language is not English shall have evidence submitted directly from the TOEFL/TSE that he has taken either the TOEFL or TSE examination.
- Military Service** - If you have been discharged from the United States Military Service within the past ten years, submit a photostatic notarized copy of your discharge papers.

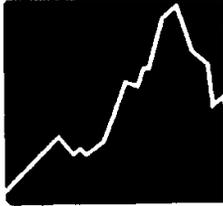
Each licensee shall furnish the board his current business address. Any change of address shall be furnished in writing to the board within 30 days of such change.

Applications will remain in process no longer than six months. If, at the end of that time, a license is not issued, your file will be placed in an inactive status for a period of approximately two years, after which it will be destroyed. If after six months you choose to reactivate your file, you will need to update certain materials.

No application will be considered by the board until the entire file is complete. Therefore, you should not make any firm commitment to begin working until you have received notification of licensure from this office.

Proposed Regulations

Rev. 7/98



COMMONWEALTH OF VIRGINIA Board of Medicine

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717

(804) 662-7423

Application for A License to Practice as an Acupuncturist

**SECURELY PASTE A
PASSPORT-TYPE
PHOTOGRAPH IN THIS SPACE**

To the Board of Medicine of Virginia:

I hereby make application for a license to practice
as a Licensed Acupuncturist in the Commonwealth
of Virginia and submit the following statements:

1. Name in Full (Please Print or Type)

Last		First		Middle	
Street		City		State	ZIP Code
Date of Birth ____/____/____ Mo. Day Yr.		Place of Birth		Social Security No. or VA Control No. *	
Graduation Date ____/____/____ Mo. Day Yr.		Prof. School Degree	School, City, State		MAIDEN NAME

Please submit address changes in writing immediately.

Please attach check or money order. Application will not be processed without the fee. It will be returned.

Do not submit fee without an application. **IT WILL BE RETURNED.**

APPLICANTS DO NOT USE SPACES BELOW THIS LINE – FOR OFFICE USE ONLY

APPROVED _____

CLASS	PROCESSING NUMBER	SUFFIX	SCHOOL CODE	FEE	HOW REG.	BASE STATE

*In accordance with §54.1-116 Code of Virginia, you are required to submit your Social Security Number or your control number** issued by the *Virginia* Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded. This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided by law. Federal and state law requires that this number be shared with other state agencies for child support enforcement activities. **NO LICENSE WILL BE ISSUED TO ANY INDIVIDUAL WHO HAS FAILED TO DISCLOSE ONE OF THESE NUMBERS.**

**In order to obtain a Virginia driver's license control number, it is necessary to appear in person at an office of the Department of Motor Vehicles in *Virginia*. A fee and disclosure to DMV of your Social Security Number will be required to obtain this number.

Proposed Regulations

QUESTIONS MUST BE ANSWERED. If any of the following questions (5-13) is answered **Yes**, explain and substantiate with documentation. Letters must be submitted by your attorney regarding malpractice suits (or you may complete and submit Form #A yourself).

3. I hereby certify that I studied acupuncture and received the degree of _____
on _____ from _____
(date) (school) (degree)

4. List all jurisdictions in which you have been issued a license to practice acupuncture: active, inactive or expired. Indicate number and date issued. _____

5. List all schools from which undergraduate transcripts will be submitted:

6. Do you intend to engage in the active practice of acupuncture in the Commonwealth of Virginia? Yes No

7. Have you ever been denied a license or the privilege of taking a licensure/competency examination by any licensing authority? If Yes, please explain giving the location. _____

Yes No

8. Have you ever been convicted of a violation of/or pled Nolo Contendere to any federal, state or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence.) _____

9. Have you ever had any membership in a state or local professional society revoked, suspended, or sanctioned? _____

10. Have you voluntarily withdrawn from any professional society while under investigation? _____

11. Have you had any malpractice suits brought against you in the last ten years? If so, how many? _____
Provide details. _____

12. Have you been physically or emotionally dependent upon the use of alcohol/drugs or treated by, consulted with, or been under the care of a professional for any substance abuse within the last two years? If so, please provide a letter from the treating professional. _____

13. Do you have a physical disease, mental disorder, or any condition which could affect your performance of professional duties? If so, provide a letter from your treating professional to include diagnosis, treatment, prognosis and fitness to practice. _____

14. AFFIDAVIT OF APPLICANT

(THIS SECTION MUST BE NOTARIZED)

I, _____, being first duly sworn, depose and say that I am the person referred to in the foregoing application and supporting documents.

I hereby authorize all hospitals, institutions, or organizations, my references, personal physicians, employers (past and present), business and professional associates (past and present), and all governmental agencies and instrumentalities (local, state, federal, or foreign) to release to the Virginia Board of Medicine any information, files or records requested by the Board in connection with the processing of individuals and groups listed above, any information which is material to me and my application.

I have carefully read the questions in the foregoing application and have answered them completely, without reservations of any kind, and I declare under penalty of perjury that my answers and all statements made by me herein are true and correct. Should I furnish any false information in this application, I hereby agree that such act shall constitute cause for the denial, suspension, or revocation of my license to practice acupuncture in the Commonwealth of Virginia.

RIGHT THUMB PRINT
(May be self-applied)

Signature of Applicant

If right thumb is missing, use left and so indicate

City/County of _____ State of _____

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

My Commission expires _____.

Signature of Notary Public

NOTARY SEAL

CERTIFICATE OF PROFESSIONAL EDUCATION
(American and Canadian Graduates Only)
(Not for use by Non-American Graduates)

It is hereby certified that _____
(Name of Applicant)

matriculated in _____ on _____
(Course of Study) (Date)

and received a diploma from _____
(Name of Institution)

conferring the degree of _____ on _____
(Degree) (Date)

SCHOOL SEAL

(President, Secretary or Dean)

INTERNATIONAL MEDICAL GRADUATES: In lieu of the above Certificate of Medical Education, please attach a notarized copy of your diploma and grades from medical school, with an English translation.

Proposed Regulations

Rev. 1/98
Licensed Acupuncturist

FORM #A



COMMONWEALTH OF VIRGINIA

Board of Medicine

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717

(804) 662-7423

CLAIMS HISTORY SHEET

If you answered "yes" to Question #11 on page three of the application, please either have your attorney submit a letter regarding malpractice suits or complete one of these sheets for each case you have been involved in.

(Make additional copies of this form as needed)

Claimant: _____

Date of Incident: _____ Date Claim Made: _____

Name of all Defendants, Persons or Entities against whom claim was made: _____

City, County and State of Suit: _____

Name and Address of Defense Attorney: _____

Settlement Amount (if any): _____ Verdict Amount: _____ Date Case Closed: _____

Current Status of Claim (indicate insurance company reserve if case is not closed): _____

Name of Involved Insurance Company: _____

Policy Number: _____ Detailed Description of Claim (use reverse side if necessary): _____

AUTHORIZATION FOR RELEASE OF INFORMATION

I hereby authorize any person, company, insurer, hospital or other organization to release any and all information, privileged, or in their dominion, custody, or control, regarding insurance applications by me, professional liability issued to me, any employment or personnel records involving me and any health, medical psychological or psychiatric records involving me, as well as information obtained by any attorneys who are now representing, or have in the past represented me.

Date

Signature

Rev. 1/98
Licensed Acupuncturist

Form #B



COMMONWEALTH OF VIRGINIA

Board of Medicine

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717

(804) 662-7423

Please print or type name, address, city and state, of employment setting.

Please print or type name of applicant

The Virginia Board of Medicine, in its consideration of a candidate for licensure, depends on information from persons and institutions regarding the candidate's employment, training, affiliations, and staff privileges. Please complete this form to the best of your ability and return it to the board so the information you provide can be given consideration in the processing of this candidate's application in a timely manner. I hereby authorize all hospitals, institutions or organizations, my references, personal physicians, employers (past and present), business and professional associates (past and present) and governmental agencies and instrumentalities (local, state, federal or foreign) to release to the Virginia Board of Medicine any information, files or records requested by the board in connection with the processing of my application.

Signature of Applicant _____

1. Date and type of service: This individual served with us as _____
from _____ to _____.
(Month/Year) (Month/Year)

2. Please evaluate:

(Please indicate with check mark)

	Poor	Fair	Good	Superior
Professional knowledge _____				
Clinical judgment _____				
Relationship with patients _____				
Ethical/professional conduct _____				
Interest in work _____				
Ability to communicate _____				

3. Recommendation: (please indicate with check mark)

1. Recommend highly and without reservation _____
2. Recommend as qualified and competent _____
3. Recommend with some reservation (explain) _____
4. Do not recommend (explain) _____

4. Of particular value to us in evaluating any candidate regarding any notable strengths and weaknesses (including personal demeanor). We would appreciate such comments from you.

5. The above report is based on: (please indicate with check mark)

1. Close personal observation _____
2. General impression _____
3. A composite of evaluations _____
4. Other _____

Date: _____

Signed _____

Please print or type name

Title

(This report will become a part of the applicant's file and may be reviewed by the applicant upon request.)

Proposed Regulations

Rev. 1/98
Licensed Acupuncturist

Form #C



COMMONWEALTH OF VIRGINIA

Board of Medicine

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717

(804) 662-7423

Dear Sirs:

The person listed below is applying for licensure as a Licensed Acupuncturist in the state of Virginia. The Board of Medicine requests that the form be completed by each jurisdiction in which he/she holds or has held a license/certificate. Please complete the form and return it to the address below. Thank you.

Commonwealth of Virginia _____
Department of Health Professions Name of Applicant (please print or type)
Board of Medicine
6606 West Broad Street, 4th Floor _____
Richmond, VA 23230-1717 License/certificate # _____

=====
State of _____ Name of Licensee _____

License/Certification number _____ Issued effective _____

Licensed/Certified Through (check one)

NCCAOM/PEPLS Examination CNA Examination

Endorsement from (name of state) _____

Board examination other than NCCAOM/PEPLS/CNT Examination

License is: Current Lapsed

Has the applicant's license/certificate ever been suspended or revoked? Yes No

If yes, for what reason? _____

Derogatory information, if any _____

Comments, if any _____

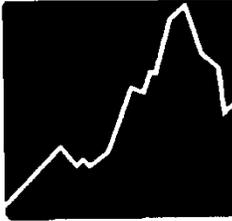
Signed _____

BOARD SEAL Title _____

State Board _____

NOTE TO APPLICANT: PLEASE PROVIDE LICENSE NUMBER AND FORWARD TO STATE INDICATED

Rev. 7/98
Licensed Acupuncturist



**COMMONWEALTH OF VIRGINIA
Board of Medicine**

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717

(804) 662-7423

Verification of NCCAOM Certification

Please complete the following, enclose a \$25.00 check payable to the NCCAOM and forward to:

**NATIONAL CERTIFICATION COMMISSION FOR ACUPUNCTURE &
ORIENTAL MEDICINE**
1424 16TH Street, N.W., Suite 501
Washington, DC 20036
202-232-1404

I am applying for a license to practice as an acupuncturist in the Commonwealth of Virginia. The Board of Medicine requires that the NCCAOM submit verification of the following. Please complete the form for SCORE VERIFICATION OF NCCAOM CERTIFICATION and send to the above address. Thank you.

Applicant's Name

Applicant's Signature/Date

Applicant's Certificate Number

The Score Verification of NCCAOM Certification shall include:

1. Comprehensive Written Examination test date and score
2. Clean Needle Technique Portion test date and score
3. Practical Examination of Point Location Skills test date and score
4. When the Clean Needle Technique Course was passed
5. Certificate Number
6. Certificate expiration
7. Examination Language

BOARD OF NURSING

Title of Regulation: 18 VAC 90-20-10 et seq. **Regulations of the Board of Nursing (amending 18 VAC 90-20-10, 18 VAC 90-20-20, 18 VAC 90-20-40, 18 VAC 90-20-50, 18 VAC 90-20-60, 18 VAC 90-20-70, 18 VAC 90-20-80, 18 VAC 90-20-90, 18 VAC 90-20-100, 18 VAC 90-20-110, 18 VAC 90-20-120, 18 VAC 90-20-130, 18 VAC 90-20-140, 18 VAC 90-20-170, 18 VAC 90-20-190, 18 VAC 90-20-210, 18 VAC 90-20-280, 18 VAC 18-90-290, 18 VAC 90-20-300, 18 VAC 90-20-310, 18 VAC 90-20-330, 18 VAC 90-20-340 and 18 VAC 90-20-350; adding 18 VAC 90-20-35, 18 VAC 90-20-95, 18 VAC 90-20-275, 18 VAC 90-20-400 and 18 VAC 90-20-410; repealing 18 VAC 90-20-150, 18 VAC 90-20-180, 18 VAC 90-20-250 and 18 VAC 90-20-260).**

Statutory Authority: § 54.1-2400 and Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: August 12, 1998 - 10 a.m.

Public comments may be submitted until September 18, 1998.

(See Calendar of Events section for additional information)

Basis: Chapters 24 (§ 54.1-2400 et seq.) and 30 (§ 54.1-3000 et seq.) of the Code of Virginia provide the basis for this regulation.

Chapter 24 establishes the general powers and duties of the health regulatory boards, including the power to establish qualifications for licensure and the responsibility to promulgate regulations.

Chapter 30 establishes the Board of Nursing and sets forth the authority for the board to approve nursing education programs; to establish standards for the licensure and practice of registered nurses, practical nurses, and clinical nurse specialists; and to provide for the registration and education of nurse aides.

Section 54.1-3408 provides the mandate for a training program for the administration of medications and for establishing a protocol for the administration of adult vaccines.

Purpose: The purpose of these regulations is to establish: (i) criteria for licensure including education, training and examination; (ii) a process for applicants to follow; (iii) requirements for renewal and fees; and (iv) practice standards appropriate to the type of licensure and the statutory mandates for these professions. Minimal qualifications and standards for ethical practice are essential for the health, safety, and welfare of patients who will receive nursing care, medications or immunizations in the Commonwealth.

Substance:

18 VAC 90-20-10. Definitions of "clinical setting," "nursing faculty," and "preceptor" are added to clarify terminology used in amended rules for nursing education.

18 VAC 90-20-20. Unnecessary regulations which state responsibilities of the executive director are deleted.

18 VAC 90-20-35. Requirements for maintaining accurate records with the board are not new but have been moved from another section. A new requirement is proposed for all persons regulated under this chapter to wear identification which clearly indicates the license, certificate, or registration issued to such person.

18 VAC 90-20-40. Proposed amendments eliminate the requirement for an institution wishing to begin a nursing education program to submit a feasibility study, information on anticipated student enrollment and a current catalog. It requires submission of the organizational structure.

18 VAC 90-20-50. A proposed amendment deletes the requirement that the institution shall apply for board approval after the graduation of the first class; the requirement is addressed in 18 VAC 90-20-60.

18 VAC 90-20-60. The board proposes to decide on the granting of final approval of a nursing education program after the first graduating class has taken the licensure examination.

18 VAC 90-20-70. Several amendments are proposed in the section on organization and administration of a nursing education program: (i) current subsection A is deleted; (ii) the specific reference to the Southern Association of Colleges and Schools for accreditation of programs is replaced with a requirement that the governing institution be accredited by an agency recognized by the U. S. Department of Education; (iii) current subsection C is deleted which called for accreditation of hospitals by the Joint Commission on Accreditation of Healthcare Organizations and current subsection D is amended to require that any institution used for clinical experience by a program shall be in good standing with its licensing body, regardless of jurisdiction; (iv) current subsection E is amended to clarify the qualifications of the director of the nursing education program; (v) current subsection F is amended to eliminate the need for a "written" organizational plan; and (vi) current subsection G is amended to require that there be evidence of financial support and resources sufficient to meet the goals of the program.

18 VAC 90-20-80. The section on philosophy and objectives is amended to state that they must serve as the foundation of the curriculum and to delete unclear requirements.

18 VAC 90-20-90. Several amendments are proposed as follows:

In subsection A: (i) currently the nursing faculty is required to hold licensure as registered nurses, but an amendment to subdivision 1 clarifies that persons providing instruction in topics other than nursing do not have to be so licensed; (ii) an amendment to subdivision 2 provides that persons supervising the clinical practice of students are required to hold licensure in the jurisdiction in which that practice occurs; and (iii) an amendment to subdivision 4 clarifies the current requirement.

Proposed Regulations

In subsection B: (i) the requirement for the number of faculty proportional to the number of students is restated less specifically but with a requirement that the number be sufficient to ensure safety for patients; and (ii) amendments are proposed to allow the ratio to increase from 10 to 1 to 15 to 1 in settings where preceptors are utilized for specific learning experiences in clinical settings.

Subsection C stating the conditions of employment is eliminated.

Subsection E stating the requirements for organization of the faculty is eliminated except that the requirement to document actions taken in faculty and committee meetings is moved to new subsection C.

18 VAC 90-20-95. A new section is proposed to establish the criteria and requirements for the use of preceptors in supervising the clinical practice of nursing students. When giving care to patients, the proposed ratio of preceptors to nursing students cannot exceed 1 to 2.

18 VAC 90-20-100. Proposed amendments are primarily editorial and delete a requirement which is repetitive of federal law.

18 VAC 90-20-110. Amendments delete unnecessary requirements for records to be maintained by the program and for information to be given on living accommodations.

18 VAC 90-20-120. Proposed amendments to the curriculum requirements eliminate unnecessary language and inconsistent grammar.

18 VAC 90-20-130. Amendments include preceptors in provisions for written agreements with agencies cooperating in the training of nursing students.

18 VAC 90-20-140. The board recommends elimination of a requirement that there be prior approval to certain changes in the nursing education program. It continues to require that changes be reported to the board in the annual report.

18 VAC 90-20-150. The board recommends repeal of this section on the procedure for board approval of a program change.

18 VAC 90-20-170. Requirements for the closing of an approved program are amended to eliminate the procedures for closure as listed in subdivision A 1.

18 VAC 90-20-180. It is proposed that this section be repealed and the rules be included in a new Part IV on Clinical Nurse Specialists.

18 VAC 90-20-190. The proposed amendment changes the word "score" to "standard" for passage of the examination.

18 VAC 90-20-210. Rather than have transcripts and licensure verification of foreign-trained applicants evaluated by the board, the proposed amendment requires that they submit evidence from a recognized agency that reviews educational credentials and licensure.

18 VAC 90-20-250 and 18 VAC 90-20-260. Regulations for name and address changes are repealed in these sections and included in Part I.

18 VAC 90-20-275. This section is identical language from 18 VAC 90-20-180 which is being moved from Part II to this new Part IV.

18 VAC 90-20-300. An amendment is proposed in the section on disciplinary provisions to delete the word "writing" and insert the word "taking" of the licensure examination in recognition of the fact that the exam is now given by computer.

18 VAC 90-20-310. A change in the definition of "nursing facility" for certified nurse aides is recommended to clarify that it includes "a licensed nursing home."

18 VAC 90-20-330. In its requirements for maintenance of an approved nurse aide program, the board proposes to: (i) clarify that its rule for skills training experience in subsection B does not apply to a program which has received a waiver from the state survey agency in accordance with federal law; (ii) require financial support and resources sufficient to meet all requirements; (iii) require at least one year of experience in long-term care for the primary instructor; (iv) require the primary instructor to actually participate in the teaching and evaluation of students; (v) require the licensed practical nurse serving as an instructor to have at least two years of experience with direct patient care "as a licensed practical nurse"; (vi) eliminate the specific reference to a course entitled "train the trainer"; (vii) amend competency requirements for instructors to simply require experience in teaching adults or in supervising nurse aides; (viii) eliminate all of subdivision D 1 on the curriculum and other specific content subjects which may not be necessary; and (ix) stipulate that if the program provider does not offer the program for two consecutive years, it shall be considered closed.

18 VAC 90-20-350. In the renewal of persons of the nurse aide registry, the board proposes to increase the renewal fee from \$20 to \$30 and to add a \$15 fee for a returned check.

18 VAC 90-20-400. The board proposes to add a requirement for a post-course test to measure minimum competency in the training of persons to administer medications.

18 VAC 90-20-410. The board proposes to add requirements for a protocol for the administration of adult vaccines pursuant to a provision in § 54.1-3408 of the Drug Control Act.

Issues:

Issue #1: Identification of persons regulated by the board.

A problem has been identified by a variety of sources, including public comment, articles in journals and other publications, and site visits to several large health care delivery systems. The public does not know whether the person providing direct patient care is a licensed professional, and if so, his level of licensure. There is a public misperception that anyone in uniform working with

patients holds some type of licensure with an assurance of minimal competency. To address the problem, the board considered methods adopted by other states, including the requirement for wearing identification for all persons regulated under this chapter. Such required identification gives the person's name and title of the license or certificate issued by the board. In addition, the board has proposed legislation to clarify the appropriate delegation of nursing duties in Chapter 30 of Title 54.1.

Advantages or disadvantages to licensees: There are no disadvantages to licensees who are educated and trained to perform nursing duties and clearly identified as such to patients.

Advantages or disadvantages to the public: There is a tremendous advantage to the public, both for those who will be patients receiving care and for those friends and family who will be with patients. By being able to identify the licensed professional, the public will have a better understanding of the level and quality of nursing care being given. If a problem is identified, the patient or his family will have some recourse to the board which regulates the nursing profession.

Issue #2: Approval process for nursing education programs.

In its Executive Order 15 Report on approval of nursing education programs, the Board of Nursing considered a recommendation of the Nursing Education Advisory Committee as follows: *"That the Board accept as evidence the final report of the accrediting body, the National League of Nursing (NLN), for continuing approval in all areas determined to duplicate information. Board of Nursing regulations should state accreditation criteria related to issues of public safety and unregulated practice which are not specifically addressed in NLN accreditation. The written report should also review any areas of concern that receive recommendations from the accrediting body or any other areas of concern required by the Board."*

Since all approved programs in Virginia that educate registered nurses also maintain NLN approval, the duplication of preparing for survey visits and accreditation reviews by both agencies seemed unnecessary. The committee did not recommend the NLN accreditation be accepted in lieu of all board requirements because NLN does not address areas of supervision of unlicensed persons. Virginia law allows such persons engaged in an educational program to practice under supervision. Therefore, it is essential for public protection that the board continue to regulate and monitor that supervision.

The board would be unable to eliminate its specific requirements for approval and site visits because many of the licensed practical nursing programs do not have NLN approval, and to require such would be too expensive and burdensome. The board would need to continue its current process for those schools.

At the time of its Executive Order 15 Report, the board was favorably inclined toward acceptance of the report of the committee, but it deferred a recommendation pending the

outcome of a review of the accreditation of NLN by the U. S. Department of Education. To date, the issue of accreditation has not been resolved, so the board recommends continuation of its current approval process and the adoption of amended regulations to make that process less burdensome.

Advantages or disadvantages to licensees: The continued board approval of nursing education programs will provide assurance to nursing students and to the public that programs will retain the necessary quality and integrity. Recommended amendments for nursing education programs will remove some of the steps which are now required for board approval. Other amendments clarify the requirements for a nursing faculty in such programs, including a provision that a person providing instruction in topics other than nursing is not required to hold licensure as a registered nurse.

Since recommendations of the Nursing Education Advisory Committee have been accepted by the board and regulations have been clarified and simplified, there should be no disadvantages to licensees.

Advantages or disadvantages to the public: There are no disadvantages to the public, which is protected by the regulations which assure that student nurses are receiving adequate instruction and supervision while providing patient care in the course of their clinical practice.

Issue #3: Use of preceptors in nursing training.

Teaching programs and institutions that serve as settings for clinical nursing education have recommended that there be a substantial reduction in the regulatory burden by allowing the use of preceptors to supervise the clinical practice of students. Compliance with current regulations, which require a ratio of 10 students to one faculty member in clinical areas, is difficult and costly. However, there is a compelling need to provide for public protection in these situations. Consequently, the board has recommended amendments to its regulations, including definitions of "preceptor" and "clinical setting" and other amended rules to enable programs to make the change. Proposed rules would set the number of students to each preceptor at not more than two and would establish goals and objectives for a preceptorship program. By utilizing clinical preceptors, the ratio of students to nursing faculty can be increased to 15 to 1.

There is also a clarification to specify that persons supervising the clinical practice of students shall be licensed as a registered nurse in the jurisdiction in which that practice occurs. Since nursing practice by a student is only allowable by law under the supervision of a licensed registered nurse, it is essential to require current licensure for the preceptor/supervisor.

Advantages or disadvantages to licensees: There are a number of advantages to nursing programs which will be able to utilize preceptorships in clinical settings for a more efficient and less costly method of training students. Students will benefit by having closer supervision (2 to 1) from a nurse who is engaged in the clinical setting providing

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direct patient care and will also have opportunities for clinical practice in community settings. Patients will benefit by the continued requirement for close supervision of practice by the preceptor who has responsibility for the nursing student.

Advantages or disadvantages to the public: There are no disadvantages to the public which continues to be protected by direct supervision of faculty or preceptors.

Issue #4: Fees.

The board issued a Notice of Intended Regulatory Action to consider raising some of its fees in order to have sufficient funds for the operation of its regulatory program. Since then, the board staff has been reduced, an automated system for licensure verification by telephone has been installed, and other economies adopted. Therefore, the board has determined that it is not necessary to raise those fees listed in Part I at this time. However, it does recommend increasing the renewal fees for nurse aides (Part V) from \$20 to \$30 in order to pay for costs attributable to that program. Costs for investigations and adjudication of cases far exceed revenues generated by the current renewal fee, and an even greater increase could be justified. However, the board determined that a \$10 increase over a two-year renewal cycle was reasonable. It also recommends a fee of \$15 for a returned check for nurse aides (other licensees already have such a fee in Part I).

Advantages or disadvantages to licensees: There is no disadvantage to the registered nurses, licensed practical nurses, or clinical nurse specialists regulated by this chapter, as their fees will not change. The nurse aide will pay an additional \$10 every two years in order to continue to be listed on the Nurse Aide Registry. While it is required by federal law for a nurse aide working in a facility receiving Medicaid or Medicare to be on the registry, there are other settings in which the aide can work without registration by the board. Federal law also requires that the board charge no fee for initially certifying a nurse aide or operation of the program, so only fees which are attributable to our disciplinary process can be justified.

Advantages or disadvantages to the public: There are no disadvantages to the public. By having the resources to investigate complaints and nurse aides and to hold disciplinary hearings in a timely fashion, the public is better protected from persons who serve a frail population in long-term care.

Fiscal Impact:

A. Projected number of persons affected and their cost of compliance:

Registered nurse	73,777
Licensed practical nurse	25,708
Clinical nurse specialist	438

There is no fiscal impact of proposed amendments to this chapter on registered nurses, licensed practical nurses and clinical nurse specialists. No fees are being changed, and no new requirements are proposed.

Certified nurse aide	38,514
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There is an impact on certified nurse aides listed on the Nurse Aide Registry, where such listing is required in order to work in a facility receiving Medicare or Medicaid reimbursement. In order to renew with the registry, a nurse aide will pay an additional \$10 every two years for a total of \$30. Without an increase in the renewal fee, the finance office of the department has projected a deficit of \$403,855 by the end of the '98-'00 biennium in the certified nurse aide program. With the proposed increase, the deficit will fall within 10% of total budget, as required by § 54.1-113 of the Code of Virginia. Without the proposed increase, the board will be unable to investigate all complaints of patient abuse or neglect, drug diversion, or other unprofessional conduct. The board would be unable to perform its statutory responsibility of protecting the public, especially the frail population in long-term care facilities typically served by nurse aides.

B. Cost to the agency for implementation:

The board will incur approximately \$2,500 in costs for printing and mailing Notices of Comment and final amended regulations to licensees and other interested parties. There will be no additional cost for conducting a public hearing, which will be held in conjunction with a scheduled board meeting. The board does not anticipate any additional costs for investigations or administrative proceedings against licensees for violations of these regulations.

C. Cost to local governments:

There will be no impact of these regulations on local government.

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. These regulations establish criteria for the licensure of nurses in Virginia. Most of the proposed changes to the regulations clarify the wording, intent and organization of the rules. A few of the changes eliminate provisions that, while somewhat costly, had little or no impact on the quality of nurses in Virginia. One provision provides that nurses always wear a visible indication of the level of licensure. The proposal also allows the use of preceptors, or experienced mentors, to aid in nursing training. Finally, the regulation increases renewal fees for nurse aides to cover the costs attributable to that program.

Estimated economic impact.

Housekeeping changes: The largest share of the changes proposed are simply clarification and reorganization of the existing rules. These changes will not be discussed in detail. Their economic impact will be small but could reduce slightly the cost of complying with the rules by making the rules easier to follow. Most do not appear likely to have any impact on the quality of nursing services experienced by Virginians.

Unnecessary requirements eliminated: In several cases, the proposal eliminates requirements that add to the cost of nursing training but do not improve the quality of nursing education. For example, 18 VAC 90-20-40 eliminates the requirement of a feasibility study for those institutions applying to offer nursing training. It is not at all clear what function such a requirement is supposed to serve. Any institution investing in establishing a nursing training program surely has plenty of incentive to investigate the feasibility of such an undertaking and is in a better position to judge the program's likelihood of success than is the board.

In 18 VAC 90-20-140 and 18 VAC 90-20-150 the board proposes eliminating the requirement of prior approval for certain changes in a nursing education program while it continues to require that changes be reported in the annual report. This double reporting requirement increased costs without producing any commensurate benefit.

These and a number of other similar changes have helped reduce regulatory complexity without compromising the quality of nursing education.

Some substantive changes: The proposed regulations require that practitioners licensed by the board must wear identification that includes the person's name and the title of the license or certificate granted by the board. This requirement is intended to make sure that consumers of nursing services know the qualifications of the person from whom they are receiving treatment. Without such identification, consumers may be unable to determine easily whether the person offering nursing services is licensed to carry out the given service. The board indicates that there has been an increasing commentary about the difficulties that consumers of nursing services have had in ensuring that their treatment is being provided by someone qualified to perform the service. Because the regulation addresses a real information asymmetry and because the requirements in the proposal are modest and inexpensive to carry out, it may be expected that this proposal will have a positive net economic benefit.

Another substantive change in the regulation allows the use of preceptors in nursing training. A preceptor is simply a licensed professional in practice who "serves as a resource person and role model, and is present with the nursing student in that setting." The student is, in effect, apprenticed to the preceptor. A preceptor may oversee the activities of as many as two students. Allowing the use of preceptors in the program, the ratio of actual nursing faculty to students can be increased from 10 faculty per student to 15 faculty

per student. This on-the-job training is very well established in many other professions, including the training of medical doctors. This reduces the cost of providing nursing education without reducing the quality of practitioners who earn their licenses. It is expected that this change will produce a net economic benefit.

Finally, the board recommends increasing the renewal fees for nurse aides from \$20 to \$30 to cover the costs of administering the program. This change is required to ensure that the fees charged cover the costs of the licensure program. In terms of economic efficiency, charging user fees to cover the costs of government certification programs is preferred to paying for those programs from general funds.

Businesses and entities affected. Nurses, nurse aides, and nurse training programs will be directly affected by this rule. There are currently 73,777 registered nurses, 25,708 licensed practical nurses, 438 clinical nurse specialists, and 38,514 certified nurse aides in the Commonwealth. Consumers of nursing services will also receive some benefits from the proposed changes.

Localities particularly affected. The costs and benefits of these changes will not fall disproportionately on any particular localities.

Projected impact on employment. There will not be any impact on employment in Virginia due to this proposal.

Effects on the use and value of private property. The costs of establishing and running a nursing training program will be slightly reduced by this proposal. As such, the cost of obtaining a nursing license may be slightly less than it would have otherwise been and the net income of nursing training programs may increase somewhat. These effects will be small and will probably not have any measurable impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs in the analysis of the Department of Planning and Budget.

Summary:

Amendments to these regulations are proposed pursuant to Executive Order 15 (94) report which called for greater clarity and elimination of any unnecessary regulations. In addition, the board has addressed several other issues which include: (i) amending its regulation to require registered nurses, licensed practical nurses, certified nurse aides, and clinical nurse specialists to wear identification which indicates the person's name and appropriate title granted by the board; (ii) adding a regulation that establishes a standard protocol, so groups operating "flu vaccine clinics" using persons without prescriptive authority will have guidelines to follow; and (iii) amending its renewal fee for certified nurse aides in order to have sufficient funds to operate the investigative and disciplinary functions related to that program.

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18 VAC 90-20-10. Definitions.

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

"*Approval*" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"*Associate degree nursing program*" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, State Council of Higher Education or an Act of the General Assembly.

"*Baccalaureate degree nursing program*" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, the State Council of Higher Education or an Act of the General Assembly.

"*Board*" means the Board of Nursing.

"*Clinical nurse specialist*" means a licensed registered nurse who holds:

1. A master's degree from a board-approved program which prepares the nurse to provide advanced clinical nursing services; and
2. Specialty certification from a national certifying organization acceptable to the board or an exception available from March 1, 1990, to July 1, 1990.

"*Clinical setting*" means any location in which the clinical practice of nursing occurs as specified in an agreement between the cooperating agency and the school of nursing.

"*Conditional approval*" means a time-limited status which results when an approved nursing education program has failed to maintain requirements as set forth in Article 2 (18 VAC 90-20-10 et seq.) of Part II of this chapter.

"*Cooperating agency*" means an agency or institution that enters into a written agreement to provide learning experiences for a nursing education program.

"*Diploma nursing program*" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"*National certifying organization*" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"*Nursing education program*" means an entity offering a basic course of study preparing persons for licensure as

registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.

"*Nursing faculty*" means registered nurses who teach the practice of nursing in nursing education programs.

"*Practical nursing program*" means a nursing education program preparing for practical nurse licensure, offered by a Virginia school, that leads to a diploma or certificate in practical nursing, provided the school is authorized by the appropriate governmental agency.

"*Preceptor*" means a licensed health care provider who is employed in the clinical setting, serves as a resource person and role model, and is present with the nursing student in that setting.

"*Program director*" means a registered nurse who has been designated by the controlling authority to administer the nursing education program.

"*Provisional approval*" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.

"*Recommendation*" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"*Requirement*" means a mandatory condition that a nursing education program must meet to be approved.

18 VAC 90-20-20. Delegation of authority.

~~A. The executive director of the board shall issue a certificate of registration to each person who meets the requirements for initial licensure under §§ 54.1-3017, 54.1-3018, 54.1-3020 and 54.1-3021 of the Code of Virginia. Such certificates of registration shall bear the signature of the president of the board, the executive director and the director of the Department of Health Professions.~~

~~B. The executive director shall issue license to each applicant who qualifies for such license under § 54.1-3011 of the Code of Virginia. Such licenses shall bear the name of the executive director.~~

~~C. The executive director shall be delegated the authority to issue licenses and certificates, execute all notices, orders and official documents of the board unless the board directs otherwise.~~

18 VAC 95-20-35. Identification; accuracy of records.

A. Any person regulated by this chapter who provides direct patient care shall, while on duty, wear identification which clearly indicates the person's name and the appropriate title for the license, certification, or registration issued to such person by the board.

B. A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order evidencing the change. A duplicate license shall

be issued by the board upon receipt of such evidence and the required fee.

C. Each licensee shall maintain a record of his current mailing address with the board, and any change of address by a licensee shall be submitted in writing to the board within 30 days of such change. All notices required by law and by this chapter to be mailed by the board to any licensee shall be validly given when mailed to the latest address on file with the board.

PART II.
NURSING EDUCATION PROGRAMS.

Article 1.
Establishing a Nursing Education Program.

18 VAC 90-20-40. Phase I.

A. An institution wishing to establish a nursing education program shall:

1. Submit to the board, at least ~~45~~ 12 months in advance of expected opening date, a statement of intent to establish a nursing education program;
2. Submit to the board, along with the statement of intent, ~~a feasibility study to include~~ the following information:
 - a. ~~Studies documenting the need for the program. Organizational structure of the institution and relationship of nursing program therein;~~
 - b. Purpose and type of program;
 - c. Availability of qualified faculty;
 - d. Budgeted faculty positions;
 - e. Availability of clinical facilities for the program;
 - f. Availability of academic facilities for the program;
 - g. Evidence of financial resources for the planning, implementation and continuation of the program; ~~and~~
 - h. ~~Anticipated student population;~~
 - i. ~~h. Tentative time schedule for planning and initiating the program; and~~
 - j. ~~Current catalog, if applicable.~~
3. Respond to the board's request for additional information.

B. A site visit ~~shall~~ may be conducted by a representative of the board.

C. The Education Special Conference Committee (the "committee"), comprised of not less than ~~three~~ two members of the board, shall, in accordance with § 9-6.14:11 of the Code of Virginia, receive and review applications and the report of the site visit and shall make recommendations to the board regarding the grant or denial of approval of Phase I.

1. If the board accepts the recommendation to approve Phase I, the institution may apply for provisional approval of the nursing education program as set forth in this chapter.

2. If the committee recommendation is to deny approval of Phase I, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

18 VAC 90-20-50. Phase II.

A. The application for provisional approval shall be complete when the following conditions are met:

1. A program director has been appointed, and there are sufficient faculty to initiate the program (18 VAC 90-20-90 ~~of this chapter~~);
2. A tentative written curriculum plan developed in accordance with 18 VAC 90-20-120 ~~of this chapter~~ has been submitted.

B. The committee shall, in accordance with § 9-6.14:11 of the Code of Virginia, make recommendations to the board for the grant or denial of provisional approval.

1. If provisional approval is granted:
 - a. The admission of students is authorized; and
 - b. The program director shall submit quarterly progress reports to the board which shall include evidence of progress toward application for approval and other information as required by the board.
2. If the committee recommendation is to deny approval of Phase II, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

~~C. Following graduation of the first class, the institution shall apply for approval of the nursing education program.~~

18 VAC 90-20-60. Phase III.

A. The application for approval shall be complete when:

1. A self-evaluation report of compliance with Article 2 (18 VAC 90-20-70 *et seq.*) of this part has been submitted;
2. *The first graduating class has taken the licensure examination;* and
3. A survey visit has been made by a representative of the board.

B. The committee shall, in accordance with § 9-6.14:11 of the Code of Virginia, receive and review the self-evaluation and survey reports and shall make a recommendation to the board for the grant or denial of approval.

C. If the committee's recommendation is to deny approval of Phase III, no further action will be required of the board unless the program requests a hearing before the board or a

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panel thereof in accordance with § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

18 VAC 90-20-70. Organization and administration.

~~A. The institution shall be authorized to conduct a nursing education program by charter or articles of incorporation of the controlling institution, by resolution of its board of control, or by the institution's own charter or articles of incorporation.~~

~~B. Universities, colleges, community or junior colleges, proprietary schools and public schools~~ A. *The governing or parent institution* offering nursing education programs shall be approved or accredited by the appropriate state agencies and the Southern Association of Colleges and Schools or by an accrediting agency recognized by the United States Department of Education.

~~C. Hospitals conducting a nursing education program shall be accredited by the Joint Commission on Accreditation of Healthcare Organizations.~~

~~D. B.~~ Any agency or institution that is utilized used for clinical experience by a nursing education program shall be one that is authorized to conduct business in the Commonwealth of Virginia, or in the state in which the agency or institution is located in good standing with its licensing body.

~~E. The authority and responsibility for the operation of the nursing education program shall be vested in a program director who is duly licensed to practice professional nursing in Virginia and who is responsible to the controlling board, either directly or through appropriate administrative channels.~~ C. *The director of the nursing education program shall be a registered nurse licensed in the Commonwealth, with the additional education and experience necessary to administer, plan, implement and evaluate the nursing education program.*

~~F. A written~~ D. An organizational plan shall indicate the lines of authority and communication of the nursing education program to the controlling body; to other departments within the controlling institution; to the cooperating agencies; and to the advisory committee, if one exists.

~~G. Funds shall be allocated by the controlling agency to carry out the stated purposes of the~~ E. *There shall be evidence of financial support and resources to meet the goals of the nursing education program.* The program director of the nursing education program shall be responsible for the budget recommendations and administration, consistent with the established policies of the controlling agency.

18 VAC 90-20-80. Philosophy and objectives.

Written statements of philosophy and objectives shall be the foundation of the curriculum and shall be:

1. Formulated and accepted by the faculty;
- ~~2. Directed toward achieving realistic goals;~~

~~3. Directed toward the meaning of education, nursing and the learning process;~~

4. 2. Descriptive of the practitioner to be prepared; and

~~5.~~ 3. The basis for planning, implementing and evaluating the total program.

18 VAC 90-20-90. Faculty.

A. Qualifications.

1. Every member of a *the* nursing faculty, including the program director, shall hold a current license to practice as a registered nurse in Virginia. *Persons providing instruction in topics other than nursing shall not be required to hold a license as a registered nurse.*

2. Every member of a nursing faculty responsible for teaching students in a cooperating agency located outside the jurisdictional limits of Virginia supervising the clinical practice of students shall meet the licensure requirements of ~~that~~ the jurisdiction in which that practice occurs.

3. The program director and each member of the nursing faculty shall maintain professional competence through such activities as nursing practice, continuing education programs, conferences, workshops, seminars, academic courses, research projects and professional writing.

4. For baccalaureate degree programs:

- a. The program director shall hold a doctoral degree.
- b. Every member of the nursing faculty shall hold a graduate degree. Faculty members ~~without~~ with a graduate degree with a major *other than* in nursing shall have a baccalaureate degree with a major in nursing.

5. For associate degree and diploma programs:

- a. The program director shall hold a graduate degree, preferably with a major in nursing.
- b. The majority of the members of the nursing faculty shall hold a graduate degree, preferably with a major in nursing.
- c. Other members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

6. For practical nursing programs.

- a. The program director shall hold a baccalaureate degree, preferably with a major in nursing.
- b. The majority of the members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

7. Exceptions to provisions of subdivisions 4, 5, and 6 of this subsection shall be by board approval.

- a. Initial request for exception.

(1) The program director shall submit a request for initial exception in writing for ~~considerations~~ *consideration* at a regular board meeting prior to the term during which the nursing faculty member is scheduled to teach.

(2) A description of teaching assignment, a curriculum vitae, and a statement of intent, from the prospective faculty member, to pursue the required degree shall accompany each request.

b. Request for continuing exception.

(1) Continuing exception will be based on the progress of the nursing faculty member toward meeting the degree required by this chapter during each year for which the exception is requested.

(2) The program director shall submit the request for continuing exception in writing for consideration at a regular board meeting prior to the next term during which the nursing faculty member is scheduled to teach.

(3) A list of courses required for the degree being pursued and college transcripts showing successful completion of a minimum of two of the courses during the past academic year shall accompany each request.

c. The executive director of the board shall be authorized to make the initial decision on requests for exceptions. Any appeal of that decision shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

B. Number.

1. The number of faculty shall be sufficient to prepare the students to achieve the objectives of the educational program and ~~such number shall be reasonably proportionate to:~~ *ensure safety for patients to whom students provide care.*

- ~~a. Number of students enrolled;~~
- ~~b. Frequency of admissions;~~
- ~~c. Education and experience of faculty members;~~
- ~~d. Number and location of clinical facilities; and~~
- ~~e. Total responsibilities of the faculty.~~

2. When students are giving direct care to patients, the ratio of students to faculty ~~in clinical areas~~ shall not exceed 10 students to one faculty member.

3. *When preceptors are utilized for specified learning experiences in clinical settings, the ratio shall not exceed 15 students to one faculty member.*

~~C. Conditions of employment.~~

~~1. Qualifications and responsibilities for faculty positions shall be defined in writing.~~

~~2. Faculty assignments shall allow time for class and laboratory preparation; teaching; program revision; improvement of teaching methods; academic advisement and counseling of students; participation in faculty organizations and committees; attendance at professional meetings; and participation in continuing education activities.~~

~~D. C. Functions.~~ The principal functions of the faculty shall be to:

1. Develop, implement and evaluate the philosophy and objectives of the nursing education program;
2. ~~Participate in designing, implementing, teaching, and evaluating and revising~~ *Design, implement, teach, evaluate and revise* the curriculum;
3. Develop and evaluate student admission, progression, retention and graduation policies within the framework of the controlling institution;
4. Participate in academic advisement and counseling of students; ~~and~~
5. Provide opportunities for student and graduate evaluation of curriculum and teaching and program effectiveness; ~~and~~
6. *Document actions taken in faculty and committee meetings.*

~~E. Organization.~~

- ~~1. The nursing faculty shall hold regular meetings for the purpose of developing, implementing and evaluating the nursing education program.~~
- ~~2. Minutes of faculty and committee meetings, including actions taken, shall be recorded and available for reference.~~
- ~~3. There shall be provision for student participation.~~

18 VAC 90-20-95. Preceptorships.

A. *Clinical preceptors may be used to augment the faculty and enhance the clinical learning experience. The clinical preceptor shall be licensed at or above the level for which the student is preparing.*

B. *When giving direct care to patients, students shall be supervised by faculty or preceptors as designated by faculty. In utilizing preceptors to supervise students, the ratio shall not exceed two students to one preceptor at any given time.*

C. *Preceptorships shall include:*

1. *Written objectives, methodology, and evaluation procedures for a specified period of time;*
2. *An orientation program for faculty, preceptors, and students;*
3. *The performance of skills for which the student has had clinical and didactic preparation; and*

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4. *The overall coordination by faculty who assume ultimate responsibility for implementation, periodic monitoring, and evaluation.*

18 VAC 90-20-100. Admission, promotion and graduation of students.

A. Requirements for admission to the nursing education program shall not be less than the ~~statutory~~ requirements of § 54.1-3017 A 1 of the Code of Virginia that will permit the graduate to be admitted to the appropriate licensing examination.

~~EXPLANATORY NOTE: Reference subdivision 1 of subsection A of § 54.1-3017 of the Code of Virginia:~~ B. The equivalent of a four-year high school course of study is considered to be:

1. A General Educational Development (GED) certificate for high school equivalence; or
2. Satisfactory completion of the college courses required by the nursing education program.

~~B. Students shall be selected on the basis of established criteria and without regard to age, race, creed, sex or national origin.~~

C. Requirements for admission, readmission, advanced standing, progression, retention, dismissal and graduation shall be available to the students in written form.

18 VAC 90-20-110. School records; student records; school bulletin or catalogue.

A. A system of records shall be maintained and be made available to the board representative and shall include:

1. Data relating to accreditation by any agency or body;
2. Course outlines;
3. Minutes of faculty and committee meetings;
4. ~~A record of the performance of graduates on the licensing examination;~~
5. ~~Survey reports.~~

B. A file shall be maintained for each student. Each file shall be available to the board representative and shall include:~~4.~~ the student's:

1. Application;
2. High school transcript or copy of high school equivalence certificate; *and*
3. Current record of achievement.

A final transcript shall be retained in the permanent file of the institution.

Provision shall be made for the protection of student and graduate records against loss, destruction and unauthorized use.

C. Current information about the nursing education program shall be published periodically and distributed to

students, applicants for admission and the board. Such information shall include:

1. Description of the program.
2. Philosophy and objectives of the controlling institution and of the nursing program.
3. Admission and graduation requirements.
4. Fees.
5. Expenses.
6. Financial aid.
7. Tuition refund policy.
8. Education facilities.
9. ~~Living accommodations.~~
10. ~~9.~~ Student activities and services.
11. ~~10.~~ Curriculum plan.
12. ~~11.~~ Course descriptions.
13. ~~12.~~ Faculty-staff roster.
14. ~~13.~~ School calendar.

18 VAC 90-20-120. Curriculum.

A. Curriculum shall reflect the philosophy and objectives of the nursing education program, and shall be consistent with the law governing the practice of nursing.

~~B. The ratio between nursing and nonnursing credit shall be based on a rationale to ensure sufficient preparation for the safe and effective practice of nursing.~~

~~C. Learning experiences shall be selected to fulfill curriculum objectives.~~

~~D. B.~~ Nursing education programs preparing for practical nursing licensure shall include:

1. Principles and practice in nursing encompassing the attainment and maintenance of physical and mental health and the prevention of illness for individuals and groups throughout the life cycle;
2. Basic concepts of the nursing process;
3. Basic concepts of anatomy, physiology, chemistry, physics and microbiology;
4. Basic concepts of communication, growth and development, interpersonal relations, patient education and cultural diversity;
5. *Basic concepts of* ethics, nursing history and trends, vocational and legal aspects of nursing, including regulations and sections of the Code of Virginia related to nursing; and
6. Basic concepts of pharmacology, nutrition and diet therapy.

~~E.~~ C. Nursing education programs preparing for registered nurse licensure shall include:

1. Theory and practice in nursing, encompassing the attainment and maintenance of physical and mental health and the prevention of illness throughout the life cycle for individuals, groups and communities;
2. Concepts of the nursing process;
3. Concepts of anatomy, physiology, chemistry, microbiology and physics;
4. Sociology, psychology, communications, growth and development, interpersonal relations, group dynamics, cultural diversity and humanities;
5. Concepts of pharmacology, nutrition and diet therapy, and pathophysiology;
6. Concepts of ethics, nursing history and trends, and the professional and legal aspects of nursing, including regulations and sections of the Code of Virginia related to nursing; and
7. Concepts of leadership, management and patient education.

18 VAC 90-20-130. Resources, facilities and services.

A. Periodic evaluations of resources, facilities and services shall be conducted by the administration, faculty, students and graduates of the nursing education program.

B. Secretarial and other support services shall be provided.

C. Classrooms, conference rooms, laboratories, clinical facilities and offices shall be available to meet the objectives of the nursing education program and the needs of the students, faculty, administration and staff.

D. The library shall have ~~holdings~~ *resources* that are current, pertinent and accessible to students and faculty, and sufficient in number to meet the needs of the students and faculty.

E. Written agreements with cooperating agencies shall be developed, maintained and periodically reviewed. The agreement shall:

1. Ensure full control of student education by the faculty of the nursing education program, including the selection and supervision of learning experiences.
2. Provide that ~~an instructor shall~~ *faculty members or preceptors* be present ~~on the clinical unit(s) unit or units in the clinical setting~~ to which students are assigned for direct patient care.
3. Provide for cooperative planning with designated agency personnel *to ensure safe patient care*.
4. *Provide that faculty be available to students and preceptors while students are involved in preceptorship experiences.*

F. Any observational experiences shall be planned in cooperation with the agency involved to meet stated course objectives.

G. Cooperating agencies shall be approved by the appropriate accreditation, evaluation or licensing bodies, if such exist.

18 VAC 90-20-140. Program changes.

~~A. The following proposed changes require board approval prior to their implementation:~~

~~1. Proposed changes in the nursing education program's philosophy and objectives that result in program revision.~~

~~2. Proposed changes in the curriculum that result in alteration of the length of the nursing education program.~~

~~B. Other~~ Additions, deletions or revisions of courses shall be reported to the board with the annual report required in 18 VAC 90-20-160 A of this chapter.

18 VAC 90-20-150. Procedure for approval of program change. (Repealed.)

~~A. When a program change is contemplated, the program director shall inform the board or board representative.~~

~~B. When a program change is requested, a plan shall be submitted to the board including:~~

~~1. Proposed change,~~

~~2. Rationale for the change,~~

~~3. Relationship of the proposed change to the present program.~~

~~C. Fifteen copies of these materials shall be submitted to the board at least three weeks prior to the board meeting at which the request will be considered.~~

18 VAC 90-20-170. Closing of an approved nursing education program; voluntary closing; closing as a result of denial or withdrawal of approval; custody of records.

A. When the governing institution anticipates the closing of a nursing education program, it shall notify the board in writing, stating the reason, plan and date of intended closing. ~~The governing institution shall choose one of the following closing procedures:~~

~~1. The program shall continue until the last class enrolled is graduated.~~

~~a. The program shall continue to meet the standards for approval until all of the enrolled students have graduated.~~

~~b. The date of closure is the date on the degree, diploma or certificate of the last graduate.~~

~~e. The governing institution shall notify the board of the closing date.~~

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~~2. The program shall close after the governing institution has assisted~~ shall assist in the transfer of students to other approved programs- *with the following conditions:*

~~a.~~ 1. The program shall continue to meet the standards required for approval until all students are transferred.

~~b.~~ 2. A list of the names of students who have been transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.

~~c.~~ 3. The date on which the last student was transferred shall be the closing date of the program.

B. When the board denies or withdraws approval of a program, the governing institution shall comply with the following procedures:

1. The program shall close after the institution has made a reasonable effort to assist in the transfer of students to other approved programs. A time frame for the transfer process shall be established by the board.

2. A list of the names of students who have transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.

3. The date on which the last student was transferred shall be the closing date of the program.

C. Provision shall be made for custody of records as follows:

1. If the governing institution continues to function, it shall assume responsibility for the records of the students and the graduates. The institution shall inform the board of the arrangements made to safeguard the records.

2. If the governing institution ceases to exist, the academic transcript of each student and graduate shall be transferred by the institution to the board for safekeeping.

Article 4.

~~Clinical Nurse Specialist Education Program.~~

18 VAC 90-20-180. ~~Clinical nurse specialist education program. (Repealed.)~~

~~An approved program shall be offered by:~~

~~1. A nationally accredited school of nursing within a college or university that offers a master's degree in nursing designed to prepare a registered nurse for advanced practice in a clinical specialty in nursing; or~~

~~2. A college or university that offers a master's degree consistent with the requirements of a national certifying organization as defined in 18 VAC 90-20-10 of this chapter.~~

18 VAC 90-20-190. Licensure by examination.

A. The board shall authorize the administration of examinations for registered nurse licensure and examinations for practical nurse licensure.

B. A candidate shall be eligible to take the examination (i) upon receipt by the board of the completed application, fee and an official transcript from the nursing education program; and (ii) when a determination has been made that no grounds exist upon which the board may deny licensure pursuant to § 54.1-3007 of the Code of Virginia.

C. To establish eligibility for licensure by examination, an applicant for the licensing examination shall:

1. File the required application, any necessary documentation and fee no later than 60 days prior to the first day of the month in which the applicant expects to take the examination.

2. Arrange for the board to receive an official transcript from the nursing education program which shows either:

a. That the degree or diploma has been awarded; or

b. That all requirements for awarding the degree or diploma have been met and specifies the date of conferral.

3. File a new application and fee if:

a. The examination is not taken within six months of the date that the board determines the applicant to be eligible; or

b. Eligibility is not established within six months of the original filing date.

D. The minimum passing ~~score~~ *standard* on the examination for registered nurse licensure and practical nurse licensure shall be determined by the board.

E. Any applicant suspected of giving or receiving unauthorized assistance during the examination may be noticed for a hearing pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) to determine eligibility for licensure or reexamination.

F. The board shall not release examination results of a candidate to any individual or agency without written authorization from the applicant or licensee.

G. Practice of nursing pending receipt of examination results.

1. An eligible graduate who has filed an application for licensure in Virginia may practice nursing in Virginia for a period not to exceed 90 days between completion of the nursing education program and the receipt of the results of the candidate's first licensing examination.

2. Candidates who practice nursing as provided in ~~18 VAC 90-20-190 G~~ *subdivision 1* of this ~~chapter~~ *subsection* shall use the designation "R.N. Applicant" or "L.P.N. Applicant" when signing official records.

3. The designations "R.N. Applicant" and "L.P.N. Applicant" shall not be used by applicants who either do not take the examination within 90 days following completion of the nursing education program or who have failed the examination.

H. Applicants who fail the examination.

1. An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Virginia.

2. An applicant for licensure by reexamination shall file the required application and fee no later than 60 days prior to the first day of the month in which the applicant expects to take the examination in order to establish eligibility.

3. Applicants who have failed the examination for licensure in another U.S. jurisdiction but satisfy the qualifications for licensure in this jurisdiction may apply for licensure by examination in Virginia. Such applicants shall submit the required application and fee. Such applicants shall not, however, be permitted to practice nursing in Virginia until the requisite license has been issued.

18 VAC 90-20-210. Licensure of applicants from other countries.

A. Applicants whose basic nursing education was received in, and who are duly licensed under the laws of, another country, shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in subsections B and C of this section.

B. Such applicants for registered nurse licensure shall:

1. Submit evidence of a passing score on the Commission on Graduates of Foreign Nursing Schools Qualifying Examination; and
2. Submit the required application and fee for licensure by examination.

C. Such applicants for practical nurse licensure shall:

- ~~1. Request a transcript from the nursing education program to be submitted directly to the board office; Submit evidence from a recognized agency that reviews credentials of foreign-educated nurses that the secondary education, nursing education, and license are comparable to those required for licensed practical nurses in the Commonwealth;~~
- ~~2. Provide evidence of secondary education to meet the statutory requirements;~~
- ~~3.~~ 2. Request that the credentialing agency, in the country where licensed, submit the verification of licensure form directly to the board office; and
- ~~4.~~ 3. Submit the required application and fee for licensure by examination.

18 VAC 90-20-250. Evidence of change of name. (Repealed.)

~~A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order evidencing the change. A duplicate license shall be issued by the board upon receipt of such evidence and the required fee.~~

18 VAC 90-20-260. Requirements for current mailing address. (Repealed.)

~~A. All notices, required by law and by this chapter to be mailed by the board to any licensee, shall be validly given when mailed to the latest address on file with the board.~~

~~B. Each licensee shall maintain a record of his current mailing address with the board.~~

~~C. Any change of address by a licensee shall be submitted in writing to the board within 30 days of such change.~~

PART IV.
CLINICAL NURSE SPECIALISTS.

18 VAC 90-20-275. Clinical nurse specialist education programs.

An approved program shall be offered by:

1. A nationally accredited school of nursing within a college or university that offers a master's degree in nursing designed to prepare a registered nurse for advanced practice in a clinical specialty in nursing; or
2. A college or university that offers a master's degree consistent with the requirements of a national certifying organization as defined in 18 VAC 90-20-10.

18 VAC 90-20-280. Clinical nurse specialist registration.

A. Initial registration. An applicant for initial registration as a clinical nurse specialist shall:

1. Be currently licensed as a registered nurse in Virginia;
2. Submit evidence of graduation from an approved program as defined in ~~18 VAC 90-20-180~~ 18 VAC 90-20-275 of this chapter;
3. Submit evidence of current specialty certification from a national certifying organization as defined in 18 VAC 90-20-10 of this chapter; and
4. Submit the required application and fee.

B. Renewal of registration.

1. Registration as a clinical nurse specialist shall be renewed biennially at the same time the registered nurse license is renewed.
2. The clinical nurse specialist shall complete the renewal application and return it with the required fee and evidence of current specialty certification unless registered in accordance with an exception.

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3. Registration as a clinical nurse specialist shall lapse if the registered nurse license is not renewed and may be reinstated as follows:

- a. Reinstatement of R.N. license;
- b. Payment of reinstatement and current renewal fees; and
- c. Submission of evidence of continued specialty certification unless registered in accordance with an exception.

18 VAC 90-20-290. Clinical nurse specialist practice.

A. The practice of clinical nurse specialists shall be consistent with the:

1. Education required in ~~18 VAC 90-20-180~~ 18 VAC 90-20-275 of this chapter, and
2. Experience required for specialist certification.

B. The clinical nurse specialist shall provide those advanced nursing services that are consistent with the standards of specialist practice as established by a national certifying organization for the designated specialty and in accordance with the provisions of Title 54.1 of the Code of Virginia.

C. Advanced practice as a clinical nurse specialist shall include but shall not be limited to performance as an expert clinician to:

1. Provide direct care and counsel to individuals and groups;
2. Plan, evaluate and direct care given by others; and
3. Improve care by consultation, collaboration, teaching and the conduct of research.

PART ~~IV~~ V. DISCIPLINARY PROVISIONS.

18 VAC 90-20-300. Disciplinary provisions.

A. The board has the authority to deny, revoke or suspend a license issued, or to otherwise discipline a licensee, upon proof that the licensee has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit means, but shall not be limited to:
 - a. Filing false credentials;
 - b. Falsely representing facts on an application for initial license, reinstatement or renewal of a license; or
 - c. Giving or receiving assistance in ~~writing~~ the *taking of the* licensing examination.
2. Unprofessional conduct means, but shall not be limited to:
 - a. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter

30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;

- b. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;
- c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
- d. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;
- e. Falsifying or otherwise altering patient or employer records;
- f. Abusing, neglecting or abandoning patients or clients; ~~or~~
- g. Practice of a clinical nurse specialist beyond that defined in 18 VAC 90-20-290 ~~of this chapter~~; or
- h. ~~Holding self out~~ *Representing oneself* as or performing acts constituting the practice of a clinical nurse specialist unless so registered by the board.

B. Any sanction imposed on the registered nurse license of a clinical nurse specialist shall have the same effect on the clinical nurse specialist registration.

PART ~~V~~ VI. CERTIFIED NURSE AIDES.

18 VAC 90-20-310. Definitions.

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

"Nurse aide education program" means a program designed to prepare nurse aides for certification.

"Nursing facility" means a licensed nursing home or an entity which is certified for Medicare or Medicaid long-term care reimbursement.

"Primary instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.

"Program coordinator" means a registered nurse who is administratively responsible and accountable for a nurse aide education program.

"Program provider" means an entity which conducts a nurse aide education program.

18 VAC 90-20-330. Nurse aide education programs.

A. Establishing a nurse aide education program.

1. A program provider wishing to establish a nurse aide education program shall submit an application to the board at least 90 days in advance of the expected opening date.

2. The application shall provide evidence of the ability of the institution to comply with subsection B of this section.

3. The Education Special Conference Committee (the "committee"), comprised of not less than ~~three~~ two members of the board, shall, in accordance with § 9-6.14:11 of the Code of Virginia, receive and review the application and shall make a recommendation to the board for grant or denial of approval.

4. If the committee's recommendation is to deny approval, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

B. Maintaining an approved nurse aide education program. To maintain approval, the nurse aide education program shall:

1. Demonstrate evidence of compliance with the following essential elements:

~~1-~~ a. Curriculum content and length as set forth in subsections D and G of this section.

~~2-~~ b. Maintenance of qualified instructional personnel as set forth in subsection C of this section.

~~3-~~ c. Classroom facilities that meet requirements set forth in subsection H of this section.

~~4-~~ d. Maintenance of records as set forth in subsection E of this section.

~~5-~~ e. Skills training experience in a nursing facility which has not been subject to penalty or penalties as provided in 42 CFR 483.151(b)(2) (Medicare and Medicaid Programs: Nurse Aide Training and Competency Evaluation Programs, effective April 1, 1992) in the past two years. *The foregoing shall not apply to a nursing facility which has received a waiver from the state survey agency in accordance with federal law.*

~~6-~~ f. Agreement that board representatives may make unannounced visits to the program.

~~g.~~ *Financial support and resources sufficient to meet requirements of this chapter.*

~~7-~~ 2. Impose no fee for any portion of the program on any nurse aide who, on the date on which the nurse aide begins the program, is either employed or has an offer of employment from a nursing facility.

~~8-~~ ~~Must~~ 3. Report all substantive changes in ~~subdivisions 1 through 7 of this subsection B of this section~~ subdivision 1 through 7 of this subsection B of this section within 10 days of the change to the board.

C. Instructional personnel.

1. Program coordinator.

a. The program coordinator in a nursing facility based program may be the director of nursing services. The

director of nursing may assume the administrative responsibility and accountability for the nurse aide education program but shall not engage in the actual classroom and clinical teaching.

b. The primary instructor may be the program coordinator in any nurse aide education program.

2. Primary instructor.

a. Qualifications. The primary instructor, who does the actual teaching of the students:

(1) Shall hold a current Virginia license as a registered nurse; and

(2) Shall have two years of experience as a registered nurse ~~and at least one year of experience~~ within the previous five years *and at least one year of experience* in the provision of long-term care facility services. Such experience may include, but not be limited to, employment in a nurse aide education program or employment in or supervision of nursing students in a nursing facility or unit, geriatrics department, chronic care hospital, home care or other long-term care setting. Experience should include varied responsibilities, such as direct resident care, supervision and education.

b. Responsibilities. The primary instructor shall *participate in the teaching and evaluation of students and, in addition, shall*

(1) Participate in the planning of each learning experience;

(2) Ensure that course objectives are accomplished;

(3) Ensure that the provisions of subdivision 6 of this subsection are maintained;

(4) Maintain records as required by subsection E of this section;

(5) Perform other activities necessary to comply with subsection B of this section; and

(6) Ensure that students do not perform services for which they have not received instruction and been found proficient by the instructor.

3. Other instructional personnel.

a. Qualifications.

(1) A registered nurse shall:

(a) Hold a current Virginia license as a registered nurse; and

(b) Have had at least one year, ~~within the preceding five years,~~ of direct patient care experience as a registered nurse ~~with the elderly or chronically ill, or both, of any age.~~

(2) A licensed practical nurse shall:

(a) Hold a current Virginia license as a practical nurse;

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(b) Hold a high school diploma or equivalent;

(c) Have ~~been~~ graduated from a state-approved practical nursing program; and

(d) Have had at least two years, ~~within the preceding five years,~~ of direct patient care experience ~~with the elderly or chronically ill, or both, of any age as a licensed practical nurse.~~

b. Responsibilities. Other personnel shall provide instruction under the general supervision of the primary instructor.

4. Prior to being assigned to teach the nurse aide education program, all instructional personnel shall demonstrate competence to teach adults by one of the following:

a. Complete satisfactorily a ~~"train-the-trainer" program approved by the board. Such a program shall be approved by the board for five years, at which time the sponsor must request reapproval of the program. The content of the program must include course in teaching adults that includes:~~

(1) Basic principles of adult learning;

(2) Teaching methods and tools for adult learners; and

(3) Evaluation strategies and measurement tools for assessing the learning outcomes; ~~or~~

b. ~~Complete satisfactorily a credit or noncredit course or courses approved by the board. Such courses shall be evaluated for approval by the board upon request from the individual taking the course. The content of such credit or noncredit course shall be comparable to that described in subdivision 4 a of this subsection~~ Have experience in teaching adults; or

c. ~~Provide evidence acceptable to the board of experience in teaching adult learners within the preceding five years~~ Have experience in supervising nurse aides.

5. The program may utilize resource personnel who have had at least one year of experience in their field to meet the planned program objectives for specific topics.

6. When students are giving direct care to clients in *Virginia* clinical areas, instructional personnel must be on site solely to supervise the students. The ratio of students to each instructor shall not exceed 10 students to one instructor.

D. Curriculum *content*.

1. ~~The graduate of the nurse aide education program shall be prepared to:~~

a. ~~Communicate and interact competently on a one-to-one basis with the clients;~~

~~b. Demonstrate sensitivity to clients' emotional, social, and mental health needs through skillful directed interactions;~~

~~c. Assist clients in attaining and maintaining functional independence;~~

~~d. Exhibit behavior in support and promotion of clients' rights; and~~

~~e. Demonstrate skills in observation and documentation needed to participate in the assessment of clients' health, physical condition and well-being.~~

2. ~~Content.~~

1. The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:

a. Initial core curriculum. Prior to the direct contact of a student with a nursing facility client, a total of at least 16 hours of instruction in the following areas must be presented:

(1) Communication and interpersonal skills;

(2) Infection control;

(3) Safety and emergency procedures, including the Heimlich Maneuver;

(4) Promoting client independence; and

(5) Respecting clients' rights.

b. Basic skills.

(1) Recognizing ~~abnormal~~ changes in body functioning and the importance of reporting such changes to a supervisor.

(2) Measuring and recording routine vital signs.

(3) Measuring and recording height and weight.

(4) Caring for the clients' environment.

(5) Measuring and recording fluid and food intake and output.

(6) Performing basic emergency measures.

(7) Caring for client when death is imminent.

c. Personal care skills.

(1) Bathing and oral hygiene.

(2) Grooming.

(3) Dressing.

(4) Toileting.

(5) Assisting with eating and hydration including proper feeding techniques.

(6) Caring for skin.

(7) Transfer, positioning and turning.

d. Individual client's needs, including mental health and social service needs.

~~(1) Identifying the psychosocial characteristics of the populations who reside in nursing homes.~~

~~(2)~~ (1) Modifying the aide's behavior in response to the behavior of clients.

~~(3)~~ (2) Identifying developmental tasks associated with the aging process.

~~(4) Providing training in and the opportunity for self care according to clients' capabilities.~~

~~(5)~~ (3) Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.

~~(6)~~ (4) Demonstrating skills supporting age-appropriate behavior by allowing the client to make personal choices, *and by* and reinforcing other behavior consistent with the client's dignity.

~~(7)~~ (5) Utilizing the client's family or concerned others as a source of emotional support.

~~(8)~~ (6) Responding appropriately to the client's behavior.

e. Care of the cognitively impaired client.

(1) Using techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

(2) Communicating with cognitively impaired residents.

(3) Demonstrating and understanding the behavior of cognitively impaired residents.

(4) Responding appropriately to the behavior of cognitively impaired residents.

(5) Using methods to reduce the effects of cognitive impairment.

f. Skills for basic restorative services.

(1) Using assistive devices in transferring, ambulation, eating and dressing.

(2) Maintaining range of motion.

(3) Turning and positioning, both in bed and chair.

(4) Bowel and bladder training.

(5) Caring for and using prosthetic and orthotic devices.

(6) Teaching the client in self-care according to the client's abilities as directed by a supervisor.

g. Clients' rights.

(1) Providing privacy and maintaining confidentiality.

(2) Promoting the client's right to make personal choices to accommodate individual needs.

(3) Giving assistance in resolving grievances and disputes.

(4) Providing assistance necessary to participate in client and family groups and other activities.

(5) Maintaining care and security of the client's personal possessions.

(6) Promoting the resident's rights to be free from abuse, mistreatment and neglect and the need to report any instances of such treatment to appropriate staff.

(7) Avoiding the need for restraints in accordance with current professional standards.

h. Legal aspects of practice as a certified nurse aide.

~~3.~~ 2. Unit objectives.

a. Objectives for each unit of instruction shall be stated in behavioral terms which are measurable.

b. Objectives shall be reviewed with the students at the beginning of each unit.

E. Records.

1. Each nurse aide education program shall develop an individual record of major skills taught and the date of performance by the student. At the completion of the nurse aide education program, the nurse aide must receive a copy of this record.

2. A record of the reports of graduates' performance on the approved competency evaluation program shall be maintained.

3. A record that documents the disposition of complaints against the program shall be maintained.

F. Student identification. The nurse aide students shall wear identification that is clearly recognizable *distinguishes them as students* to clients, visitors and staff.

G. Length of program.

1. The program shall be at least 80 clock hours in length.

2. The program shall provide for at least 16 hours of instruction prior to direct contact of a student with a nursing facility client.

3. Skills training in clinical settings shall be at least 40 hours. Five of the clinical hours may be in a setting other than a nursing home.

4. Employment orientation to facilities used in the education program must not be included in the 80 hours allotted for the program.

H. Classroom facilities. The nurse aide education program shall provide facilities that meet federal and state requirements including:

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1. Comfortable temperatures.
2. Clean and safe conditions.
3. Adequate lighting.
4. Adequate space to accommodate all students.
5. All equipment needed, including audio-visual equipment and that needed for simulating resident care.

I. Program review.

1. Each nurse aide education program shall be reviewed on site by an agent of the board at least every two years following initial review.
2. The committee, in accordance with § 9-6.14:11 of the Code of Virginia, shall receive and review the report of the site visit and shall make recommendations to the board to grant or deny continued approval.

a. A nurse aide education program shall continue to be approved provided the requirements set forth in subsections B through H of this section are maintained.

b. If the committee determines that a nurse aide education program is not maintaining the requirements of subsections B through H of this section, with the exception of subdivision B ~~5~~ 1 e of this section, the committee shall recommend to the board that the program be placed on conditional approval and the program provider shall be given a reasonable period of time to correct the identified deficiencies.

(1) The committee shall receive and review reports of progress toward correcting identified deficiencies and, when a final report is received at the end of the specified time showing corrections of deficiencies, make a recommendation to the board for grant of continued approval.

(2) If the program provider fails to correct the identified deficiencies within the time specified by the committee or the board, the board or a panel thereof may withdraw approval following a hearing in accordance with § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

(3) The program provider may request a formal hearing before the board or a panel thereof pursuant to § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia if it objects to any action of the board relating to conditional approval.

3. The program coordinator shall prepare and submit a program evaluation report on a form provided by the board in the intervening year that an on-site review is not conducted.

J. Curriculum changes. Changes in curriculum ~~must~~ *shall* be approved by the board prior to implementation and shall be submitted ~~for approval~~ at the time of a ~~report of a~~ *the* site

visit or *with* the report submitted by the program coordinator in the intervening ~~years~~ *year*.

K. Interruption of program.

1. When a program provider does not wish to admit students for a period not to exceed one year, the provider may request that the program be placed on inactive status and shall not be subject to compliance with subsection B of this section for the specified time.

2. Unless the program provider notifies the board that it intends to admit students, the program ~~will~~ *shall* be considered closed at the end of the one-year period and *shall* be subject to the requirements of subsection L of this section.

3. *If the program provider does not offer the program for two consecutive years, the program shall be considered closed and shall be subject to the requirements of subsection L of this section.*

L. Closing of a nurse aide education program. When a nurse aide education program closes, the program provider shall:

1. Notify the board of the date of closing.
2. Submit to the board a list of all graduates with the date of graduation of each.

18 VAC 90-20-340. Nurse aide competency evaluation.

A. The board may contract with a test service for the development and administration of a competency evaluation.

B. All individuals completing a nurse aide education program in Virginia shall successfully complete the competency evaluation required by the board prior to making application for certification and to using the title Certified Nurse Aide.

C. The board shall determine the minimum passing ~~score~~ *standard* on the competency evaluation.

18 VAC 90-20-350. Nurse aide registry.

A. Initial certification by examination.

1. To be placed on the registry and certified, the nurse aide must:

a. Satisfactorily complete a nurse aide education program approved by the board; or

b. Be enrolled in a nursing education program preparing for registered nurse or practical nurse licensure, have completed at least one nursing course which includes clinical experience involving client care; or

c. Have completed a nursing education program preparing for registered nurse licensure or practical nurse licensure; and

d. Pass the competency evaluation required by the board; and

e. Submit the required application and fee to the board.

2. Initial certification by endorsement.

a. A graduate of a state-approved nurse aide education program who has satisfactorily completed a competency evaluation program and is currently registered in another state may apply for certification in Virginia by endorsement.

b. An applicant for certification by endorsement shall submit the required application and fee and submit the required verification form to the credentialing agency in the state where registered, certified or licensed within the last two years.

3. Initial certification shall be for two years.

B. Renewal of certification.

1. No less than 30 days prior to the expiration date of the current certification, an application for renewal shall be mailed by the board to the last known address of each currently registered certified nurse aide.

2. The certified nurse aide shall return the completed application with the required fee of ~~\$20~~ \$30 and verification of performance of nursing-related activities for compensation within the preceding two years. *The board shall also charge a fee of \$15 for a returned check.*

3. Failure to receive the application for renewal shall not relieve the certificate holder of the responsibility for renewing the certification by the expiration date.

4. A certified nurse aide who has not performed nursing-related activities for compensation during the two years preceding the expiration date of the certification shall repeat and pass the nurse aide competency evaluation prior to applying for recertification.

C. Reinstatement of lapsed certification. An individual whose certification has lapsed shall file the required application and renewal fee and:

1. Verification of performance of nursing-related activities for compensation prior to the expiration date of the certificate and within the preceding two years; or

2. When nursing activities have not been performed during the preceding two years, evidence of having repeated and passed the nurse aide competency evaluation.

D. Evidence of change of name. A certificate holder who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order authorizing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence and the required fee.

E. Requirements for current mailing address.

1. All notices required by law and by this chapter to be mailed by the board to any certificate holder shall be validly given when mailed to the latest address on file with the board.

2. Each certificate holder shall maintain a record of his current mailing address with the board.

3. Any change of address by a certificate holder shall be submitted in writing to the board within 30 days of such change.

PART ~~VI~~ VII.

MEDICATION ADMINISTRATION TRAINING PROGRAM.

18 VAC 90-20-400. Post-course examination.

The program provider shall require that each student shall pass a written and practical examination at the conclusion of the training which measures minimum competency in medication administration.

PART VIII.

PROTOCOL FOR ADULT IMMUNIZATION.

18 VAC 90-20-410. Requirements for protocol for administration of adult immunization.

Pursuant to provisions of § 54.1-5408 of the Code of Virginia, a protocol shall be submitted to the board prior to the administration of an adult immunization program which includes the following:

1. Purpose and objectives of immunization program.
2. Target population.
3. Name and address of medical director.
4. A signed and dated medical directive.
5. Screening criteria for inclusion and exclusion.
6. Informed consent form.
7. Immunization procedures.
 - a. Dosage.
 - b. Single or multiple dose administration.
 - c. Injection site.
 - d. Vaccine storage.
 - e. Biohazardous waste disposal.
 - f. Universal precautions.
8. Post-immunization instructions.
9. Emergency guidelines.
10. Qualification of immunization providers.
 - a. Virginia licensure as a registered nurse, licensed practical nurse, or pharmacist.
 - b. Supervision of LPN provider.
11. Resource personnel and supervision.

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12. *Sample of patient record with date, vaccine, dose, site, expiration date, lot number, administering person's signature.*

NOTICE: The forms used in administering 18 VAC 90-20-10 et seq., Regulations of the Board of Nursing, 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 Health Professions, 6606 West Broad Street, 4th floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Licensure by Endorsement - Registered Nurse (*with Instructions*) (rev. 7/97).

Application for Licensure by Endorsement - Licensed Practical Nurse.

Instructions for Filing Application for Licensure by Examination for Registered Nurses (8/97).

Application for Licensure by Examination - Registered Nurse (rev. 8/97).

Instructions for Filing Application for Licensure by Examination for Practical Nurses (rev. 11/96).

Application for Licensure by Examination - Licensed Practical Nurse (rev. 11/96).

Instructions for Filing Application for Licensure by Repeat Examination for Registered Nurses (rev. 8/97).

Application for Licensure by Repeat Examination for Registered Nurse (rev. 8/97).

Instructions for Filing Application for Licensure by Repeat Examination for Practical Nurses (rev. 8/97).

Application for Licensure by Repeat Examination - Licensed Practical Nurse (rev. 8/97).

Instructions for Filing Application for Licensure by Examination for Nurses Educated in Other Countries (rev. 8/97).

Application for Licensure by Examination for Nurses Educated in Other Countries (rev. 8/97).

Instructions for Filing Application by Practical Nurses from Other Countries (rev. 1/94).

Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. 11/95).

Application for Reinstatement of License as a Registered Nurse (rev. 1/98).

Application for Reinstatement of License as a Licensed Practical Nurse (rev. 1/98).

Verification of Licensure or Registration (11/95).

Renewal Notice and Application (7/97).

Application for Registration as a Clinical Nurse Specialist.

Survey Visit Report.

Annual Report for Registered Nursing Programs.

Annual Report for Practical Nursing Programs.

Certified Nurse Aide Renewal.

Application for Reinstatement of Nurse Aide Certification.

Application for Nurse Aide Certification by Endorsement.

Nurse Aide Certification Verification Form.

Application to Establish Nurse Aide Education Program.

Program Evaluation Report.

On-Site Review Report.

Evaluation of On-Site Visitor.

Application for Approval of Train-the-Trainer Program.

Request for Statistical Information.

VA.R. Doc. No. R97-420; Filed June 23, 1998, 11:29 a.m.

BOARDS OF NURSING AND MEDICINE

Title of Regulation: 18 VAC 90-30-10 et seq. **Regulations Governing the Licensure of Nurse Practitioners (amending 18 VAC 90-30-10, 18 VAC 90-30-30, 18 VAC 90-30-70, 18 VAC 90-30-80, 18 VAC 90-30-90, 18 VAC 90-30-120 and 18 VAC 90-30-160; and repealing 18 VAC 90-30-40, 18 VAC 90-30-140, 18 VAC 90-30-150 and 18 VAC 90-30-170 through 18 VAC 90-30-210).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public Hearing Date: September 9, 1998 - 9 a.m.

Public comments may be submitted until September 18, 1998.

(See Calendar of Events section for additional information)

Basis: Chapter 24 (§ 54.1-2400 et seq.) and § 54.1-2957 of the Code of Virginia provide the basis for this regulation.

Chapter 24 establishes the general powers and duties of the health regulatory boards including the power to establish qualifications for licensure and the responsibility to promulgate regulations.

Section 54.1-2957 establishes the authority for the Board of Medicine and the Board of Nursing to jointly prescribe the regulations governing the licensure of nurse practitioners. It further makes it unlawful for a person to practice as a nurse practitioner in this Commonwealth unless he holds such a joint license.

Purpose: The purpose for the proposed amendments is to provide greater clarity and understanding of requirements for all nurse practitioners and to eliminate the process for board approval of educational programs. In addition, the board has recommended amending some regulations on practice

standards for the purpose of better protecting the public health, safety and welfare.

Substance:

18 VAC 90-30-10. Proposed amendments eliminate the definition for an "accredited program" and amend the definition of "approved program" to include all educational programs currently approved by the board. In the definition of "collaboration," the term "professional expertise" is replaced with "professional education and experience." The definition of "medical direction and supervision" is amended to include a requirement for guidelines for availability in the protocol between nurse practitioner and supervising physician.

18 VAC 90-30-40 is repealed and its requirements included in 18 VAC 90-30-30 since the provision for an advisory committee is more properly stated there. The process for appointment to the advisory committee is amended to make it possible to appoint more than one physician or nurse practitioner annually.

18 VAC 90-30-70. The categories of licensed nurse practitioners are amended to clarify that the certified nurse midwife and certified registered nurse anesthetist are categories similar to the others listed. Other amendments add the two-digit suffix used to identify the type of nurse practitioner on the license and add a category of acute care nurse practitioner.

18 VAC 90-30-80 and 18 VAC 90-30-90. Amendments eliminate reference to sections on board approval of educational programs and reference instead the definition of an approved program in 18 VAC 90-30-10.

18 VAC 90-30-120. Amendments clarify that the practice standards for the licensed nurse practitioner also apply to certified nurse midwives and certified registered nurse anesthetists. In current regulations, the practice standards for those two categories of nurse practitioner are stated in 18 VAC 90-30-140 and 18 VAC 90-30-150. Currently, it is not clear that they are required to follow provisions of 18 VAC 90-30-120 A to practice in collaboration with and under the medical direction and supervision of a licensed physician.

18 VAC 90-30-140 and 18 VAC 90-30-150 are repealed and their requirements included in 18 VAC 90-30-120.

All of Part IV (18 VAC 90-30-170 et seq.) is repealed to eliminate the process for board approval of nurse practitioner education programs.

Issues:

Issue #1: Definition of "medical direction and supervision."

A definition for the term "medical direction and supervision" was added in 1995 to assure monitoring of medical acts performed by licensed nurse practitioners and to allow for the deletion of the existing definition of supervision which had been viewed as overly restrictive by licensed nurse practitioners in all categories as well as by the physicians with whom they collaborate. Guidelines for availability are

required as a part of medical direction and supervision, but vary widely in their use and interpretation.

The issue of "availability" has been debated throughout regulatory review. In some practices and areas of the state, the supervising physician may be located in another city. Appropriate supervision may depend on the health care needs of the locality, the nature of the practice, and the acuity of patients and possible need for emergency intervention. Consequently, it is very difficult to quantify supervision in a regulation. With the range of nurse practitioners and practice settings in various parts of the state, it was not possible to specify conditions or requirements for availability of the collaborating physician to the nurse practitioner. In the practice of a nurse anesthetist working in a surgery suite, the availability of a physician should be immediate and on site. In a rural family clinic, the physician may be available on call within a short time frame to a family nurse practitioner, but the availability is not immediate and on site. The committee considered the addition of the word "appropriate" before the word supervision but concluded that the term was subjective and open to interpretation.

The Committee of the Joint Boards, with the concurrence of the advisory committee made up of nurse practitioners and collaborating physicians, developed an amended definition of the term "medical direction and supervision" to include a requirement for "availability" to be spelled out in the protocol. It should include an agreement for availability "proportionate to such factors as practice setting, acuity, and geography."

Advantages to the licensees and physicians: Clarification of the definition of "medical direction and supervision" with more specificity about "availability" will answer many questions by licensed nurse practitioners and their collaborating physicians.

Disadvantages to licensees or collaborating physicians: There should be no disadvantages of proposed amendments to the licensees or collaborating physicians since the amendments are clarifying in nature.

Advantages or disadvantages to the public: Clarification of the definition of "medical direction and supervision" to include in a written protocol the expectation for availability which is appropriate to the practice setting and acuity will benefit the public by providing additional protection. Collaborating physicians and nurse practitioners will be more aware of the necessity of arranging for availability which is reasonable and offers the necessary safeguards for the patient.

Issue #2: Approval of nurse practitioner education programs.

Currently, professional education programs for nurse practitioners are approved through this chapter by a definition of an "accredited program" or by criteria set forth in regulation. The board is recommending elimination of those regulations which establish the specific requirements for approval, and the adoption of an expanded definition of an "approved program." That definition would incorporate

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reference to the specific accrediting bodies for nurse practitioner programs and the schools which offer master's degrees in nursing which hold national accreditation acceptable to the board. With the proposed amendment to the definition of an "approved program," the board proposes to repeal all of Part IV, Criteria for Approval of Nurse Practitioner Education Programs.

Advantages to the licensees and to the board: With these proposed amendments, there is a clearer understanding for applicants and persons interested in preparing for a profession as a nurse practitioner of which education programs are approved for licensure in Virginia. There is no confusion about whether an unaccredited program would be able to meet the criteria for board approval currently established in Part IV of this chapter. Since the board has not approved any programs based on those criteria, there would be no increased burden and anyone enrolled in a currently approved program would be eligible for licensure.

Issue #3: Practice standards for all types of nurse practitioners.

In its discussion and in review of comments received on the categories of nurse practitioners, the committee considered the following alternatives: (i) eliminate the listing of categories in the regulation with each licensee responsible for his specialty certification; (ii) add other categories to the listing in 18 VAC 90-30-70; (iii) add the specialty code designation maintained in the data system for licensure and/or rearrange the listing in some logical order; and (iv) eliminate separate categories of certified nurse midwife and certified registered nurse anesthetist and include them as a category of nurse practitioner.

The boards decided on the following combination of these alternatives: reordering the list, adding the two-digit specialty code, adding the category of acute care nurse practitioners, deletion the word "room" in the "emergency room nurse practitioner" as an outdated term, and adding midwives and nurse anesthetists in the listing of categories of nurse practitioners.

Advantages to the licensees and physicians: Clarification of these regulations will answer some questions by applicants, licensees and collaborating physicians. Since the amendments are primarily editorial, they should have no affect on the practice of nurse practitioners.

Issue #4: Nurse practitioners in podiatric practices.

Requests to the boards for the addition of podiatrists among the "physicians" authorized to supervise nurse practitioners have been discussed on several occasions. After consideration of the request, the Committee of the Joint Boards chose not to recommend a change in this chapter that would permit "medical direction and supervision" of licensed nurse practitioners by podiatrists. The reasons given for the recommendation against an amendment were: (i) the licensure of nurse practitioner requires graduate education which prepares an individual to practice in a category as listed in 18 VAC 90-30-70. Professional certification is required (18 VAC 90-30-90) and practice is

based on the specialty education preparation and the standards of those certifying organizations. There is no specialty education or certifying organization of a "podiatric nurse practitioner"; (ii) since the practice of a podiatrist is limited by training and licensure to practice on the human body at and below the ankle, it would not be appropriate for a podiatrist to supervise another type of nurse practitioner (such as a family nurse practitioner); (iii) in its review of functions which are performed in a podiatrist's office, the committee concluded that all could be done by a registered nurse and that a licensed nurse practitioner was unnecessary; and (iv) since one category of nurse practitioner is a certified registered nurse anesthetist, there was concern that a podiatrist could be the supervising physician for such a practitioner during surgery. The committee has not been able to determine that all medical education in podiatry sufficiently prepares a person to supervise the administration of anesthesia. While the course work in Virginia may provide the necessary expertise to supervise the administration of anesthesia, there is some doubt about educational programs received by podiatrists outside the state. Dentists who are authorized to supervise nurse anesthetists may only do so by their regulations which require additional education. The committee will continue collecting information about the practices and educational training of podiatrists for the appropriate supervision of nurse practitioners.

Advantages to the licensees: Nurse practitioners who sit on the Committee of the Joint Boards and on the advisory committee do not believe that the inclusion of podiatrists as supervising physicians for nurse practitioners would be advisable or appropriate. There would not appear to be any opportunities for nurse practitioners in podiatric practices, so there should be no impact on licensees.

Estimated Impact:

Projected number of persons affected and their cost of compliance: There are approximately 3,100 licensed nurse practitioners and their collaborating physicians who would be affected by amendments to this regulation.

There will be no cost for compliance by regulated entities or their employers, since the requirements are clarified rather than changed. There are no amendments proposed to fees charged to licensees.

Cost to the agency for implementation: The boards will incur approximately \$2,000 in cost for printing and mailing final amended regulations to licensees and other interested parties. There will be no additional cost for conducting a public hearing, which will be held in conjunction with scheduled committee or board meetings.

Cost to local governments: There will be no impact of these regulations on local government.

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 Section 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 effects.

Summary of the proposed regulation. The proposed regulation amends current regulations governing the licensure of nurse practitioners. The primary amendments are as follows:

1. Criteria for board approval of nurse practitioner educational programs would be deleted from the body of the regulation and summarized instead in the definition provided for "approved" programs;
2. The definition of "medical direction and supervision" would be amended to stipulate that "[g]uidelines for availability shall address at a minimum the availability of the collaborating physician...";
3. The process for appointment to the Committee of the Joint Boards of Nursing and Medicine's Advisory Committee would be amended to allow the appointment of more than one physician and one nurse practitioner annually; and
4. The section on categories of nurse practitioners would be amended to add the category of acute care nurse practitioner.

Estimated economic impact. The majority of the proposed amendments are either clarifications or simplifications of the existing requirements. Although these amendments will certainly make the regulation more accessible to the regulated community, they are not anticipated to have a significant economic impact.

Businesses and entities particularly affected. The proposed regulation particularly affects approximately 3,100 nurse practitioners licensed by the Boards of Nursing and Medicine, their collaborating physicians, and their employers.

Localities particularly affected. No localities are particularly affected by the proposed regulation.

Projected impact on employment. The proposed regulation is not anticipated to have a significant effect on employment.

Effects on the use and value of private property. The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

Summary of analysis. The proposed amendments to the Regulations Governing the Licensure of Nurse Practitioners are not anticipated to have a significant economic impact.

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

Summary:

The proposed amendments are the boards' response to the review of regulations pursuant to Executive Order 15 (94). The proposed amendments clarify several definitions, add a requirement for guidelines on availability in the protocol between the nurse practitioner and supervising physician, and eliminate the process for board approval of a nurse practitioner education program.

18 VAC 90-30-10. Definitions.

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

~~"Accredited program" means a nurse practitioner education program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse-Midwives, American Nurses' Association or National League for Nursing.~~

"Approved program" means a nurse practitioner education program that ~~meets the criteria set forth in this chapter~~ *is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse-Midwives, American Nurses' Association or National League for Nursing or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a master's degree in nursing and which hold a national accreditation acceptable to the board.*

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Collaboration" means the process by which a nurse practitioner, in association with a physician, delivers health care services within the scope of practice of the nurse practitioner's professional ~~expertise~~ *education and experience* and with medical direction and supervision, consistent with this chapter.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Controlling institution" means the college or university offering a nurse practitioner education program.

~~"Licensed nurse practitioner" means a registered nurse who has met the requirements for licensure as stated in Part II (18 VAC 90-30-60 et seq.) of this chapter and who practices in the category of either a nurse practitioner, certified registered nurse anesthetist or certified nurse-midwife.~~

"Licensed physician" means a person licensed by the Board of Medicine to practice medicine or osteopathy.

"Medical direction and supervision" means participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications which provide for and define consultation among the collaborating parties and

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the patient; and periodic joint evaluation of services provided, e.g., chart review, and review of patient care outcomes. *Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.*

"National certifying body" means a national organization that has as one of its purposes the certification of nurse anesthetists, nurse midwives or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Preceptor" means a physician or a licensed nurse practitioner who supervises and evaluates the nurse practitioner student.

"Protocol" means a written statement, jointly developed by the collaborating physician(s) and the licensed nurse practitioner(s), that directs and describes the procedures to be followed and the delegated medical acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner(s) in the care and management of patients.

18 VAC 90-30-30. Committee of the Joint Boards of Nursing and Medicine.

A. The presidents of the Boards of Nursing and Medicine respectively shall each appoint three members from their boards to the Committee of the Joint Boards of Nursing and Medicine. The purpose of this committee shall be to administer the Regulations Governing the Licensure of Nurse Practitioners, 18 VAC 90-30-10 et seq.

~~18 VAC 90-30-40. Advisory Committee.~~

~~B. The committee, in its discretion, may appoint an advisory committee. Such an advisory committee shall be comprised of four licensed physicians and four licensed nurse practitioners, of whom one shall be a certified nurse midwife, one shall be a certified registered nurse anesthetist and two shall be nurse practitioners from other categories. Appointment to the advisory committee shall be for four years, with one physician and one licensed nurse practitioner appointed annually; members may be appointed for one additional four-year period.~~

18 VAC 90-30-70. Categories of licensed nurse practitioners.

A. The boards shall license nurse practitioners in the following categories (*a two-digit suffix appears on licenses to designate category*):

- ~~1. Certified nurse midwife~~
 - ~~2. Certified registered nurse anesthetist~~
 - ~~3. Nurse practitioner~~
- a. 1. Adult nurse practitioner (01);
 - b. 2. Family nurse practitioner (02);

- ~~e.~~ 3. Pediatric nurse practitioner (03);
- ~~d.~~ 4. Family planning nurse practitioner (04);
- e. 5. Obstetric/gynecologic nurse practitioner (05);
- f. 6. Emergency ~~room~~ nurse practitioner (06);
- ~~g.~~ 7. Geriatric nurse practitioner (07);
8. Certified registered nurse anesthetist (08);
9. Certified nurse midwife (09);
- ~~h.~~ 10. School nurse practitioner (10);
- i. 11. Medical nurse practitioner (11);
- j. 12. Maternal child health nurse practitioner (12);
- ~~k.~~ 13. Neonatal nurse practitioner (13);
- ~~l.~~ 14. Women's health nurse practitioner (14); and
15. Acute care nurse practitioner (16).

B. Other categories of licensed nurse practitioners shall be licensed if the Committee of the Joint Boards of Nursing and Medicine determines that the category meets the requirements of this chapter.

18 VAC 90-30-80. Qualifications for initial licensure.

A. An applicant for initial licensure as a nurse practitioner shall:

1. Be currently licensed as a registered nurse in Virginia; ~~and~~
2. Submit evidence of completion of an educational program designed to prepare ~~nurse anesthetists, nurse midwives or~~ nurse practitioners that is either: *an approved program as defined in 18 VAC 90-30-10;*
 - ~~a. Approved by the boards as provided in 18 VAC 90-30-170 through 18 VAC 90-30-200; or~~
 - ~~b. Accredited by an agency identified in 18 VAC 90-30-10; and~~
3. Submit evidence of professional certification by an agency identified in 18 VAC 90-30-90 ~~of this chapter~~ as an agency accepted by the boards; ~~and~~
4. File the required application; and
5. Pay the application fee prescribed in 18 VAC 90-30-50.

B. Provisional licensure may be granted to an applicant who satisfies all requirements of this section with the exception of subdivision A 3 of this section only until the release of the results of the first national certifying examination for which he is eligible following his application.

18 VAC 90-30-90. Certifying agencies.

A. The boards shall accept the professional certification by examination of the following:

1. American College of Nurse Midwives Certification Council;
2. American Nurses' Credentialing Center;
3. Council on Certification of Nurse Anesthetists;
4. National Certification Board of Pediatric Nurse Practitioners and Nurses;
5. National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties; and
6. American Academy of Nurse Practitioners.

B. The boards may accept professional certification from other certifying agencies on recommendation of the Committee of the Joint Boards of Nursing and Medicine provided that the professional certification is awarded on the basis of:

1. Completion of an *approved* educational program that ~~meets the criteria of Part IV as defined in 18 VAC 90-30-10~~; and
2. Achievement of a passing score on an examination.

18 VAC 90-30-120. Practice of licensed nurse practitioners.

A. A licensed nurse practitioner shall be authorized to engage in practices constituting the practice of medicine in collaboration with and under the medical direction and supervision of a licensed physician.

B. The practice of licensed nurse practitioners shall be based on specialty education preparation as ~~outlined in Part IV~~ a nurse practitioner in accordance with *standards of the applicable certifying organization and written protocols as defined in 18 VAC 90-30-10*.

~~**18 VAC 90-30-140. Certified registered nurse category.**~~

C. A certified registered nurse anesthetist shall practice in accordance with the functions and standards defined by the American Association of Nurse Anesthetists (Guidelines and Standards for Nurse Anesthesia Practice, Revised 1992) and under the medical direction and supervision of a doctor of medicine or a doctor of osteopathy or *the medical direction and supervision of a dentist in accordance with rules and regulations promulgated by the Board of Dentistry*.

~~**18 VAC 90-30-150. Certified nurse midwife category.**~~

D. A certified nurse midwife shall practice in accordance with the Standards for the Practice of Nurse-Midwifery (Revised 1993) defined by the American College of Nurse-Midwives.

18 VAC 90-30-160. Prohibited practice.

Practice as a licensed nurse practitioner shall be prohibited if:

1. The license has lapsed; or
2. The license as a *registered nurse* is revoked or suspended.

PART IV.
CRITERIA FOR APPROVAL OF NURSE PRACTITIONER
EDUCATION PROGRAMS.

18 VAC 90-30-170. Criteria for program approval. (Repealed.)

~~The committee may delegate to the staff of the committee the authority to approve nurse practitioner education programs that meet the following criteria:~~

~~A. Administration.~~

- ~~1. The nurse practitioner education program shall be offered either:
 - a. By a nationally accredited school of nursing that offers a master's degree in nursing; or
 - b. Jointly by a nationally accredited school of medicine and a nationally accredited school of nursing that offers a master's degree in nursing.~~

- ~~2. The authority and responsibility for the conduct of the program shall be vested in a nurse educator or coadministered by a physician and a nurse educator who hold faculty appointments at the controlling institution.~~

- ~~3. The controlling institution shall provide each student who successfully completes the program a certificate of completion or equivalent official document.~~

~~B. Philosophy and objectives. There shall be clearly written statements of philosophy and objectives of the program that shall include a description of the category of nurse practitioner being prepared.~~

~~C. Faculty.~~

- ~~1. Nurse faculty shall include nurse practitioners each currently certified in the area of specialization in which he is teaching.~~
- ~~2. Medical faculty shall include currently licensed physicians each having preparation in his specialty area.~~

~~D. Curriculum.~~

- ~~1. The program shall be at least one academic year in length including planned clinical practice under the direction of a preceptor.~~
- ~~2. Course descriptions and objectives shall be available in writing.~~
- ~~3. The curriculum shall provide:
 - a. Instruction in the biological, behavioral, medical and nursing sciences relevant to practice as a nurse practitioner in the specialized field;
 - b. Instruction in legal, ethical and professional responsibilities of a nurse practitioner; and
 - c. Supervised clinical practice of those skills essential for a nurse practitioner in the specialized field.~~

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18 VAC 90-30-180. Denial of approval of programs. (Repealed.)

~~Approval will be denied if the program does not meet the criteria set forth in 18 VAC 90-30-170. The controlling institution may request a hearing before the committee, and the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) shall apply.~~

18 VAC 90-30-190. Continued approval of programs. (Repealed.)

~~Each program shall be subject to periodic review by the boards to determine whether standards for approval are being maintained.~~

18 VAC 90-30-200. Withdrawal of approval. (Repealed.)

~~A. If the boards determine that an approved program is not maintaining the standards set forth in this chapter, the controlling institution shall be given a reasonable period of time to correct the identified deficiencies.~~

~~B. If the controlling institution fails to correct the identified program deficiencies within the time specified, the boards shall withdraw the approval following proceedings held pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).~~

18 VAC 90-30-210. Exemptions from program approval requirements. (Repealed.)

~~Programs accredited by any agency listed in the definition of accredited program in 18 VAC 90-30-10 are exempt from the program approval requirements of this chapter.~~

PART ~~V~~. IV.
DISCIPLINARY PROVISIONS.

NOTICE: The forms used in administering 18 VAC 90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioners, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Instructions for Licensure - Nurse Practitioner (rev. 1/98).

Application for Licensure as a Nurse Practitioner (rev. 1/98).

~~*Nurse Practitioner Provisional License.*~~

Renewal Notice and Application (rev. 7/97).

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF NURSING
6606 WEST BROAD STREET, 4TH FLOOR
RICHMOND, VIRGINIA 23230-1717
(804) 662-9909 - PHONE
(804) 662-9512 - FAX

INSTRUCTIONS FOR LICENSURE - NURSE PRACTITIONER

Virginia law and regulations require that nurse practitioners, certified nurse midwives and certified registered nurse anesthetists must be licensed as nurse practitioners by the Boards of Nursing and Medicine prior to beginning practice in the Commonwealth.

There is no authority in the law or regulations for practice pending licensure in Virginia, except, provisional licensure may be granted pending the results of the first national certifying examination for which the applicant is eligible following receipt of the application for licensure. Verification of professional certification must be sent as soon as it is available.

Application for licensure and a copy of the Regulations Governing the Licensure of Nurse Practitioners are enclosed. The completed application form and required fee is to be returned to the address shown above. The following is required to support the application:

FOR NURSE PRACTITIONERS

1. A transcript from your nurse practitioner program must be sent directly to this office from the school.
2. Request that verification of professional certification by one of the agencies listed in 18 VAC 90-30-90 of the enclosed regulations or evidence that you are scheduled to take the next available certifying examination be sent to the Board of Nursing office from the professional certification organization (copy of card or certificate will not be accepted).

FOR CERTIFIED NURSE MIDWIVES

1. A transcript from your nurse midwifery program must be sent directly to this office from the school.
2. Request that verification of professional certification by the American College of Nurse Midwives or evidence that you are scheduled to take the next available certifying examination be sent to the Board of Nursing office from the ACNM (copy of card or certificate will not be accepted).

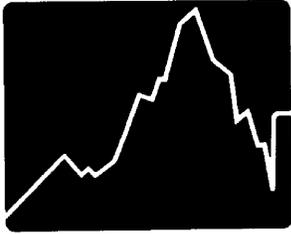
FOR CERTIFIED REGISTERED NURSE ANESTHETISTS

1. A transcript from your nurse anesthesia program must be sent directly to this office from the school.
2. Request that verification of professional certification from the Council on Certification of Nurse Anesthetists or evidence that you are scheduled to take the next available certifying examination be sent to the Board of Nursing office from the Council (copy of card or certificate will not be accepted).

***** In accordance with §54.1-116 of the Code of Virginia, you are required to submit your Social Security Number or your Control Number issued by the Virginia Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded.**

This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities.

Proposed Regulations



COMMONWEALTH OF VIRGINIA
 Board of Nursing
 Department of Health Professions
 6606 West Broad Street, 4th Floor
 Richmond, Virginia 23230-1717
 (804) 662-9909
 (804) 662-9512 - FAX

APPLICATION FOR LICENSURE AS A NURSE PRACTITIONER

**I hereby make application for licensure As a Nurse Practitioner in the category of _____.
 (See categories in the regulations.)

The following evidence of my qualifications is submitted with a **check or money order in the amount of **\$50** made payable to the *Treasurer of Virginia*. **The application fee is non-refundable.**

<i>APPLICANT - Please provide the information requested below and on the back of this page. (Print or Type)</i>				
Name:	Last	Suffix	First	Middle Maiden
Street Address			Area Code & Telephone Number	
City		State		Zip Code
Date of Birth (M/D/Y)	Social Security Number or Virginia DMV Control Number		Virginia RN License Number & Expiration Date	
Nurse Practitioner, Nurse Anesthesia, or Nurse Midwife Program Name:				
Program Address:		City		State
Program Completion Date: _____			Length of Program: _____	
Program Accredited/Approved by: <i>(Accrediting Authority)</i> _____				
Professional Certification held from: <i>(Name of Organization)</i> _____				
I (am) (am not) certified or registered with an equivalent title in another state.				
Title: _____		State: _____		
Date Certified or Registered: _____		Current [] Lapsed []		
Prospective employer: _____				
Address: _____				
Date you expect to begin employment as a Licensed Nurse Practitioner in Virginia: _____				

Revised 1/98

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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 licensure as a registered nurse 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 the affidavit.

Signature of Applicant

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

My commission expires on _____.

Signature of Notary Public

SEAL

For Office Use Only

Computer File Pending # _____
Practitioner Type Code # _____
Practitioner _____
Date Issued _____

Approved by: _____
Board of Nursing



C-45128

Department of Health Professions
COMMONWEALTH OF VIRGINIA

RENEWAL NOTICE AND APPLICATION

Telephone:
License, certificate or registration number:

TYPE OF RENEWAL	CURRENT EXPIRATION DATE	CURRENT AMOUNT DUE	RENEWAL PERIOD FROM TO	AMOUNT DUE IF RECEIVED AFTER
		\$		\$

MAKE CHECKS PAYABLE TO THE "TREASURER OF VIRGINIA"
RETURN PAYMENT AND THE COMPLETED BOTTOM PORTION ONLY IN THE ENCLOSED ENVELOPE
KEEP TOP PORTION FOR YOUR RECORDS

DETACH HERE →

DISCLOSURE OF SOCIAL SECURITY OR VIRGINIA DMV CONTROL NUMBER
 In accordance with § 54.1-116 of the Code of Virginia, you are required to submit your Social Security Number or your control number* issued by the Virginia Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded.
 This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities.
 If the boxes below are empty, write in your Social Security or Virginia DMV Control Number. If the boxes do contain numbers, please verify that they are correct and make any necessary changes.

NO LICENSE, CERTIFICATION OR REGISTRATION WILL BE ISSUED TO ANY INDIVIDUAL WHO HAS FAILED TO DISCLOSE ONE OF THESE NUMBERS.

--	--	--	--	--	--	--	--	--	--

*In order to obtain a Virginia driver's license control number, it is necessary to appear in person at an office of the Department of Motor Vehicles in Virginia. A fee and disclosure of your Social Security Number will be required.

INSTRUCTIONS

1. Verify Social Security or Virginia DMV Control Number at left.
2. Complete item "A" below if you do not wish to renew.
3. Make any address changes on this application when renewing.
4. Make any name changes on this application and enclose a copy of your marriage license or court order.
5. Note name and license, certificate or registration number on all enclosures.
6. Return the bottom portion of this application in the enclosed envelope.

A. Check here if you **do not** wish to renew, and sign below.

Signature _____

DETACH HERE →

THIS BOTTOM PORTION MUST BE RETURNED IN ORDER TO RENEW

Department of Health Professions
Type of renewal:
License, certificate or registration number:

BOARD OF NURSING HOME ADMINISTRATORS

Title of Regulation: 18 VAC 95-20-10 et seq. Regulations of the Board of Nursing Home Administrators (amending 18 VAC 95-20-10, 18 VAC 95-20-70, 18 VAC 95-20-80, 18 VAC 95-20-130, 18 VAC 95-20-170, 18 VAC 95-20-180, 18 VAC 95-20-200, 18 VAC 95-20-220, 18 VAC 95-20-230, 18 VAC 95-20-290, 18 VAC 95-20-300, 18 VAC 95-20-310, 18 VAC 95-20-330, 18 VAC 95-20-340, 18 VAC 95-20-380, 18 VAC 95-20-390, 18 VAC 95-20-400, 18 VAC 95-20-430, 18 VAC 95-20-440 and 18 VAC 95-20-470; adding 18 VAC 95-20-175 and 18 VAC 95-20-225; and repealing 18 VAC 95-20-20 through 18 VAC 95-20-50, 18 VAC 95-20-90 through 18 VAC 95-20-120, 18 VAC 95-20-140, 18 VAC 95-20-150, 18 VAC 95-20-160, 18 VAC 95-20-190, 18 VAC 95-20-210, 18 VAC 95-20-240 through 18 VAC 95-20-280, 18 VAC 95-20-320, 18 VAC 95-20-350, 18 VAC 95-20-360, 18 VAC 95-20-370, 18 VAC 95-20-410, 18 VAC 95-20-420, 18 VAC 95-20-450, 18 VAC 95-20-460, 18 VAC 95-20-480 through 18 VAC 95-20-740, and Appendices I, II & III).

Statutory Authority: § 54.1-2400 and Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: August 5, 1998 - 10 a.m.

Public comments may be submitted until September 18, 1998.

(See Calendar of Events section for additional information)

Basis: Chapters 24 (§ 54.1-2400 et seq.) and 31 (§ 54.1-3100 et seq.) of the Code of Virginia provide the basis for this regulation.

Chapter 24 establishes the general powers and duties of the health regulatory boards including the power to establish qualifications for licensure and the responsibility to promulgate regulations.

Chapter 31 establishes the Board of Nursing Home Administrators and the mandate for licensure. It further requires that all licensed nursing homes in the Commonwealth be under the supervision of a licensed administrator.

Purpose: The purpose of these regulations is to protect the public health, safety, and welfare by establishing educational, experiential, and examination requirements for those seeking licensure as nursing home administrators and by setting standards of professional conduct for practice. Amendments are proposed to implement the recommendations of the Board of Nursing Home Administrators in its report pursuant to Executive Order 15 (94), which were to simplify, clarify, and eliminate redundancy and unnecessary requirements.

Substance:

18 VAC 95-20-10. The proposed amendments eliminate definitions which are redundant or unnecessary and simplify or clarify the definition of an "accredited institution" and a "preceptor." The definition of full-time employment is

changed from 37½ hours to a less burdensome requirement of 35 hours.

18 VAC 95-20-20, 18 VAC 95-20-30, 18 VAC 95-20-40 and 18 VAC 95-20-50 are repealed as they are not necessary regulations.

18 VAC 95-20-70. The amendment requires notification of a change of address or name within 30 days rather than the current requirement of five days.

18 VAC 95-20-80. All fees of the board are placed in this section of the regulation. Reductions in fees are proposed for seven of the 12 fees listed.

18 VAC 95-20-90, 18 VAC 95-20-100, 18 VAC 95-20-110 and 18 VAC 95-20-120 are repealed and incorporated in other sections.

18 VAC 95-20-130. The proposed amendment specifies that all examination fees are to be paid directly to the service or services contracted by the board to administer the examinations.

18 VAC 95-20-140, 18 VAC 95-20-150 and 18 VAC 95-20-160 are repealed and requirements incorporated into other sections.

18 VAC 95-20-170. Amendments simplify and include requirements and dates for renewal of licensure.

18 VAC 95-20-175. A new section is added to specify the requirements of continuing education needed for renewal of licensure. The licensee would be allowed to carry over up to 10 hours of CE credits to another renewal year, and a new licensee would be exempt from CE requirements for the first renewal cycle.

18 VAC 95-20-180. Requirements for a late renewal are specified and the time allowed is amended from six months to one year.

18 VAC 95-20-190 is repealed and the requirements incorporated into 18 VAC 95-20-180.

18 VAC 95-20-200 is amended to clarify and restate the requirements for reinstatement of a nursing home administrator license or preceptor registration.

18 VAC 95-20-210 is repealed and requirements incorporated into 18 VAC 95-20-200.

18 VAC 95-20-220 sets forth the qualifications for initial licensure; amendments are clarifying.

18 VAC 95-20-225 establishes requirements for licensure by endorsement.

18 VAC 95-20-230 establishes the regulations for applying for licensure; it incorporates some requirements currently including in sections which are being repealed.

18 VAC 95-20-240 through 18 VAC 95-20-280 are repealed.

18 VAC 95-20-290. Amendments are editorial and clarifying.

18 VAC 95-20-300. The amendment clarifies which parts of the application package must be submitted simultaneously by the applicant.

Proposed Regulations

18 VAC 95-20-310. Amendments incorporate regulations currently contained in 18 VAC 95-20-320 and 18 VAC 95-20-370, which are being repealed.

18 VAC 95-20-330 and 18 VAC 95-20-340. Amendments are editorial only.

18 VAC 95-20-350 and 18 VAC 95-20-360 are repealed. Requirements are included in other sections.

18 VAC 95-20-380 establishes the qualifications for preceptors. Current requirements are consolidated and restated.

18 VAC 95-20-390 is amended to incorporate by reference the Core of Knowledge and the Domains of Practice which are currently attached as Appendices I and II. (Those appendices are repealed.)

18 VAC 95-20-400. Establishes reporting requirements for the A.I.T. preceptors and incorporates regulations currently listed in 18 VAC 95-20-410 and 18 VAC 95-20-420, which are repealed.

18 VAC 95-20-430 and 18 VAC 95-20-440 are amended for clarity and to include requirements currently stated in 18 VAC 95-20-450 and 18 VAC 95-20-460, which are repealed.

18 VAC 95-20-470. Amendments clarify, reduce redundancy, and establish that a misdemeanor involving moral turpitude constitutes unprofessional conduct.

18 VAC 95-20-480 through 18 VAC 95-20-740. These sections are repealed. All requirements are either unnecessary or are included in other sections. Regulations for the approval of sponsors for continuing education courses are repealed because the board has determined that it would approve courses already accredited for CE by several organizations or agencies.

Issues:

Issue #1: Continuing education requirements.

While the Board of Nursing Home Administrators was in agreement that continuing education remains essential to the continued competency of its licensees, there were several issues surrounding its requirements. First, there was a question about the appropriate role of the board in granting approval for sponsors of CE and about the capacity and resources of the board to evaluate course content and quality. The board is proposing to repeal regulations on approval of CE sponsors and to designate as board-approved those courses offered by sponsors approved by the National Association of Boards of Examiners of Nursing Home Administrators or by an accredited educational institution.

Second, there was discussion about the inflexibility of a 20-hour annual requirement for continuing education. There was a suggestion that the board regularly conduct a study of the developments, trends, and issues critical for administrators and determine the number of hours that were necessary to cover essential topics. While it is important for there to be continual assessment of the needs of

administrators and of changing issues in the field, the board decided that the individual administrator is in a better position to make that determination. Therefore, proposed amendments allow the licensee to carry over up to 10 excess hours of CE from one year to the next.

Third, there was discussion about the need to allow educational activities other than the traditional group course of continuing education. Other types of instruction or interactive education would be permissible under proposed amendments, which would delete the word "group" from the definition of a "classroom hour."

Advantages to the licensees: The licensee has the opportunity to choose educational activities which increase his knowledge, skills, and competency as long as the activity is recognized as relevant to the professional responsibilities of an administrator. Proposed amendments would also allow the administrator to carry over hours from taking an in-depth course resulting in more than 20 hours of credit; the proposed amendment allows more flexibility and encourages comprehensive educational activities. By eliminating board approval of CE courses, the licensee does not have the uncertainty of signing up for CE courses which are pending approval. Sponsors are recognized and established by regulation.

Disadvantages to the licensees: There should be no disadvantages to licensees; the board has proposed less burdensome continuing education regulations.

Advantages or disadvantage to the public: The public is not affected by amendments to CE regulations except to the extent that assurance of continued competency would be made somewhat more attainable and perhaps less costly for nursing home administrators.

Issue #2: Required fees.

The board determined that many of its fees were slightly higher than was necessary and in a few cases were excessive. Therefore, proposed amendments lower seven of the 12 fees set forth in regulation.

Advantages or disadvantages to the licensees: There are no disadvantages to licensees in lowering fees. The board has examined its projected budget for the next biennium and determined that the proposed reductions should not create a shortfall which would result in a subsequent increase in fees.

Since the license renewal fee will not be reduced, the vast majority of licensees will not realize a fee reduction. For those who need a duplicate license or wall certificate, verification of licensure to another state, or are submitting an application, the fees will be less under the proposed regulations.

Advantages or disadvantage to the public: There are no advantages or disadvantages to the public.

Issue #3. Administrator-in-training program.

Applicants for the administrator-in-training program with prior work experience in health care (such as nursing or hospital administration) may have 1,000 of the 2,080 required hours of training waived. The board considered a suggestion that all of

the training hours be waived for a hospital administrator and that person be allowed to sit for the state and national examinations. While the board concurs that there are similar and overlapping experiences, it reaffirms its determination that additional hours of training specific to nursing home administration are necessary; therefore, current regulations were not amended.

Advantages or disadvantages to the licensees: The current regulation requires the applicant to complete at least 1,080 hours of training in nursing home administration, but the board is determined that the specified hours are essential to ensure that the licensee will have the knowledge and skills necessary to safely carry out his responsibilities.

Advantages or disadvantage to the public: The nursing home population is among the most vulnerable of all citizens of the Commonwealth. The board is not comfortable with reducing training standards for the administrator who has responsibility for their health, safety, and welfare. Therefore, the current regulation is more advantageous to the public.

Issue #4. Need for simplification and clarification of regulations.

In compliance with the directives of Executive Order 15 (94), the board sought to reduce the number and complexity of these regulations. Duplication, excess verbiage, and unnecessary regulation were eliminated. Consequently, 53 VAC sections have been repealed in this proposal.

Advantages or disadvantages to the licensees: The advantage to the reduction in the number and complexity of regulation is the ease of reading and compliance for the applicant, the preceptor, and the licensee. There are no disadvantages.

Advantages or disadvantages to the public: There are no advantages or disadvantages to the public of reducing these regulations.

Estimated Impact:

A. Projected number of persons affected and their cost of compliance:

The approximate number of licensees affected by these regulations are as follows:

Nursing Home Administrators	716
Preceptors	166

There will be no cost for compliance by regulated entities or their employers. License renewal fees (\$125 per biennium) are not being changed, and there are no additional requirements which would add to the cost of providing health care services.

B. Cost to the agency for implementation:

The board will incur approximately \$1,000 in cost for printing and mailing Notices of Comment and final amended regulations to licensees and other interested parties. There will be no additional cost for conducting a public hearing, which will be held in conjunction with a scheduled board meeting. The board does not anticipate any additional costs for investigations or administrative proceedings against licensees for violations of these regulations.

C. Cost to local governments:

There will be no impact of these regulations on local government.

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 changes to the regulations on the licensure of nursing home administrators are pursuant to Executive Order 15 (94). They are intended to simplify and clarify the regulations and to eliminate redundancy and unnecessary requirements. Most of the proposed changes simply reorganize and reword the regulations into a more logical and understandable form, and fees are adjusted to keep revenues in line with costs.

A few minor changes are made in deadlines that will make compliance easier without reducing the effectiveness of the licensure program. For example, licensees will have 30 days rather than five days to report changes of address; the period when late renewal is allowed is extended from six months to one year; and licensees are allowed to carry forward 10 hours of continuing education credits into the next year.

The only truly substantive change is in the repeal of those sections specifying standards for continuing education. The board has determined that it would be better to approve by regulation courses offered by sponsors approved by the National Association of Boards of Examiners of Nursing Home Administrators or by an accredited educational institution.

Estimated economic impact. The rewritten regulations appear to be clearer and easier to follow. The economic value of improved clarity and ease of compliance will almost certainly be positive although its magnitude will be modest.

Relaxing the compliance dates for changes of address and late renewal would appear to have no cost but makes compliance marginally easier. Again, the savings are small but can be expected to be positive.

Allowing for 10 hours of CE credits to be carried over into the new year will not only reduce costs but could actually improve the quality of CE by allowing for more intensive courses to count for CE credit. It would seem highly unlikely that this change would have any negative impact on the quality and value of CE in maintaining nursing home administrator skills.

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Finally, removing the board and the department from the business of assessing the quality of CE programs appears to be a significant improvement. It is doubtful that the board could easily develop the same level of expertise about the value and quality of a given CE program as that available to the national association. This change can be expected to both reduce the department's costs and improve the general consistency and responsiveness of program evaluations. This change can be expected to have a significant positive net economic impact.

Businesses and entities affected. Nursing home administrators, approximately 882 individuals, and nursing homes will receive the direct benefits from the changes.

Localities particularly affected. No localities will be particularly affected by the changes.

Projected impact on employment. These changes will not have any net impact on employment.

Effects on the use and value of private property. There will not be any significant impact on the use and value of private property.

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

Summary:

The proposed amendments implement the recommendations of the Board of Nursing Home Administrators in its report pursuant to Executive Order 15 (94), which were to simplify and clarify regulations and eliminate redundant and unnecessary requirements. Less restrictive requirements are proposed for the definition of "full-time employment," for notification of a change of address, and for continuing education. Amendments also clarify application, licensure, and preceptorship requirements.

18 VAC 95-20-10. Definitions.

The following words and terms when used in this chapter shall have the definitions ascribed to them in § 54.1-3100 of the Code of Virginia:

Board

Nursing home

Nursing home administrator

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

"Accredited institution" means any degree-granting college or university accredited by the following: Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, Western Association of Schools and Colleges, and public schools accredited by the Virginia Department of

Education an accrediting body approved by the United States Department of Education or any diploma-granting program approved by the Virginia Board of Nursing.

~~"Applicant" means a person applying to sit for an examination or applying for licensure by the board.~~

~~"Administrator-in-training program (A.I.T.) A.I.T." means the apprenticeship program which consists of 2,080 hours of continuous training a person enrolled in the administrator-in-training program in nursing home administration in a licensed nursing home.~~

"Administrator-of-record" means the licensed nursing home administrator designated in charge of the general administration of the facility and identified as such to the facility's licensing agency.

~~"Administrator-in-training applicant" means a person applying for approval to enter the administrator-in-training (A.I.T.) program.~~

"Approved sponsor" means an individual, business or organization approved by the National Association of Boards of Examiners of Nursing Home Administrator or by an accredited education institution to offer continuing education in accordance with this chapter.

"Classroom hour" means 60 minutes of attendance in a group program for obtaining continuing education. (See Appendix III.)

"Continuing education" means the educational activities which serve to maintain, develop, or increase the knowledge, skills, and performance and competence generally recognized as relevant to the nursing home administrator's professional responsibilities.

~~"Department" means the Department of Health Professions.~~

~~"Direct supervision" means directing the activities and course of a subordinate's performance.~~

~~"Executive director" means the board administrator for the Board of Nursing Home Administrators.~~

~~"Formal program of learning" means a process that is designed and intended primarily as an educational activity and that complies with the applicable standards as defined by Part VIII of this chapter.~~

"Full-time employment" means employment of at least 37½ 35 hours per week.

~~"Group program" means an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants.~~

"Instructional design" means a plan that specifies the learning objectives of the program; the content of the program; the methods of presentation (case studies, lectures, work group, programmed instruction, use of audio or visual aids or group participation), and the method whereby the participant evaluates whether the learning objectives were achieved. Adequacy of technical knowledge

~~or skills in developing instructional design shall be demonstrated by appropriate experience or education of the presenter.~~

~~"Learning objectives" means specifications of what participants should gain as a result of completing continuing education courses.~~

~~"N.A.B." means the National Association of Boards of Examiners for Nursing Home Administrators.~~

~~"National examination" means a test used by the board to determine the competence of candidates for licensure.~~

~~"Nursing home administrator" means any individual licensed by the Board of Nursing Home Administrators.~~

~~"Nursing home" means any public or private facility required to be licensed as a nursing home under the provisions of Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 of the Code of Virginia and the regulations of the Board of Health.~~

~~"Practicum" means a course of study as part of a degree or post-degree program designed especially for the preparation of candidates for licensure as nursing home administrators that involves supervision by an accredited college or university of the practical application of previously studied theory. The practicum shall be served under a preceptor registered with the board.~~

~~"Preceptor" means a nursing home administrator currently licensed in Virginia approved and registered by the board to conduct an administrator-in-training (A.I.T.) program.~~

~~"Quality instruction" means instruction that is provided by teachers/presenters who are capable through background, training, education and experience of communicating effectively and providing an environment conducive to learning. Instructors shall be competent in the subject matter, skilled in the use of the appropriate teaching method or methods and prepared in advance.~~

~~"Sponsor" means an individual or business approved by the board to offer continuing education in accordance with this chapter.~~

~~"State examination" means a test used by the Board of Nursing Home Administrators to determine competency of a candidate relevant to regulations and laws in Virginia for purposes of licensure.~~

18 VAC 95-20-20. Legal base. (Repealed.)

~~The following legal base describes the authority of the Board of Nursing Home Administrators to prescribe regulations governing nursing home administrators in the Commonwealth of Virginia:~~

~~Title 54.1:~~

- ~~1. Chapter 1 (§ 54.1-100 through 54.1-114);~~
- ~~2. Chapter 24 (§ 54.1-2400 through 54.1-2403);~~
- ~~3. Chapter 25 (§ 54.1-2500 through 54.1-2510); and~~

~~4. Chapter 31 (§ 54.1-3100 through 54.1-3103) of the Code of Virginia.~~

18 VAC 95-20-30. Purpose. (Repealed.)

~~This chapter establishes the standards for qualifications, training, examination, licensure, and practice of persons as administrators-in-training; nursing home administrators; and preceptors in the Commonwealth of Virginia.~~

18 VAC 95-20-40. Applicability. (Repealed.)

~~Individuals subject to this chapter are (i) nursing home administrators, (ii) applicants, (iii) administrators-in-training, (iv) preceptors, and (v) approved sponsors of continuing education courses.~~

**PART II.
OPERATIONAL RESPONSIBILITIES.**

**ARTICLE 1.
POSTING OF LICENSE AND LICENSURE.**

18 VAC 95-20-50. License required. (Repealed.)

~~An individual shall have a valid nursing home administrator's license issued by the Board of Nursing Home Administrators in order to engage in the general administration of a nursing home.~~

**ARTICLE 2.
RECORDS.**

18 VAC 95-20-70. Accuracy of information.

A. All changes of mailing address or name shall be furnished to the board within ~~five~~ 30 days after the change occurs.

B. All notices required by law and by this chapter to be mailed by the board to any registrant or licensee shall be validly given when mailed to the latest address on file with the board and shall not relieve the licensee, trainee, or preceptor of the obligation to comply.

**PART III.
FEES.**

**ARTICLE 1.
INITIAL FEES.**

18 VAC 95-20-80. Initial Required fees.

The applicant shall submit all fees below which apply:

1. Application for A.I.T. program <i>application</i>	\$188 \$185
2. Preceptor application fee	\$125
3. Application fee for license to practice nursing home administration <i>Licensure application</i>	\$156 \$150
4. Fee to sit for state examination	\$125
5. Fee to sit for national examination	\$188
6. 4. Verification of licensure requests from other states	\$63. \$10

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5. Nursing home administrator license renewal	\$125
6. Preceptor renewal	\$60
7. Penalty for nursing home administrator late renewal	\$50
8. Penalty for preceptor late renewal	\$25
9. Nursing home administrator reinstatement	\$225
10. Preceptor reinstatement	\$110
11. Duplicate license	\$25
12. Duplicate wall certificates	\$50

~~ARTICLE 2.
RENEWAL FEES.~~

18 VAC 95-20-90. Renewal fees. (Repealed.)

~~Renewal fees received by the board no later than the expiration date (see 18 VAC 95-20-140).~~

~~The following annual fees shall be paid as applicable and received by the board no later than the expiration date for license:~~

1. Nursing home administrator license renewal	\$125
2. Preceptor registration renewal	\$63

18 VAC 95-20-100. Late renewal fees. (Repealed.)

~~The following late fees shall be paid as applicable and received by the board within six months following the initial expiration date (see 18 VAC 95-20-170):~~

1. Nursing home administrator late license renewal (\$125 renewal and \$50 penalty fee)	\$175
2. Preceptor late registration renewal (\$63 renewal and \$25 penalty fee)	\$88.

~~ARTICLE 3.
REINSTATEMENT FEES.~~

18 VAC 95-20-110. Reinstatement fees. (Repealed.)

~~The board, in its discretion, may reinstate a license that was not renewed within six months of the initial expiration date provided certain conditions are met.~~

~~NOTE: There may be additional fees for nursing home administrator license reinstatement depending upon the conditions approved by the board for reinstatement (see 18 VAC 95-20-200).~~

~~The board, in its discretion, may reinstate a preceptor registration that was not renewed within six months of the initial expiration date (see 18 VAC 95-20-210).~~

~~If the board approves reinstatement the following applicable reinstatement fees shall be paid:~~

1. Nursing home administrator reinstatement (See NOTE under 18 VAC 95-20-110)	\$225
2. Preceptor reinstatement	\$113

~~ARTICLE 4.
OTHER FEES.~~

18 VAC 95-20-120. Duplicates. (Repealed.)

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

1. Duplicate license	\$31
2. Duplicate wall certificates	\$63

18 VAC 95-20-130. Additional fee information.

- A. There shall be a fee of \$31 \$25 for returned checks.
- B. Fees shall not be refunded once submitted.
- C. *Examination fees are to be paid directly to the service or services contracted by the board to administer the examinations.*

~~PART IV II.
RENEWALS AND REINSTATEMENTS.~~

~~ARTICLE 1.
EXPIRATION DATES.~~

18 VAC 95-20-140. Expiration of nursing home administrator license and preceptor registration. (Repealed.)

~~The following shall expire on March 31 of each calendar year:~~

- 1. Nursing home administrator license; and
- 2. Preceptor registration.

18 VAC 95-20-150. Invalid license. (Repealed.)

~~A licensee who fails to renew his license by the expiration date shall have an invalid license. See 18 VAC 95-20-180 and 18 VAC 95-20-200.~~

18 VAC 95-20-160. Invalid registration. (Repealed.)

~~A preceptor who fails to renew his registration by the expiration date shall not serve as a preceptor. See 18 VAC 95-20-190 and 18 VAC 95-20-210.~~

~~ARTICLE 2.
RENEWAL AND REINSTATEMENT.~~

18 VAC 95-20-170. Renewal received by the board no later than the expiration date requirements.

- A. A person who desires to renew his license or preceptor registration for the next year shall, not later than the

expiration date: of March 31 of each year, submit a completed renewal application and fee.

- ~~1. Return the renewal notice;~~
- ~~2. Submit the applicable fee or fees prescribed in 18 VAC 95-20-90;~~
- ~~3. Notify the board of any changes in name and address; and~~
- ~~4. Submit the continuing education documentation prescribed in 18 VAC 95-20-480 through 18 VAC 95-20-550 of this chapter.~~

B. The documents required in subsection A above renewal application and fee shall be received in the board office or the bank lock box no later than the expiration date. Postmarks shall not be considered.

C. A nursing home administrator license or preceptor registration not renewed by the expiration date shall be invalid.

18 VAC 95-20-175. Continuing education requirements.

A. In order to renew a nursing home administrator license, an applicant shall attest on his renewal application to completion of 20 classroom hours of approved continuing education for each renewal year.

1. Up to 10 continuing education hours in excess of the number required may be transferred or credited to another year.
2. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following initial licensure.

B. In order for continuing education to be approved by the board, it shall be related to health care administration and shall be approved by the National Association of Boards of Examiners of Nursing Home Administrators or by an accredited institution.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files complete documentation of continuing education including evidence of attendance as provided by the approved sponsor for each course taken.
2. Evidence of attendance may be a wall certificate or an original computerized document provided by the approved sponsor and shall include:
 - a. Date or dates the course was taken;
 - b. Hours attended;
 - c. Participant's name; and
 - d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of

completion on forms provided by the board and evidence of attendance as provided by the approved sponsor.

18 VAC 95-20-180. Late renewal for nursing home administrator license.

A. A person who fails to renew his license or preceptor registration by the expiration date shall, within six months one year of the initial expiration date:

1. Return the renewal notice or request renewal in writing to the board; and
2. Submit the applicable renewal fee prescribed in 18 VAC 95-20-100; and penalty fee.
3. Notify the board of any changes in name and address; and
4. Submit the continuing education documentation prescribed in 18 VAC 95-20-480 through 18 VAC 95-20-550 for the previous calendar year.

B. The documents required in this subsection A of this section shall be received in the board office within six months one year of the initial expiration date. Postmarks shall not be considered.

~~B. A candidate for late renewal who does not meet the requirements in subsection A above shall reinstate as prescribed in 18 VAC 95-20-200.~~

18 VAC 95-20-190. Late renewal for preceptor registration. (Repealed.)

~~A. A person who fails to renew his preceptor registration by the expiration date shall, within six months of the initial expiration date:~~

- ~~1. Return the renewal notice or request renewal in writing to the board;~~
- ~~2. Submit the applicable fee prescribed in 18 VAC 95-20-100; and~~
- ~~3. Notify the board of any changes in name and address.~~

~~The documents required in this subsection A shall be received in the board office within six months of the initial expiration date. Postmarks shall not be considered.~~

~~B. A preceptor who fails to renew within six months of the initial expiration date shall reinstate as prescribed in 18 VAC 95-20-210.~~

18 VAC 95-20-200. Reinstatement for nursing home administrator license or preceptor registration.

A. The board, in its discretion, may reinstate a nursing home administrator license or preceptor registration that was not renewed as prescribed in 18 VAC 95-20-170 and 18 VAC 95-20-180 as follows: within one year of the initial expiration date.

B. An applicant for nursing home administrator license reinstatement shall apply on a reinstatement form provided by

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the board, submit the reinstatement fee, and provide one of the following:

- ~~1. Apply as a new applicant on forms provided by the board; and~~
- ~~2. Submit the applicable reinstatement fee prescribed in 18 VAC 95-20-110; and~~
- ~~3. Meet one or more of the following requirements as determined by the board at the time of application for reinstatement. All applications for reinstatement shall be reviewed by the Credentials Committee and the applicant shall be notified of which of the following requirements must be met:~~

~~a. Submit evidence of attendance at 20 classroom hours of continuing education for each year of expiration and for the year preceding expiration if continuing education requirements were not met for that year. (NOTE: See 18 VAC 95-20-500 B and C for possible exception to the 20-hour requirement);~~

~~b. Requalify for licensure under the requirements for initial licensure in effect at the time of application for reinstatement (see 18 VAC 95-20-220). (NOTE: Such requalification does not include retaking of the state and national examinations but may include more stringent qualifications than were in effect at the time of original application for licensure);~~

~~e. Retake and pass the state and national examinations (see fees under 18 VAC 95-20-80).~~

- ~~1. Evidence of attendance at 20 classroom hours of continuing education for each year since the last renewal.~~
- ~~2. Evidence of active practice in another state or U.S. jurisdiction or in the U.S. armed services during the period licensure in Virginia was lapsed.~~
- ~~3. Evidence of requalifying for licensure by meeting the requirements prescribed in 18 VAC 95-20-220 or 18 VAC 95-20-225.~~

~~C. An applicant for preceptor reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and meet the current requirements for a preceptor in effect at the time of application for reinstatement.~~

18 VAC 95-20-210. Reinstatement of preceptor registration. (Repealed.)

~~The board, in its discretion, may reinstate a preceptor registration that was not renewed as prescribed in 18 VAC 95-20-190 as follows:~~

~~An applicant for preceptor registration reinstatement shall:~~

- ~~1. Apply as a new applicant on forms provided by the board;~~

~~2. Meet the current requirements for preceptor approval in effect at the time of application for reinstatement (see 18 VAC 95-20-370 through 18 VAC 95-20-380); and~~

~~3. Submit the applicable reinstatement fee prescribed in 18 VAC 95-20-110.~~

PART V III. REQUIREMENTS FOR LICENSURE.

ARTICLE 1. QUALIFICATIONS.

18 VAC 95-20-220. Qualifications for initial licensure.

One of the following sets of qualifications is required for licensure as a *nursing home administrator*:

~~1. Degree and practicum experience:—a. Applicant holds. The applicant shall (i) hold a baccalaureate or higher degree in nursing home administration or a health administration field from an accredited college or university; and b. Applicant has (ii) have completed a 400-hour practicum (see 18 VAC 95-20-10) in nursing home administration as part of the degree program under the supervision of a preceptor registered by the board; and c. Applicant has (iii) have received a passing grade on the state examination and the national examination;—or;~~

~~2. Certificate program:—a. Applicant holds. The applicant shall (i) hold a baccalaureate or higher degree from an accredited college or university;—and b. Applicant has; (ii) have completed successfully a program with a minimum of 21 semester hours study in long-term care administration from an accredited college or university. The program shall be one that has been recognized by the board and shall include a minimum of 15 semester hours of academic courses related to long-term care administration; and c. Applicant has; (iii) have completed successfully a 400-hour practicum (see 18 VAC 95-20-10) as part of the certificate program under the supervision of a preceptor registered by the board; and d. Applicant has (iv) have received a passing grade on the state examination and the national examination;—or~~

~~3. Administrator-in-training program:—a. The applicant has shall have (i) successfully completed 2,080 hours, or the approved equivalent thereof (see 18 VAC 95-20-320), of continuous training in an A.I.T. program; which meets the requirements of Part IV (18 VAC 95-20-300 et seq.) of this chapter and b. Applicant has (ii) received a passing grade on the state examination and the national examination.~~

~~OR~~

~~4. Endorsement. The board may issue a Virginia license to any person by endorsement when the person:~~

18 VAC 95-20-225. Qualifications for licensure by endorsement.

~~The board may issue a license to any person who:~~

~~a- 1. Holds a current unencumbered, unrestricted license from any state or the District of Columbia;~~

~~b- 2. Meets one of the following conditions:~~

~~(1) a. Has practiced nursing home administration for one year; or~~

~~(2) Complies with all regulations of the Board of Nursing Home Administrators governing nursing home administration licensure in Virginia; or~~

~~(3) b. Has education and experience equivalent to qualifications required by this chapter and has provided written evidence of those qualifications at the time of application for licensure; and~~

~~e- 3. Has successfully completed the state examination.~~

~~ARTICLE 2.
APPLICATION PROCESS.~~

~~18 VAC 95-20-230. Application package.~~

~~A. An individual seeking licensure as a nursing home administrator, approval or registration as a preceptor, or seeking examination or reexamination shall submit simultaneously:~~

~~1. Application A completed application as provided by the board;~~

~~2. Additional documentation as may be required by the board to determine eligibility of the applicant; and~~

~~3. The applicable fee or fees prescribed in 18 VAC 95-20-80.~~

~~B. With the exception of school transcripts, examination scores, and verifications from other state boards, all parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year, after which time the application shall be destroyed and a new application and fee shall be required.~~

~~C. An applicant for examination shall submit the application package not less than 45 days prior to an examination date. The application package shall be received in the board office by the examination application deadline date. Postmarks shall not be considered. In exceptional circumstances and for good cause shown by the applicant, the board may waive the time requirement.~~

~~18 VAC 95-20-240. Incomplete application package. (Repealed.)~~

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

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

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

~~18 VAC 95-20-250. Receipt of application package. (Repealed.)~~

~~An applicant for examination shall submit the application package not less than 45 days prior to an examination date. The application package shall be received in the board office on the examination application deadline date. Postmarks will not be considered.~~

~~18 VAC 95-20-260. Waiver of time limits. (Repealed.)~~

~~The board may, for good cause, waive the time requirement in 18 VAC 95-20-250 for the filing of any application. The burden of proof which demonstrates good cause rests with the applicant.~~

~~ARTICLE 3.
GENERAL EXAMINATION REQUIREMENTS.~~

~~18 VAC 95-20-270. Failure to appear. (Repealed.)~~

~~The applicant shall forfeit the examination fee if unable to sit for the examination for any reason.~~

~~18 VAC 95-20-280. Reexamination. (Repealed.)~~

~~Any person failing an examination may reapply for a subsequent examination, and shall pay the examination fee prescribed in 18 VAC 95-20-80 with each application filed.~~

~~18 VAC 95-20-290. Scheduling early examinations Examination requirements.~~

~~A. An applicant may request in writing to take the scheduled examination most closely preceding the expected completion of the required formal education requirement or the A.I.T. program.~~

~~B. All such requests shall be in writing.~~

~~C. Approval of the written request by the board shall be required prior to submitting the application and fee for examination (see 18 VAC 95-20-230, 18 VAC 95-20-250, and 18 VAC 95-20-80).~~

~~D. Application for licensure shall be submitted after the applicant completes the qualifications for licensure.~~

~~PART VI IV.
ADMINISTRATOR-IN-TRAINING PROGRAM.~~

~~ARTICLE 1.
TRAINEE REQUIREMENTS AND APPLICATION PROCESS.~~

~~18 VAC 95-20-300. Administrator-in-training qualifications.~~

~~A. To be approved as an administrator-in-training, a person shall:~~

~~1. Have received a passing grade on a total of 60 semester hours of education from an accredited college or university;~~

~~2. Obtain a preceptor currently approved by and registered with the board to provide training;~~

~~3. Submit the fee prescribed in 18 VAC 95-20-80;~~

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4. Submit the application provided by the board; and
5. Submit additional documentation as may be required by the board to determine eligibility of the applicant.

B. With the exception of school transcripts, all required parts of the application package shall be submitted at the same time. An incomplete package shall be returned retained by the board for on year after which time the application shall be destroyed and a new application and fee shall be required.

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

ARTICLE 2. TRAINING PROGRAM.

18 VAC 95-20-310. Required hours of training.

A. The A.I.T. program shall consist of 2,080 hours or its approved equivalent (~~see 18 VAC 95-20-320~~) as prescribed in subsection B of this section of continuous training to be completed within 24 months. An extension may be granted by the board on an individual case basis.

~~18 VAC 95-20-320. Hours of credit.~~

B. An A.I.T. applicant with prior health care work experience may request approval to receive a maximum 1,000 hours of credit toward the total 2,080 hours as follows:

1. Applicant shall have been employed full-time for four of the past five consecutive years immediately prior to application as an assistant administrator or director of nursing. ~~2. The employment described above shall have been in a training facility as prescribed in 18 VAC 95-20-330.~~

- ~~3.~~ 2. Applicants with experience as a hospital administrator shall have been employed full-time for three of the past five years immediately prior to application as a hospital administrator-of-record or an assistant hospital administrator in a hospital setting having responsibilities in all of the following areas:

- a. Regulatory;
- b. Fiscal;
- c. Supervisory;
- d. Personnel; and
- e. Management.

C. *An A.I.T. shall be required to serve full-time weekday, evening, and weekend shifts to receive training in all areas of nursing home operation.*

18 VAC 95-20-330. Training facilities.

Training shall be conducted only in:

1. A nursing home, licensed by the ~~Department~~ Virginia Board of Health, ~~Commonwealth of Virginia~~; or

2. An institution licensed by the Virginia Mental Health, Mental Retardation and Substance Abuse Services Board in which long-term care is provided; or

3. A certified nursing home owned or operated by an agency of any city, county, or the Commonwealth or of the United States government; or

4. A certified nursing home unit located in and operated by a general or special hospital licensed under procedures of Rules and Regulations for the Licensure of ~~General and Special~~ Hospitals in Virginia (12 VAC 5-410-10 et seq.) of the Virginia Department of Health.

18 VAC 95-20-340. Supervision of trainees.

A. Training shall be under the direct supervision of a certified preceptor (~~see 18 VAC 95-20-370 and 18 VAC 95-20-380~~) registered by the board.

B. *A preceptor may supervise no more than two A.I.T.'s at any one time.*

18 VAC 95-20-350. Number of trainees. (Repealed.)

~~Not more than two A.I.T.'s may be supervised per approved and registered preceptor at any time.~~

18 VAC 95-20-360. Required shifts. (Repealed.)

~~An A.I.T. shall be required to serve full-time weekday, evening, and weekend shifts to receive training in all areas of nursing home operation.~~

ARTICLE 3. QUALIFICATIONS AND APPLICATION PROCESS TO TRAIN: PRECEPTORS.

18 VAC 95-20-370. Board approval and registration. (Repealed.)

~~An individual shall be approved by and registered with the board prior to serving as a preceptor.~~

18 VAC 95-20-380. Qualifications of preceptors.

~~The board shall approve and register only preceptors to give training who:~~

- ~~1. Have a full, unrestricted, and current Virginia nursing home administrator license;~~
- ~~2. Are employed full time in the facility where training occurs (see 18 VAC 95-20-330);~~
- ~~3. Have served for a minimum of two of the past three years immediately prior to the preceptorship as a full-time administrator in accordance with 18 VAC 95-20-330 or as an approved preceptor in another state;~~
- ~~4. Submitted the fee prescribed in subdivision 2 of 18 VAC 95-20-80;~~
- ~~5. Submitted the application provided by the board; and~~
- ~~6. Submitted additional documentation as may be required by the board to determine eligibility of the applicant.~~

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

EXCEPTION: Preceptors submitting information which documents preceptorship served in another state, may have the other state send information directly to the licensing authority. That policy is acceptable to the board.

To be registered by the board as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia nursing home administrator license and shall be employed full time for a minimum of two of the past three years immediately prior to the preceptorship as an administrator in a training facility as prescribed in 18 VAC 95-20-330; and
2. Meet the application requirements in 18 VAC 95-20-230.

ARTICLE 4.
ADMINISTRATION OF A.I.T. PROGRAM.

18 VAC 95-20-390. Training plan.

Prior to the beginning of the A.I.T. program, the preceptor shall develop and submit to the board for approval, a training plan which shall include and be designed around the specific training needs of the administrator-in-training. The training plan shall include the Core of Knowledge as defined by Title XVIII and Title XIX of the Social Security Act, 42 USC §§ 1395-1396, and published in the Federal Register on February 2, 1989, and the Domains of Practice as appended to this chapter. (See Appendices I and II.) The training plan developed by the board or an alternate plan may be used.

18 VAC 95-20-400. Progress reports Reporting requirements.

A. The preceptor shall maintain progress reports on forms prescribed by the board for each month of training.

B. The A.I.T.'s certificate of completion plus the accumulated original monthly reports shall be submitted by the preceptor to the board within 30 days following the completion of the A.I.T. program.

18 VAC 95-20-410. Certificate of completion. (Repealed.)

The A.I.T.'s certificate of completion plus the accumulated original monthly reports shall be submitted by the preceptor to the board within 30 days following the completion of the A.I.T. program.

18 VAC 95-20-420. Failure to submit report. (Repealed.)

If the preceptor fails to submit the reports required in 18 VAC 95-20-430, the A.I.T. shall forfeit all credit for training. The board may waive such forfeiture.

18 VAC 95-20-430. Termination of program.

A. If the A.I.T. program is terminated prior to completion, the trainee and the preceptor shall each submit the following information a written explanation of the causes of program termination to the board within five working days:

1. Preceptor:

- a. All required monthly progress reports prescribed in 18 VAC 95-20-400; and
- b. Written explanation of the causes of program termination.

2. A.I.T. The A.I.T. shall submit written explanation of the causes of program termination.

B. The preceptor shall also submit all required monthly progress reports completed prior to termination.

18 VAC 95-20-440. Inability of preceptor to serve Interruption of program.

A. If the program is interrupted because the approved and registered preceptor is unable to serve, the A.I.T. shall notify the board within five working days and shall obtain a new preceptor who is registered with the board.

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

C. If an alternate training plan is developed, it shall be submitted to the board for approval before the A.I.T. resumes training.

18 VAC 95-20-450. Credit for training. (Repealed.)

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

18 VAC 95-20-460. Alternate training plan. (Repealed.)

If an alternate training plan or set of goals is developed, it shall be submitted to the board for approval before A.I.T. resumes training.

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

18 VAC 95-20-470. Unprofessional conduct.

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

1. Conducting the practice of nursing home administration in such a manner as to constitute a danger to the health, safety, and well-being of the residents, staff, or public;
2. Demonstrated inability or unwillingness to maintain a facility in accordance with the Virginia Department of Health Rules and Regulations for the Licensure of Nursing Homes in Virginia;
3. 2. Failure to comply with federal, state, or local laws and regulations governing the operation of a nursing home;

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~~4. 3. Conviction of a felony related to the practice for which the license was granted or any misdemeanor involving moral turpitude;~~

~~5. 4. Failure to comply with any regulations of the board;~~

~~6. Failure to comply with continuing education requirements;~~

~~7. 5. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse;~~

~~8. Failure to comply with board's regulations on preceptorship while serving as a preceptor.~~

~~PART VIII. CONTINUING EDUCATION.~~

~~18 VAC 95-20-480. Prerequisite for renewal or reinstatement of license. (Repealed.)~~

~~As a prerequisite to renewal of a license or reinstatement of a license, each licensee shall be required to take continuing education related to health care administration. See 18 VAC 95-20-490 and 18 VAC 95-20-530 through 18 VAC 95-20-580.~~

~~18 VAC 95-20-490. Content of continuing education programs. (Repealed.)~~

~~Continuing education shall consist of training programs, seminars, workshops and courses taken at accredited institutions directly related to the following:~~

- ~~1. Nursing home administration;~~
- ~~2. Long-term care;~~
- ~~3. Resident care;~~
- ~~4. Physical resource management;~~
- ~~5. Laws, regulatory codes, and governing boards;~~
- ~~6. Courses to gain knowledge in departmental areas;~~
- ~~7. Core of Knowledge in Appendix I; and~~
- ~~8. Domains of Practice in Appendix II.~~

~~18 VAC 95-20-500. Continuing education requirements for each calendar year. (Repealed.)~~

~~A. An administrator who holds a license on January 1 of any calendar year shall attend 20 classroom hours of continuing education for that calendar year.~~

~~B. An administrator whose initial date of licensure is between April 1 and July 31 of any calendar year shall attend 10 classroom hours of continuing education for the calendar year in which initial licensure takes place.~~

~~C. An administrator whose initial date of licensure is between August 1 and December 31 of any calendar year shall not be required to attend continuing education for the calendar year in which initial licensure takes place.~~

~~D. An administrator may carry over a maximum of five excess classroom attendance hours to the next calendar year provided that the classroom attendance hours requirements prescribed in subsections A through C of this section are met first.~~

~~18 VAC 95-20-510. Retention of continuing education documentation. (Repealed.)~~

~~The licensee shall retain in his personal files complete documentation of continuing education as specified in subdivisions 1 and 2 of 18 VAC 95-20-520.~~

~~18 VAC 95-20-520. Audit. (Repealed.)~~

~~If contacted for an audit, the licensee shall forward to the board by the date requested the following:~~

- ~~1. Completed and signed affidavit of completion on forms provided by the board;~~
- ~~2. Evidence of attendance provided by the approved sponsor for each course taken. Evidence of attendance may be a wall certificate or an original computerized document provided by the vendor and shall include:
 - ~~a. Date or dates the course was taken;~~
 - ~~b. Hours attended;~~
 - ~~c. Participant's name;~~
 - ~~d. Approved sponsor's signature.~~~~

~~18 VAC 95-20-530. Effective through December 31, 1994. (Repealed.)~~

~~Credit shall be considered only for courses taken under sponsors approved by the board or courses taken from an accredited institution as defined in 18 VAC 95-20-10 or a state agency.~~

~~EXCEPTION: Credit shall be considered for courses taken in another state by Virginia licensed nursing home administrators when the sponsors of such courses are listed in good standing with the National Association of Boards of Examiners of Nursing Home Administrators.~~

~~18 VAC 95-20-540. Effective January 1, 1995. (Repealed.)~~

~~Credit shall be considered only for courses taken under sponsors approved by the board, approved by the National Association of Boards of Examiners of Nursing Home Administrators, or courses taken from an accredited institution as defined in 18 VAC 95-20-10.~~

~~18 VAC 95-20-550. Classroom hours. (Repealed.)~~

~~Only classroom hours shall be accepted. (See Appendix III.)~~

~~18 VAC 95-20-560. Credit. (Repealed.)~~

~~Credit shall only be given for 30-minute increments.~~

18 VAC 95-20-570. Continuing education hours. (Repealed.)

The continuing education hours shall be current to the calendar year in which they were required.

18 VAC 95-20-580. Credit allowance. (Repealed.)

Credit shall be allowed for the licensed nursing home administrator who is the presenter of a course prescribed in 18 VAC 95-20-490. Credit received by the presenter will be equivalent in classroom hours to the credit received by the participants. Credit shall only be given for the initial time that the course is presented in a calendar year.

**PART IX.
CONTINUING EDUCATION SPONSORS.**

**ARTICLE 1.
APPLICABILITY.**

18 VAC 95-20-590. Applicability. (Repealed.)

These regulations apply to individuals or businesses applying for approval and approved by the Board of Nursing Home Administrators to provide continuing education courses recognized for credit by the Board of Nursing Home Administrators.

EXCEPTION: Providers of courses do not have to have prior approval of the Virginia Board of Nursing Home Administrators if such courses are provided by sponsors listed in good standing with the National Association of Boards of Examiners of Nursing Home Administrators.

Courses provided by an accredited institution as defined in 18 VAC 95-20-10 and taken for credit do not have to have prior approval of the Virginia Board of Nursing Home Administrators.

**ARTICLE 2.
APPLICATION PROCESS.**

18 VAC 95-20-600. Application requirements. (Repealed.)

Individuals or businesses as required by 18 VAC 95-20-590 seeking registration as an approved sponsor of continuing education courses for licensed nursing home administrators shall apply for sponsor approval by the board as follows:

1. Submit a completed application on a form provided by the board;
2. Submit additional information as prescribed on the application to determine eligibility of the sponsor;
3. Submit applicable fee prescribed in 18 VAC 95-20-630 effective through December 31, 1994, and prescribed in 18 VAC 95-20-640 effective January 1, 1995.

18 VAC 95-20-610. Incomplete application package. (Repealed.)

All required parts of the application package shall be submitted at the same time. An incomplete package will not be considered.

18 VAC 95-20-620. Application deadline. (Repealed.)

An applicant for approved sponsorship shall submit the application package not less than 30 days prior to presenting a course. The application package shall be received by the deadline date. Postmarks will not be considered.

**ARTICLE 3.
FEES.**

18 VAC 95-20-630. Fees effective through December 31, 1994. (Repealed.)

- | | |
|---|-------|
| A. Initial Application for Sponsorship Approval | \$275 |
| B. Annual Renewal of Sponsorship Approval | \$200 |

18 VAC 95-20-640. Fees effective January 1, 1995. (Repealed.)

- | | |
|---|------|
| A. Initial Application for Sponsorship Approval | \$50 |
| B. Annual Renewal of Sponsorship Approval | \$25 |

**ARTICLE 4.
RENEWAL OF SPONSORSHIP APPROVAL.**

18 VAC 95-20-650. Expiration date. (Repealed.)

Sponsorship approval shall expire on December 31 of each calendar year. A renewal notice will be sent by the board to each registered sponsor within 60 days prior to expiration. All renewal notices required by this chapter shall be validly given when mailed to the latest address on file with the board and shall not relieve the sponsor from obligation to comply.

18 VAC 95-20-660. Renewals. (Repealed.)

A. Renewal fees received by the board no later than the expiration date shall be in the amount prescribed in subsection B of 18 VAC 95-20-630 through December 31, 1994, and prescribed in subsection B of 18 VAC 95-20-640 effective January 1, 1995. Postmarks shall not be considered.

B. An individual or company who fails to renew the sponsorship approval by the expiration date shall reapply for approval as a new sponsor and pay the fee prescribed in subsection A of 18 VAC 95-20-630 through December 31, 1994, and prescribed in subsection A of 18 VAC 95-20-640 effective January 1, 1995.

**ARTICLE 5.
QUALIFICATIONS FOR APPROVAL.**

18 VAC 95-20-670. Course content. (Repealed.)

A. If audited by the board, the sponsor shall document that the content of each course provided meets at least one

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of the requirements prescribed in 18 VAC 95-20-490 of this chapter.

~~NOTE: Self-study courses and home video courses shall not meet the requirements of this chapter. Courses designed to enhance the profitability or decorating needs of the nursing home facility shall not meet the requirements of this chapter.~~

~~B. If audited by the board, the sponsor shall document that the primary objective of the course shall be to increase the licensees' professional competence and skills and shall improve the quality of long-term care services rendered to the public as follows:~~

- ~~1. Sponsor shall establish learning objectives of each course as defined in 18 VAC 95-20-10;~~
- ~~2. Sponsor shall establish the level of knowledge of each course. Levels of knowledge shall be described as basic, intermediate, advanced or updated;~~
- ~~3. Sponsor shall establish method or methods of presentation as defined under "Instructional design" in 18 VAC 95-20-10;~~
- ~~4. Instructional design shall comply with 18 VAC 95-20-680 through 18 VAC 95-20-730.~~

18 VAC 95-20-680. Prerequisites. (Repealed.)

~~Sponsors shall state in writing the prerequisites for education, experience or both for all courses. Prerequisites shall be written in precise language so that potential participants can readily ascertain whether they qualify for the program or whether the program's specified level of knowledge is appropriate for them.~~

18 VAC 95-20-690. Presenters/Instructors. (Repealed.)

~~Sponsors shall maintain a Vita on each presenter and shall be able to demonstrate to the board if audited that each presenter is qualified in the subject matter (see "Qualified Instructors" in 18 VAC 95-20-10) and knowledgeable in instructional design as defined in 18 VAC 95-20-10.~~

18 VAC 95-20-700. Program materials. (Repealed.)

~~Sponsors shall be able to demonstrate to the board if audited that program materials are technically accurate, current and sufficient to meet the course's stated objectives.~~

18 VAC 95-20-710. Program presentation. (Repealed.)

~~A. Sponsors shall inform participants in writing prior to the date of the course of the following:~~

- ~~1. Learning objectives;~~
- ~~2. Prerequisites;~~
- ~~3. Level of knowledge of course;~~
- ~~4. Program content;~~
- ~~5. Nature and extent of advance preparation;~~
- ~~6. Method of presentation to be used;~~

~~7. Amount of continuing education credit in classroom hours;~~

~~8. Date or dates of course;~~

~~9. Registration policies or procedures, fees, refunds;~~

~~10. That the sponsor is approved by the Board of Nursing Home Administrators to provide courses for which credit shall be considered by the board; and~~

~~11. A written agenda of the program's activities.~~

~~B. Sponsors shall monitor group courses and accurately record attendance including participants who arrive late or leave before a program is completed. Credit for participants who arrive late or leave early shall be given at the discretion of the sponsor. Credit under such circumstances shall only be given in 30-minute increments. Sponsors shall be able to demonstrate to the board, if audited, the attendance recording procedure.~~

18 VAC 95-20-720. Evaluations. (Repealed.)

~~A. Sponsors shall evaluate instructors' performance at the conclusion of each program to determine continued use of such instructor. Sponsor shall be able to document the evaluation to the board if audited.~~

~~B. Sponsors shall solicit evaluations on the course and the instructor from the participants to include the following:~~

- ~~1. Were learning objectives met?~~
- ~~2. Were prerequisites necessary?~~
- ~~3. Did program materials contribute to the achievement of the learning objectives?~~
- ~~4. Did the program content comply with the stated contents in the course's advertisement?~~
- ~~5. Was the instructor qualified and knowledgeable in communicating effectively and competent in the subject matter?~~

18 VAC 95-20-730. Certificates of attendance or computerized record of attendance. (Repealed.)

~~A. Each attendee shall receive from the sponsor a certificate of attendance or an original computer document (See subsection B of 18 VAC 95-20-710). A sample copy of the certificate of attendance or original computer document for each course shall be retained and available for inspection during an audit.~~

~~B. The certificate of attendance or original computer document shall contain the following information:~~

- ~~1. Date or dates the course was taken;~~
- ~~2. Classroom hours of the course;~~
- ~~3. Participant's name;~~
- ~~4. Signature of authorized representative of the sponsor.~~

~~ARTICLE 6.
RECORD-KEEPING.~~

~~18 VAC 95-20-740. Documentation retention. (Repealed.)~~

~~A. The sponsor shall retain for three years complete documentation of each continuing education course provided as prescribed in 18 VAC 95-20-670 through 18 VAC 95-20-730.~~

~~B. If contacted for an audit, the sponsor shall forward by the date requested each item required in 18 VAC 95-20-670 through 18 VAC 95-20-730 which will be listed on the request for audit.~~

~~APPENDIX I.
CORE OF KNOWLEDGE.~~

~~The Core of Knowledge referred to in this program consists of the disciplines under the federal guidelines:~~

~~A. Applicable standards of environmental health and safety.~~

~~1. Knowledge of local, state, and federal regulations applicable to nursing homes.~~

~~2. Resources: Local and state health departments, local state regulatory agencies, and federal regulatory agencies.~~

~~B. Local and state health and safety regulations.~~

~~C. General administration.~~

~~D. Psychology of patient care. Resources: Staff, patient, and advisory physicians; social worker and patient's social history; principles and techniques of long term care nursing (director of nursing, nursing supervisors).~~

~~E. Principles of medical care. Resources: Medical director, staff, patient, and advisory physicians/medical colleges, especially those offering degree programs in health care administration or long term health care.~~

~~F. Personal and social care.~~

~~G. Therapeutics and supportive care and services in long term care. Resources: Dietary, physical therapy, occupational therapy, clinic, social services, volunteers, family, and pharmacist.~~

~~H. Departmental organization and management administrator, adviser physicians, director of nursing, food service manager, laundry and housekeeping supervisor, and maintenance supervisor.~~

~~I. Community Interrelationships.~~

~~1. Hospitals~~

~~2. Hospice programs~~

~~3. Other nursing homes~~

~~4. Home for adults~~

~~5. Retirement or life care communities~~

~~6. Home health care~~

~~7. Health Department~~

~~8. Social service agencies~~

~~9. Department for the Aging~~

~~10. Area Agencies on Aging~~

~~11. Clinics~~

~~12. Physicians~~

~~13. Medical societies~~

~~14. Regulatory agencies~~

~~15. Long term care professional associations~~

~~16. Advocates for the aged~~

~~17. Ombudsman~~

~~18. Volunteers~~

~~19. Educators~~

~~20. Schools~~

~~21. Religious communities.~~

~~APPENDIX II. DOMAINS OF PRACTICE.~~

CODE	SUBJECT CATEGORY
10.00.	PATIENT CARE
10.10.	Nursing Services
10.20.	Social Services
10.30.	Food Services
10.40.	Physician Services
10.50.	Social and Therapeutic Recreational Activities
10.60.	Medical Records
10.70.	Pharmaceutical Services
10.80.	Rehabilitation Services
20.00.	PERSONNEL MANAGEMENT
20.10.	Maintaining positive atmosphere
20.20.	Evaluation Procedures
20.30.	Recruitment of Staff
20.40.	Interviewing Candidates
20.50.	Selecting Future Candidates
20.60.	Selecting Future Employees
20.70.	Providing Staff Development & Training Activities
20.80.	Health and Safety
30.00.	FINANCIAL MANAGEMENT
30.10.	Budgeting
30.20.	Financial Planning
30.30.	Asset Management
30.40.	Accounting
40.00.	MARKETING AND PUBLIC RELATIONS
40.10.	Public Relations Activities
40.20.	Marketing Program
50.00.	PHYSICAL RESOURCE MANAGEMENT
50.10.	Building & Grounds Maintenance
50.20.	Environmental Services
50.30.	Safety Procedures and Programs
50.40.	Fire and Disaster Plans
60.00.	LAWS, REGULATORY CODES &

Proposed Regulations

~~GOVERNING BOARDS~~

- ~~60-10- Rules and Regulations~~
- ~~60-20- Governing Boards.~~

~~APPENDIX III. CONTINUING EDUCATION CONVERSIONS.~~

~~The regulations of the Board of Nursing Home Administrators require that all licensed administrators comply with the continuing education requirements of the board. Continuing education credit is calculated in classroom hours (the actual clock hours that one attends the class). However, some courses are taken at accredited colleges and universities where credit is given in semester or quarter hours and some vendors provide credit in CEUs (continuing education units). To assist in the conversion, the examples below are provided:~~

~~1 Semester Hour equals 15 classroom hours~~

~~1 Quarter Hour equals 12 classroom hours~~

~~Each CEU is given in decimal percentiles (.1, for example). Each CEU is multiplied by 10 to determine classroom hours. The calculation of .1 CEUs multiplied by 10 equals 1 classroom hour. Two full CEUs would equal 20 classroom hours, etc.~~

NOTICE: The forms used in administering 18 VAC 95-20-10 et seq., Regulations of the Board of Nursing Home Administrators, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

~~Application for Nursing Home Administrator Licensure (rev. 1/98).~~

~~Endorsement Certification Form (rev. 1/98).~~

~~Application for Administrator-in-Training (rev. 1/98).~~

~~Application for Preceptor Certification Registration (rev. 1/98).~~

~~Application for Continuing Education Sponsorship Approval~~

~~Instruction Sheet Application for Administrator-in-Training Program~~

~~Administrator-in-Training Checklist~~

~~Application for Reinstatement of License (rev. 1/98)~~

~~Renewal Notice and Application (rev. 7/97).~~

	<p>COMMONWEALTH OF VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS BOARD OF NURSING HOME ADMINISTRATORS 6606 W. BROAD STREET, 4TH FLOOR RICHMOND, VIRGINIA 23230-1717</p> <p>APPLICATION FOR LICENSURE</p>	
		(804) 662-9111

PLEASE PROVIDE A PHOTO I.D. WITH THIS APPLICATION.

Check or money order must accompany this application. Applications received without the appropriate fees will be returned to applicant. Make check or money order payable to the Treasurer of Virginia. **ALL FEES ARE NON-REFUNDABLE.**
LICENSURE FEE: \$150

DISCLOSURE OF SOCIAL SECURITY OR VIRGINIA DMV CONTROL NUMBER. In accordance with § 54.1-116 of the *Code of Virginia*, you are required to submit your Social Security Number or your control number* issued by the *Virginia* Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded. This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities. **NO LICENSE, CERTIFICATION OR REGISTRATION WILL BE ISSUED TO ANY INDIVIDUAL WHO HAS FAILED TO DISCLOSE ONE OF THESE NUMBERS.** *In order to obtain a Virginia driver's license control number, it is necessary to appear in person at an office of the Department of Motor Vehicles in Virginia. A fee and disclosure of your Social Security Number will be required.

I. IDENTIFYING INFORMATION: Name in full (please type or print)

LAST	FIRST	MIDDLE	MAIDEN
HOME ADDRESS	CITY	STATE	ZIP CODE
DATE OF BIRTH	SOCIAL SECURITY NUMBER OR	DMV CONTROL NUMBER	AREA CODE & TELEPHONE NUMBER

II. HOW DO YOU QUALIFY FOR LICENSURE: (Check the way in which you are applying for licensure). Check only ONE eventhough you may qualify for more than one.

ENDORSEMENT CERTIFICATE PROGRAM EDUCATION AIT PROGRAM

III. PROFESSIONAL LICENSURE IN ANOTHER JURISDICTION. If you are currently licensed or have been licensed in another jurisdiction, please list the information below and complete the licensure verification form for each and forward to the jurisdictions you have indicated. Use additional sheet(s) as necessary to list all licenses.

Jurisdiction	Date of Initial licensure	License #	Professional Area

SHOULD THE STATUS OF YOUR NURSING HOME ADMINISTRATORS LICENSE(S) IN ANOTHER JURISDICTION CHANGE PENDING CONSIDERATION OF THIS APPLICATION, YOU ARE REQUIRED TO INFORM THIS BOARD IN DETAIL IMMEDIATELY. THE FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR DENIAL OF YOUR APPLICATION OR SUBSEQUENT DISCIPLINARY ACTION.

IV. CERTIFICATE PROGRAM

NAME OF COLLEGE OR UNIVERSITY WHERE DEGREE WAS RECEIVED:

ADDRESS	CITY	STATE	ZIP CODE
DATE OF GRADUATION	DEGREE EARNED		

AREA OF COURSEWORK:
 Nursing Home Adm. Health Adm. Business Adm. Other _____

COLLEGE OR UNIVERSITY FOR CERTIFICATE:

ADDRESS	CITY	STATE	ZIP CODE
DATE OF GRADUATION	DEGREE EARNED		

AREA OF COURSEWORK:
 Nursing Home Adm. Health Adm. Business Adm. Other _____

NUMBER OF PRACTICUM HOURS: _____ SITE OF PRACTICUM: _____

NAME OF SUPERVISOR OF PRACTICUM: _____

V. EDUCATION

NAME OF COLLEGE OR UNIVERSITY:

ADDRESS	CITY	STATE	ZIP CODE
DATE OF GRADUATION	DEGREE EARNED		

AREA OF COURSEWORK:
 Nursing Home Adm. Health Adm. Business Adm. Other _____

Proposed Regulations

VI. AIT PROGRAM		
I have completed the AIT Program : Yes ___ No ___ . Number of Hours Completed _____ Date Completed _____		
VII. EXAMINATIONS		
A. National Board Scores		
Have you taken and passed the a National Board Examination ? Yes ___ No ___ .		
Name of examination taken: _____ Year Passed: _____ Raw Score: _____		
Is this your National Board Examination Application ? Yes ___ No ___ . Test Date Desired _____		
B. State Board Scores		
Have you taken and passed the Virginia State Board Examination ? Yes ___ No ___ .		
Year Passed: _____ Raw Score: _____		
Is this your Virginia State Board Examination application? Yes ___ No ___ . Test Date Desired _____		
* If applying through endorsement, Virginia state examination is required.		
VIII. REQUIRED DOCUMENTATION; The following documents must be on file or received in the Board's office before the application will be processed. Please indicate as stipulated below, if applicable.		
	ATTACHED	ON FILE WITH BOARD OFFICE
		OTHER : Explain
Certified letter of verification of practicum		
Notarized form of completion of AIT Program		
Certified college transcript(must state degree conferred)		
Endorsement certification form		
Verification of employment		
Certified Examination scores		
IX. AFFIDAVIT		
1. Have you ever been convicted of any criminal offense other than minor traffic violations ? Yes ___ No ___ . If yes, please explain:		
2. Have you ever had a license to practice nursing home administration lapse _____, voluntarily surrendered _____, placed on probation _____, suspended _____, revoked _____, or have you been otherwise found in violation of laws of any Board that regulates nursing home administrators? Yes ___ No ___ If yes, please explain:		
X. AFFIDAVIT (To be completed by a Notary Public)		
State of _____ County/City of _____		
I _____ am applying to be licensed to practice nursing home administration in the Commonwealth of Virginia.		
I will, at all times, abide by the laws of the Commonwealth and Regulations of the Board of Nursing Home Administrators governing such practice.		
I understand that should I violate any of these laws or regulations, that action may be taken against my license by due process.		
I hereby certify that all statements contained in this application, and all representations and documents presented by me in connection with this application are true and correct.		
		_____ Signature of Applicant
Subscribed and sworn to before me this _____ day of _____, 19 _____.		
My Commission expires _____.		
		_____ Notary Public
SEAL		

FOR OFFICE USE ONLY

	<p>COMMONWEALTH OF VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS BOARD OF NURSING HOME ADMINISTRATORS 6606 W. BROAD STREET, 4TH FLOOR RICHMOND, VIRGINIA 23230-1717</p> <p>APPLICATION FOR ADMINISTRATOR-IN-TRAINING</p>	
		(804) 662-9111

Check or money order must accompany this application. Applications received without the appropriate fees will be returned to applicant. Make check or money order payable to the Treasurer of Virginia. **ALL FEES ARE NON-REFUNDABLE.**
FEE \$185

DISCLOSURE OF SOCIAL SECURITY OR VIRGINIA DMV CONTROL NUMBER. In accordance with § 54.1-116 of the *Code of Virginia*, you are required to submit your Social Security Number or your control number* issued by the *Virginia* Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded. This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities. **NO LICENSE, CERTIFICATION OR REGISTRATION WILL BE ISSUED TO ANY INDIVIDUAL WHO HAS FAILED TO DISCLOSE ONE OF THESE NUMBERS.** *In order to obtain a Virginia driver's license control number, it is necessary to appear in person at an office of the Department of Motor Vehicles in Virginia. A fee and disclosure of your Social Security Number will be required.

I. IDENTIFYING INFORMATION: Name in full (please type or print)

LAST	FIRST	MIDDLE	MAIDEN
HOME ADDRESS	CITY	STATE	ZIP CODE
DATE OF BIRTH	SOCIAL SECURITY NUMBER OR DMV CONTROL NUMBER	AREA CODE & TELEPHONE NUMBER	

II. DISCLOSURE OF INFORMATION

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

 Signature of Applicant

 Date

III. TRAINING INFORMATION

PRECEPTOR'S NAME	FACILITY NAME		
FACILITY STREET ADDRESS	CITY	STATE/ZIP CODE	TELEPHONE NUMBER OF FACILITY ()

IV. EDUCATION INFORMATION

Have you received a passing grade on a total of 60 semester hours of education from an accredited college or university? Yes ___ No ___

V. MODIFIED PROGRAM REQUEST

Have you served as one of the following:

___ Employed full-time for four of the past five consecutive years immediately prior to application as an assistant administrator or director of nursing in a facility prescribed in 18 VAC 95-20-330 of the Board's regulation.

___ Employed as a hospital administrator full-time for three of the past five years immediately prior to application as a hospital administrator-of-record or an assistant hospital administrator in a hospital setting having responsibilities in all of the following areas:

1. Regulatory;
2. Fiscal;
3. Supervisory;
4. Personnel; and
5. Management

VI. REQUIRED DOCUMENTATION: The following documents must be on file or received in the Board's office before the application will be processed. Please indicate as stipulated below, if applicable.

	ATTACHED	ON FILE WITH BOARD OFFICE	OTHER: Explain
Official transcript of college credit			
Verification of employment for Modified AIT program			
Outline of proposed program			

CONTINUED ON BACK

revised 1/98

Proposed Regulations

VII. AFFIDAVIT

Have you ever been convicted of any criminal offense other than minor traffic violations ? Yes ____ No ____ . If yes, please attach an explanation.

VIII. AFFIDAVIT (To be completed in the presence of a Notary Public)

State of _____ County/City of _____

I _____ am requesting to be registered as an administrator-in-training in the Commonwealth of Virginia . I will at all times, abide by the laws of the Commonwealth and Regulations of the Board of Nursing Home Administrators governing such practice.

I understand that should I violate any of these laws or regulations, that action may be taken against my license by due process.

I hereby certify that all statements contained in this application, and all representations and documents presented by me in connection with this application are true and correct.

Signature of Applicant

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

My Commission expires _____.

Notary Public

SEAL

FOR OFFICE USE ONLY

	<p>COMMONWEALTH OF VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS BOARD OF NURSING HOME ADMINISTRATORS 6606 W. BROAD STREET, 4TH FLOOR RICHMOND, VIRGINIA 23230-1717</p> <p>APPLICATION FOR PRECEPTOR REGISTRATION</p>	
		(804) 662-9111

Check or money order must accompany this application. Applications received without the appropriate fees will be returned to applicant. Make check or money order payable to the Treasurer of Virginia. **ALL FEES ARE NON-REFUNDABLE.**
FEES: \$125

DISCLOSURE OF SOCIAL SECURITY OR VIRGINIA DMV CONTROL NUMBER. In accordance with § 54.1-116 of the *Code of Virginia*, you are required to submit your Social Security Number or your control number* issued by the *Virginia* Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded. This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities. **NO LICENSE, CERTIFICATION OR REGISTRATION WILL BE ISSUED TO ANY INDIVIDUAL WHO HAS FAILED TO DISCLOSE ONE OF THESE NUMBERS.** *In order to obtain a Virginia driver's license control number, it is necessary to appear in person at an office of the Department of Motor Vehicles in Virginia. A fee and disclosure of your Social Security Number will be required.

I. IDENTIFYING INFORMATION: Name in full (please type or print)

LAST	FIRST	MIDDLE	MAIDEN
HOME ADDRESS	CITY	STATE	ZIP CODE
DATE OF BIRTH	SOCIAL SECURITY NUMBER OR	DMV CONTROL NUMBER	AREA CODE & TELEPHONE NUMBER

II. DISCLOSURE OF INFORMATION

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

Signature of Applicant

Date

III. EMPLOYMENT INFORMATION

PLACE OF EMPLOYMENT AND ADDRESS	AREA CODE & TELEPHONE NUMBER	WILL TRAINING TAKE PLACE IN THIS FACILITY? YES ___ NO ___	EMPLOYED FULL-TIME IN THIS FACILITY? YES ___ NO ___
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IV. EMPLOYMENT HISTORY: Please provide attachments if additional space is needed

In the past 3 years immediately prior to this application, have you served a minimum of 2 years as a licensed administrator in a facility prescribed in 18 VAC 95-20-330 of the Board's regulations. YES ___ NO ___ If answer is yes, please provide letter of employment verification.

EMPLOYER/ ADDRESS	YOUR TITLE	IMMEDIATE SUPERVISOR	DATES OF EMPLOYMENT

V. PROFESSIONAL LICENSURE IN ANOTHER JURISDICTION. If you are currently licensed in another jurisdiction, please list the information below and complete the licensure verification form for each and forward to the jurisdiction you have indicated. If more space is needed, please provide attachments.

Jurisdiction	Date of Initial Licensure	License #	Professional Area

VI. REQUIRED DOCUMENTATION: The following documents must be on file or received in the Board's office before the application will be processed. Please indicate as stipulated below:

	ATTACHED	ON FILE WITH BOARD OFFICE	OTHER: Explain
Verification of Employment			
Verification of Licensure (Endorsement Form)			

CONTINUED ON BACK

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Proposed Regulations

VII. AFFIDAVIT

1. Have you ever been convicted of any criminal offense other than minor traffic violations ? Yes ____ No ____ . If yes, please explain:
2. Have you ever had a license to practice nursing home administration lapse ____, voluntarily surrendered ____, placed on probation ____, suspended ____, revoked ____, or have you been otherwise found in violation of laws of any Board that regulates nursing home administrators? Yes ____ No ____ If yes, please explain:

VIII. AFFIDAVIT (To be completed by a Notary Public)

State of _____ County/City of _____

I _____ am applying to be licensed as a preceptor in the Commonwealth of Virginia.
I will, at all times, abide by the laws of the Commonwealth and Regulations of the Board of Nursing Home Administrators governing such practice.

I understand that should I violate any of these laws or regulations, that action may be taken against my license by due process.

I hereby certify that all statements contained in this application, and all representations and documents presented by me in connection with this application are true and correct.

Signature of Applicant

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

My Commission expires _____.

Notary Public

SEAL

FOR OFFICE USE ONLY

	<p>COMMONWEALTH OF VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS BOARD OF NURSING HOME ADMINISTRATORS 6606 W. BROAD STREET, 4TH FLOOR RICHMOND, VIRGINIA 23230-1717</p>	
<p>APPLICATION FOR REINSTATEMENT OF LICENSE Fee \$225.00</p>		
<p>(804) 662-9111</p>		

Check or money order must accompany this application. Applications received without the appropriate fees will be returned to applicant.
 Make check or money order payable to the Treasure of Virginia. **ALL FEES ARE NON-REFUNDABLE.**

DISCLOSURE OF SOCIAL SECURITY OR VIRGINIA DMV CONTROL NUMBER. In accordance with § 54.1-116 of the *Code of Virginia*, you are required to submit your Social Security Number or your control number* issued by the *Virginia* Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded. This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities. **NO LICENSE, CERTIFICATION OR REGISTRATION WILL BE ISSUED TO ANY INDIVIDUAL WHO HAS FAILED TO DISCLOSE ONE OF THESE NUMBERS.** * In order to obtain a Virginia driver's license control number, it is necessary to appear in person at an office of the Department of Motor Vehicles in Virginia. A fee and disclosure of your Social Security Number will be required.

I. IDENTIFYING INFORMATION: Name in full (please type or print)

LAST	FIRST	MIDDLE	MAIDEN
HOME ADDRESS	CITY	STATE	ZIP CODE
DATE OF BIRTH	SOCIAL SECURITY NUMBER OR DMV CONTROL NUMBER		AREA CODE & TELEPHONE NUMBER

II. LICENSE INFORMATION: Name at the time of initial Virginia licensure

LAST	FIRST	MIDDLE	MAIDEN
FORMER VA. LICENSE NUMBER	EXPIRATION DATE		

III. EMPLOYMENT HISTORY: Please list all employment since expiration date. If more space is needed, please provide attachments.

FACILITY NAME	ADDRESS	CITY/STATE/ZIP CODE
JOB RESPONSIBILITIES:		DATES OF EMPLOYMENT
FACILITY NAME	ADDRESS	CITY/STATE/ZIP CODE
JOB RESPONSIBILITIES:		DATES OF EMPLOYMENT

IV. IMPAIRED PRACTICE: Should you need additional space for explanations, please provide attachments.

A. Have you ever been convicted of any criminal offense other than minor traffic violations? ___ Yes ___ No. If yes, please explain:

B. Have you ever had a license lapse, voluntarily surrendered, placed on probation, suspended, revoked, or have been otherwise disciplined, or ever been the subject of an investigation by any Board that regulates audiology and speech-language pathology? ___ Yes ___ No. If yes, please explain:

C. Is your license in good standing in all jurisdictions where licensed? ___ Yes ___ No If no, explain.

revised 1/98

CONTINUED ON BACK

V. AFFIDAVIT (To be completed in the presence of a Notary Public)

State of _____ County/City of _____

I, _____, being duly sworn, state that I am the person making application for reinstatement of licensure as a nursing home administrator in the Commonwealth of Virginia; that the statements contained herein are true in every respect; that I have complied with all requirements of the law; and that I have read and understand this affidavit.

Signature of Applicant

Subscribed and sworn to before me this _____ day of _____ 19 _____

My commission expires on _____.

Signature of Notary Public

FOR OFFICE USE ONLY

APPROVED

DATE OF REINSTATEMENT

LICENSE NUMBER

DATE LICENSE EXPIRED

BOARD OF OPTOMETRY

Title of Regulation: 18 VAC 105-20-10 et seq. **Regulations of the Virginia Board of Optometry (amending 18 VAC 105-20-10, 18 VAC 105-20-20, 18 VAC 105-20-40, 18 VAC 105-20-50, 18 VAC 105-20-60 and 18 VAC 105-20-70; adding 18 VAC 105-20-15 and 18 VAC 105-20-45; repealing 18 VAC 105-20-30).**

Statutory Authority: § 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: September 16, 1998 - 9 a.m.

Public comments may be submitted until September 18, 1998.

(See Calendar of Events section for additional information)

Basis: Chapters 24 (§ 54.1-2400 et seq.) and 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia provide the basis for this regulation.

Chapter 24 establishes the general powers and duties of the health regulatory boards including the power to establish qualifications for licensure and the responsibility to promulgate regulations.

Chapter 32 establishes the Board of Optometry, defines the practice of optometry, establishes standards for professional conduct and sets forth the authority for the board to license optometrists who meet certain qualifications.

Purpose: The purpose of these regulations is to establish criteria for licensure of optometrists by examination or endorsement, a process for applicants to follow, requirements for renewal and fees, and appropriate practice standards. Minimal qualifications and standards for ethical practice are essential for the health, safety, and welfare of patients who will receive optometric care in the Commonwealth.

Substance:

18 VAC 105-20-10. Proposed amendments: (i) eliminate the requirements for filing an application 30 days prior to examination and for including a photograph; (ii) add a requirement that persons who passed the National Board Examination prior to 1993 shall apply for licensure by endorsement; (iii) include the required parts of the examination in regulation; and (iv) eliminate the state examination to be replaced by a statement by the applicant attesting that he will comply with statutes and regulations governing the practice of optometry in Virginia.

18 VAC 105-20-15. Current requirements for licensure by endorsement have been separated from 18 VAC 105-20-10 and set forth in a new section with certain amendments including: (i) a requirement that the licensing or certification examination be comparable to the Virginia examination at the time of initial licensure; (ii) a requirement that the applicant not be a respondent in a pending or unresolved malpractice claim or board action; (iii) a requirement that the applicant provide proof of qualification for the administration of diagnostic pharmaceutical agents; and (iv) elimination of

the state examination to be replaced by a statement by the applicant attesting that he will comply with statutes and regulations governing the practice of optometry in Virginia.

18 VAC 105-20-20. Proposed amendments to the section on fees repeal outdated fees for years '94-'95 and '95-'96 and combine the application and initial licensure fees. There are also new fees proposed for reinstatement after disciplinary action and for review of continuing education courses given by providers seeking board approval.

18 VAC 105-20-30. This section on examinations is repealed and requirements are included in 18 VAC 105-20-10.

18 VAC 105-20-40. Proposed amendments eliminate unnecessary rules which are already covered by a prohibition on violating any statute or regulation governing the practice of optometry. The requirements for a complete prescription are eliminated in this section and included in a new section on Standards of Practice, 18 VAC 105-20-45. A proposed amendment clarifies the requirement for posting a chart or directory of the optometrists practicing in a location.

18 VAC 105-20-45. The proposed amendments list the requirements for a complete record of all examinations and treatments. There are several clarifications of current regulations but no new requirements are imposed. This section also includes the requirements for inclusion of sufficient information on a contact lens or spectacle lens prescription.

18 VAC 105-20-50. Proposed amendments would substitute the term "professional designation" for the current term "fictitious name" and restate several requirements for greater clarity and understanding.

18 VAC 105-20-60. A proposed amendment reduces the required notification of a change of name or address from five days to 30 days. Other proposed amendments specify that failure to renew a license may subject the licensee to disciplinary action and simplify the stated requirements for reinstatement of an expired license.

18 VAC 105-20-70. Several amendments are proposed in the section on continuing education. Currently, licensees are required to submit evidence of continuing education (CE) courses prior to renewal; proposed amendments require each licensee to attest to compliance and to retain documentation of CE which are required in a random audit of licensees. The Code of Virginia stipulates that the board may require 16 hours of CE; the board proposes to raise the current requirement of 12 hours to 14 hours. In addition, the board proposes to list the sponsoring organizations or entities which have board approval for offering continuing education. A sponsor not listed as approved can also submit a course for approval by paying a fee and meeting requirements of subsections D and E. Current regulations prohibit CE courses designed to promote specific instruments or products; a proposed amendment allows such courses if they are not given solely to promote the sale of such products.

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Issues:

Issue #1: Examination requirements.

After July 1, 1997, all optometrists licensed by examination in the Commonwealth are considered to be certified to administer diagnostic pharmaceutical agents (Chapters 365 and 436 of the 1996 Acts of Assembly). Therefore, the board found it necessary to amend its examination requirements to ensure that persons licensed on or after July 1 are competent to administer diagnostic pharmaceutical agents (DPAs). Since the licensure examination of the National Board of Examiners in Optometry now includes in Parts I and II questions which are designed to certify the competency of applicants in DPA, proposed regulations adopt all three parts as the board's approved examination for licensure. Individuals who were examined prior to August 1993, which is the time the DPA portion was added, must apply for licensure by endorsement.

Applicants who apply for licensure by endorsement must show evidence of passing Parts I and II of the National Board Examination taken after August 1993, or show other evidence of meeting requirements of the Code of Virginia for certification in DPAs.

For all applicants, the board proposes to eliminate the board jurisprudence examination and to replace it with a required statement that the applicant has read, understands and will abide by Virginia's optometry laws and regulations.

Advantages or disadvantages to licensees: The proposed amendments will conform the regulations to current law in Virginia which requires persons initially licensed to be certified to administer diagnostic pharmaceutical agents (DPAs). Currently licensed optometrists who did not qualify through the National Board Examination have been given several years to qualify for DPAs by passage of a special DPA examination offered in Virginia. Since DPA has been a part of the National Board Examination, the state DPA examination is being phased out.

The proposed elimination of the jurisprudence examination will enable applicants to become licensed as soon as all documentation of meeting requirements for licensure is complete with the board. Currently, the applicant must wait for the state exam to be offered, graded and results reported. Applicants will be licensed more quickly and, therefore, able to begin practice.

Advantages or disadvantages to the public: There should be an advantage to the public who will be assured that all optometrists initially licensed after July 1, 1997, will also be certified to use DPAs.

Issue #2: Continuing education requirements.

Under current regulations, licensees are required to submit the documentation of CE courses prior to renewal, resulting in a significant amount of time and resources being used to track and maintain certificates for completion of coursework. Licensees often have to call the board staff to check on the number of hours they have obtained or on whether a particular course has board approval. Proposed

amendments require licensees to retain their documentation of CE and to attest to compliance on a renewal form. A random audit of licensees will be required to ensure compliance with CE requirements.

In addition, the board proposes to list in regulation the sponsoring organizations or entities which have board approval for offering continuing education. A sponsor not listed as approved can submit a course for approval by paying a fee and meeting certain requirements. Current regulations prohibit CE course designed to promote specific instruments or products; a proposed amendment allows such courses if they are not given solely to promote the sale of such products.

For a few organizations, businesses, or other entities which offer continuing education, there may be a fiscal impact as a result of the proposed new fee of \$25 for course review and board approval. Currently, there are approximately 500 CE courses reviewed for approval each year by board members and staff. Under proposed regulations, which list providers that will have automatic approval for continuing education courses, it is estimated that only 30 or 40 courses will need to be reviewed. Those providers who are approved by regulation will be able to offer courses which have approval of the Virginia Board of Optometry without having to submit in advance all of the required paperwork. Other providers who will be required to pay \$25 for a course review are usually commercial vendors who are providing courses for a fee to the participants or are teaching the utilization of their product, equipment, or drug. Therefore, there should be no impact on the availability of affordable continuing education courses to licensees.

In response to a comment from a licensee who provides continuing education courses, the board considered the addition of two hours of continuing education to be used for practice management courses currently not accepted as approved CE. The board reviewed the types of courses offered and concluded that the purpose of continuing education is to provide ongoing assurance to the public that licensees remain clinically competent. Therefore, the alternative adopted is to increase the required hours to 14 (the Code of Virginia stipulates up to 16 hours may be required for renewal) and to permit optometrists to take courses which are offered by a very inclusive list of providers. The current exclusion on courses designed to promote the sale of specific instruments or products is relaxed to permit those courses if they are intended to instruct the optometrists on a new technique or instrumentation and not intended solely for the purpose of selling.

Advantages or disadvantages to licensees: Under the proposed regulations, licensees will have the responsibility for maintaining their own CE documentation and for keeping track of the number of hours obtained during a renewal cycle. By having that information at their place of business, optometrists will not have to seek assistance from board staff. By having a list of approved providers set in regulation, licensees will not have to wait for board approval of each individual CE course. A proposed amendment also

allows an optometrist to count the hours obtained in learning the use of new equipment or techniques from an approved provider, as long as the sole purpose of the course is not to promote the sale of a product.

Advantages or disadvantages to the public: Since continuing education is already statutorily mandated, there should be no advantages or disadvantages to the public.

Fiscal Impact:

A. Projected number of persons affected and their cost of compliance:

Licensed optometrists	1,285
Professional designations	113

There is no fiscal impact of proposed amendments to this chapter on optometrists or on the businesses being operated under a professional designation. No fees are being changed with the exception of a fee to reinstate after a disciplinary action.

For a few organizations, businesses, or other entities which offer continuing education, there may be a fiscal impact as a result of the proposed new fee of \$25 for course review and board approval. Currently, there are approximately 500 CE courses reviewed each year by members and staff for board approval. Under proposed regulations, which list providers that will have automatic approval for continuing education courses, it is estimated that only 30 or 40 courses will need to be reviewed. Those providers who are approved by regulation will be able to offer courses which have approval of the Virginia Board of Optometry without having to submit in advance all of the required paperwork. Other providers who will be required to pay \$25 for a course review are commercial vendors who are providing courses for a fee to the participants or are teaching the utilization of their product, equipment, or drug. Therefore, there should be no impact on the availability of affordable continuing education courses to licensees.

B. Cost to the agency for implementation:

The board will incur approximately \$1,000 in cost for printing and mailing Notices of Comment and final amended regulations to licensees and other interested parties. There will be no additional cost for conducting a public hearing, which will be held in conjunction with a scheduled board meeting. The board does not anticipate any additional costs for investigations or administrative proceedings against licensees for violations of these regulations.

C. Cost to local governments:

There will be no impact of these regulations on local government.

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 effects.

Summary of the proposed regulation. Pursuant to recommendations of the Executive Order 15 (94) report, DHP proposes to amend the current Regulations Governing the Practice of Optometry. The primary amendments proposed by DHP are as follows:

1. Requirements for licensure by examination would be amended to replace the requirement that applicants pass a Virginia Board of Optometry licensure examination with the requirement that they pass the National Board Examination, require applicants who passed the National Board Examination prior to 1993 to apply for licensure by endorsement, and replace the requirement that applicants take a jurisprudence examination with a requirement that they sign a statement attesting that they have read, understand, and will comply with all applicable statutes and regulations;
2. Requirements for licensure by endorsement would be amended to require that the out-of-state licensing examination must be comparable to the Virginia exam "at the time of initial licensure," stipulate that applicants must not be a respondent in a pending or unresolved malpractice claim, require applicants to provide proof of qualification for the administration of diagnostic pharmaceutical agents, and require applicants to sign a statement stipulating that they have read, understand, and will comply with all applicable statutes and regulations;
3. New fees would be instituted for reinstatement after disciplinary action (\$500) and for review of continuing education courses (\$25);
4. The period that licensees have to notify the board of changes of address would be increased from five to 30 days; and
5. Continuing education (CE) requirements would be amended to increase the number of mandatory credits per license period from 12 to 14 hours, replace the requirement that licensees submit evidence of having taken CE courses to the board with a requirement that they maintain such evidence and simply attest to fulfilling the CE requirement, and to provide a list of approved CE course sponsors.

Estimated economic impact. The proposed regulation is anticipated to have two primary economic effects: (i) it will alter the compliance costs faced by the regulated community, and (ii) it will affect the quality of optometric services provided in Virginia.

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Compliance costs. In some instances the proposed changes to the regulation will likely reduce compliance costs. Specifically, the proposal to eliminate the jurisprudence examination and replace it with a requirement that applicants simply attest to having read all applicable regulations and statutes will allow applicants to become licensed as soon as all documentation has been received by the board. Currently, applicants must wait for the state exam to be offered, graded, and results reported. Put simply, time is money and this proposed amendment will reduce the amount of time involved in obtaining licensure. In addition, the proposal to amend requirements for licensure by endorsement to require that the out-of-state licensure examination be comparable to the Virginia exam "at the time of initial licensure" will ensure that out-of-state examinations will be judged in the appropriate time context and, thereby, likely increase the number of individuals who qualify for licensure by endorsement. Also, the proposal to increase from five to 30 days the period that licensees have to notify the board of changes in address will increase regulatory flexibility and, thereby, decrease compliance costs. Finally, the proposal to reduce reporting requirements by allowing licensees to attest to completing CE requirements rather than submitting proof will also reduce compliance costs.

In other instances, the proposed changes to the regulation will likely increase compliance costs. Specifically, the proposal to increase the stringency of the requirements for licensure by endorsement (i.e., require that applicants attest to not being a respondent in a pending or unresolved malpractice claim and provide proof of qualification for the administration of diagnostic pharmaceutical agents) will likely prevent some applicants, who would otherwise qualify under current requirements, from obtaining licensure by endorsement. This increase in compliance costs must be weighed against the likely increase in service quality, discussed below, that will be obtained as a result of more stringent requirements, however. Additionally, the proposed new fees for reinstatement after disciplinary action (\$500) and for review of continuing education courses (\$25) will also increase compliance costs. Information provided by DHP indicates that this increase will be minimal, on the order of \$1,000 annually, however. Finally, the proposed increase in the number of mandatory CE credits from 12 to 14 hours per license period will also raise compliance costs. Here too, however, these additional compliance costs must be weighed against the likely increase in service quality that will occur as a result of more stringent CE requirements.

On net, these proposed amendments are likely to generate a modest increase in the compliance costs borne by the regulated community.

Quality of optometric services. The other economic effect of the proposed regulation is that it will likely affect the quality of optometric services offered in the Commonwealth. Specifically, two of the proposed amendments will likely increase the quality of optometric services offered in Virginia. The more stringent requirements for licensure by endorsement will ensure that applicants who qualify for such licensure have not been found negligent in some other jurisdiction and possess the requisite skills and training to

practice in Virginia. In addition, the increase in CE requirements will further ensure that licensees remain clinically competent.

On net, these proposed amendments are likely to generate a modest increase in the quality of optometric services offered in Virginia.

Businesses and entities particularly affected. The proposed regulation will particularly affect the 1,285 licensed optometrists and 113 licensed professional designations operating in Virginia, those seeking such licensure in the future, and members of the general public who make use of their services.

Localities particularly affected. No localities are particularly affected by the proposed regulation.

Projected impact on employment. The proposed regulation is not anticipated to have a significant effect on employment.

Effects on the use and value of private property. The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

Summary of analysis. The proposed regulation would make certain amendments to the current regulations governing the practice of optometry in Virginia. On net, these amendments are likely to (i) cause a modest increase in the compliance costs borne by the regulated community and (ii) induce a modest increase in the quality of optometric services offered in Virginia.

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

Summary:

Amendments to these regulations are proposed to implement the recommendations of the board in its report pursuant to Executive Order 15 (94), which were to simplify, clarify, and eliminate redundancy and unnecessary requirements. Specifically, the amendments: (i) provide a listing of approved providers of continuing education and eliminate the burden and expense of submitting for board approval the materials for each course offered; (ii) increase the number of mandatory CE credits per license period from 12 to 14 hours; and (iii) change the requirements for licensure by examination and endorsement.

18 VAC 105-20-10. Licensure qualifications by examination.

A. The applicant, in order ~~to be qualified to be examined by the board for licensure~~ *eligible for licensure by examination* to practice optometry in the Commonwealth, shall:

1. Be a graduate of a school of optometry ~~approved~~ *accredited* by the Council on Optometric Education; have the registrar of the school provide an official transcript ~~verifying graduation sent~~ *verifying graduation sent* to the board;
2. ~~File at least 30 days prior to the date of examination, on a form supplied by the board, a completed~~

~~application which shall have affixed securely in the space provided, two identical recent passport-type photographs of himself, not less than 2½ by 2½ inches in-size;~~

~~3. Submit 2. Request submission of an official report from the National Board of Examiners in Optometry of the scores a score received on all parts each required part of the examination of the National Board of Examiners in Optometry or other board-approved examination; and~~

~~4. 3. Submit a completed application and the prescribed examination fee.~~

~~B. If any applicant withdraws from the examination at least 30 days prior to the examination date, all but the prescribed administrative fee will be refunded. If the applicant withdraws in 30 days or fewer prior to the examination date, only the licensure fee will be refunded. If an applicant is unsuccessful in passing the examination, the applicant shall receive upon request a refund of the licensure fee.~~

~~C. The provisions for licensure by endorsement are established in this subsection.~~

~~1. When a license is issued without examination, subsections A, B, and D of this section may be waived once the board determines that the examination from the state from which the applicant is applying for endorsement was approximately comparable at the time of the initial licensure.~~

~~2. An application for licensure by endorsement shall be filed that certifies the following:~~

~~B. Applicants who passed the National Board Examination prior to August 1993 shall apply for licensure by endorsement as provided for in 18 VAC 105-20-15.~~

~~C. Required examinations.~~

~~1. For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the examination of the National Board of Examiners in Optometry as its written examination for licensure. After July 1, 1997, the board shall require passage as determined by the board of Parts I, II, and III of the National Board Examination.~~

~~2. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.~~

18 VAC 105-20-15. Licensure by endorsement.

~~A. An applicant for licensure by endorsement shall pay the fee as prescribed in 18 VAC 105-20-20 and file a completed application that certifies the following:~~

~~a. 1. The applicant has successfully completed an a licensing examination or certification in optometry in any state jurisdiction of the United States that is~~

~~approximately comparable to Virginia examination; at the time of initial licensure.~~

~~b. 2. The applicant has been engaged in active clinical practice for at least 36 months out of the last 60 months immediately preceding application;.~~

~~3. The applicant is not a respondent in a pending or unresolved malpractice claim.~~

~~4. Each jurisdiction in which the applicant is currently licensed has verified that:~~

~~a. The license is full and unrestricted, and all continuing education requirements have been completed, if applicable;~~

~~b. The applicant is not a respondent in any pending or unresolved board action;~~

~~e. The applicant has completed all continuing education requirements from the state in which he is currently licensed;~~

~~d. The applicant has been certified to be in good standing from each state in which he is currently licensed;~~

~~e. c. The applicant has not committed any act which would constitute a violation of § 54.1-3204 or § 54.1-3215 of the Code of Virginia, and is not the respondent in any pending or unresolved board action or malpractice claim;~~

~~f. d. The applicant has graduated from an accredited school or college of optometry.~~

~~5. The applicant shall also provide proof of competency in the use of diagnostic pharmaceutical agents (DPAs) which shall consist of a report from the national board of passing scores on all sections of Parts I and II of the National Board Examination taken in August 1993 or thereafter. If the applicant does not qualify through examination, he shall provide other proof of meeting the requirements for the use of DPA as provided in §§ 54.1-3220 and 54.1-3221 of the Code of Virginia.~~

~~6. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.~~

~~3. B. In the case of a federal service optometrist, the commanding officer shall also verify that the applicant is in good standing and provide proof of credentialing and quality assurance review to satisfy subdivisions 2 b, 2 c, 2 e, and 2 f compliance with applicable requirements of this subsection A of this section. The state board of optometry in which the federal service optometrist is currently licensed shall provide the remainder of information required from this subsection.~~

~~4. The applicant must take and pass the law portion of the Virginia State Board Examination.~~

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5. All appropriate fees must be paid as prescribed in 18 VAC 105-20-20.

D. C. In the event the examinations for initial licensure are determined not comparable, the board may require the applicant to take and pass a regional or national practical examination.

18 VAC 105-20-20. Fees.

The following fees are required: A. Required fees.

	Fiscal Years		
	94/95	95/96	Thereafter
Application for Licensure by Examination Fee	\$150	\$150	\$150
Initial application and licensure Fee (Prorated \$8/month prior to annual renewal)	\$95*	\$95*	\$95* \$245
Application for Licensure by Endorsement Fee (Includes initial licensure fee)	\$195	\$195	\$195
Examination Fee Endorsement of certification to use diagnostic pharmaceutical agents	\$100	\$100	\$100
Annual licensure renewal Fee (due October 31)	\$150	\$20	\$150
Late Fee renewal Administrative Fee Returned check	\$100	\$400	\$100
Professional designation application	\$25	\$25	\$25
Annual professional designation renewal (due October 31 per location)	\$100	\$100	\$100
Reinstatement application fee	\$50**	\$50**	\$50**
Reinstatement application after disciplinary action	\$250	\$250	\$250
Continuing education course review (per course)			\$500
Duplicate wall certificate			\$25
Duplicate License			\$25
			\$10

*Maximum

**per location

B. Unless otherwise specified, all fees are nonrefundable.

18 VAC 105-20-30. Examinations. (Repealed.)

A. For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the examination of the National Board of Examiners in Optometry as its written examination for licensure.

B. In addition, upon receiving a passing score on all parts of the examination of the National Board of Examiners in Optometry, an applicant shall pass a practical examination administered or accepted by the Virginia Board of Optometry. If the board chooses to use a regional or national practical examination, the applicant must pass this examination prior to licensure.

C. All candidates must take and pass the law portion of the examination.

D. A candidate may take or retake the practical examination or law examination upon payment of the prescribed examination fee.

18 VAC 105-20-40. Unprofessional conduct.

It shall be deemed unprofessional conduct for any licensed optometrist in the Commonwealth to violate any statute or regulation governing the practice of optometry or to fail to:

1. Fail to Use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."
2. Practice optometry under a name other than the optometrist's own name, except to the extent authorized by 18 VAC 105-20-50, "Professional Designations."
3. Fail to 2. Maintain records on each patient for not less than five years from the date of the most recent service rendered.

A complete record of all examinations and treatment made of a patient shall include but not be limited to:

a. During a comprehensive eye examination:

- (1) Case history;
- (2) Acuity measure;
- (3) Internal tissue health evaluation;
- (4) External tissue health evaluation;
- (5) Refraction;
- (6) Treatment, recommendations and directions to the patients, including prescriptions; and
- (7) Name of attending optometrist.

b. During a contact lens examination:

- (1) The requirements of subdivision 3 a of this section;
- (2) Assessment of corneal curvature;
- (3) Acuity through the lens;

~~(4) Directions for the care and handling of lenses and an explanation of the implications of contact lenses with regard to eye health and vision; and~~

~~(5) Name of attending optometrist.~~

~~c. During a follow-up contact lens examination:~~

~~(1) Assessment of fit of lens;~~

~~(2) Acuity through the lens;~~

~~(3) Such further instructions as in subdivision 3 b (4) above as necessary for the individual patient; and~~

~~(4) Name of attending O.D.~~

~~4. Fail to include the following information on a prescription for ophthalmic goods:~~

~~a. The printed name of the prescribing optometrist;~~

~~b. The address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation;~~

~~c. The name of the patient;~~

~~d. The signature of the optometrist;~~

~~e. The date of the examination, and, in the case of a spectacle prescription, an expiration date, if medically appropriate.~~

~~f. Any special instructions.~~

~~5. Refuse to provide a written prescription for spectacle lenses upon the request of the patient once all fees have been paid.~~

~~6. Refuse to provide a written prescription for contact lenses upon the request of the patient once all fees have been paid and the prescription has been established and the follow-up care completed. Follow-up care will be presumed to have been completed if there is no reappointment scheduled within 30 days after the last visit.~~

~~Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not be limited to the power, the fit, the material or manufacturer, the curve or appropriate designation, the diameter when appropriate, and medically appropriate expiration date.~~

~~7. Advertise in a manner that is false, misleading, or deceptive. False, misleading and deceptive advertising shall include, but not be limited to, when the price of ophthalmic goods or services (or both) is advertised, to fail to state what goods and services the advertised price includes.~~

~~8. Administer any diagnostic pharmaceutical agents, specified in § 54.1-3221 of the Code of Virginia, without certification of the Board of Optometry to use such agent.~~

~~9. Fail to 3. Post conspicuously in the entrance or reception an area of the optometric office which is conspicuous to the public, a chart or directory listing the names of all optometrists practicing at that particular location.~~

~~10. Violate any provision of this chapter pertaining to professional designations.~~

~~11. Fail to 4. Maintain patient records, perform procedures or make recommendations during any eye examination contact lens examination or treatment as necessary to protect the health and welfare of the patient.~~

~~12. Practicing on an invalid license shall occur when the requirements as set forth in 18 VAC 105-20-60 A and C or 18 VAC 105-20-70 A and B have not been met.~~

18 VAC 105-20-45. Standards of practice.

A. A complete record of all examinations and treatment of a patient shall include but not be limited to:

1. During a comprehensive eye examination:

a. Case history;

b. Acuity measure;

c. Internal health evaluation;

d. External health evaluation;

e. Treatment, recommendations and directions to the patients, including prescriptions; and

2. During an initial contact lens examination:

a. The requirements of a comprehensive eye examination;

b. Assessment of corneal curvature;

c. Assessment of corneal/contact lens relationship;

d. Acuity through the lens;

e. Directions for the care and handling of lenses and an explanation of the implications of contact lenses with regard to eye health and vision; and

3. During a follow-up contact lens examination:

a. Assessment of corneal/contact lens relationship and anterior segment health;

b. Acuity through the lens;

c. Such further instructions as in subdivision 2 of this subsection, as necessary for the individual patient; and

4. In addition, the record of any examination shall include the signature of the attending optometrist and, if indicated, refraction of the patient.

B. The following information shall appear on a prescription for ophthalmic goods:

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1. *The printed name of the prescribing optometrist;*
2. *The address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation;*
3. *The name of the patient;*
4. *The signature of the optometrist;*
5. *The date of the examination and an expiration date, if medically appropriate; and*
6. *Any special instructions.*

C. *Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not be limited to the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and medically appropriate expiration date.*

D. *A licensed optometrist shall provide a written prescription for spectacle lenses upon the request of the patient once all fees have been paid. In addition, he shall provide a written prescription for contact lenses upon the request of the patient once all fees have been paid and the prescription has been established and the follow-up care completed. Follow-up care will be presumed to have been completed if no reappointment is recommended within 60 days after the last visit.*

18 VAC 105-20-50. Professional designations.

A. *In addition to the name of the optometrist as it appears on the license, an optometrist may practice in an office that uses any one of the following professional designations:*

- ~~1. The name of the optometrist as it appears on his license or renewal certificate; or~~
1. *The name of an optometrist who employs him and practices in the same office; or*
2. *A partnership name composed of some or all names of optometrists practicing in the same office; or*
3. *A fictitious name professional designation, if the conditions set forth in subsection B of this section are fulfilled.*

B. *Optometrists licensed in this Commonwealth who practice as individuals, partnerships, associations, or other group practices may use a fictitious name professional designation for the optometric office in which they conduct their practices; provided the following conditions are met:*

1. *Each fictitious name professional designation shall be registered with the board by a licensed optometrist, who must be associated with the optometric office has an ownership or equity interest in the optometric practice and who must practice in any location with that registered designation and who shall assume responsibility for compliance with this section. Each fictitious name professional designation shall be approved by the board and a fee shall be paid as prescribed by board regulations prior to use of the name. Names which, in*

the judgment of the board, are false, misleading, or deceptive will be prohibited.

2. *No licensed optometrist may, at any time, register to practice optometry under more than one ~~fictitious name~~ professional designation.*

3. *All advertisements, including but not limited to signs, printed advertisements, and letterheads, shall contain the word "optometry" or reasonably recognizable derivatives thereof unless the name of the optometrist is used with the ~~fictitious name~~ professional designation with the O.D. designation, Doctor of Optometry or optometrist.*

4. *In the entrance or reception area of the optometric office, a chart or directory listing the names of all optometrists practicing at that particular location shall be kept at all times prominently and conspicuously displayed.*

5. *The names of all optometrists who practice under the ~~fictitious name~~ professional designation shall be maintained in the records of the optometric office for five years following their departure from the practice.*

~~6. Subsequent to the administration of any optometric service, the optometrist of record shall place his name in the record of the patient following a description of the service rendered. If the treatment is rendered by an optometrist other than the optometrist of record, the name of that optometrist shall be placed in the record of the patient.~~

~~7.~~ 6. *The name of the licensed optometrist providing care shall appear on the initial statement all statements of charges and on the receipts given to patients.*

~~8. No fictitious name may be used~~ 7. *An optometrist may use a professional designation which contains the name of an inactive, retired, removed, or deceased optometrist, except that for a period of no more than one year from the date of succession to a practice, an optometrist may list the name of the inactive, retired, removed, or deceased optometrist, and so long as he does so in conjunction with his own name, together with the words, "succeeded by," "succeeding," or "successor to."*

18 VAC 105-20-60. Renewal of licensure; reinstatement; renewal fees.

A. *Every person authorized by the board to practice optometry shall, on or before October 31 of every year, submit a completed renewal application and pay to the executive director of the Board of Optometry the prescribed annual licensure fee.*

B. *It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current address. All changes of mailing address or name shall be furnished to the board within five 30 days after the change occurs. All notices required by law or by these rules and regulations are to be deemed to be validly tendered when mailed to the*

address given and shall not relieve the licensee of the obligation to comply.

~~C. It shall be the duty of each person so licensed to return the renewal application with the prescribed fee prior to the expiration of their license postmarked no later than October 31. Upon expiration of the license, the executive director of the board shall notify the licensee of expiration and reinstatement procedures. The license of every person who does not return the completed form and fee by October 31 of each year shall may be extended for 30 days until November 30 and may be renewed by paying the prescribed late fee, postmarked no later than November 30, provided the requirements of 18 VAC 105-20-70 have been met. After November 30, an unrenewed license is invalid. Failure to renew a license may subject the licensee to disciplinary action by the board. The executive director may grant reinstatement provided that:~~

1. The applicant can demonstrate continuing competence;

~~that~~ 2. The applicant has satisfied requirements for continuing education during the lapsed period; and

~~that~~ 3. The applicant has paid all unpaid renewal fees from the time the license lapsed, and the prescribed reinstatement fee. ~~In addition to the foregoing reinstatement procedure, the failure to renew a license may subject the licensee to disciplinary action by the board.~~

D. The board may, ~~in its discretion,~~ require an applicant who ~~has allowed his license to expire and who cannot satisfy 18 VAC 105-20-10 and 18 VAC 105-20-30 and the requirement of subsection C of 18 VAC 105-20-60 of this chapter, demonstrate continuing competency to pass all or parts of the written examination of the National Board of Examiners in Optometry or the practical examination administered or accepted by the board, or both board-approved examinations.~~

18 VAC 105-20-70. Continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of ~~42~~ 14 hours of continuing education taken by the applicant during the previous license period.

~~B. It shall be the responsibility of each licensee to submit evidence substantiating attendance of continuing education courses, as required by subsection A of this section, no later than October 31 of the license period. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to October 31 unless an extension or waiver has been granted by the Continuing Education Committee. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses.~~

C. An approved continuing education course or program shall be sponsored by one of the following:

1. *The American Optometric Association and its constituent organizations.*
2. *Regional optometric organizations.*
3. *State optometric associations and their affiliate local societies.*
4. *Accredited colleges and universities providing optometric or medical courses.*
5. *The American Academy of Optometry and its affiliate organizations.*
6. *The American Academy of Ophthalmology and its affiliate organizations.*
7. *The Virginia Academy of Optometry.*
8. *Council on Optometric Practitioner Education (C.O.P.E.).*
9. *State or federal governmental agencies.*
10. *College of Optometry in Vision Development.*
11. *Specialty organizations.*
12. *Journals or optometric information networks as recognized by the board.*
13. *Optometric Extension Program.*

~~E. D. For board approval of courses offered by other sponsors, the board will review courses for acceptability for purposes of continuing education requirements if the course review fee as prescribed in 18 VAC 105-20-20 has been paid and the following information is provided:~~

1. The title of the course;
2. The sponsoring organization(s);
3. The name of the lecturer;
4. The qualifications of the lecturer;
5. An outline of the course's content;
6. The length of the course in clock hours;
7. The method of certification of attendance or completion if offered as a correspondence course; and
8. Number of credit hours requested.

~~D. The titles of all~~ E. Courses approved by the board will be kept on a list maintained by the board. All courses approved by the board shall pertain directly to the care of the patient.

Courses excluded by the board shall include:

1. Courses which are *solely* designed to promote the sale of specific instruments or products;
2. Courses offering instruction on augmenting income; and
3. Courses which are neither advertised nor in fact available to all optometrists ~~or any courses for which~~

Proposed Regulations

~~there is no independent assurance that no part of the educational session is devoted to the promotion of specific instruments, products, or marketing philosophies.~~

~~E. When the annual license fee is submitted to the executive director of the board, the licensee shall enclose with it the required forms to indicate fulfillment of the continuing education requirements for the previous period. All continuing education must be completed prior to October 31 unless extension or waiver has been granted by the Continuing Education Committee. In the event that continuing education has not been completed by October 31, the executive director of the board shall notify the licensee that his license has lapsed. The board may reinstate the license, upon showing of disability or undue hardship, or upon showing that the licensee has complied with the requirements of subsection B of this section.~~

NOTICE: The forms used in administering 18 VAC 105-20-10 et seq., Regulations of the Virginia Board of Optometry, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

~~Application for License to Practice Optometry.~~

~~Diagnostic Pharmaceutical Agents Application.~~

~~Verification of Licensure Instructions for Applicant.~~

~~Application for Approval of Continuing Education Course.~~

~~Application for Reinstatement of License.~~

~~Application for Professional Designation.~~

~~Renewal Notice and Application.~~

Instructions to Applicant (eff. 3/95).

Application for a License to Practice Optometry (eff. 3/95).

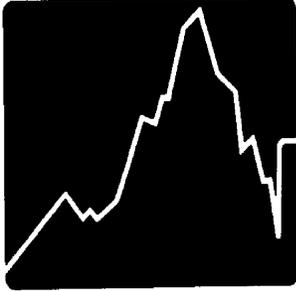
Diagnostic Pharmaceutical Agents Endorsement Application (eff. 7/95).

Application for Approval of a Continuing Education Course (eff. 3/95).

Application for Professional Designation (eff. 1/98).

Application for Reinstatement of License (eff. 3/95).

Renewal Notice and Application (eff. 7/97).



**COMMONWEALTH OF VIRGINIA
BOARD OF OPTOMETRY**

**Department of Health Professions
6606 West Broad Street, Fourth Floor
Richmond, Virginia 23230-1717
(804) 662-9910**

INSTRUCTIONS TO APPLICANT

Send one copy of this form to each Board by which you are, or have been, licensed.

TO: _____

FROM: THE VIRGINIA BOARD OF OPTOMETRY

_____ has applied for certification and licensure as an optometrist in Virginia.

1. Certificate No: _____ Licensure Date: _____

2. Basis for Certification: _____ National Board Examination
_____ Oral Examination
_____ Other

3. Has this certificate/license ever been suspended, revoked or otherwise disciplined?

_____ YES _____ NO, If yes, please provide details.

4. Is applicant currently licensed? _____ YES _____ NO

5. Does your Board endorse this applicant for licensure in Virginia?

_____ YES _____ NO

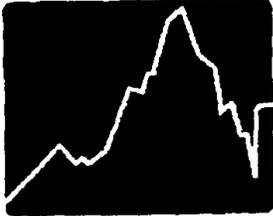
STATE SEAL

Signature of Authorized Person

Title

Date

Proposed Regulations

	<p>COMMONWEALTH OF VIRGINIA</p> <p>BOARD OF OPTOMETRY</p> <p>Department of Health Professions 6606 West Broad Street, 4th Floor Richmond, Virginia 23230-1717 (804) 662-9910</p>
---	---

APPLICATION FOR A LICENSE TO PRACTICE OPTOMETRY

Please check one:

- LICENSURE BY EXAMINATION (send the Examination fee of \$150 and Licensure Fee prorated at \$8.00 for each month prior to October).
- LICENSURE BY ENDORSEMENT (send the Licensure by Endorsement of \$195 which includes initial Licensure Fee).

PLEASE INDICATE WHICH CLINICAL SKILLS PRACTICAL EXAM YOU HAVE TAKEN OR PLAN TO TAKE:	
<input type="checkbox"/> NBEO	<input type="checkbox"/> NERCOATS
<input type="checkbox"/> DATE _____	PASSPORT TYPE PHOTO
EXAM LOCATION _____	
VA LAW EXAM - RICHMOND, VA	
DATE _____	

Each question must be answered fully, truthfully and accurately. If the space for any answer is insufficient, the applicant must complete his/her answer on a rider signed by him/her specifying the number of question to which it relates and enclose with this application. DO NOT STAPLE ENCLOSURES TO THIS APPLICATION BLANK.

I hereby make application for issuance to me of a license to practice optometry in the Commonwealth of Virginia, all in accordance with and subject to the regulations of the Board of Optometry and the laws governing the practice of optometry in Virginia.

1. APPLICANT - Please provide the information requested below. (Print or Type) Use full name, not initials. ALL SECTIONS MUST BE COMPLETE			
Name (Last, First, M.I., Suffix, Maiden)		Social Security Number	Graduation Date
Street Address	City	State	Zip Code
			Area Code/Telephone No.
Date of Birth	Place of Birth	Prof. School Degree	School, City, State
Date NBEO Parts I & II Taken		Location	

Have you ever been known by any other name? Yes ___ No ___. If yes, state in full every other name by which you have been known, the reason therefore, and inclusive dates so shown. If change was made by court order, enclose herein a Certified Copy of such order. _____

FOR OFFICE USE ONLY APPLICANT #	FEES	SCORES	LICENSE #	DATE ISSUED
_____	Exam _____	_____	_____	_____
	Lic. _____	_____		
	DPA _____	_____		

Effective 2-1-05

Proposed Regulations

2. Name two persons who will always know your address:

 (Name)

 (Address)

 (City, State, Zip Code)

 (Name)

 (Address)

 (City, State, Zip Code)

3. Professional Experience. (Provide a complete statement in reverse chronological order of applicant's entire career.)

Inclusive Dates		Name of Practice and Address	Type of Activity	Status of Candidate (Employee, Owner, Partner)
Began	Ended			

4. Membership in Societies or Association: (Professional, Scientific or Technical)

COLLEGES ATTENDED

5. Name and location of institution attended: (Include City and State) Period of Attendance
(Example: Sept. 1991 to June 1992)

1st year _____ _____

2nd year _____ _____

3rd year _____ _____

4th year _____ _____

I received the degree of _____ from _____ on the _____ day of _____, 19_____.

OPTOMETRIC EDUCATION

6. List in chronological order months, years and schools of optometry

From	To*	Name of School of Optometry	Degree
_____	_____	_____	_____
_____	_____	_____	_____

* (For Example: 4-9-90 to 6-1-92)

In addition to the above, I am enclosing official transcripts of my school of optometry credits to date. In the event I am a current year graduate, arrangements will be made to have my school of optometry send final grades when completed to the Office of the Board.

Proposed Regulations

I am licensed to practice optometry in the following jurisdictions and no others.

Jurisdiction	How Licensed	License Number	Date of Issuance	Years of Practice

ALL QUESTIONS MUST BE ANSWERED. If any of the following questions is answered YES, explain and substantiate with available documentation. Letters must be submitted by any treating professionals regarding treatment. These shall include diagnosis, treatment, and prognosis.

8. Have you ever failed the optometry examination given by another jurisdiction? Yes No

If yes, they are as follows and no others: (Give dates and jurisdiction).

9. Have you been refused an optometry examination given by another jurisdiction? Yes No

If yes, they were as follows and no others: (Give dates and jurisdiction).

10. Have you ever been reprimanded, had your license suspended, or canceled, or revoked by any jurisdiction? Yes No

If yes, give jurisdiction, reasons and dates _____

11. Have you ever been convicted of a violation of or pled Nolo Contendere to any federal, state, or local statute, regulation, or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence.) Please provide written statement of explanation. Yes No

12. Have you had any malpractice suits brought against you in the last ten years? If yes, how many, and provide a letter explaining each case. Yes No

13. Have you, within in the last two (2) years, received treatment for/or been hospitalized for a nervous, emotional, or mental disorder which could impair your practice? If yes, please provide a letter from your treating professional summarizing diagnosis, treatment, and prognosis. Yes No

14. Do you have a physical disease or diagnosis which could affect your performance of professional duties? If yes, please provide a letter from the treating professional. Yes No

15. Have you, within the last two (2) years, been treated by, consulted with or been under the care of a professional for any substance abuse? If yes, please provide a letter from the treating professional. Yes No

16. Have you, within the last five (5) years, been adjudged mentally incompetent or been committed to a mental institution? If yes, please provide details. Yes No

Proposed Regulations

7. In addition to the foregoing, I add the following:

- (a) I have read the laws and regulations of the Virginia Board of Optometry. I solemnly declare upon my honor that if granted a license to practice optometry in Virginia, I will respectfully comply with any law or regulation governing the practice of optometry in the Commonwealth, and will do my best to uphold and maintain the ethics of the profession.
- (b) I hereby give permission to the Virginia Board of Optometry to secure additional information concerning me or any statement in this application from any person or any source the Board may desire. I further agree to submit to questioning by the Board or any Agent thereof, and to substantiate my statements if desired by the Board.
- (c) I shall present any credentials required or requested by the Board.
- (d) I HAVE ATTACHED A MONEY ORDER OR CHECK IN THE AMOUNT OF \$ _____, MADE PAYABLE TO THE TREASURER OF VIRGINIA.
- (e) I hereby certify that in applying to the Virginia Board of Optometry for a license to practice optometry in Virginia, I have made no fraudulent or deceitful statement, nor have I made any misrepresentation of a material fact. I agree that if I am granted a license I will practice my profession of optometry in an ethical manner; that I will not participate directly in any illegal or unethical modes of practice; that I will not practice optometry under a false or assumed name; that I will not knowingly enter the employment of or the association with any person, firm or corporation engaged in the practice of optometry contrary to the laws of the Commonwealth of Virginia; I further certify that I will at all times obey the regulations of the Virginia Board of Optometry and the laws of the Commonwealth of Virginia relating to the practice of optometry.
- (f) I, _____, the applicant herein, depose and say that all facts, statements, and answers contained in this application are true and correct; I am not omitting any information which might be of value to this Board in determining my qualifications and character, whether it is called for or not; and I agree that any falsification, omission, or withholding of information of facts concerning my qualification as an applicant shall be sufficient grounds for the suspension, cancellation, or revocation of my Virginia Board of Optometry License even though it is not discovered until after issuance.

Applicant's Signature

State _____ City/County _____

Before me, the undersigned authority, on this day personally appeared _____ who after being duly sworn by me on his or her oath that all facts, statements, and answers contained in this application are true and correct in every respect, and that the attached photograph is a true likeness of the applicant.

Applicant's Signature (Signed in presence of Notary)

Sworn and subscribed to before me this _____ day of _____, 19____, to certify which witness my hand and official seal of office.

Notary Public

My Commission Expires _____.

{SEAL}

Proposed Regulations

In accordance with Section 54.1-116 of the *Code of Virginia* you~~s~~ are required to submit your Social Security Number or your **Virginia** control number* issued by the Virginia Department of Motor Vehicles. Failure to do so will cease the processing of your application. Fees will not be refunded.

This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as are provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities.

Please indicate you Social Security or Virginia control number below:

_____ - - - - - _____ - - - - - _____

No license certificate or registration will be issued to any individual who has failed to disclose one of these identifiers.

*In order to obtain a Virginia drivers license control number it is necessary to appear in person at an office of the Department of Motor Vehicles in Virginia. In order to obtain this number a fee and disclosure of your Social Security Number will be required.

Proposed Regulations



COMMONWEALTH OF VIRGINIA

Board of Optometry

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717
(804) 662-9910

APPLICATION FOR APPROVAL OF A CONTINUING EDUCATION COURSE

✕ (Please Submit Application 45 Days Prior to Course Date.) ✕

A. INDIVIDUAL REQUESTING COURSE APPROVAL		
Name - Last	First	Middle/Maiden
Street Address		
City	State	Zip Code
Area Code and Telephone Number		

B. COURSE PROVIDER		
Name		
Street Address		
City	State	Zip Code
Area Code and Telephone Number		

C. WILL OTHER ORGANIZATIONS ALSO SPONSOR COURSE?		YES []	NO []
Name			
Street Address			
City	State	Zip Code	
Area Code and Telephone Number			

Effective 3-1-95

D. TITLE OF PROGRAM			
Dates		Location	
Beginning	Ending		
City	State	Zip Code	

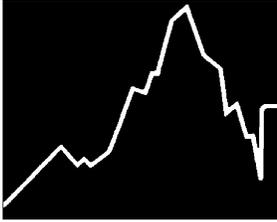
1. Attach list of courses to be given at program. Show beside each course title, the amount of credit hours requested. (The Board allows 1.0 credit hour for each 60 minutes of course work attended. This does not include welcoming remarks, introductions, breaks, and meals. Credit hours of instruction will be rounded to the nearest half hour).
2. **ATTACH COMPREHENSIVE COURSE OUTLINES WITH LESSON PLANS, INCLUDING AMOUNT OF TIME TO BE DEVOTED TO ALL COMPONENTS, I.E., OPENING REMARKS, INTRODUCTION, INSTRUCTIONAL TIME, BREAKS AND MEALS.**
3. Amount of credits requested for entire program: _____
4. **ATTACH LIST OF LECTURERS AND CURRICULUM VITAE FOR EACH LECTURER.**
5. Manner of certifying attendance: _____
6. Will there be speeches or any literature or products distributed promoting a particular brand or company product? Yes ____ No ____ . If yes, what will be the nature of the promotion? _____

7. Will there be an objective third party sponsor or co-sponsor to ensure the criteria for approval? Yes ____ No ____ . Name and nature of organization: _____

8. Will the program be made available to any optometrist? Yes ____ No ____ .

Signature

COURSEWORK WILL NOT BE SUBMITTED TO THE EDUCATION COMMITTEE UNLESS ALL THE ABOVE CRITERIA ARE MET.



**COMMONWEALTH OF VIRGINIA
BOARD OF OPTOMETRY**

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717
(804) 662-9910

APPLICATION FOR PROFESSIONAL DESIGNATION

APPLICANT - PLEASE PROVIDE THE INFORMATION REQUESTED BELOW (PRINT OR TYPE). A NON-REUNDABLE \$100 (PAYABLE TO THE TREASURER OF VIRGINIA) APPLICATION FEE IS REQUIRED FOR REVIEW AND APPROVAL.

Name of Optometrist (Assuming responsibility for Professional	Area Code/Telephone No.
Last	
First	
MI	

Street Address

City

State

Zip Code

Proposed Professional Designation Name:

1st Choice: _____

2nd Choice: _____

3rd Choice: _____

Street address of practice location(s):

1. _____

2. _____

3. _____

FOR OFFICE USE ONLY

FEE

PERMIT#/ISSUE DATE

Pending application no. _____

Continued on back

Effective 1-20-98

REQUIRED ATTACHMENTS:

- 1. Provide an explanation of the ownership of the entity.**
- 2. If multiple locations are involved, explain the business relationship between locations.**
- 3. Provide a drawing (by hand is acceptable) of the physical layout of your entire practice area. If an optical area is involved, please designate it.**

DISCLAIMER

The application or registration of a professional designation with the Virginia Board of Optometry shall not authorize the use in this state of any professional designation in violation of any third parties' rights under federal, state or common law. Application or registration herein shall not be a defense to an action for violation of any such rights. It is the applicant's responsibility to insure that a particular professional designation is not otherwise registered and/or protected.

It is my belief or the belief of the firm, corporation or association in whose behalf I make the following verification or declaration, that no other person, firm, corporation or association, to the best of my knowledge and belief, has the right to use such professional designation with respect to the practice of optometry in the Commonwealth and that I have read and understood the foregoing disclaimer:

SEEN AND APPROVED

Signature of Applicant

COMMONWEALTH OF VIRGINIA

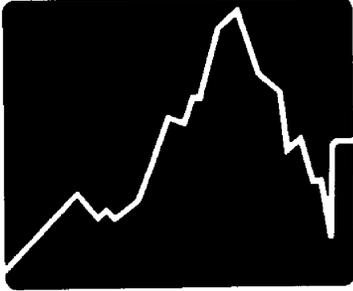
CITY/COUNTY OF _____, to wit:

Subscribed and sworn to before me, the undersigned and Notary Public, in and for the Commonwealth at large, this _____ day of _____, 19_____

Notary Public

My Commission Expires _____

g:\pdapplic
Revised date: 2/5/98



**COMMONWEALTH OF VIRGINIA
BOARD OF OPTOMETRY**

6606 WEST BROAD STREET, 4TH FLOOR
RICHMOND, VIRGINIA 23230-1717
(804) 662-9910

APPLICATION FOR REINSTATEMENT OF LICENSE

APPLICANT - Please provide the information requested below and on the back of this page.

NAME - LAST	FIRST	MIDDLE	MAIDEN
-------------	-------	--------	--------

STREET ADDRESS	AREA CODE & TELEPHONE NUMBER
----------------	------------------------------

CITY	STATE	ZIP CODE
------	-------	----------

DATE OF BIRTH (M/D/Y)	VIRGINIA LICENSE NUMBER	ORIGINAL ISSUE DATE
-----------------------	-------------------------	---------------------

Reinstatement requested due to lapse of license _____ or suspension or revocation of license _____

1. Why do you seek reinstatement at this time? _____

2. Please attach a detailed summary of your professional activities, affiliations, employment and education since the expiration of your license. Be sure to explain any absences from practice and work. Please account for all time.

3. Date(s) you took the NBEO examination(s): _____.

4. Do you have a mental, physical or chemical dependency condition which could interfere with your current ability to practice optometry? Yes ___ No ___. If yes, explain response in detail and have a letter from your treating licensed professional sent to the Board of Optometry.

5. Has your license ever been voluntarily surrendered to a licensing authority in any jurisdiction _____ or revoked _____ suspended _____ placed on probation _____ otherwise disciplined _____ by any licensing authority in any jurisdiction? If yes, explain response in detail.

6. Have you ever been convicted, pled guilty to or pled Nolo Contendere to the violation of any federal, state or other statute ordinance constituting a felony or misdemeanor? (Including convictions for driving under the influence, but excluding traffic violations. Yes ___ No ___ If yes, explain in detail and have a certified copy of the court order mailed to the Board of Optometry.

7. List all states in which you are or have been licensed to practice optometry and request that each state provide licensure verification to Virginia: _____.

**Please enclose the reinstatement fee of \$250.
Make check or money order payable to the "Treasurer of
Virginia".**

**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 licensure as an optometrist 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

SEAL

f:\RENSTAPL
Revised 12/11/97

Department of Health Professions
COMMONWEALTH OF VIRGINIA

RENEWAL NOTICE AND APPLICATION

Telephone:
License, certificate or registration number:

TYPE OF RENEWAL	CURRENT EXPIRATION DATE	LICENSE FEE	RENEWAL PERIOD FROM TO	AMOUNT DUE IF RECEIVED AFTER \$
		\$		\$

MAKE CHECKS PAYABLE TO THE "TREASURER OF VIRGINIA"
RETURN PAYMENT AND THE COMPLETED BOTTOM PORTION ONLY IN THE ENCLOSED ENVELOPE
KEEP TOP PORTION FOR YOUR RECORDS

DETACH HERE →

DISCLOSURE OF SOCIAL SECURITY OR VIRGINIA DMV CONTROL NUMBER
In accordance with § 54.1-116 of the Code of Virginia, you are required to submit your Social Security Number or your control number issued by the Virginia Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded.
This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities.
If the boxes below are empty, write in your Social Security or Virginia DMV Control Number. If the boxes do contain numbers, please verify that they are correct and make any necessary changes.

NO LICENSE, CERTIFICATION OR REGISTRATION WILL BE ISSUED TO ANY INDIVIDUAL WHO HAS FAILED TO DISCLOSE ONE OF THESE NUMBERS.

*In order to obtain a Virginia driver's license control number, it is necessary to appear in person at an office of the Department of Motor Vehicles in Virginia. A fee and disclosure of your Social Security Number will be required.

THIS BOTTOM PORTION MUST BE RETURNED IN ORDER TO RENEW

Department of Health Professions
Type of renewal:
License, certificate or registration number:

INSTRUCTIONS

1. Verify Social Security or Virginia DMV Control Number at left.
2. Complete statements "A" and "B" below, if renewing.
3. Complete statement "C" if you desire inactive status or do not wish to renew.
4. Make any address changes on this application and enclose a copy of your marriage license or court order.
5. Note name and certificate number on all enclosures.
6. Return the bottom portion of this application in the enclosed envelope.

STATEMENTS

- A. I certify that I have met all continuing education requirements to renew this license, certificate or registration. Yes No
- B. I swear that I have not made any misrepresentation on this renewal application and understand that furnishing false information constitutes cause for loss of license to practice.

- C. Check the appropriate box and sign below.
 I wish to take inactive status and enclose the inactive fee of: \$

I do not wish to renew.

Signature

Signature

DETACH HERE →

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 change from the proposed text of the regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulation is exempt from Article 2 of the Administrative Process Act in accordance with § 28.2-1207 C of the Code of Virginia.

Title of Regulation: 4 VAC 20-395-10 et seq. **General Permit for Emergency Situations and Water Quality Improvement Projects.**

Statutory Authority: §§ 28.2-103 and 28.2-1207 of the Code of Virginia.

Effective Date: July 1, 1998.

Summary:

This regulation describes the qualifications, procedures and manner of applying for a general permit for activities under the jurisdiction of the Marine Resources Commission involving state-owned subaqueous beds in nontidal waterways for activities required during emergencies to protect public and private property as well as public health and safety, or activities that are intended to improve water quality. It also establishes the minimum stream size above which an individual commission permit will be required for activities not covered by this general permit.

Agency Contact: Copies of the regulation may be obtained from Tony R. Watkinson, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2255.

CHAPTER 395.

GENERAL PERMIT FOR EMERGENCY SITUATIONS AND WATER QUALITY IMPROVEMENT PROJECTS.

4 VAC 20-395-10. Purpose.

The purpose of this chapter is to provide an expedited process for the issuance of a general permit for activities in or on state-owned subaqueous beds whereby property owners adjacent to nontidal waterways are granted authority to install structures to stabilize watercourses and stream banks in emergency situations or to construct facilities designed to improve water quality.

Qualification for this general permit constitutes the commission authorization required in accordance with §§ 28.2-1204 and 28.2-1207 of the Code of Virginia. This general permit shall not conflict with any other federal, state,

or local permitting requirements or authorization governing the proposed activity.

4 VAC 20-395-20. Definitions.

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

"Bioengineered" means an applied science that combines structural, biological, and ecological concepts to construct living structures for erosion, sediment, and flood control.

"Commission" means the Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Emergency" means a situation in which a structure, facility or property is in imminent or potential danger following a flood event or natural disaster and by definition includes those situations which qualify for assistance as part of the Department of Agriculture's Natural Resources Conservation Service (NRCS) Emergency Watershed Protection Program.

"Emergency Watershed Protection Program" means the program administered by NRCS to assist in relieving imminent hazards to life and property from floods and products of erosion created by natural disasters. The authority for the EWP Program is given to NRCS in § 216, P. L. 81-516, and § 403 of Title IV of the Agriculture Credit Act of 1978, P. L. 95-334. Codified rules are set forth in 7 CFR Part 624.

"Exigency" means a situation which presents an immediate threat of damage to life or property. An exigency situation continues to exist as long as the probability of damage continues at such a high level.

"NRCS" means the Natural Resources Conservation Service, which is the federal agency under the U.S. Department of Agriculture delegated to administer the Emergency Watershed Protection (EWP) Program.

4 VAC 20-395-30. Authority and applicability.

A. Prior to the enactment of § 28.2-1207 C, the Code of Virginia provides no mechanism for the emergency authorization of projects designed to protect public or private property or safeguard public health and safety involving encroachments in, on, or over state-owned submerged beds. While the commission has entered into a Memorandum of Understanding with the Department of Agriculture's Natural Resources Conservation Service (NRCS) to expedite permit issuance for exigency projects under the Emergency Watershed Protection Program, the process does not eliminate the need for the commission's required public interest review and comment period. Furthermore, there was

no expedited mechanism to authorize projects that are designed to improve water quality in waterways with drainage areas greater than five square miles or with flow rates greater than five cubic feet per second where project impacts are minimal.

B. This general permit provides a streamlined public interest review process for projects that are deemed necessary in an emergency or which will result in improved water quality with only minor impacts in waterways with drainage areas greater than five square miles or flow rates greater than five cubic feet per second.

C. Experience has shown that the types of projects covered by this general permit (i) are necessary in emergency situations or (ii) would improve water quality and result in only minor impact. In addition, these types or classes of projects would normally receive an individual commission permit following the normal public interest review.

D. This general permit is valid only for projects which result in encroachments over state-owned submerged lands in nontidal waterways.

4 VAC 20-395-40. Conditions and procedures for issuing general permits.

A. The commissioner or his designee, Chief, Habitat Management Division, will oversee administration of the provisions of the general permit.

B. An approved Local, State, Federal Joint Permit Application (Joint Permit Application) or abbreviated General Permit No. 5 Application must be completed and filed in accordance with the instructions contained therein. The application shall be submitted to the Marine Resources Commission. The commission will assign a processing number and forward copies to the U.S. Army Corps of Engineers and the Department of Environmental Quality for concurrent processing. Copies will also be forwarded to the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, and the Department of Historic Resources for review and comment. If an agency does not respond within 10 working days, the commission will presume the agency has no comment on the proposed activity.

C. If the proposed project does not satisfy the conditions of this general permit, the environmental impacts are estimated to be more than minimal, or there are unresolved objections by other state agencies, the proposed project will be processed for an individual commission permit.

D. If the project qualifies for the general permit, the commission's public notice requirement shall be waived.

E. The commissioner is empowered to issue the general permit under any of the following conditions:

1. a. The project is part of the Emergency Watershed Protection Program and is being conducted in accordance with all applicable Emergency Watershed Protection Program standards for exigency projects in response to

an emergency following a flood event or natural disaster; and

b. The project is covered under the U.S. Army Corps of Engineers Nationwide Permit No. 37 (33 CFR Part 230).

2. The project is a stream bank restoration, generally including bioengineered approaches and livestock crossings that meets the following requirements:

a. The project has been designed or approved by one or more of the following agencies: Natural Resources Conservation Service, Department of Conservation and Recreation, Soil and Water Conservation District, Department of Game and Inland Fisheries, Department of Forestry or U.S. Fish and Wildlife Service.

b. The project is conducted in accordance with the terms and conditions of a binding agreement between the landowner and the oversight agency indicated in subdivision 1 of this subsection with such agreement including provisions for maintenance of the project; and

c. The project is covered under the U.S. Army Corps of Engineers Nationwide Permit Program (33 CFR Part 230) or qualifies for Regional Permit No. 40 authorized by the Norfolk District of the U.S. Army Corps of Engineers.

3. The project is for the replacement of a previously existing and previously serviceable structure or facility located on state-owned submerged land that has been damaged or lost due to a flood event or natural disaster.

F. Any general permit authorized by this regulation is valid for one year from the date of issuance. If the project has not been commenced within that time, a reapplication and evaluation will be required.

G. Upon a determination that a proposed project could significantly impact water quality, aquatic resources or other properties, the commissioner may determine that this general permit does not apply and require that an individual Marine Resources Commission permit be processed.

H. This general permit does not authorize any rechannelization; channel widening, deepening, or straightening; levee construction; or water withdrawal. This general permit does not authorize any projects that will impede the migration or other movements of aquatic life.

I. This general permit will be reevaluated by the commission two years following July 1, 1998.

NOTICE: The form used in administering 4 VAC 20-395-10 et seq., General Permit for Emergency Situations and Water Quality Improvement Projects, is not being published due to the number of pages. The form is available for public inspection at the Marine Resources Commission, 2600 Washington Avenue, Newport News, VA, telephone (757) 247-2255.

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FORM

Local, State, Federal Joint Permit Application, NAO FM 1065/VMRC 30-300 (rev. 4/93).

VA.R. Doc. No. R98-37; Filed June 22, 1998, 2:42 p.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Title of Regulation: 11 VAC 10-180-10 et seq. **Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Medication (amending 11 VAC 10-180-10, 11 VAC 10-180-20, [11 VAC 10-180-30,] 11 VAC 10-180-50, 11 VAC 10-180-60, 11 VAC 10-180-70, 11 VAC 10-180-80, and 11 VAC 10-180-90).**

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

Effective Date: August 20, 1998.

Summary:

The amendments provide for the use of furosemide and adjunct therapies in racehorses on race day. The regulations also set forth (i) applicable definitions, (ii) procedures for the collection of test samples, (iii) determination of positive tests, and (iv) rights of testing split samples. Since the regulation was published as proposed, three changes were made to conform to practices of the Maryland Racing Commission: (i) a 10-day period to file documentation of bleeders, (ii) clarification of the recovery period for bleeders, and (iii) substitution of split sample testing for quarantining of racehorses with overages of bicarbonate.

Summary of Public Comments and Agency's Response: No comments were received by the promulgating agency.

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

CHAPTER 180.

REGULATIONS PERTAINING TO HORSE RACING WITH PARI-MUTUEL WAGERING: MEDICATION.

11 VAC 10-180-10. Definitions.

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

"*Bleeder*" means a horse which has been diagnosed as suffering from exercise-induced pulmonary hemorrhage based on external or endoscopic examination by the commission veterinarian, licensee's veterinarian or private practitioner who is a permit holder.

"*Bleeder list*" means a tabulation of all bleeders to be maintained by the stewards.

"*Commission*" means the Virginia Racing Commission.

"*Controlled substance*" means any substance included in the five classification schedules of the U.S. Controlled Substances Act of 1970 (21 USC § 801 et seq.).

"*Injectable substance*" means a liquid or solid substance, which may require the addition of a liquid via a needle and syringe to change it from a solid into a liquid, contained in a vial with a rubber top which can be accessed and administered only via a needle and syringe.

"*Permitted race day substances*" means nonperformance altering and administered only for the benefit and welfare of the horse.

"*Prescription substance*" means any substance which is administered or dispensed by or on the order of a private practitioner, who is a permit holder, for the purpose of medical treatment of an animal patient when a bona fide doctor-patient relationship has been established.

"*Primary laboratory*" means a facility designated by the commission for the testing of test samples.

"*Prohibited substance*" means any drug, medication or chemical foreign to the natural horse, whether natural or synthetic, or a metabolite or analog thereof, the use of which is not expressly permitted by the regulations of the commission.

"*Race day*" means ~~a 24-hour~~ the period ~~beginning at~~ between midnight before a race and post-time for the race in which the horse is entered to start.

"*Reference laboratory*" means a facility designated by the commission for the testing of split samples.

"*Substance*" means any drug, medication or chemical foreign to the natural horse or human being, whether natural or synthetic, or a metabolite or analog thereof.

"*Test sample*" means any sample of blood, urine, saliva or tissue obtained from a horse or person for the purpose of laboratory testing for the presence of substances.

"*Tubing*" means the administration to a horse of any substance via a naso-gastric tube.

11 VAC 10-180-20. Generally.

A. ~~Administration on race day prohibited~~ *Race day prohibitions.* No person shall administer any substance to a horse on race day other than furosemide, and then only under the procedures set forth in this chapter ~~those substances expressly permitted by the commission.~~ *Substances permitted by the commission shall be nonperformance altering and administered only for the benefit and welfare of the horse.*

B. *Tubing of horses prohibited.* The tubing or dosing of any horse for any reason on race day is prohibited, unless administered for medical emergency purposes by a private practitioner who is a permit holder, in which case the horse shall be scratched. The practice of administration of any substance, via a tube or dose syringe, into a horse's

stomach on race day is considered a violation of this chapter.

C. Possession of needles prohibited. No permit holder, except a veterinarian or an assistant under his immediate supervision, shall have in his possession within the enclosure any hypodermic syringe or needle or any instrument capable of being used for the injection of any substance.

D. Possession of injectables prohibited. No permit holder, except a veterinarian or an assistant under his immediate supervision, shall have in his possession within the enclosure any injectable substance.

E. Prescription substances for animal use. No permit holder, except a veterinarian or an assistant under his immediate supervision, shall have in his possession within the enclosure of a horse racing facility any prescription substance for animal use unless:

1. The permit holder actually possesses, within the enclosure of the horse racing facility, documentary evidence that a prescription has been issued to him for the substance by a private practitioner who is a permit holder;
2. The prescription substance is labelled with a dosage for the horse or horses to be treated with the prescription substance; and
3. The horse or horses named in the prescription are then under the care and supervision of the permit holder and are then stabled within the enclosure of the horse racing facility.

F. Possession of substances. No veterinarian or permit holder shall possess or administer any substance to a horse stabled within the enclosure:

1. That has not been approved by the U.S. Food and Drug Administration, pursuant to the Federal Food, Drug and Cosmetic Act (21 USC § 30 et seq.); or
2. That is on the U.S. Drug Enforcement Agency's Schedule I or Schedule II of controlled substances as prepared by the Attorney General of the United States pursuant to 21 USC §§ 811 and 812.

G. Human use of needles and substances. Notwithstanding these regulations, a permit holder or veterinarian may possess within the enclosure of a horse racing facility a substance for use on his person, providing the permit holder or veterinarian possesses documentary evidence that a valid medical prescription has been issued to the permit holder or veterinarian.

Notwithstanding these regulations, a permit holder or veterinarian may possess within the enclosure of a horse racing facility a hypodermic syringe or needle for the purpose of administering to himself a substance, provided that the permit holder has documentary evidence that the substance can only be administered by injection and that the substance to be administered by injection has been prescribed for him.

[11 VAC 10-180-30. Bleeders.

A. Examination of bleeders. A horse which is alleged to have bled in Virginia must be physically examined by the commission veterinarian, licensee's veterinarian or private practitioner who is a permit holder in order to confirm the horse's inclusion on the bleeder list. The veterinarians may conclude a horse is a bleeder under the following circumstances:

1. If the examination takes place immediately following the race or exercise and before the horse leaves the racing surface, a veterinarian may conclude the horse is a bleeder and an endoscopic examination is not required for inclusion on the bleeder list; or
2. If the examination takes place after the horse leaves the racing surface but within 90 minutes following the finish of a race or exercise in which the horse participated, a veterinarian shall require an endoscopic examination for inclusion on the bleeder list.

B. Confirmation of a bleeder. The commission veterinarian, licensee's veterinarian or private practitioner who is a permit holder, shall decide, based upon his experience and professional training, whether the horse suffers from exercise-induced pulmonary hemorrhage and should be placed on the bleeder list. The confirmation of a bleeder shall be certified in writing by the commission veterinarian, licensee's veterinarian or private practitioner who is a permit holder, and the horse shall be placed on the bleeder list. *The confirmation of a bleeder shall be filed with the commission within 10 days of the confirmation.* Upon request, a copy of the certification shall be provided to the owner of the horse or his agent.

C. Posting of bleeder list. The bleeder list shall be maintained by the stewards, with the assistance of the commission veterinarian, and ~~posted in the office of the racing secretary~~ *shall be made available upon request.* No horse shall be removed from the bleeder list without the approval of the stewards.

~~D. Restrictions on bleeders. Horses placed on the bleeder list shall be subject to the following restrictions:~~

- ~~1. For the first occurrence of bleeding, the horse shall be placed on the bleeder list and shall not be eligible to race for at least 10 days;~~
- ~~2. For the second occurrence of bleeding, the horse shall not be eligible to race for at least 30 days;~~
- ~~3. For the third occurrence of bleeding, the horse shall not be eligible to race for at least 90 days; and~~
- ~~4. For the fourth occurrence of bleeding, the horse shall be barred from further racing at race meetings licensed by the commission.~~

D. Recovery period. If it is determined that a horse has bled as determined by this chapter, the horse shall be placed on the bleeders list and may not be permitted to race for at least 10 days. If a horse is determined to have bled within 365 days of the first occurrence, the horse may not race for the following periods of time:

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1. 30 days after the first reoccurrence;
2. 90 days after the second reoccurrence; and
3. The horse shall be barred from racing forever at race meetings licensed by the commission after the third reoccurrence.

For the purpose of counting the number of days a horse is not permitted to race in meetings licensed by the commission, the day the horse bled is the first day of the recovery period, and the horse shall be permitted to race in meetings licensed by the commission when the last day of the recovery period under this chapter has expired.

E. Bleeders from other jurisdictions. The commission veterinarian may designate a horse as a bleeder from another jurisdiction upon receipt of documentation confirming that the horse is a bleeder, providing that the requirements for inclusion on the bleeder list in Virginia have been satisfied.]

11 VAC 10-180-50. Laboratory findings and reports.

A. Primary testing laboratory. The commission shall designate a primary testing laboratory for the analysis of test samples collected under the supervision of the commission veterinarian. The commission shall designate a chief racing chemist within the primary testing laboratory who shall have the authority to report his findings to the executive secretary of the commission, the stewards and the commission veterinarian.

B. Reference laboratories. The commission shall designate one or more laboratories, other than the primary testing laboratory, as reference laboratories. These laboratories will conduct confirmatory analysis of split samples as shipped by the commission veterinarian. Any reference laboratory must be accredited by the Association of Racing Commissioners International and be willing to accept split samples for confirmatory testing. Any reference laboratory shall send results to both the person requesting the testing and the commission.

C. Chief racing chemist's responsibilities. The chief racing chemist shall be responsible for safeguarding and analyzing the test samples delivered to the primary testing laboratory. It shall be the chief racing chemist's responsibility to maintain proper equipment, adequate staffing and acceptable procedures to thoroughly and accurately analyze test samples submitted to the primary testing laboratory.

D. Reporting procedures. The chief racing chemist shall submit to the executive secretary of the commission, the stewards and the commission veterinarian a written report as to each test sample analyzed, indicating by identification tag number, whether the test sample was negative or there was a chemical identification.

E. Chemical identifications. If the chief racing chemist determines that there is present in the test sample a substance or metabolites of a substance foreign to the natural horse, except those specifically permitted by the regulations of the commission, he shall submit a report of chemical identification to the executive secretary of the

commission, the stewards and the commission veterinarian. In a report of chemical identification, the chief racing chemist shall submit evidence acceptable in the scientific community and admissible in court in support of his determination.

F. Review of chemical identifications. Upon receipt of a report of a chemical identification from the chief racing chemist, the stewards shall conduct a review of the chemical identification which shall include but not be limited to the chief racing chemist, the commission veterinarian and the commission's veterinary-pharmacological consultant. During the review, the following procedures shall apply:

1. All references to the report of a chemical identification shall be only by the identification tag number of the sample collected from the horse;
2. The chief racing chemist shall submit his written report of the chemical identification and the evidence supporting his finding;
3. The commission's veterinary-pharmacological consultant shall submit a written statement to the stewards including but not limited to the classification of the substance, its probable effect on a racehorse, and the efficacy of the substance at the levels found in the test sample;
4. The stewards may ask questions at any time and request further documentation as they deem necessary;
5. If the chemical identification involves a Class 1 or Class 2 substance, as specified by this regulation, then the stewards shall determine that the chemical identification constitutes a violation of the regulations of the commission and it is deemed a positive test result;
6. If the chemical identification and quantification involves a Class 3, Class 4 or Class 5 substance, as specified by this regulation, then the stewards shall determine whether the chemical identification does or does not constitute a violation of the regulations of the commission and whether it should be deemed a positive test result;
7. In the event of a positive test result, the stewards shall notify the trainer of the horse, in writing, of his right to send the split sample collected from the horse to one of the reference laboratories, designated by the commission, for confirmatory testing;
8. The stewards shall take no disciplinary action against any permit holder until the results of confirmatory testing are received, and the findings shall be a part of the record of any subsequent informal fact-finding conference; and
9. The chief racing chemist's report of a chemical identification, the commission's veterinary-pharmacological consultant's written statement, the results of confirmatory testing and any other documentation submitted to the stewards shall become part of the record of any subsequent proceedings.

G. Barred from racing. No horse from which a positive test sample was collected shall be permitted to race until the

stewards have made a final determination in the matter. Such a horse shall not be immune from resulting disciplinary action by the stewards or the commission.

H. Frozen samples. Unconsumed portions of all test samples tested by the primary testing laboratory will be maintained in a frozen state ~~for a period of six months~~ *until the last sample of the race meeting is cleared by the chief racing chemist.* In the event of a positive test result involving a Class 1, Class 2 or Class 3 substance, the commission or stewards shall direct that the stored frozen samples collected from the horses raced by the trainer shall be tested for the presence of the identified substance. The results of this testing may be considered by the stewards or commission in assessing any disciplinary actions.

I. Split samples. The commission veterinarian shall determine a minimum test sample requirement for the primary testing laboratory. If the test sample collected is less than the minimum requirement, then the entire test sample shall be sent to the primary laboratory.

If the sample collected is greater than the minimum sample requirement but less than twice that amount, the portion of the test sample that is greater than the minimum test sample requirement shall be secured as the split sample.

If the test sample collected is greater than twice the minimum test sample requirement, a portion of the sample approximately equal to the test sample shipped to the primary testing laboratory shall be secured as the split sample.

J. Storage of split samples. Split samples shall be stored in secured location inside a locked freezer in accordance with the following procedures:

1. Split samples shall be secured in the test barn in the same manner as the portion of the test sample acquired for shipment to the primary laboratory until such time as test samples are packed and secured for shipment to the primary laboratory.
2. Upon shipment of the test samples to the primary laboratory, the split samples shall be transferred to the locked freezer by the commission veterinarian who shall be responsible for securing possession of the keys.
3. The freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of split samples.
4. Whenever the freezer used for storage of split samples is opened, it shall be attended by the commission veterinarian or his designee and a representative of the horsemen.
5. A log shall be maintained each time the freezer used for storage of split samples is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, and the time the freezer was locked.

6. Any evidence of a malfunction of the freezer used for storage of split samples or evidence that split samples are not in a frozen condition shall be documented in the log and immediately reported to the stewards.

K. Shipment of split samples. The trainer or owner of the horse shall have 48 hours from receipt of the written notice of a positive test result to request that the split sample be shipped to one of the reference laboratories designated by the commission and the split sample shall be shipped to the requested reference laboratory within an additional 48 hours. The cost of shipment and additional testing shall be paid by the permit holder requesting the testing of the split sample.

L. Chain of custody form. The commission veterinarian, or his designee, shall be responsible for the completion of a chain of custody verification form that shall provide a place for recording the following information:

1. Date and time the split sample is removed from the freezer;
2. The test sample number;
3. The address of the reference laboratory;
4. The name and address where the split sample package is to be taken for shipment to the reference laboratory;
5. Verification of retrieval of the split sample from the freezer;
6. Verification that each specific step of the split sample packaging procedure is in accordance with the recommended procedure;
7. Verification of the address of the reference laboratory on the split sample package;
8. Verification of the condition of the split sample package immediately prior to the transfer of custody to the carrier for shipment to the reference laboratory;
9. The date and time custody of the split sample package was transferred to the carrier; and
10. The commission veterinarian, or his designee, and the trainer or owner of the horse, or his designee, shall witness, attest and sign the form, and a copy of the form shall be supplied to the trainer or owner.

M. Packaging the split sample. The following procedures shall apply to the packaging of the split sample:

1. The split sample shall be removed from the freezer by the commission veterinarian, or his designee, in the presence of the trainer or owner, or his designee.
2. The trainer or owner, or his designee, shall pack the split sample, in the presence of the commission veterinarian or his designee, in accordance with the instructions supplied by the reference laboratory.
3. The exterior of the package shall be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package.

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4. The package containing the split sample shall be transported in the presence of the commission veterinarian, or his designee, and the trainer or owner, or his designee, to the location where custody is transferred to the delivery carrier for shipment to the reference laboratory.

5. The commission veterinarian, or his designee, and the trainer or owner, or his designee, shall inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

6. The commission veterinarian, or his designee, and the trainer or owner, or his designee, shall complete the chain of custody verification form.

11 VAC 10-180-60. Medications and substances.

A. Disciplinary actions. The stewards may, at their discretion, refer to the following guidelines in imposing a disciplinary action upon a permit holder for a positive test result for one of the five classifications listed in subsection B of this section. However, the stewards may, at their discretion and in consideration of the circumstances, impose a greater or lesser disciplinary action. The guidelines are:

1. Class 1. One to five years suspension and at least \$5,000 fine and loss of purse;

2. Class 2. Six months to one year suspension and \$1,500 to \$2,500 fine and loss of purse;

3. Class 3. Sixty days to six months suspension and up to \$1,500 fine and loss of purse;

4. Class 4. Fifteen to 60 days suspension and up to \$1,000 fine and loss of purse; and

5. Class 5. Zero to 15 days suspension with a possible loss of purse or fine or both.

6. For *cimetidine, dicoumerol, griseofulvin, isoxsuprine, ranitidine, sulfa and tetramisole*--first offense: \$500 fine; second offense: 15-day suspension and disqualification.

7. For *procaine, o-desmethyl pyrilamine*--if the stewards determine that the drug was administered more than 48 hours before race day, first offense: \$500 fine; second offense: 15-day suspension and disqualification.

8. For *procaine, o-desmethyl pyrilamine*--if the stewards determine that the drug was administered within 48 hours of race day, first offense: 15-day suspension and disqualification; second offense: more stringent disciplinary action.

9. For *methylprednisolone*--first offense, if found in urine only: \$250 fine, or if found in urine and blood: 15-day suspension and disqualification; second offense: 15-day suspension and disqualification.

B. Classes of prohibited substances. The classes of prohibited substances are:

1. Class 1. Drugs found in this class are substances which are potent stimulants of the nervous system and

included in this class are opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) Scheduled I and II drugs. Drugs in this class have no generally accepted medical use in the racehorse and their pharmacological potential for altering the performance of a racehorse is very high.

2. Class 2. Drugs found in this class have a high potential for affecting the outcome of a race. Most drugs in this class are generally not accepted therapeutic agents in the racehorse. Many drugs in this class are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some drugs in this class, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a racehorse. The following groups of drugs are in this class:

- a. Opiate partial agonists, or agonist-antagonists;
- b. Nonopiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;
- c. Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);
- d. Drugs with prominent CNS depressant action;
- e. Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;
- f. Muscle blocking drugs which have a direct neuromuscular blocking action;
- g. Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and
- h. Snake venoms and other biological substances which may be used as nerve blocking agents.

3. Class 3. Drugs found in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a racehorse. The following groups of drugs are in this class:

- a. Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);
- b. A local anesthetic which has nerve blocking potential but also a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);
- c. Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;
- d. Primary vasodilating/hypotensive agents; and

e. Potent diuretics affecting renal function and body fluid composition.

4. Class 4. This class of drugs is comprised primarily of therapeutic medications routinely used in racehorses. These drugs may influence performance but generally have a more limited ability to do so. The following groups of drugs are in this class:

a. Nonopiate drugs which have a mild central analgesic effect;

b. Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects:

(1) Drugs used solely as topical vasoconstrictors or decongestants;

(2) Drugs used as gastrointestinal antispasmodics;

(3) Drugs used to void the urinary bladder; and

(4) Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs-;

c. Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

d. Mineralocorticoid drugs;

e. Skeletal muscle relaxants;

f. Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

(1) Nonsteroidal Anti-inflammatory Drugs (NSAIDs)--aspirin-like drugs;

(2) Corticosteroids (glucocorticoids); and

(3) Miscellaneous anti-inflammatory agents-;

g. Anabolic or androgenic steroids, or both, and other drugs;

h. Less potent diuretics;

i. Cardiac glycosides and antiarrhythmics including:

(1) Cardiac glycosides;

(2) Antirhythmic agents (exclusive of lidocaine, bretylium and propranolol);

(3) Miscellaneous cardiotonic drugs-;

j. Topical anesthetics--agents not available in injectable formulations;

k. Antidiarrheal agents; and

l. Miscellaneous drugs including:

(1) Expectorants with little or no other pharmacologic action;

(2) Stomachics; and

(3) Mucolytic agents.

5. Class 5. Drugs found in this class are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically in this class of drugs are agents with very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

C. Permitted race day substances. The following substances have been determined to be nonperformance altering and administered only for the benefit and welfare of the horse. These substances may be administered to a horse on race day by a permit holder when administered under veterinary supervision within the limits of this chapter:

1. *Intravenous commercially available electrolyte solutions including calcium and magnesium, but not including bicarbonate.*

2. *Conjugated estrogens, not to exceed 25 milligrams.*

3. *Aminocaproic acid, not to exceed 2.5 grams.*

4. *Tranexamic acid, not to exceed 1 gram.*

11 VAC 10-180-70. Phenylbutazone.

A. Generally. By this regulation, the Virginia Racing Commission specifically permits the use of phenylbutazone in racehorses in the quantities provided for in this chapter.

B. Quantitative testing. Any horse to which phenylbutazone has been administered shall be subject to having test samples taken at the direction of the commission veterinarian to determine the quantitative level of phenylbutazone or the presence of other substances which may be present.

C. Disciplinary actions. The stewards shall take the following disciplinary actions for reports of quantitative testing by the primary testing laboratory for levels of phenylbutazone quantified at levels above ~~5.0~~ 2.0 micrograms per milliliter of ~~serum~~ plasma:

~~1. A written reprimand shall be issued to the trainer for the first violation of this chapter;~~

~~2. A fine of \$500 shall be issued to the trainer for the second violation of this chapter;~~

~~3. A 15 day suspension shall be issued to the trainer and the horse shall be disqualified for the third violation of this chapter; and~~

1. *The stewards shall verbally warn a trainer of a horse with a post-race test above 2.0 to below 2.6 micrograms per milliliter of plasma;*

2. *The stewards shall fine a trainer \$500, but not more than any purse, for the first offense with a post-race test above 2.6 micrograms per milliliter to below 5.0 micrograms per milliliter of plasma;*

3. *The stewards shall suspend a trainer for 15 days and disqualify the horse for a second offense with a post-race test from above 2.6 micrograms per milliliter of*

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plasma and below 5.0 micrograms per milliliter of plasma; and

4. The stewards shall suspend a trainer for 15 days and disqualify the horse for a post-race test of 5.0 micrograms per milliliter of plasma or above.

~~4. 5.~~ The stewards, in their discretion, may impose other more stringent disciplinary actions against trainers or other permit holders who violate the provisions under which phenylbutazone is permitted by the commission, ~~regardless of whether or not the same horse is involved.~~

11 VAC 10-180-80. Furosemide Bleeder medications.

A. Generally. By this regulation, the Virginia Racing Commission specifically permits the use of furosemide in only those horses that have been placed on the bleeder list by the stewards.

B. Furosemide.

~~B.~~ 1. Procedures for usage. The use of furosemide shall be permitted by the commission only on horses already on the bleeder list and under the following circumstances:

~~4. a.~~ Furosemide shall be administered intravenously, within the enclosure of the horse race facility, no less than four hours prior to post time ~~for which the horse is entered to race of the race in which the horse is entered to start.~~

~~2. b.~~ The furosemide dosage administered shall not exceed 10 ml (500 mg) and shall not be less than 3 ml (150 mg). Dosage levels between each race shall not vary by more than 3 ml (150 mg).

~~3. c.~~ The private practitioner, who is a permit holder, administering the furosemide shall deliver to the commission's office at the racetrack no later than one hour prior to post time for the race in which the horse is entered a furosemide treatment form containing the following:

~~a.~~ (1) The trainer's name, date, horse's name, and horse's identification number;

~~b.~~ (2) The time furosemide was administered to the horse;

~~e.~~ (3) The prior dosage level of furosemide administered to the horse and the dosage level administered for this race;

~~d.~~ (4) The barn and stall number; and

~~e.~~ (5) The signature of the private practitioner, who is a permit holder.

~~C.~~ 2. Furosemide quantification. Furosemide levels must not exceed 100 nanograms per milliliter (ng/ml) of plasma in horses administered furosemide and with urine specific gravity measuring 1.010 or lower. Furosemide must be present in the plasma of any horse racing in Virginia which has been designated in the program as being treated with the substance.

~~D.~~ C. Disciplinary actions.

1. For the first violation of the regulation pertaining to furosemide quantification (~~subsection C subdivision B 2~~ of this section), the stewards shall issue a written reprimand to the trainer.

2. For the second violation of the regulation pertaining to furosemide quantification (~~subsection C subdivision B 2~~ of this section), the stewards shall fine the trainer an amount not to exceed \$500;

3. For the third violation of the regulation pertaining to furosemide quantification (~~subsection C subdivision B 2~~ of this section) within a 12-month period, the stewards shall suspend or fine the trainer or both; and

4. The stewards, in their discretion, may impose other more stringent disciplinary actions against trainers or other permit holders who violate the provisions under which furosemide is permitted by the commission, regardless of whether or not the same horse is involved.

~~E.~~ D. Program designation. The licensee shall be responsible for designating in the program those horses racing on furosemide. The designation shall also include those horses making their first or second starts while racing on furosemide. In the event there is an error, the licensee shall be responsible for making an announcement to be made over the public address system and taking other means to correct the information published in the program.

~~F.~~ E. Removal from the bleeder list. A trainer or owner may remove his horse from the bleeder list with the permission of the stewards prior to entering the horse in a race.

11 VAC 10-180-90. Bicarbonate testing.

A. Generally. By this regulation, the Virginia Racing Commission prohibits the use of any bicarbonate containing substance or any substance which effectively alters the serum or plasma pH or concentration of bicarbonates or carbon dioxide in the horse.

B. Test values. For a test sample collected from a horse one hour following a race in the test barn, the serum total carbon dioxide concentration shall not exceed ~~36~~ 37 millimoles per liter for horses not administered furosemide prior to racing or shall not exceed ~~38~~ 39 millimoles per liter for horses administered furosemide prior to racing. A serum total carbon dioxide level exceeding these values constitutes a positive test.

C. Testing procedure. The stewards or commission veterinarian may, at their discretion and at any time, order the collection of test samples from any horses present within the enclosure for determination of serum or plasma pH or concentration of bicarbonate, carbon dioxide, or electrolytes. A sample shall be taken from the horse one hour after racing to determine the serum total carbon dioxide concentration. The procedures for split samples do not apply to bicarbonate testing procedures.

D. Positive test results. [~~Upon receipt of a positive test report, the stewards shall inform the trainer of the horse from which the sample was collected of the result. The stewards shall inform the trainer that he has two options: If the chief racing chemist determines that there is a positive test, he shall send the sample to a reference laboratory for confirmatory testing. If the reference laboratory confirms the chief racing chemist's initial finding, then he shall inform the stewards of the positive test results.~~]

~~1. The trainer shall pay a \$1,000 fine and serve a 45-day suspension, and in addition, the horse will lose any purse money earned; or~~

~~2. The trainer shall make arrangements with the stewards to have the horse quarantined within the enclosure of the racetrack for a period of 24 hours under conditions acceptable to the stewards and at the expense of the trainer. At the conclusion of the quarantine period, the horse shall have a workout before and acceptable to the stewards with a post-quarantine test sample collected from the horse one hour after the workout. In addition, the feed and water supplied by the trainer shall be subjected to testing.~~

~~3. If the post-quarantine serum total carbon dioxide value exceeds ~~36/38~~ ~~37/39~~ mm/L, then there is no positive test and the trainer is not subject to disciplinary action. However, if the post-quarantine total carbon dioxide value does not exceed ~~36/38~~ ~~37/39~~ mm/L, then the post-race total carbon dioxide constitutes a positive test and the trainer is subject to disciplinary actions beyond those specified in subdivision 1 of this subsection.~~

NOTICE: The forms used in administering 11 VAC 10-180-10 et seq., Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Medication, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Universal Bleeder Certificate - Examination for Exercise Induced Pulmonary Hemorrhage, 3/98.

Furosemide Administration Report, 3/98.

Split Sample Freezer Log, 3/98.

Chain of Custody Form, 3/98.

Test Barn Daily Log, 3/98.

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VIRGINIA RACING COMMISSION
10700 HORSEMEN'S ROAD
NEW KENT, VA
(804) 966-4200
(3/98)

DONALD R. PRICE
EXECUTIVE SECRETARY

UNIVERSAL BLEEDER CERTIFICATE EXAMINATION FOR EXERCISE INDUCED PULMONARY HEMMORRHAGE

NAME OF HORSE: _____ TATTOO: _____

YEAR FOALED: _____ COLOR: _____ SEX: _____

ON _____ THE ABOVE HORSE WAS OBSERVED BLEEDING

- _____ From the nostrils
- _____ By endoscopic examination
- _____ From the nostrils and by endoscopic examination

THE OBSERVED BLEEDING OCCURRED _____ DURING _____ FOLLOWING

- _____ A training exercise
- _____ The race _____ at _____ in Virginia

THE ENDOSCOPIC EXAM WAS PERFORMED BY _____

THE BLEEDING WAS OBSERVED BY _____

- _____ Commission Veterinarian
- _____ Licensee's Veterinarian
- _____ Private Practicioner (Permit Holder)

THIS HORSE WILL NOT BE ALLOWED TO RACE IN VIRGINIA UNTIL _____

SIGNATURE: _____
(Commission Veterinarian)

9/98

VIRGINIA RACING COMMISSION
Furosemide Administration Report

Trainer: _____

Date: _____ Race: _____

Horse: _____ Horse ID#: _____

Prior Today

Time of Administration: _____ Dosage: _____

Barn: _____ Stall#: _____

Veterinarian: _____
Signature

Notice: A Furosemide administration report on a horse shall be delivered to the office of the Virginia Racing Commission not less than one hour before the scheduled post time of the race in which the horse is to participate.

Original - Commission Pink - Veterinarian Yellow - Trainer

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VIRGINIA RACING COMMISSION
TEST BARN DAILY LOG

Track: _____ Date: _____

Race: _____ Time In: _____

Horse: _____ Time Out: _____

Permit Holder: _____
(Signature)

Permit Number: _____

Race: _____ Time In: _____

Horse: _____ Time Out: _____

Permit Holder: _____
(Signature)

Permit Number: _____

Race: _____ Time In: _____

Horse: _____ Time Out: _____

Permit Holder: _____
(Signature)

Permit Number: _____

Race: _____ Time In: _____

Horse: _____ Time Out: _____

Permit Holder: _____
(Signature)

Permit Number: _____

Race: _____ Time In: _____

Horse: _____ Time Out: _____

Permit Holder: _____
(Signature)

Permit Number: _____

VA.R. Doc. No. R98-36; Filed June 24, 1998, 3:40 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **Reimbursement for Individuals with Traumatic Brain Injury.**

12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12 VAC 30-90-52; adding 12 VAC 30-90-266 and 12 VAC 30-90-330).

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

Effective Date: August 19, 1998.

Summary:

This action establishes the Traumatic Brain Injury (TBI) additional payment within the Nursing Home Payment System (NHPS) that will provide a fixed per day payment for residents with TBI served in the program in addition to the reimbursement otherwise payable under the provisions of the NHPS. Specific criteria for both the patient and the facility are established in this action.

Individuals who have been diagnosed with Traumatic Brain Injury (TBI) may have injuries so severe that they require institutionalization for the remainder of their lives. Such individuals, who may frequently be young and active before their traumas, require methods of care and treatment which are different from that provided to the typically institutionalized, debilitated elderly patients. These young TBI patients frequently exhibit behavioral problems which render them difficult, if not impossible, to care for with the average aging population of nursing facility residents.

Medicaid recipients with TBI who require long-term institutional care were being served, prior to the agency's emergency regulation, in either the general nursing facility setting or in the specialized care nursing facility setting, when they met the criteria for comprehensive rehabilitation. Caring for TBI patients who demonstrate behavioral problems in either the general nursing facility population or in the specialized care setting has been a less than satisfactory service solution. These TBI patients require additional staffing and scheduled activities beyond those required by typical debilitated elderly nursing facility patients.

Summary of Public Comments and Agency's Response: No comments were received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

12 VAC 30-90-52. Administrator/owner compensation.

A. Administrators' compensation, whether administrators are owners or nonowners, shall be based on a schedule adopted by DMAS and varied according to facility bed size. The compensation schedule shall be adjusted annually to reflect cost-of-living increases and shall be published and distributed to providers annually. The administrator's compensation schedule covers only the position of administrator and assistants and does not include the compensation of owners employed in capacities other than the ~~NF~~ nursing facility administrator (see 12 VAC 30-90-290 [, Cost reimbursement limitations]).

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

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

D. Owner/administrator employment documentation.

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

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

3. Compensation for such services shall be adjusted where such compensation exceeds that paid in such arms-length transactions or where there is a duplication of duties normally rendered by an administrator. No reimbursement shall be allowed for compensation where owner services cannot be documented and audited.

12 VAC 30-90-266. Traumatic Brain Injury (TBI) payment.

DMAS shall provide a fixed per day payment for nursing facility residents with TBI served in the program in accordance with resident and provider criteria, in addition to the reimbursement otherwise payable under the provisions of the Nursing Home Payment System. Effective for dates of service on and after [~~July 1, 1997~~ August 19, 1998], a per day rate add-on shall be paid for recipients who meet the eligibility criteria for these TBI payments and who are

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residents in a designated nursing facility TBI unit of 20 beds or more that meets the provider eligibility criteria. The value of the rate add-on shall be [~~\$50~~ \$22] on [~~July 1, 1997~~ August 19, 1998, and thereafter]. The rate add-on for any qualifying provider's fiscal year shall be [~~adjusted for inflation using the Data Resources, Inc., moving average that is used to adjust ceilings and rates for inflation under the Nursing Home Payment System~~ reviewed annually to determine the appropriateness of the amount, and any changes will be published and distributed to the providers]. (Refer to 12 VAC 30-90-330 [, Traumatic brain injury diagnoses,] for related [resident and] provider [~~and recipient~~] requirements.)

PART IV.

TRAUMATIC BRAIN INJURY PAYMENT SYSTEM.

12 VAC 30-90-330. Traumatic brain injury diagnoses.

A. Consistent with the Nursing Home Payment System, DMAS shall provide a fixed per day payment for nursing facility residents with traumatic brain injury diagnoses. The residents and facilities must meet the criteria set out in this section.

B. Resident criteria. To meet the criteria for admission and continued stay for the TBI program, there shall be documented evidence in the resident's medical record of all of the following:

1. The resident shall meet the minimum nursing facility criteria [~~as specified in 12 VAC 30-60-300~~], as well as meet the preadmission screening requirements for nursing facility level of care [as specified in 12 VAC 30-60-300, Nursing facility criteria];
2. The resident has a physician's diagnosis of TBI which is also recorded on the Patient Intensity Rating System Review (DMAS-80) form by diagnosis code 85000 (trauma to the brain);
3. Abusive, aggressive, or disruptive behavior has been documented within 30 days prior to admission and also recorded on the Patient Intensity Rating System Review (DMAS-80) form by coding of behavior pattern 3 or 4. Behavior coding on the Patient Intensity Rating System Review form must also be supported by documentation in the medical record;
4. The resident is at least 14 years old; and
5. The resident must be appropriate for nursing facility placement and the facility must be able to safeguard him such that the resident will not be a physical or emotional danger to himself or other residents on the unit.

C. Provider criteria. Nursing facilities which may be approved to provide this service shall operate a dedicated unit of 20 beds or more and provide additional professional services to support the special needs of these individuals. These criteria shall concentrate individuals with TBI into specially dedicated facilities thereby satisfying safety concerns and achieving economies of scale necessary for the nursing facilities. At a minimum, the provider shall meet

all of the criteria outlined below to receive the add-on reimbursement for the TBI program for residents who meet the TBI program resident criteria.

1. Provide all services that are available to the general nursing facility population in accordance with established standards and regulations for nursing facilities to include programming that is individualized and geared toward the needs and interests of the unit's population;
2. Provide a dedicated unit of at least 20 beds that is physically separated by a doorway that shall be either locked or maintained with an alarm system that sounds at the unit nursing station when opened;
3. Certify all beds on this dedicated unit for licensed nursing facility care. To receive payment the resident must reside in a Medicaid certified bed;
4. Locate at least one nursing station on the unit and that nursing station must serve the dedicated unit only;
5. Maintain a contractual agreement with a physiatrist and a neuropsychologist to serve the resident population as needed;
6. Provide a registered nurse to function in a charge nurse capacity on the unit whose sole responsibility is for the care and oversight of the designated unit. This registered nurse cannot have other responsibilities outside of the unit during the period for which she is designated as the charge nurse for the dedicated unit. The registered nurse working in a charge nurse capacity must have sufficient experience working with the population with head injuries before serving in this capacity. Temporary agency nurses cannot be used to fulfill the charge nurse requirement;
7. Ensure that each resident on the unit is evaluated on an annual basis by a licensed clinical psychologist with expertise in neuropsychology or a neurologist. If a resident is admitted and has not been evaluated by a neuropsychologist or neurologist in the past calendar year, an evaluation must be completed within the first 30 days of the resident's stay in the TBI program; and
8. Coordinate educational services for the resident with the appropriate public school system if the resident has not completed all educational requirements for high school education as specified by the State Board of Education. Coordination is defined as making the necessary contacts and providing necessary information to the appropriate school division. The facility shall keep records of such coordination contacts.

VA.R. Doc. No. R97-723; Filed July 1, 1998, 11:39 a.m.

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 16 VAC 25-90-1910. General Industry Standards (29 CFR Part 1910) (amending 16 VAC 25-90-1910.134, 16 VAC 25-90-1910.1003, 16 VAC 25-90-1910.1025, 16 VAC 25-90-1910.1028, 16 VAC 25-90-1910.1045, 16 VAC 25-90-1910.1048, 16 VAC 25-90-1910.1050 and 16 VAC 25-90-1910.1052).

16 VAC 25-175-1926. Construction Industry Standards (29 CFR Part 1926) (amending 16 VAC 25-175-1926.1101).

Statutory Authority: § 40.1-22 (5) of the Code of Virginia.

Effective Date: September 1, 1998.

Summary:

These amendments correct errors in the regulatory text of the Respiratory Protection final rule and related regulations which were originally published in the Federal Register on January 8, 1998 (63 FR 1152) and adopted by the board on February 9, 1998.

The following corrections were made to 29 CFR 1910.134:

1. *In paragraphs (i)(1)(ii) and (i)(4)(ii), references to "Type 1-Grade D breathing air" was corrected to "Grade D breathing air" to conform to ANSI/CGA Commodity Specification for Air, G-7.1-1989.*

2. *In paragraph (n)(3), reference that previous federal standard is in effect until April 8, 1998, was changed to October 5, 1998.*

3. *The following changes were made in Appendix A:*

a. *Bitrex Solution Aerosol qualitative Fit Test protocol: part numbers for the fit test hood assembly now match the part numbers given in the saccharin qualitative fit test protocol;*

b. *Generated Aerosol Quantitative Fit Test protocol: reference for using P100 filters as one of the methods to filter exhaust air flow from the fit test chamber was deleted because it was incorrect;*

c. *Condensation Nuclei Counter Negative Fit Test protocol: requirement in paragraph (a)(1) that a high-efficiency filter be fitted was revised to allow for the fit testing of additional types of filters as appropriate; and*

d. *Controlled Negative Fit Test protocol: pressure setting for default pressure test was changed from 1.5 mm to 15 mm.*

4. *In Appendix C: Part A, Section 2, question 11(e) was corrected to read "d. Any other eye or vision problem: Yes/No."*

5. *Appendix D is now mandatory since the employer is required by paragraph (k)(6) of 29 CFR 1910.134 to provide information to employees who voluntarily use respirators.*

In 29 CFR 1910.1003(c)(4)(iv), 13 Carcinogens, requiring appropriate respirator filters for these carcinogens, language was added permitting the use of air-purifying canisters or cartridges in addition to particulate filters since some of the 13 carcinogens are vapors.

In 29 CFR 1910.1025(f)(1)(i), Lead, the provision that limited respirator use to a maximum of 4.4 hours per day was removed. It was revised to read: "(i) Periods necessary to install or implement engineering or work-practice controls."

In 29 CFR 1910.1028(g)(2)(i), Benzene, the reference "(d)(3)(iii)(b)(1)" was corrected to read "(d)(3)(iii)(B)(1)."

In 29 CFR 1910.1045(h)(2)(i), Acrylonitrile, the reference "(d)(3)(iii)(b)(1)" was corrected to read "(d)(3)(iii)(B)(1)."

In 29 CFR 1910.1048(g)(2)(i), Formaldehyde, the reference "(d)(3)(iii)(b)(1)" was corrected to read "(d)(3)(iii)(B)(1)."

In 29 CFR 1910.1050, Methylenedianiline, following Table 1, paragraph 28 is revised to read "28. Section 1910.1050 is amended by removing Appendix E, Qualitative and Quantitative Fit Testing Procedures, and revising paragraph (h) and the first paragraph of Section III to Appendix A." These changes require the use of fit testing protocols in Appendix A of 29 CFR 1910.134.

29 CFR 1910.1052, Methylene chloride: The methylene chloride (MC) standard limits respiratory protection to supplied-air respirators except for emergency escape. 29 CFR 1910.134(d)(3)(iii)(B)(1) and (2) address the use of end-of-service-life indicators or change schedules for cartridges and canisters, and do not apply to supplied-air or emergency escape respirators. These paragraphs were removed from the respiratory protection program required by the MC standard for compliance with the revised respiratory protection standard.

29 CFR 1926.1101(h)(2)(iv), Asbestos, was corrected to reinstate an earlier revision permitting the use of PAPRs with HEPA filters or supplied-air respirators with HEPA egress cartridges under specified conditions.

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Agency Contact: Copies of the regulation may be obtained from Bonnie R. Hopkins, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, Respiratory Protection Standard, General Industry, and Other Related Regulations (29 CFR Part 1910 and 29 CFR Part 1926) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason the documents will not be printed in the Virginia Register of Regulations. Copies of the documents are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, Capitol Square, Richmond, Virginia 23219.

On June 15, 1998, the Safety and Health Codes Board adopted an identical version of the corrections to federal OSHA's Respiratory Protection Standard, General Industry, and Other Related Regulations, 29 CFR Part 1910 and 29 CFR Part 1926, as published on April 23, 1998, at 63 FR 20098.

When the regulations, as set forth in the corrections to the final rule for Respiratory Protection, General Industry, 29 CFR 1910.134, and other related General Industry and Construction Industry regulations (29 CFR Part 1910 and 29 CFR Part 1926), are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as below:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
April 23, 1998	September 1, 1998



COMMONWEALTH of VIRGINIA

E.M. MILLER, JR.
ACTING REGISTRAR OF REGULATIONS

JANE D. CHAFFIN
DEPUTY REGISTRAR

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591
FAX (804) 692-0625

July 8, 1998

Mr. Linwood Saunders, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, VA 23219

Attention: Bonnie R. Hopkins
Regulatory Coordinator

Dear Mr. Saunders:

This letter acknowledges receipt on June 22, 1998, of the amendments to General Industry Standards (29 CFR Part 1910) and Construction Industry Standards (29 CFR Part 1926), submitted by the Department of Labor and Industry.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Jane Chaffin".

Jane D. Chaffin
Registrar of Regulations

VA.R. Doc. No. R98-261; Filed June 22, 1998, 11:38 a.m.



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TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 9-6.14:4.1 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval or police functions.

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 (amending 19 VAC 30-170-10, 19 VAC 30-170-20, 19 VAC 30-170-30, 19 VAC 30-170-40, 19 VAC 30-170-50, adding 19 VAC 30-170-5, and 19 VAC 30-170-60).**

Statutory Authority: § 19.2-390.1 of the Code of Virginia.

Effective Date: July 1, 1998.

Summary:

The 1998 Acts of Assembly amended and reenacted §§ 19.2-298.1 through 19.2-298.4 and 19.2-390.1 of the Code of Virginia and added § 19.2-390.2 that added offenses for which a person could be included in the Sex Offender and Crimes against Minors Registry. Additionally, the General Assembly (i) provided jurisdiction for prosecution for failure to register to the Department of State Police, (ii) provided more stringent reregistration requirements, (iii) required the Department of State Police to develop an internet-accessible site for public access to Sex Offender and Crimes against Minors Registry information on violent sexual offenders, and (iv) provided for the Department of State Police to develop an electronic notification system which would allow certain entities providing care services for children to receive notice whenever a sex offender who lives in a zip code or contiguous zip code area in which the entity is located registers with the Department of State Police.

Agency Contact: Copies of the regulation may be obtained from Captain R. Lewis Vass, Department of State Police, Records Management Division, P.O. Box 27472, Richmond, VA 23261, telephone (804) 674-4605.

CHAPTER 170.

REGULATIONS GOVERNING THE OPERATION AND MAINTENANCE OF THE SEX OFFENDER AND CRIMES AGAINST MINORS REGISTRY.

19 VAC 30-170-05. Definitions.

"Sex Offender and Crimes against Minors Registrant" means a person whose offense is a violation of or attempted violation of the following sections of the Code of Virginia: §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, subdivision A 2 of 18.2-67.3, subsection B of 18.2-67.5, 18.2-90 with intent to commit rape, 18.2-370, 18.2-370.1, 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 or attempted violation of subsection A of § 18.2-47, clause

(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" as defined in § 19.2-298.1 of the Code of Virginia, means a violation of clause (ii) of §§ 18.2-48, 18.2-61, 18.2-67.1, 18.2-67.2, subdivision A 1 of § 18.2-67.3 or subsection A of § 18.2-67.5 or a second or subsequent violation of §§ 18.2-63, 18.2-64.1, 18.2-67.2:1, subdivision A 2 of § 18.2-67.3, subsection B of § 18.2-67.5, 18.2-90 with the intent to commit rape, 18.2-370, 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, clause (iii) of § 18.2-48, subsection B of § 18.2-361, subsection B of § 18.2-366, or subdivision B 1 of § 18.2-374.1 within a 10-year period, provided that person had been at liberty between such convictions.

19 VAC 30-170-10. Sex Offender and Crimes against Minors Registry established.

A. 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 § ~~19.2-390~~ 19.2-390.1 of the Code of Virginia and registrations and reregistrations received from persons required to do so by §§ 19.2-298.1 through 19.2-298.4 of the Code of Virginia. The purpose of the registry shall be to assist the efforts of law-enforcement agencies to protect their communities from repeat sex offenders and to protect children from becoming victims of criminal offenders by helping to prevent such individuals from being hired or allowed to volunteer to work directly with children.

B. 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.

19 VAC 30-170-20. Registration; duties of registrants and local law-enforcement agencies.

~~A. Any person required to register with the Department of State Police pursuant to § 19.2-298.1 of the Code of Virginia 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, VA 23261-7472. Form SP-236 may be obtained at any office of the Department of State Police.~~

~~B. Within 30 days following any change of residence by any person required to register with the Sex Offender Registry, any such person shall reregister by mailing a new Sex Offender Registration Form with the new residence information.~~

A. Every person convicted on or after July 1, 1997, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269 of the Code of Virginia, of an offense for which registration is required shall be required, as a part of the sentence imposed upon conviction, to register and

reregister with the Department of State Police. In accordance with § 19.2-298.1 of the Code of Virginia, the court shall order the person to submit all information required by the Department of State Police, including fingerprints and photographs to the local law-enforcement agency. The local law-enforcement agency will forward to the Department of State Police such information within seven days of sentencing and promptly (within 48 hours) provide any information necessary for reregistration. Upon release from incarceration, a person who is required to register, must register within 10 days of their release from confinement or within 10 days of the suspension of their sentence. Persons who have been convicted in other states of offenses for which registry is required shall obtain from the local law-enforcement agency in the jurisdiction in which they have established residence, two sets of fingerprints and two photographs of a type and kind specified by the Department of State Police, and shall provide to the local agency all information necessary to complete Form SP-236 for inclusion in the registry, within 10 days of establishing a residence in the Commonwealth. 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. The local law-enforcement agency shall advise the person of his duties regarding reregistration. Any person required to register shall also be required to reregister within 10 days following any change in residence, whether within or without the Commonwealth. Completed forms shall be mailed to the Department of State Police, Central Criminal Records Exchange, Attn: Sex Offender Registry, P.O. Box C85076, Richmond, Virginia 23261-5076. Form SP-236 may be obtained at any office of the Department of State Police, sheriff's office, county or local police department. The local law-enforcement agency shall promptly submit to the Department of State Police, all necessary information for registrations and reregistrations pursuant to § 19.2-298.1 D of the Code of Virginia. "Promptly" is defined as within 48 hours.

B. The registration shall be maintained within the Sex Offender and Crimes against Minors Registry established pursuant to § 18.2-390.1 of the Code of Virginia and shall include the person's name; all aliases which he has used or under which he may have been known; the date and locality of the conviction for which the registration is required; his fingerprints and a photograph as specified by the Department of State Police; his date of birth, social security number, current address and a description of the offense or offenses for which he was convicted; and shall, if applicable, provide the same information on convictions prior to July 1, 1997, for any of the specified offenses or under a substantially similar law of the United States or any other state. In addition, to maintain the integrity of the Sex Offender and Crimes against Minors Registry, the person shall submit a recent photograph of himself to the Department of State Police every two years of a size and type specified by the Department of State Police.

Every person required to register under this section, other than a person convicted of a sexually violent offense,

including those persons required to register prior to July 1, 1997, shall reregister with the Department of State Police on an annual basis from the date of initial registration. Every person convicted of a sexually violent offense, including persons convicted of a sexually violent offense who were required to register prior to July 1, 1997, shall reregister with the Department of State Police every 90 days from the date of initial registration in accordance with § 19.2-298.1 F of the Code of Virginia. Within 10 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 reregister by mailing a new Sex Offender Registration Form (SP-236) with the new residence information. The Department of State Police will provide the person with an address verification form to be used for reregistration (Form SP-236A) which will be mailed to their residence.

C. Upon the receipt of a registration or ~~registration~~ reregistration 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 reregistration and transmit the appropriate information as required by the Federal Bureau of Investigation for inclusion in the National Sex Offender Registry.

D. Whenever it appears from the records of the Department of State Police, that a person has failed to comply with the duty to register or reregister, the Department of State Police will request a warrant be issued for the arrest of the person in the jurisdiction in which the person last registered or reregistered or, if the offender failed to initially register, in the jurisdiction where he was last convicted of an offense requiring registration.

E. The registration period will be 10 years from the date of initial registration. Any person who has been convicted of a sexually violent offense shall have a continuing duty to reregister for life. Any confinement in a state or local correctional facility, hospital, or any other institution or facility during the 10-year period shall toll the registration period and the duty to reregister shall be extended.

19 VAC 30-170-30. Expungement from Sex Offender and Crimes against Minors Registry; petition for removal.

A. 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. If available, a set of fingerprints should accompany the death certificate.

B. 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

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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.

C. 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.

D. Upon receipt of a certified copy of an order of expungement entered pursuant to §§ 19.2-298.3 or 19.2-392.2 of the Code of Virginia, 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.

E. Any person required to register, other than a person who has been convicted of a sexually violent offense, may petition the circuit court in which he was convicted or the circuit court in the jurisdiction where he resides for removal of his name and all identifying information from the Sex Offender and Crimes against Minors Registry. A petition may not be filed earlier than 10 years from the date of initial registration. The court will hold a hearing on the matter, and, if the court is satisfied that the person does not pose a risk to public safety, the court shall grant the petition. If the petition is not granted, the person shall wait at least 24 months from the date of denial to enter a new petition for removal. A petition for expungement shall not be granted to any person convicted of two or more offenses for which registration is required or to any person convicted of any sexually violent offense.

F. Sexually violent offenders may seek relief from reregistration in accordance with § 19.2-298.4 of the Code of Virginia which provides that upon the expiration of three years from the date upon which the duty to register is imposed, any person convicted of a sexually violent offense as defined in § 19.2-298.10 of the Code of Virginia may petition the court in which he was convicted for relief from the requirement to reregister every 90 days. This section further provides that 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 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 of the Code of Virginia. 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 reregister every 90 days shall be terminated. The Department of State Police shall be notified promptly upon entry of an order granting the petition and registry information on the offender shall be removed from the Internet system developed and maintained by the Department of State Police pursuant to of § 19.2-390.1 D of the Code of Virginia. The person however, is still under a duty to reregister annually in accordance with § 19.2-298.1 F of the Code of Virginia. Should the petition be denied, the duty to reregister every 90 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 years from the date on which any previous petition for such relief was denied.

19 VAC 30-170-40. Dissemination of Sex Offender and Crimes against Minors Registry information.

A. Any authorized officer or employee of an agency authorized to receive Sex Offender and Crimes against Minors Registry information pursuant to § 19.2-390.1 or §§ 19.2-298.1 through 19.2-298.4 of the Code of Virginia may request such information by completing a ~~Sex Offender Registry Record Name Search Request Form for Criminal History Record and/or Sex Offender and Crimes Against Minors Registry Search~~, 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. The form used by the Department of State Police to disseminate information from the Sex Offender and Crimes against Minors Registry shall provide notice that any unauthorized use of the information shall be punishable as a Class 1 misdemeanor.

~~B. 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 Information Network (VCIN). Registry information shall be disseminated upon a request made directly to the Department of State Police or to the Department of State Police through a local law-enforcement agency. Such information may be disclosed to any person requesting information on a specific individual in accordance with subsection A of this section. The Department of State Police shall make registry information available, upon request, to criminal justice agencies including local law-enforcement agencies through the Virginia Criminal Information Network (VCIN). The information provided under this section shall only be used for the administration of justice and to prevent sex offenders from being hired or allowed to work or volunteer to work directly with children. Sex Offender and Crimes against Minors Registry information shall be made available for screening of current or prospective~~

employees or volunteers or otherwise for the protection of the public in general and children in particular. Use of this information for purposes not authorized in § 19.2-390.1 of the Code of Virginia is prohibited and willful violation of this section with the intent to harass or intimidate another shall be punished as a Class 1 misdemeanor. (See Name Search Request Form, Form SP 266.)

C. Registry information will be made available to public, parochial, denominational or private elementary or secondary school and any state-regulated or state-licensed child caring institution, child day center, child day program, family day home, foster home, or group home. For the purposes of this chapter, day-care services means provision of supplementary care and protection during part of the day for the minor child of another, and child-minding services means provision of temporary custodial care or supervisory services for the minor child of another. Examples of child-minding services include little league, soccer league, or similar situations where children are placed under the temporary care of another adult.

~~C.~~ D. Upon the receipt of a registration or reregistration pursuant to § 19.2-298.1 of the Code of Virginia, 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 reregistration and the Federal Bureau of Investigation for entry into the National Sex Offender Registry. The information shall also be transmitted to any person or entity who has requested automatic notification pursuant to § 19.2-320.2 of the Code of Virginia.

E. 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.

19 VAC 30-170-50. Fee for responding to requests for information.

A. Any person requesting Sex Offender and Crimes against Minors Registry information shall pay a fee of \$15 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 \$20 to cover both requests.

B. Consistent with § 19.2-389 (11) of the Code of Virginia, the fee for a criminal history record search will not be assessed if that person has applied to be a volunteer (i) with a Virginia affiliate of Big Brothers/Big Sisters of America, (ii) with a volunteer fire company or volunteer rescue squad, (iii) as a court-appointed special advocate, or (iv) with the Volunteer Emergency Families for Children.

19 VAC 30-170-60. Information on violent sex offenders through the Internet and electronic notification of registration or reregistration.

A. The Department of State Police will develop and maintain a system that will enable the public to obtain information on violent sex offenders through the Internet.

B. The information to be contained on the Internet shall include the offender's name; all aliases which he has used or under which he may have been known; the date and locality of the conviction and a brief description of the offense; his date of birth, current address and photograph; and other information the Department of State Police believes necessary to preserve the public safety.

C. Any public, parochial, denominational or private elementary or secondary school and any state-regulated or state-licensed child caring institution, child day center, child day program, family day home, foster home, or group home may request the Department of State Police under § 19.2-390.1 of the Code of Virginia to receive electronic notice of the registration or reregistration of any sex offender registered pursuant to § 19.2-298.1 of the Code of Virginia. Agencies and other entities that request and are entitled to this notification who do not have the capability of receiving such notice may register with the Department of State Police to receive written notification of sex offender registration or reregistration.

D. In order to receive Sex Offender and Crimes against Minors Registry information, public, parochial, denominational or private elementary or secondary school and any state-regulated or state-licensed child caring institution, child day center, child day program, family day home, foster home, or group home and other entities must register with the Department of State Police. Registration for this service may occur through either of two methods. The first method is to submit to the Department of State Police a request for this information on official letterhead specifying the responsible party of the entity, official address and whether the information is to be sent to the entity though electronic means or by US mail. If the information is to be sent by electronic means an Internet e-mail address shall be provided. The second method will be to submit the required information on a form provided by the Department of State Police, Internet Registry Request.

<p>NOTICE: The forms used in administering 19 VAC 30-170-10 et seq., Regulations Governing the Operation and Maintenance of the Sex Offender and Crimes against Minors Registry, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.</p>
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FORMS

Name Search Request Form, SP- 266 (eff. 7/98).

~~Sex Offender Registry Record Request~~ OR Name Search Request Form for Criminal History Record and/or Sex Offender and Crimes against Minors Registry Search Request, SP-230 (eff. ~~7/1/94~~ rev. 7/98).

Sex Offender and Crimes against Minors Reregistration and Address Verification Form, SP-236A (eff. 7/97).

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Sex Offender and Crimes against Minors Registration Form,
SP-236 (rev. 7/98).

SP 266 (7-1-1998)

SEX OFFENDER & CRIMES AGAINST MINORS

*****NAME SEARCH REQUEST FORM *****

This form is utilized for requesting information from the "Sex Offender and Crimes Against Minors Registry" as maintained by the Central Criminal Records Exchange (CCRE).

Section 19.2-390.1 (B) of the Code of Virginia authorizes dissemination of the Sex Offender and Crimes Against Minors Registry information for screening of employees and volunteers, and protection of the public in general and children in particular. Paragraph C of this Section requires the requestor to provide a statement of the reason(s) for the request, therefore, please check the appropriate block. The results of this search will indicate if an individual is registered for conviction(s) of the following crimes, including substantially similar out-of-state conviction(s) if maintained in the Registry. Pursuant to Section 19.2-298.1.

Sexually Violent Crimes	Sexual Crimes	Sexual Crimes (Con't.)
Abduction for immoral purposes (clause ii) Rape Forcible sodomy Object sexual penetration Aggravated sexual battery Attempted rape, forcible sodomy, inanimate object sexual penetration	Crimes against nature Adultery and fornication by persons forbidden to marry: incest Taking indecent liberties with children Taking indecent liberties with child by person in custodial or supervisory relationship Production, publication, sale, possession with intent, etc. Abduction Abduction for immoral purposes (clause iii).	Carnal knowledge of child between 13 and 15 Carnal knowledge of certain minors Marital sexual battery Aggravated sexual battery Enter dwelling house, etc. with intent to rape

Unlawful use of the information for purposes of intimidating or harassing another is prohibited, and is punishable as a Class 1 Misdemeanor.

The purpose of the request is:

Employment Child or Adult Care Volunteer Services Child Protection Public Protection

The Central Criminal Records Exchange will conduct a name search of the Sex Offender and Crimes Against Minors Registry utilizing name data provided by the requestor.

Please type or print clearly all information noted below:

SHADED AREAS INDICATE THE MINIMUM INFORMATION TO BE FURNISHED BY REQUESTOR -
Additional information should be furnished IF KNOWN

Last	First	Middle			/ /	- -
Name			Race	Sex	Date of Birth	Social Security Number

Residence Address	City/Town	Zip Code
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SEARCH RESULTS WILL BE CHECKED AND RETURNED TO REQUESTOR AT ADDRESS RECORDED BELOW

No Registration Record

Registry Information Attached

State Police Use Only
Code _____

Response is based on a comparison of name/descriptive information only. This is not intended to preclude the existence of a registration under different name(s) and positive identification can only be established through a comparison of fingerprints.

Enter the name and complete mailing address to which the processed search request is to be returned:

A \$15 money order or company check must accompany this request before a file search will be initiated. *Personal Checks Not Accepted* Allow 30 days to receive a response. Mail completed request to:

Virginia State Police
P. O. Box 27472
Richmond, VA 23261-7472

SP-230 (Rev. 7-1-98)

**NAME SEARCH REQUEST FORM
FOR
CRIMINAL HISTORY RECORD AND/OR
SEX OFFENDER & CRIMES AGAINST MINORS REGISTRY SEARCH**

**PLEASE READ & FOLLOW INSTRUCTIONS ON REVERSE SIDE OF FORM TO ENSURE REQUEST CAN BE PROCESSED.
PERSONAL CHECKS NOT ACCEPTED — ALLOW THIRTY DAYS FOR PROCESSING**

I. CHECK METHOD OF PAYMENT:

- State Police Charge Account # _____
 Paid \$ _____ Total Enclosed

II. Select type name searches requested:

- Criminal History Record..... \$15.00
 Sex Offender & Crimes Against Minors Registry \$15.00
 Criminal History/Sex Offender & Crimes Against Minors Registry Record Searches..... \$20.00

III. Print Clearly Name to be Searched:

Last Name First Middle Maiden Sex Race Date of Birth

Complete Address (Street/RFD) _____ Social Security Number _____
 City _____ State _____ Zip Code _____

I certify I am entitled by law to receive the requested record, and the record provided shall be used only for the screening of current or prospective employees or volunteers. I understand that further dissemination of Criminal History Records or their use for purposes not authorized by law is prohibited and constitutes a violation punishable as a Class 1 or 2 misdemeanor.

IV. Agency, Individual Or Authorized Agent Making Request:

Complete only for Criminal History Search:

MAIL REPLY TO:

NAME		
STREET/RFD		
CITY	STATE	ZIP CODE

V. Purpose of Search

- Child Day Care
 Religious Facility Child Day Care
 Foster Care
 Domestic Adoption
 International Adoption
 Nursing Home or Home Health
 Other (specify) _____

Date of Request

Signature of Person Making Request

Printed Name

VI. Complete for Sex Offender & Crimes Against Registry Search (See instructions for explanation)

Check appropriate block to describe the purpose for the Sex Offender & Crimes Against Minors Registry Search:

- Employment Child or Adult Care Volunteer Services Child Protection Public Protection

Unlawful use of Sex Offender information for purposes of intimidating or harassing an individual is prohibited and punishable as a Class 1 Misdemeanor.

(DO NOT WRITE IN THIS SPACE, CCRE USE ONLY)

RESPONSE(S) BASED ON COMPARISON OF REQUESTER FURNISHED INFORMATION AGAINST A MASTER ADULT NAME INDEX FILE MAINTAINED IN THE CENTRAL CRIMINAL RECORDS EXCHANGE ONLY.

RESULTS OF NAME SEARCH:

- * NO CONVICTION DATA NO CRIMINAL RECORD NO SEX OFFENDER REGISTRATION
 SEX OFFENDER REGISTRATION ATTACHED

*DOES NOT PRECLUDE THE EXISTENCE OF RECORD EXISTING UNDER DIFFERENT NAME DATA THAN FURNISHED BY THE REQUESTER.

Date: _____ By: _____

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Instructions for completing the **Request Form for the Criminal History Record/Sex Offender and Crimes Against Minors Registry** search(es).

General Instructions: Please read the following Instructions.

- Section I: Method of Payment: Either Certified Check, Money Order or Company Check Accepted
VSP Charge Account: Record Account Number
- Section II: Check type of name search(es) requested.
- Section III: Type or print legibly the full name (last, first, middle (no initials) and maiden if applicable), 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.
- Section IV: Agency, Individual or Authorized Agent Making Request
Your agency identification serves as the mailing label for State Police to return the search results, therefore, type or print legibly the information requested.
- Section V: Purpose of Search: Check the appropriate box to reflect the purpose of the search.
- VDSS licensed or registered facility includes a child day center, child day center system, child-placing agency, child-caring institution, family day home, family day system, independent foster home, adult care residence, or adult day care center. Applicants for licensure or registration may also check this box.
- Section VI: **Sex Offenders and Crimes Against Minors Registry Search Request**
Section 19.2-390.1 (B) of the **Code of Virginia** requires the Requester to provide a statement of the reason(s) for the request, therefore, please check the appropriate block. The results of this search will indicate if an individual is registered for conviction(s) of a crime(s) listed below, including substantially similar out-of-state conviction(s) if maintained in the Registry, as listed below:

1. Sexually Violent Offenses

Abduction for immoral purpose	18.2-48(ii)
Rape	18.2-61
Forcible Sodomy	18.2-67.1
Object Sexual Penetration	18.2-67.2
Aggravated Sexual Battery - victim under 13	18.2-67.3.A1
Attempt rape, forcible sodomy, object sexual penetration	18.2-67.5.A

2. *Sexual Offenses

Abduction	18.2-47A
Abduction for immoral purpose	18.2-48 (iii)
Carnal knowledge of child between 13-15	18.2-63
Carnal knowledge of certain minors	18.2-64.1
Aggravated Sexual Battery -victim under 13	18.2-67.3.A2
Attempt Rape, forcible sodomy, object sexual penetration	18.2-67.5.B
Entering dwelling house etc. with intent to rape	18.2-90
Crimes against nature	18.2-.361.B
Adultery & fornication by person forbidden to marry	18.2-366.B
Taking indecent liberties with children	18.2-370
Taking indecent liberties with child by person in custodial or supervisory relationship	18.2-370.1
Production, publication, sale, possession with intent to distribute	18.2-374.B1

*NOTE: Pursuant to 19.2-298.2 (para. 2) two convictions within a 10 year period of any of the sexual offenses listed in A.2, provided the individual has been at liberty between convictions, requires registration as a sexually violent offender.

Mailing Instructions:

Affix postage and mail to:

**DEPARTMENT OF STATE POLICE
CENTRAL CRIMINAL RECORDS EXCHANGE
P. O. BOX 85076
RICHMOND, VIRGINIA 23261-5076**

ALLOW THIRTY DAYS FOR PROCESSING

Appendix A

DATE: MM/DD/CCYY COMMONWEALTH OF VIRGINIA PROGRAM: SORPRE
TIME: HH:MM:SS DEPARTMENT OF STATE POLICE
SEX OFFENDER AND CRIMES AGAINST MINORS RE-REGISTRATION AND ADDRESS VERIFICATION FORM

OFFENDER INFORMATION

Form with fields: LAST NAME, FIRST, MI, SEX, RACE, DOB, HOME STREET ADDRESS, CITY-TOWN, ST, ZIP CODE, REGISTRATION NUMBER, SID NUMBER, FBI NUMBER, SOCIAL SECURITY NUMBER

X VIOLENT SEX OFFENDER X 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 MONTH DD, YYYY.

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 initial registration. EVERY person convicted of a sexually violent offense shall re-register with the State Police very 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.

DO NOT DUPLICATE

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

R T -
I H -
G U -
H M -
T B -

Contact (804) 674-4656 to report any discrepancy in information contained in this record.

L T -
E H -
F U -
T M -
B -

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MAIL STATE POLICE COPY TO
CENTRAL CRIMINAL RECORDS
EXCHANGE
ATTN: SEX OFFENDER REGISTRY
PO BOX 27472
RICHMOND VA 23261-7472

VIRGINIA DEPARTMENT OF STATE POLICE INSTRUCTIONS FOR REGISTERING AN INDIVIDUAL IN THE SEX OFFENDER & CRIMES AGAINST MINORS REGISTRY

The following instructions set forth responsibilities of Clerks of Court, Virginia Department of Corrections, Probation/Parole, and Law Enforcement officials on registering convicted sex offenders in the Sex Offender & Crimes Against Minors Registry. Registration requires the fingerprints and photograph of sex offenders to be forwarded to the Department of State Police pursuant to Section 19.2-298.1 of the Code and retained in accordance with Section 19.2-390.1 (para. A). Registration is required for individuals convicted on or after July 1, 1994 of any offense(s) as listed in A.

A. Convictions Reportable to the Sex Offender & Crimes Against Minors Registry

1. Sexually Violent Offenses	Section	2. * Sexual Offenses	Section
Abduction for immoral purpose	18.2-48.(ii)	Abduction	18.2-47.A **
Rape	18.2-61	Abduction for immoral purpose	18.2-48.(iii)
Forcible Sodomy	18.2-67.1	Carnal knowledge of child between 13-15	18.2-63
Object Sexual Penetration	18.2-67.2	Carnal knowledge of certain minors	18.2-64.1
Aggravated Sexual Battery-victim under 13	18.2-67.3.A1	Marital Sexual Battery	18.2-67.2.1
Attempt rape, forcible sodomy, object sexual penetration	18.2-67.5.A	Aggravated Sexual Battery - victim under 13	18.2-67.3.A2
		Attempt rape, forcible sodomy, object sexual penetration,	18.2-67.5.B
		Enter dwelling house etc. with intent to rape	18.2-90
		Crimes against nature	18.2-361.B **
		Adultery & fornication by person forbidden to marry: incest	18.2-366.B **
		Taking indecent liberties with children	18.2-370
		Taking indecent liberties with child by person in custodial or supervisory relationship	18.2-370.1
		Production, publication sale possession with intent to distribute	18.2-374.1.B1 **

* NOTE: Pursuant to Section 19.2-298.1 (para. 2) two convictions within a 10 year period of any of the sexual offenses listed in A.2, provided the individual has been at liberty between convictions, requires registration as a sexually violent offender.

** Conviction under this section gives rise to registration requirements only if the victim was a minor or physically helpless or mentally incapacitated as defined in Section 18.2-67.10.

B. Clerk of Court and Law Enforcement Agency

Upon Conviction

Section 19.2-298.1 of the Code requires every person convicted on or after July 1, 1994, including juveniles convicted in circuit court pursuant to Section 16.1-269, whether sentenced as an adult or juvenile for a conviction of any crime(s) listed in Item "A", to register as a sex or violent sex offender. Upon conviction, the court shall remand the person to the custody of the local law enforcement agency for the purpose of obtaining their fingerprints and a photograph. The local law enforcement agency shall complete the required information on the individual and forward the completed registration to the Department of State Police within 7 days of sentencing or 10 days of a suspension of a sentence(s).

C. Virginia Department of Corrections or Community Supervision

Sections 53.1-116 and 53.1-160.1 of the Code require the sheriff, jail superintendent or an official of the Department of Corrections to give notice to an inmate, prior to their release or discharge from commitment, of their duty to register and re-register and to submit the registration to State Police 7 days prior to their release from custody or discharge from community supervision. Section 19.2-298.3 of the Code provides for a period of confinement to toll the 10 year registration period for sex offenders with convictions listed in A.2 and the duty to register shall be extended upon the individual's release from custody. The submission of a re-registration with the inmate's thumb prints and recording the date they were received into Corrections and that the individual is a new prisoner will toll the re-registration period. Inmates convicted of a crime(s) listed in A.1. (violent offenses) have a duty to re-register for life. Refer to reverse for additional information.

D. Registration & Change of Address -- Law Enforcement Agency

Within Virginia - When an individual responsible to register changes residence within the Commonwealth, they are required to report to the local law enforcement agency in the new place of residence, in person, within 10 days following the change of residence for the purpose of processing a registration which includes the new physical address of residence, fingerprints and a photograph.

Outside Virginia - Individuals that relocate from Virginia to another state are required to report to the local law enforcement agency, in person, within 10 days of establishing the new residence for the purpose of processing a registration which includes the new physical address of residence outside the state of Virginia, fingerprints and a photograph.

Into Virginia - Individuals that move into the Commonwealth and have been convicted of violations under the laws of the United States or any other state which are substantially similar to charges listed in Item A. are required to register within 10 days of establishing residence in Virginia by providing physical address of residence, fingerprints and a photograph.

QUESTIONS REGARDING INSTRUCTIONS OR THE SEX OFFENDER PROGRAM MAY BE DIRECTED TO THE CCRE MANAGER AT (804) 674-2070.

SP 236 (REV 7-1-1998)

Convictions Reportable to the Sex Offender & Crimes Against Minors Registry

A. Sexually Violent Offenses	B. * Sexual Offenses
<u>Charge</u>	<u>Section</u>
Abduction for immoral purpose	18.2-48.(ii)
Rape	18.2-61
Forcible Sodomy	18.2-67.1
Object Sexual Penetration	18.2-67.2
Aggravated Sexual Battery-victim under 13	18.2-67.3.A1
Attempt rape, forcible sodomy, object sexual penetration	18.2-67.5.A

<u>Charge</u>	<u>Section</u>
Abduction	18.2-47.A **
Abduction for immoral purpose	18.2-48.(iii)
Carnal knowledge of child between 13-15	18.2-63
Carnal knowledge of certain minors	18.2-64.1
Marital Sexual Battery	18.2-67.2:1
Aggravated Sexual Battery - victim under 13	18.2-67.3.A2
Attempt rape, forcible sodomy, object sexual penetration,	18.2-67.5.B
Enter dwelling house etc. with intent to rape	18.2-90
Crimes against nature	18.2-361.B **
Adultery & fornication by person forbidden to marry: incest	18.2-366.B **
Taking indecent liberties with children	18.2-370
Taking indecent liberties with child by person in custodial or supervisory relationship	18.2-370.1
Production, publication sale possession with intent to distribute	18.2-374.1.B1 **

* NOTE: Pursuant to Section 19.2-298.2 (para. 2) two convictions within a 10 year period of any of the sexual offenses listed in B, provided the individual has been at liberty between convictions, requires registration as a sexually violent offender.

** Conviction under this section gives rise to registration requirements only if the victim was a minor or physically helpless or mentally incapacitated as defined in 18.2-67.10.

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SP 236 (REV 7-1-1998)

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 AND CRIMES AGAINST MINORS REGISTRATION FORM**

Distribution
Page 1 Instructions
Page 2 State Police
Page 3 Offender's copy

AGENCY NAME		AGENCY/DOC ADDRESS (INCLUDE PROBATION/PAROLE DISTRICT #)	
OFFENDER'S TENTATIVE RELEASE DATES FROM:			
DEPT. CORRECTIONS CUSTODY	DISCHARGE FROM PAROLE/PROBATION	OFFICIAL'S SIGNATURE	

OFFENDER INFORMATION									
LAST NAME	MAIDEN	FIRST	MIDDLE	HT	WT	HAIR	EYES	SEX	RACE
ALIASES USED				SSN	MM	DD	YYYY		
				D	O	B	I	I	I
PHYSICAL HOME STREET ADDRESS						STATE	ZIP CODE		
SIGNATURE OF PERSON REGISTERING SIGN AFTER READING OR HAVING DISCLOSURE READ TO ME				SID NUMBER	FBI NUMBER	INMATE NUMBER		DATE SUBMITTED	

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

ADDITIONAL OFFENDER INFORMATION:

EMPLOYER'S NAME: _____
EMPLOYER'S PHYSICAL ADDRESS: _____
CITY: _____ ZIP CODE: _____

AFFIX PHOTO HERE

<p>NO SMALLER THAN 2" X 4"</p> <p>OR</p> <p>NO LARGER THAN 4" X 5"</p>
--

DATE OF MUG SHOT: _____

***LIST VIRGINIA CONVICTION(S) INFORMATION**

DATE CONVICTED	CONVICTED OF	CODE SECTION	SENTENCING COURT	COURT CASE NUMBER
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

***LIST OUT OF STATE CONVICTION(S) INFORMATION**

DATE CONVICTED	STATE IN WHICH CONVICTED	CONVICTED OF	CODE SECTION	SENTENCING COURT	COURT CASE NUMBER
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

***NOTE: RECORD CONVICTION DATA WHETHER IT OCCURRED ON, OR AFTER JULY 1, 1994.**

Final Regulations

SP 236 (REV 7-1-1998)

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE
SEX OFFENDER AND CRIMES AGAINST MINORS REGISTRATION FORM**

Distribution Page 1: Instructions Page 2: State Police Page 3: Offender's copy

AGENCY NAME		AGENCY/DOC ADDRESS (INCLUDE PROBATION/PAROLE DISTRICT #)							
OFFENDER'S TENTATIVE RELEASE DATES FROM:						OFFICIAL'S SIGNATURE			
DEPT. CORRECTIONS CUSTODY		DISCHARGE FROM PAROLE/PROBATION							
OFFENDER INFORMATION									
LAST NAME	MAIDEN	FIRST	MIDDLE	HT	WT	HAIR	EYES	SEX	RACE
ALIASES USED		SSN		MM	DD	YYYY			
				D O B					
PHYSICAL HOME STREET ADDRESS				STATE		ZIP CODE			
SIGNATURE OF PERSON REGISTERING		SID NUMBER	FBI NUMBER	INMATE NUMBER		DATE SUBMITTED			
SIGN AFTER READING OR HAVING DISCLOSURE READ TO ME.									

**VIRGINIA DEPARTMENT OF STATE POLICE
Disclosure of My Duty to Re-Register
in
Sex Offender & Crimes Against Minors Registry**

Check the appropriate box(es) and sign registration to certify you have **READ** or **HAD** this "Disclosure" **READ** to you and fully understand the requirements.

I am registered as a Violent Sex Offender (In cases where conviction is for a charge(s) listed in column A, or 2 or more convictions of charges listed in column B on the reverse side of this disclosure).

I am registered as a Sex Offender (In cases where conviction is for one charge(s) listed in column B on the reverse side of this disclosure).

ITEM 1

In accordance with Section 19.2-298.1 of the Code, whether classified as a sexually violent offender, sex offender or combination thereof, I hereby certify I have read or have had read to me, understand, and received this notice of my responsibility to re-register with the Department of State Police in the following instances: 1) within 7 days of receiving an additional conviction(s), 2) within 10 days of receiving a suspended sentence(s) for a conviction of a charge listed on the reverse side of this Disclosure; 3) within 10 days of a change of residence whether within or outside the State of Virginia; 4) within 7 days prior to my release from a correctional facility (adult or juvenile) or community supervision, or 5) if I change my name.

Sex Offender:

My signature on the fingerprint registration card certifies that I fully understand a re-registration form will be mailed to me from the State Police to verify my address of residence each year, for 10 years, on the anniversary date of my original registration. Immediately upon receipt of this form, I am responsible for providing my thumbprints on the address verification form; including updating registration information as appropriate. The completed verification form must be mailed **immediately** to the Department of State Police to fulfill my obligation to re-register as a sex offender. By virtue of my review and receipt of this Disclosure, I further understand **if I fail to re-register or knowingly provide materially false information to the Sex Offender and Crimes Against Minors Registry, I shall be guilty of a Class 1 Misdemeanor.**

Sexually Violent Offender:

My signature on the fingerprint registration card certifies that I fully understand a re-registration form will be mailed to me from the State Police to verify my address of residence every 90 days from the date of my original registration. Immediately upon receipt of this form, I am responsible for providing my thumbprints on the address verification form; including updating registration information as appropriate. The completed verification form must be mailed **immediately** to the Department of State Police to fulfill my obligation to re-register as a violent sex offender. By virtue of my review and receipt of this Disclosure, I further understand **if I fail to re-register or knowingly provide materially false information to the Sex Offender and Crimes Against Minors Registry, I shall be guilty of a Class 6 felony.**

OFFENDER'S COPY

Additional Instructions for Virginia Department of Corrections or Community Supervision

New Prisoner Received

Section 19.2-298.2 (para. 2) stipulates any period of confinement in a state or local correctional facility or hospital shall toll the 10 year registration (for convictions listed in Item A.2). Accordingly, it is imperative the Virginia Department of Corrections (DOC) follow the below listed instructions to maintain the Sex Offender and Crimes Against Minors Registry in a current status.

1. Record the DOC location code of the inmate.
2. Record the inmate's tentative release date and inmate number.
3. Record any convictions for crimes listed in "Item A" regardless of date of conviction, or the State in which the conviction occurred.

Registration Prior to an inmate's release from DOC custody

Sections 53.1-116 and 53.1-160.1 require the sheriff, jail superintendent and DOC to give notice to an individual prior to their release or discharge of their responsibility to register and re-register and to obtain the individual's fingerprints and photograph. The registration is to be forwarded to State Police 7 days prior to the inmate's release from custody. Ensure registration is accurately completed by:

1. Following instructions in Item C.
2. Recording a physical residence of address (i.e. P. O. Box and rural routes are not acceptable).
3. Recording the Parole Discharge Date and Probation/Parole District Location Code.

General Information

Ensure probationer/parolee's sex offender registration is current and accurately maintained in the Central Criminal Records Exchange by conducting a QH. transaction through the Virginia Criminal Information Network (VCIN). Refer to page II-9-18 of the VCIN Operator's Manual for instructions.

VA.R. Doc. No. R98-262; Filed June 18, 1998, 1:52 p.m.



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TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Division of Securities and Retail Franchising

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **Securities Act Regulations (SEC980021).**

21 VAC 5-10-10 et seq. General Administration (amending 21 VAC 5-10-40).

21 VAC 5-20-10 et seq. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer: Registration, Expiration, Renewal, Updates and Amendments, Termination, Changing Connection, Merger or Consolidation, Examinations/Qualification, Financial Statements and Reports (amending 21 VAC 5-20-10, 21 VAC 5-20-70, 21 VAC 5-20-80, 21 VAC 5-20-230, 21 VAC 5-20-290 and 21 VAC 5-20-300).

21 VAC 5-30-10 et seq. Securities Registration (amending 21 VAC 5-30-20, 21 VAC 5-30-50, 21 VAC 5-30-60, 21 VAC 5-30-70 and 21 VAC 5-30-80).

21 VAC 5-40-10 et seq. Exempt Securities (amending 21 VAC 5-40-20, 21 VAC 5-40-30, 21 VAC 5-40-100 and 21 VAC 5-40-120).

21 VAC 5-80-10 et seq. Investment Advisors (amending 21 VAC 5-80-10, 21 VAC 5-80-40, 21 VAC 5-80-140, 21 VAC 5-80-160, 21 VAC 5-80-170, 21 VAC 5-80-210 and 21 VAC 5-80-220; adding 21 VAC 5-80-250).

21 VAC 5-85-10. Forms (amending).

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Effective Date: July 1, 1998.

AT RICHMOND, June 24, 1998

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC980021

Ex Parte, in re: Amendment and adoption of rules pursuant to § 13.1-523 of the Code of Virginia (Securities Act)

ORDER AMENDING AND ADOPTING RULES

On or about May 4, 1998, the Division of Securities and Retail Franchising ("Division") mailed to broker-dealers and investment advisors registered or pending registration under the Securities Act (§ 13.1-501 et seq. of the Code of

Virginia), issuer agents registered or pending registration under the Securities Act and other interested parties summary notice of proposed amendments to the existing Securities Act Rules ("Rules") and forms, and of the opportunity to file comments and request to be heard with respect to any objections to the proposals.¹ Similar summary notice was published in several newspapers in general circulation throughout the Commonwealth. This notice also was published in "The Virginia Register of Regulations," Vol. 14, Issue 17, May 11, 1998, pp. 2397-8. The notice stated that the purposes of the proposed changes are to implement the 1998 amendments to the Securities Act, conform the Rules to certain regulations promulgated by the U.S. Securities and Exchange Commission, and make technical and other minor changes to various Rules and forms. A total of four comment letters were filed. No one requested to be heard, and, consequently, no hearing was held.

One of the four comment letters was submitted by the Institute of Certified Financial Planners. Two of the other letters were filed by member firms of the Institute, and they contain comments substantively identical to those stated in the Institute's letter.

These three commentators expressed support for the proposed changes to Rules 21 VAC 5-10-40, 21 VAC 5-80-10 and 21 VAC 5-80-170. In addition, they suggested that the Virginia practice of requiring the owners of sole proprietor investment advisor firms to separately register as investment advisors and investment advisor representatives be modified. Their recommended change is to have the individuals' registrations as investment advisors include, or serve as a waiver for, registration as investment advisor representatives.

The Division opposes such a modification at this time because it is beyond the scope of this proceeding. Moreover, the Securities Act may have to be amended to effect this change.

The remaining comment letter focuses on the proposed amendment to Rule 21 VAC 5-80-10, which creates an exclusion, applicable only to sole proprietor investment advisors employing just one investment advisor representative, from the requirement to maintain written supervisory procedures. This person requested that the exclusion be broadened to embrace all investment advisors that employ just one investment advisor representative, regardless of their form of entity, and also recommended repeal of the separate registrations required of sole proprietor investment advisors, described above.

The Division supports expanding the exclusion from the written supervisory procedures requirement to include all entities that have only one investment advisor representative, and recommends that Rule 21 VAC 5-80-10 B 4, as well as

¹ Included in this mailing was a letter from the Division expressing the Commission's concern about the impact that the "Year 2000" computer phenomenon might have on securities and investment advisor firms as well as their customers, and urging firms to take timely measures to adequately address this issue.

Rule 21 VAC 5-80-170 D (a companion to Rule 21 VAC 5-80-10 B 4), be modified accordingly. For the reasons stated earlier, the Division objects to repealing the separate registration requirement.

The Commission, upon consideration of the proposed Rules amendments, the comment letters, and the responses and recommendations of the Division, is of the opinion and finds that the proposed amendments to Rules 21 VAC 5-80-10 B 4 and 21 VAC 5-80-170 D should be modified as noted above and adopted, and that the other proposals should be adopted as noticed.

Accordingly, IT IS ORDERED THAT:

The comment letters and evidence of mailing and publication of notice of the proposed amendments to the Rules be filed in and made a part of the record of this case.

The proposed Rules amendments previously noticed be, and they hereby are, modified as described above and adopted, effective July 1, 1998. A copy of the amended Rules as hereby adopted is attached to and made a part of this order.

This matter is dismissed from the Commission's docket and the papers herein be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent to each of the following by the Division of Securities and Retail Franchising: The Commission's Division of Information Resources; Securities Regulation and Law Report, c/o The Bureau of National Affairs, 1231 25th Street, NW, Washington, D.C. 20037; Blue Sky Law Reporter, c/o Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646; all persons who submitted written comments; and, such other persons as the Division deems appropriate.

Agency Contact: Copies of the regulation may be obtained from Thomas D. Gouldin, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9051. There may be a charge for copies.

CHAPTER 10.

GENERAL ADMINISTRATION - SECURITIES ACT.

21 VAC 5-10-40. Definitions.

As used in the Securities Act (~~the Act~~), the following regulations and forms pertaining to securities, instructions and orders of the commission, the following meanings shall apply:

"Act" means the Securities Act contained in Chapter 5 (§ 13.1-501 et seq.) of Title 13.1 of the Code of Virginia.

"Applicant" means a person on whose behalf an application for registration or a registration statement is filed.

"Application" means all information required by the forms prescribed by the commission as well as any additional information required by the commission and any required fees.

"Bank Holding Company Act of 1956" (12 USC § 1841 et seq.) means the federal statute of that name as now or hereafter amended.

"Commission" means State Corporation Commission.

"Federal covered advisor" means any person who is (†) registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser." ~~or (ii) excepted from the definition of an "investment adviser" under § 202(a)(11) of the Investment Advisers Act of 1940.~~

"Investment Advisers Act of 1940" (15 USC § 80b-1 et seq.) means the federal statute of that name as now or hereafter amended.

Notwithstanding the definition in § 13.1-501 of the Act, "investment advisor representative" as applied to a federal covered advisor only includes an individual who has a "place of business" (as that term is defined in rules or regulations promulgated by the SEC) in this Commonwealth and who either:

1. Is an "investment advisor representative" as that term is defined in rules or regulations promulgated by the SEC; or
2. a. Is not a "supervised person" as that term is defined in the Investment Advisers Act of 1940, and
b. Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered advisor.

"Investment Company Act of 1940" (15 USC § 80a-1 et seq.) means the federal statute of that name as now or hereafter amended.

"NASAA" means the North American Securities Administrators Association, Inc.

"NASD" means the National Association of Securities Dealers, Inc.

"Notice" or "notice filing" means, with respect to a federal covered advisor or federal covered security, all information required by the regulations and forms prescribed by the commission and any required fee.

"Registrant" means an applicant for whom a registration or registration statement has been granted or declared effective by the commission.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act of 1933" (15 USC § 77a et seq.) means the federal statute of that name as now or hereafter amended.

"Securities Exchange Act of 1934" (15 USC § 78a et seq.) means the federal statute of that name as now or hereafter amended.

21 VAC 5-20-10. Application for registration as a broker-dealer.

A. Application for registration as a broker-dealer shall be filed with the commission at its Division of Securities and Retail Franchising and/or such other entity designated by the commission on and in full compliance with forms prescribed

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by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer unless the following executed forms, fee and information are submitted to the commission:

1. Form BD (see 21 VAC 5-85-10).
2. Statutory fee payable to the Treasurer of Virginia in the amount of \$200 pursuant to § 13.1-505 F of the Act.
- ~~3. All items included on the Virginia Supplemental Sheet to Form BD.~~
- ~~4.~~ 3. A signed and executed Agreement for Inspection of Records form.
- ~~5.~~ 4. A copy of the firm's written supervisory procedures. Sole proprietorships are excluded.
- ~~6.~~ 5. Financial statements required by 21 VAC 5-20-80.
- ~~7.~~ 6. Evidence of exam requirements for principals required by 21 VAC 5-20-70.
- ~~8.~~ 7. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21 VAC 5-20-70. Examinations/qualifications.

A. Broker-dealers registered pursuant to § 15 of the Securities Exchange Act of 1934 (15 USC §§ ~~78a through 78j~~ 78o).

1. All principals of an applicant for registration as a broker-dealer must provide the commission with evidence of a minimum passing grade of 70% on the Uniform Securities Agent State Law Examination - Series 63 (USASLE-Series 63), the Uniform Combined State Law Examination - Series 66, or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
2. In lieu of meeting the examination requirement described in subdivision 1 of this subsection A, at least two principals of an applicant may provide evidence of having passed the General Securities Principal Qualification Exam (Series 24) or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

For the purposes of this subsection A, the term "principal" means any person associated with a broker-dealer who is engaged directly (i) in the management, direction or supervision on a regular or continuous basis on behalf of such broker-dealer of the following activities: sales, training, research, investment advice, underwriting, private placements, advertising, public relations, trading, maintenance of books or records, financial operations; or (ii) in the training of persons associated with such broker-dealer for the management, direction, or supervision on a regular or continuous basis of any such activities.

3. Subsection A of this section is applicable only to principals of broker-dealers that are, or intend to forthwith become, registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

B. Broker-dealers not registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

1. All principals of an applicant for registration as a broker-dealer must provide the commission with evidence of a minimum passing grade of 70% on:

a. The Uniform Securities Agent State Law Examination - Series 63 (USASLE-Series 63), the Uniform Combined State Law Examination - Series 66, or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

b. Any additional securities-related examination(s) that the commission deems appropriate in light of the business in which the applicant proposes to engage.

2. Subsection B of this section is applicable only to principals of broker-dealers that are not, or do not intend to forthwith become, registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

21 VAC 5-20-80. Financial statements and reports.

A. All financial statements required for registration of broker-dealers shall be prepared in accordance with generally accepted accounting principles, as promulgated by the American Institute of Certified Public Accountants.

B. Definitions:

"*Certified financial statements*" shall be defined as those financial statements examined and reported upon with an opinion expressed by an independent accountant and shall include at least the following information:

1. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;

2. Representations as to whether the audit was made in accordance with generally accepted auditing standards and designation of any auditing procedures deemed necessary by the accountant under the circumstances of

the particular case which may have been omitted, and the reason for their omission; nothing in this section however shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit for the purpose of expressing the opinions required under this section;

3. Statement of the opinion of the accountant in respect to the financial statements and schedules covered by the report and the accounting principles and practices reflected therein, and as the consistency of the application of the accounting principles, or as to any changes in such principles which would have a material effect on the financial statements;

4. Any matters to which the accountant takes exception shall be clearly identified, the exemption thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

"Financial statements" shall be defined as those reports, schedules and statements, prepared in accordance with generally accepted accounting principles and which contain at least the following information unless the context otherwise dictates:

1. Statement of Financial Condition or Balance Sheet;
2. Statement of Income;
3. Statement of Changes in Financial Position;
4. Statement of Changes in Stockholder's/Partner's/Proprietor's Equity;
5. Statement of Changes in Liabilities Subordinated to Claims of General Creditors;
6. Schedule of the Computation of Net Capital Under Rule 15c3-1 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-1);
7. Schedule of the Computation for Determination of the Reserve Requirements under Exhibit A of Rule 15c3-3 and Information Relating to the Possession and Control Requirements under Rule 15c3-3 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-3).

"Independent accountant" shall be defined as any certified public accountant in good standing and entitled to practice as such under the laws of the accountant's principal place of business or residence, and who is, in fact, not controlled by, or under common control with, the entity or person being audited; for purposes of this definition, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates in which, during the period of the accountant's professional engagements to examine the financial statements being reported on or at the date of the report, the accountant or the firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest; or in which, during the period of the accountant's professional engagement to examine the financial

statements being reported on, at the date of the report or during the period covered by the financial statements, the accountant or the firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee, except that a firm will not be deemed not independent in regard to a particular person if a former officer or employee of such person is employed by the firm and such individual has completely disassociated himself from the person and its affiliates covering any period of employment by the person. For partners in the firm participating in the audit or located in an office of the firm participating in a significant portion of the audit; and in determining whether an accountant may in fact be not independent with respect to a particular person, the commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the commission.

"Review of financial statements" shall be defined as those financial statements prepared by an independent accountant, and shall include at least the following:

1. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;
2. Representations that the review was performed in accordance with standards established by the American Institute of Certified Public Accountants;
3. Representations that the accountant is not aware of any material modification that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles, other than those modifications, if any, indicated in the accountant's report.

"Unaudited financial statements" shall be defined as those financial statements prepared in a format acceptable to the commission not accompanied by the statements and representations as set forth in the definitions of "certified financial statements" or "review of financial statements" of this subsection, and shall include an oath or affirmation that such statement or report is true and correct to the best knowledge, information, and belief of the person making such oath or affirmation; such oath or affirmation shall be made before a person authorized to administer such oath or affirmation, and shall be made by an officer of the entity for whom the financial statements were prepared.

C. Requirements for broker-dealers:

1. Every broker-dealer applicant that is subject to the Securities Exchange Act of 1934 (~~15 USC §§ 78a through 78j~~) shall file any financial information that is required to be provided to the SEC, or its designee, under the Securities Exchange Act of 1934.
2. All other broker-dealer applicants not subject to subdivision 1 of this subsection, unless exempted under

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subdivision 3 of this subsection, shall file financial statements as of a date within 90 days prior to the date of filing its application for registration, which statements need not be audited provided that the applicant shall also file audited financial statements as of the end of the most recent fiscal year end.

3. Those broker-dealer applicants which have been in operation for a period of time less than 12 months, and for which audited financial statements have not been prepared or are not available, and which are not registered with the SEC, a national securities association or a national securities exchange shall be permitted to file a review of financial statements prepared by an independent accountant provided the following conditions are met:

- a. Such financial statements shall be as of a date within 30 days prior to the date of filing an application for registration; and
- b. Such financial statements shall be prepared by an independent accountant as defined under subsection B of this section and in accordance with the definitions of "financial statements" and "review of financial statements" in subsection B and in accordance with subdivision C 3 of this subsection.

21 VAC 5-20-230. Notice of civil, criminal, administrative or arbitrational action.

A. An applicant or a registrant shall notify the commission:

1. Within 30 calendar days of the date any complaint, pleading or notice is served or received giving notice of any civil, criminal or administrative charge or any arbitration proceeding or any formal order of investigation, including any such charge, proceeding or order by a self-regulatory organization registered under the Securities Exchange Act of 1934 (~~15 USC §§ 78a-78jj~~), against the applicant or registrant which directly or indirectly relates to the registration or sale of securities to any activity as a broker-dealer or agent or to any activity in which a breach of trust is alleged.
2. Within 30 calendar days of the date filed, any answer, reply or response to the complaint, pleading or notice referred to in subdivision A 1, ~~above of this subsection.~~
3. Within 30 calendar days of the date of any decision, order or sanction rendered, or any appeal filed with respect to such decision, order or sanction, in regard to the complaint, pleading or notice referred to in subdivision A 1, ~~above of this subsection.~~

B. A registrant who is a NASD member broker-dealer or is associated with a NASD member broker-dealer may file the notification required by subsection A of this section either with the commission's Division of Securities and Retail Franchising or on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system.

C. One copy of any item referred to in ~~subdivisions A subdivision 1, A 2 or A 3, above,~~ of this subsection shall be filed with the commission promptly following a request for same.

21 VAC 5-20-290. Financial responsibility.

A. The term "financial responsibility," as used in § 13.1-505 (A) of the Act, shall mean that the net capital of an applicant or registrant subject to the Securities Exchange Act of 1934 (~~15 USC §§ 78a through 78jj~~) shall be demonstrated and maintained at a level required by subsection B of this section.

B. For the purpose of demonstrating "financial responsibility," all broker-dealers subject to the Securities Exchange Act of 1934 shall meet and maintain the net capital and ratio requirements as prescribed by Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1). The net capital and ratio requirements shall be computed in accordance with Rule 15c3-1 under the Securities and Exchange Act of 1934 (17 CFR 240.15c3-1).

C. Every broker-dealer subject to the Securities Exchange Act of 1934 shall notify the commission at its Division of Securities and Retail Franchising in writing within three business days should its net capital drop below its net capital requirement and shall immediately take action necessary to establish a net capital in compliance with Rule 15c3-1 of the Securities Exchange Act of 1934.

~~C. D.~~ Every broker-dealer shall file with the commission certified financial statements as defined in subsection B of 21 VAC 5-20-80 within 60 days of its fiscal year end.

21 VAC 5-20-300. Net worth.

A. For broker-dealers not subject to the Securities Exchange Act of 1934 (~~15 USC §§ 78a through 78jj~~), the term "net worth" as used in § 13.1-505 B of the Act shall be computed as total assets minus total liabilities, excluding liabilities of the broker-dealer which are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement as defined in Appendix D of Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1d).

B. If a broker-dealer applicant or registrant not subject to the Securities Exchange Act of 1934 cannot demonstrate and maintain a net worth in excess of \$25,000, the commission shall require the filing of a surety bond on the form prescribed in 21 VAC 5-85-10. The amount of the penal sum of the surety bond can be determined according to the following table:

NET WORTH (Rounded to nearest \$1)	PENALTY AMOUNT OF SURETY BOND
Less than \$5,000	\$25,000
5,001-10,000	20,000
10,001-15,000	15,000
15,001-20,000	10,000
20,001-25,000	5,000

C. If the net worth of a broker-dealer registrant not subject to the Securities Exchange Act of 1934 plus the penal sum of

its surety bond drops below \$25,000, the registrant must so notify the Division of Securities and Retail Franchising in writing within three business days and immediately take action to establish a net worth in excess of \$25,000.

21 VAC 5-30-20. Requirements for registrations filed pursuant to § 13.1-509 of the Code of Virginia Act.

A. Every registration statement filed under § 13.1-509 of the ~~Code of Virginia Act~~ shall contain in the prospectus such financial statements as are required by the Securities Act of 1933 (~~15 USC §§ 77a-77aa~~) and any regulations promulgated thereunder.

B. Every registration statement filed under § 13.1-509 of *the Act* that is governed by any regulation, promulgated pursuant to § 13.1-523 of the ~~Code of Virginia Act~~ shall also contain such financial information as required by such regulations.

21 VAC 5-30-50. Requirements for registration statements relating to nonissuer distributions.

A. The requirements for a registration statement filed pursuant to § 13.1-508 of the Act relating to securities to be offered and sold pursuant to a nonissuer distribution (i.e., "secondary trading") are:

1. a. The registration statement shall contain the issuer's most recent 10-K Annual Report and 10-Q Quarterly Report filed with the ~~United States~~ SEC pursuant to ~~Section~~ § 13 or § 15(d) of the Securities Exchange Act of 1934 (~~15 USC §§ 78a-78j~~ *78m* or *o(d)*).

b. The registration statement pertaining to the securities of a Canadian issuer which have been registered pursuant to the Multijurisdictional Disclosure System described by the SEC in Release No. 33-6841 shall contain the issuer's most recent Annual Information Form (plus the issuer's latest audited fiscal year-end financial statements) and Quarterly Report as filed with the appropriate Canadian regulatory authority.

2. If within 12 months of the date of filing the registration statement any 8-K Current Report has been filed with the SEC pursuant to ~~Section~~ § 13 or § 15(d) of the Securities Exchange Act of 1934, then a copy of each such report shall be filed with the registration statement.

3. If within 12 months of the date of filing the registration statement any Form 10 general form for registration of securities has been filed with the SEC pursuant to ~~Section~~ § 12(d) or (g) of the Securities Exchange Act of 1934, then a copy of each such form shall be filed with the registration statement.

4. If within 12 months of the date of filing the registration statement a registration statement has been filed with the SEC pursuant to ~~Section~~ § 6 of the Securities Act of 1933 (~~15 USC §§ 77a-77aa~~), then a copy of each such registration statement shall be filed with this registration statement.

B. For purposes of this section, the word "registered" as used in § 13.1-508 A 2 (i) of the Act shall mean registered pursuant to this Act, the Securities Act of 1933 or the Securities Exchange Act of 1934.

C. The requirement for delivery of a prospectus under § 13.1-508 D of the Act, with respect to securities registered pursuant to this section, shall be met by compliance with 21 VAC 5-20-280 A 19.

D. A registration statement filed pursuant to this section need not comply with 21 VAC 5-30-40.

21 VAC 5-30-60. Requirements for renewal applications filed pursuant to § 13.1-512 of the Code of Virginia Act.

In accordance with § 13.1-512 of the Act, a registration statement and any renewal thereof relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company as those terms are defined in the Investment Company Act of 1940 (~~15 USC §§ 80a-1 through 80a-64~~), shall expire at midnight on the annual date of its effectiveness in Virginia. The effectiveness of such registration statement ~~may~~ be renewed for an additional ~~one-year~~ *one-year* period by filing the materials described below with the commission or the Securities Registration Depository, Inc. ("SRD"), when that facility is available, *or any other entity approved by rule or order of the commission*, prior to the expiration date.

1. A renewal application filed with the commission shall contain the following:

a. A facing page of Form U-1.

b. A fee of \$300 (make check payable to Treasurer of Virginia).

2. A renewal application filed with the SRD shall be filed on and in compliance with all requirements and forms prescribed by the SRD and shall include a fee of \$300 (make check payable to SRD).

Note: Refer to 21 VAC 5-60-10 for prospectus filing requirements.

21 VAC 5-30-70. Investment company notice filing requirements.

A. An investment company that is registered or that has filed a registration statement under the Investment Company Act of 1940 (~~15 USC §§ 80a-1 through 80a-64~~) (the "1940 Act") shall make a notice filing with the commission prior to the initial offer in this Commonwealth of a security which is a federal covered security under § 18(b)(2) of the Securities Act of 1933 (~~15 USC §§ 77a through 77aa~~ *(b)(2)*) (the "1933 Act"). Notice filings shall be effective upon receipt or concurrent with SEC effectiveness, if requested by the issuer. A notice filing for a unit investment trust is effective for an indefinite period of time from the date of its effectiveness. With respect to an open-end management company, as that term is defined in the 1940 Act, the effectiveness of a notice filing, and any renewal thereof, shall expire at midnight on the annual date of its effectiveness in

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Virginia. The effectiveness of such notice may be renewed for an additional one-year period by filing a renewal notice prior to the expiration date. Notice filings, notice renewal filings, amendment filings, and termination filings may be filed with the commission, the Securities Registration Depository, Inc. ("SRD"), when that facility is available, or any other entity approved by rule or order of the commission. Requirements for investment company notice filings are set forth below:

1. An initial notice filing shall contain the following:
 - a. A copy of each document which is part of a current federal registration statement as filed with the SEC or a Form NF.
 - b. An executed consent to service of process (Form U-2) appointing the Clerk of the State Corporation Commission, unless a currently effective consent to service of process is on file with the commission.
 - c. A fee (payable to the Treasurer of Virginia) in the amount of 1/20 of 1.0% of the maximum aggregate offering price of the securities to be offered in this Commonwealth; provided that the fee shall not be less than \$200 nor more than \$700, except that in the case of a unit investment trust, as that term is defined in the 1940 Act, the fee shall not be less than \$400 nor more than \$1,000.
2. A renewal notice filing of an open-end management company shall contain the following:
 - a. A copy of each document which is part of a current federal registration statement as filed with the SEC or a Form NF.
 - b. An executed consent to service of process (Form U-2) appointing the Clerk of the State Corporation Commission, unless a currently effective consent to service of process is on file with the commission.
 - c. A fee of \$300 (payable to the Treasurer of Virginia).
3. An amendment filing of an open-end investment company shall contain a copy of the amended documents filed with the SEC or a revised Form NF. No fee is required for an amendment.
4. A notice filing may be terminated by providing notice to the commission of such termination. The termination is effective upon receipt by the commission of the notice of termination or at a later date specified in the notice.

B. Any notice, amendment, termination or renewal, *as the case may be*, filed with the SRD or *any* other entity approved by rule or order of the commission shall contain the information specified in subdivisions 1 through 4 of subsection A, ~~as the case may be of this section~~, and the proper fee, if applicable, shall be payable to the SRD, or other such entity approved by rule or order of the commission, or the fee may be payable to the Treasurer of Virginia and filed directly with the commission.

C. An investment company that is registered under the 1940 Act or that has filed a registration statement under the 1933 Act shall file, upon written request of the commission and within the time period set forth in the request, a copy of any document identified in the request that is part of the federal registration statement filed with the SEC or part of an amendment to such federal registration statement.

21 VAC 5-30-80. Adoption of NASAA statements of policy.

The commission adopts the following NASAA statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the commission.

1. Options and Warrants, as amended ~~April 27~~ *November 18, 1997*.
2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended April 27, 1997.
3. Real Estate Programs, as amended October 24, 1991.
4. Oil and Gas Programs, as amended October 24, 1991.
5. Cattle-Feeding Programs, as adopted September 17, 1980.
6. Unsound Financial Condition, as adopted April 27, 1997.
7. Real Estate Investment Trusts, as amended September 29, 1993.

21 VAC 5-40-20. Exchange and automated quotations system.

In accordance with § 13.1-514 A 12 of the Act, the National Association of Securities Dealers Automated Quotations System (NASDAQ) is approved by the commission; provided, however, that the securities for which the NASDAQ exemption is being claimed, and the issuer of such securities, meet the following conditions:

1. If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus.
2. A class of the issuer's securities is required to be and is registered under ~~Section~~ § 12 of the Securities Exchange Act of 1934, and has been so registered for the three years immediately preceding the offering date.
3. Neither the issuer nor a significant subsidiary has had a material default during the last seven years (or the issuer's existence if less than seven years) in the payment of (i) principal, interest, dividend, or sinking

fund installment on preferred stock or indebtedness for borrowed money, or (ii) rentals under leases with terms of three years or more.

4. The issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least \$1 million in four of its last five fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year, such net income, but before deduction for income taxes and depreciation, of at least one and one-half times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months prior to the commencement of the offering.

5. If the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include (i) the right to have at least as many votes per share, and (ii) the rights to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law.

6. If the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of records, on any date within six months prior to the commencement of the offering, by at least 1,200 persons, and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

7. Any securities issued or guaranteed as to both principal and interest by an international bank of which the United States is a member is so exempted without regard to the conditions in this section.

8. If the offering is of interest bearing securities of a finance company with liquid assets of at least 105% of its liabilities (other than deferred income taxes, deferred investment tax credits, capital stock and surplus) at the end of each of its last five fiscal years, the applicable net income requirement of subdivision 4 of this section, but before deduction for interest expense, shall be one and one-quarter times the issuer's annual interest expense. "Finance company" means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, banking or factoring. "Liquid assets" means cash, receivables payable on demand or not more than 12 years following the close of the company's last fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income.

21 VAC 5-40-30. Uniform limited offering exemption.

A. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, issuers or persons acting on their behalf from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Act.

In view of the objective of this section and the purpose and policies underlying the Act, this exemption is not available to an issuer with respect to a transaction which, although in technical compliance with this section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this section.

Nothing in this section is intended to exempt registered broker-dealers or agents from the due diligence standards otherwise applicable to such registered persons.

Nothing in this section is intended to exempt a person from the broker-dealer or agent registration requirements of Article 3 (§ 13.1-504 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia, except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision B 2 ~~below~~ of this section.

B. For the purpose of the limited offering exemption referred to in § 13.1-514 B 13 of the Act, the following securities are determined to be exempt from the securities registration requirements of Article 4 (§ 13.1-507 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia.

Any securities offered or sold in compliance with the federal Securities Act of 1933 (~~15 USC §§ 77a through 77aa~~), Regulation D ("Reg. D"), Rules 230.501-230.503 and 230.505 as made effective in Release No. 33-6389 (47 FR 11251), and as amended in Release Nos. 33-6437 (47 FR 54764), 33-6663 (51 FR 36385), 33-6758 (53 FR 7866) and 33-6825 (54 FR 11369) and which satisfy the following further conditions and limitations:

1. The issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that all persons who offer or sell securities subject to this section are registered in accordance with § 13.1-505 of the Act except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision B 2 ~~below~~ of this subsection.

2. No exemption under this section shall be available for the securities of any issuer if any of the persons described in the federal Securities Act of 1933 (~~15 USC §§ 77a through 77aa~~), Regulation A, Rule 230.262(a), (b), or (c) (17 CFR 230.262):

a. Has filed a registration statement which is subject of a currently effective stop order entered pursuant to any state's securities law within five years prior to the beginning of the offering.

b. Has been convicted within five years prior to the beginning of the offering of a felony or misdemeanor

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in connection with the purchase or sale of a security or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

c. Is currently subject to a state's administrative order or judgment entered by that state's securities administrator within five years prior to the beginning of the offering or is subject to a state's administrative order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the beginning of the offering.

d. Is currently subject to a state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

e. Is currently subject to an order, judgment, or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the beginning of the offering, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of a false filing with a state.

f. The prohibitions of subdivisions a, b, c and e ~~above~~ of this subdivision shall not apply if the party subject to the disqualifying order, judgment or decree is duly licensed or registered to conduct securities related business in the state in which the administrative order, judgment or decree was entered against such party.

g. A disqualification caused by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification, or the State Corporation Commission, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption under this section be denied.

3. The issuer shall file with the commission no later than 15 days after the first sale in this state from an offering being made in reliance upon this exemption:

- a. A notice on Form D (17 CFR 239.500).
- b. An undertaking by the issuer to promptly provide, upon written request, the information furnished by the issuer to offerees.
- c. An executed consent to service of process appointing the Clerk of the State Corporation Commission as its agent for purpose of service of process, unless a currently effective consent to service of process is on file with the commission.
- d. A filing fee of \$250.

4. In sales to nonaccredited investors, the issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is suitable for the purchaser as to the purchaser's other security holdings and financial situation and needs.

5. Offers and sales of securities which are exempted by this section shall not be combined with offers and sales of securities exempted by another regulation or section of the Act; however, nothing in this limitation shall act as an election. The issuer may claim the availability of another applicable exemption should, for any reason, the securities or persons fail to comply with the conditions and limitations of this exemption.

6. In any proceeding involving this section, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

C. The exemption authorized by this section shall be known and may be cited as the "Uniform Limited Offering Exemption."

21 VAC 5-40-100. Issuer limited transactional exemption.

A. In accordance with § 13.1-514 B 7(b) of the Act, an offer or sale by the issuer of any of the following securities issued by a corporation, partnership, limited liability company, or real estate investment trust, as the case may be: note, stock, bond, debenture, evidence of indebtedness, partnership interest, share of beneficial interest in a real estate investment trust, a warrant or right to purchase or subscribe to any of the foregoing or a security convertible into any of the foregoing, shall be exempt from the securities, broker-dealer and agent registration requirements of the Act, provided the following conditions are met:

1. In connection with an offering pursuant to this ~~rule~~ section, there shall be no more than 35 purchasers in this Commonwealth during any period of 12 consecutive months;

2. In connection with an offering pursuant to this ~~rule~~ section, the issuer shall:

a. Deliver Form VA-1 and in certain prescribed circumstances, Part 2 of Form VA-1 or a disclosure document containing the information required by Form VA-1 and Part 2, if required, to each prospective purchaser prior to a sale to a purchaser; and

b. Sell securities only to purchasers, each of which the issuer shall, after reasonable inquiry, believe either:

(1) Has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment, and is able to bear the economic risks of the prospective investment; or

(2) Together with a purchaser representative or representatives, has sufficient knowledge and

experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment, and that the purchaser is able to bear the economic risks of the prospective investment; and,

3. No commission or similar remuneration is paid or given, directly or indirectly, for soliciting a prospective purchaser, or in connection with sales of securities in reliance on this ~~rule section~~, unless paid to a broker-dealer and its agent who are registered under the Act;

B. This exemption is not available with respect to an offering:

1. Pursuant to a registration statement or Regulation A (17 CFR §§ 230.251-230.263) notification which has been filed under the ~~federal~~ Securities Act of 1933;

2. Pursuant to an exemption under Regulation D (17 CFR § 230.505 or 17 CFR § 230.506), which offering may be exempted in Virginia only by ~~Article 5, 21 VAC 5-40-30 of these rules~~ (, Uniform limited offering exemption);

3. If the amount of money to be raised from the offering exceeds \$1,000,000;

4. If the issuer has offered for sale or sold its securities which are of the same or a similar class as that to be offered for sale or sold under this ~~rule section~~ within 180 days prior to this offering or if the issuer offers for sale or sells its securities that are of the same or a similar class as those offered and sold under this ~~rule section~~ within 180 days after this offering; or

5. If the issuer does not have a principal place of business in this Commonwealth.

C. An exemption under this ~~rule section~~ is not available if the issuer, its directors, officers, partners, members, trustees or beneficial owners of 10% or more of a class of its voting securities, or its promoters or agents connected with it or a person offering or selling the securities for or on behalf of the issuer:

1. Has been convicted (or has pleaded nolo contendere) within five years prior to reliance on this ~~rule section~~ of a felony or a misdemeanor in connection with the purchase or sale of a security, or in connection with making a false filing with the United States Securities and Exchange Commission or a state securities administrator or of a felony involving fraud or deceit, including but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or theft;

2. Is subject to an order, judgment or decree of a court of competent jurisdiction that temporarily or preliminarily restrains or enjoins, or is subject to an order, judgment or decree of a court of competent jurisdiction, entered within five years prior to reliance on this ~~rule section~~, which permanently restrains or enjoins a person from engaging in or continuing a practice or conduct in connection with the purchase or sale of a security, or

involving the making of a false filing with the United States Securities and Exchange Commission or a state securities administrator;

3. Is subject to a United States Postal Service false representation order entered within five years prior to reliance on this ~~rule section~~; or

4. Is subject to a state administrative order entered within five years prior to reliance on this ~~rule section~~ by a state securities administrator in which fraud or deceit was found.

D. The issuer shall file with the State Corporation Commission 15 days prior to the first sale in this Commonwealth in reliance on this ~~rule section~~:

1. A copy of Form VA-1, including Part 2, if applicable or a disclosure document containing the information required by the Form;

2. An executed Consent to Service of Process on Form U2 appointing the Clerk of the State Corporation Commission as its agent for service of process;

3. An undertaking to promptly provide to the State Corporation Commission, upon request, additional information as the State Corporation Commission may require; and

4. A nonrefundable filing fee of \$250.

E. This ~~rule section~~ does not exempt persons or transactions from the anti-fraud provisions of the ~~Virginia Securities Act (§ 13.1-501 et seq. of the Act)~~.

F. The State Corporation Commission may deny the exemption if it determines that a particular transaction or offering is not in the public interest.

G. For purposes of this ~~rule section~~ and § 13.1-514 B 7(b) of the Act, the following shall apply:

1. Neither the issuer nor persons acting on its behalf shall offer or sell the securities by form of general solicitation or advertising, including but not limited to, the following:

a. "Cold" calls by telephone or other means, advertising, article, notice, or other communication published in a newspaper, newsletter, magazine, mass mailing, electronic media, or similar media or broadcast over television or radio; or

b. Seminars or meetings whose attendees have been invited by general solicitation or general advertising.

2. Securities acquired in a transaction under this ~~rule section~~ shall not be resold without registration under or exemption from the Virginia Securities Act. The issuer or a person acting on its behalf shall exercise reasonable care to assure that the purchasers of the securities in an offering under this ~~rule section~~ are purchasing for investment and not with a view to distribution of the securities. Reasonable care shall include, but not be limited to, the following:

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a. Reasonable inquiry to determine whether the purchaser is acquiring the securities for himself or for other persons;

b. Placement of a restrictive legend on the certificate or other document evidencing the securities. The legend shall be in the following form: THE SECURITIES REPRESENTED BY THIS CERTIFICATE (OR OTHER DOCUMENT) HAVE BEEN ISSUED PURSUANT TO A CLAIM OF EXEMPTION FROM THE REGISTRATION OR QUALIFICATION PROVISIONS OF FEDERAL AND STATE SECURITIES LAWS AND SHALL NOT BE SOLD OR TRANSFERRED WITHOUT COMPLIANCE WITH THE REGISTRATION OR QUALIFICATION PROVISIONS OF APPLICABLE FEDERAL AND STATE SECURITIES LAWS OR APPLICABLE EXEMPTIONS THEREFROM;

c. Issuance of stop-transfer instructions to the issuer's transfer agent with respect to the securities, or, if the issuer transfers its own securities, notation in the appropriate records of the issuer; and

d. Obtaining from the purchaser a signed agreement that the securities will not be sold unless they are registered under the Virginia Securities Act or exempted from registration.

3. All sales that are part of the same offering under this ~~rule~~ section shall meet all the conditions of this ~~rule~~ section. Offers and sales that are made more than six months before the commencement of an offering under this ~~rule~~ section or are made more than six months after completion of an offering under this ~~rule~~ section will not be considered part of that offering, so long as during those six-month periods there are no offers or sales of securities by or on behalf of the issuer that are of the same or a similar class as those offered or sold under this ~~rule~~ section. If securities of the same or a similar class as those offered pursuant to this ~~rule~~ section are offered or sold less than six months before or after an offer or sale pursuant to this ~~rule~~ section, those offers to sell or sales, will be deemed to be "integrated" with the offering.

H. In proceedings involving this ~~rule~~ section, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

I. The exemption authorized by this ~~rule~~ section shall be known and may be cited as the "Issuer Limited Transactional Exemption."

21 VAC 5-40-120. Offerings conducted pursuant to Rule 506 of federal Regulation D (17 CFR § 230.506): Filing requirements and issuer-agent exemption.

A. An issuer offering a security that is a covered security under § 18 (b)(4)(D) of the Securities Act of 1933 (15 USC §§ 77a through 77aa) (the "1933 Act" r(b)(4)(D)) shall file with the commission no later than 15 days after the first sale of such federal covered security in this Commonwealth:

1. A notice on SEC Form D (17 CFR 239.500).

2. An executed consent to service of process (Form U-2) appointing the Clerk of the State Corporation Commission as its agent for service of process.

3. A filing fee of \$250 (payable to the Treasurer of Virginia).

B. For the purpose of this chapter, SEC "Form D" is the document, as adopted by the SEC and in effect on September 1, 1996, as may be amended by the SEC from time to time, entitled "Form D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

C. Pursuant to § 13.1-514 B 13 of the Act, an agent of an issuer who effects transactions in a security exempt from registration under the *Securities Act of 1933 Act* pursuant to rules and regulations promulgated under § 4(2) thereof (15 USC § 77d(2)) is exempt from the agent registration requirements of the Act.

21 VAC 5-80-10. Application for registration as an investment advisor and notice filing as a federal covered advisor.

A. Application for registration as an investment advisor shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for purposes of applying for registration as an investment advisor unless the following executed forms, fee and information are submitted:

1. Form ADV.

2. The statutory fee in the amount of \$200. The check must be made payable to the Treasurer of Virginia.

3. Signed and executed Agreement for Inspection of Records.

4. Written supervisory procedures pursuant to 21 VAC 5-80-170 D. [~~Sole proprietorships employing no investment advisor representatives other than the sole proprietor~~ Entities employing no more than one investment advisor representative] are excluded.)

5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

D. Every person who transacts business in this Commonwealth as a federal covered advisor shall file a notice as prescribed in subsection E of this section with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission.

E. A notice filing for a federal covered advisor shall be deemed incomplete unless the following executed forms, fee and information are submitted:

1. Form ADV.
2. The statutory fee in the amount of \$200. The check must be made payable to the Treasurer of Virginia.
3. Consent to Service of Process on Form S.A.14.

Notwithstanding the exclusion provided by subdivision (vi) of § 13.1-501 of the Act in the definition of "investment advisor," for the period ending three years from October 11, 1996, the commission may require the registration as an investment advisor of any federal covered advisor who fails or refuses to pay a fee required by this ~~rule section~~; provided that a delay in payment or an underpayment of a fee that is remedied within 15 days after receipt of notice from the commission shall not constitute a failure or refusal to pay the fee.

21 VAC 5-80-40. Updates and amendments.

A. An investment advisor or federal covered advisor shall update its Form ADV as required by the "updating" provisions of ~~Item 7~~ *Items 1 and 10* of Form ADV Instructions and shall file all such information with the commission at its Division of Securities and Retail Franchising.

B. An investment advisor shall file the balance sheet as prescribed by Part II, Item 14 of Form ADV, unless excluded from such requirement, with the commission at its Division of Securities and Retail Franchising within 90 days of the investment advisor's fiscal year end. Any investment advisor who is registered in the state in which it maintains its principal place of business shall file with the commission at its Division of Securities and Retail Franchising any financial documents required to be filed by the state within 10 days of the time it must file these documents in such state.

21 VAC 5-80-140. Custody of client funds or securities by investment advisors.

An investment advisor who takes or has custody of any securities or funds of any client must comply with the following; provided that an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. An investment advisor with its principal place of business located in this Commonwealth shall notify the commission that it has or may have custody. Such notification may be given on Form ADV.

2. The securities of each client must be segregated, marked to identify the particular client having the beneficial interest therein and held in safekeeping in some place reasonably free from risk of destruction or other loss.

3. All client funds must be deposited in one or more bank accounts containing only clients' funds, such account or accounts must be maintained in the name of the investment advisor or agent or trustee for such clients, and the investment advisor must maintain a separate record for each such account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.

4. Immediately after accepting custody or possession of funds or securities from any client, the investment advisor must notify the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment advisor must give written notice thereof to the client.

5. At least once every three months, the investment advisor must send each client an itemized statement showing the funds and securities in the investment advisor's custody at the end of such period and all debits, credits and transactions in the client's account during such period.

6. At least once every calendar year, an independent public accountant must verify all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment advisor. A certificate of such accountant stating that he or she has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the commission promptly after each such examination.

7. This section shall not apply to an investment advisor also registered as a broker-dealer under ~~Section~~ § 15 of the Securities and Exchange Act of 1934 (15 USC ~~§§ 78a through 78k~~ § 78o) if the broker-dealer is (i) subject to and in compliance with SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers) (17 CFR 240.15c3-1) under the Securities Exchange Act of 1934, or (ii) a member of an exchange whose members are exempt from SEC Rule 15c3-1, (17 CFR 240.15c3-1) under the provisions of paragraph (b)(2) thereof, and the broker-dealer is in compliance with all regulations and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

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21 VAC 5-80-160. Recordkeeping requirements for investment advisors.

A. Every investment advisor registered or required to be registered under the Act shall make and keep current the following books, ledgers and records, except an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
3. A memorandum of each order given by the investment advisor for the purchase or sale of any security, of any instruction received by the investment advisor from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment advisor who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.
4. All check books, bank statements, canceled checks and cash reconciliations of the investment advisor.
5. All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment advisor as such.
6. All trial balances, financial statements, and internal audit working papers relating to the business of such investment advisor.
7. Originals of all written communications received and copies of all written communications sent by such investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, and (iii) the placing or execution of any order to purchase or sell any security; provided, however, (a) that the investment advisor shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and (b) that if the investment advisor sends any

notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment advisor shall retain with a copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

8. A list or other record of all accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.
9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.
10. All written agreements (or copies thereof) entered into by the investment advisor with any client or otherwise relating to the business of such investment advisor as such.
11. a. A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment advisor circulates or distributes, directly or indirectly, to 10 or more persons (other than investment advisory clients or persons connected with such investment advisor), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment advisor indicating the reasons therefor.
b. All of their advertisements and all records, worksheets, and calculations necessary to form the basis for performance data in their advertisements.
12. a. A record of every transaction in a security in which the investment advisor or any investment advisor representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisor representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisor representative has any direct or indirect beneficial

ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. An investment advisor shall not be deemed to have violated the provisions of this subdivision 12 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. a. Notwithstanding the provisions of subdivision 12 ~~above of this subsection~~, where the investment advisor is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment advisor or any investment advisor representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisor representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisor representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. An investment advisor is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment advisor derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

c. An investment advisor shall not be deemed to have violated the provisions of this subdivision 13 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment advisor in accordance with the provisions of 21 VAC 5-80-190 and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. Every investment advisor subject to 21 VAC 5-80-170 shall keep in each business office written procedures which shall include, but not be limited to, the duties imposed under 21 VAC 5-80-170.

B. If an investment advisor subject to subsection A of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A above shall also include:

1. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.

2. A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.

3. Copies of confirmations of all transactions effected by or for the account of any such client.

4. A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security.

C. Every investment advisor subject to subsection A of this section who renders any investment advisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:

1. Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale.

2. For each security in which any such client has a current position, information from which the investment advisor can promptly furnish the name of each such client, and the current amount or interest of such client.

D. Any books or records required by this section may be maintained by the investment advisor in such manner that the identity of any client to whom such investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

E. 1. All books and records required to be made under the provisions of subsection A to subdivision C 2, inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the

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last entry was made on such record, the first two years of such period in the office of the investment advisor.

2. Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.

F. An investment advisor subject to subsection A of this section, before ceasing to conduct or discontinuing business as an investment advisor shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commission in writing of the exact address where such books and records will be maintained during such period.

G. All books, records or other documents required to be maintained and preserved under this section may be stored on microfilm, microfiche, or an electronic data processing system or similar system utilizing an internal memory device provided a printed copy of any such record is immediately accessible.

H. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 240.17a-4) under the Securities Exchange Act of 1934 (~~45 USC §§ 78a through 78kk~~), which is substantially the same as the book, or other record required to be made, kept, maintained, and preserved under this section shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

21 VAC 5-80-170. Supervision of investment advisor representatives.

A. An investment advisor shall be responsible for the acts, practices, and conduct of its investment advisor representatives in connection with advisory services until such time as the investment advisor representatives have been properly terminated as provided by 21 VAC 5-80-110.

B. Every investment advisor shall exercise diligent supervision over the advisory activities of all of its investment advisor representatives.

C. Every investment advisor representative employed by an investment advisor shall be subject to the supervision of a supervisor designated by such investment advisor. The supervisor may be the investment advisor in the case of a sole proprietor, or a partner, officer, office manager or any qualified investment advisor representative in the case of entities other than sole proprietorships. All designated supervisors shall exercise reasonable supervision over the advisory activities of all investment advisor representatives under their responsibility.

D. As part of its responsibility under this section, every investment advisor, *except [sole proprietorships employing no investment advisor representatives other than the sole proprietor, entities employing no more than one investment*

advisor representative,] shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the investment advisor, which shall include but not be limited to the following duties imposed by this section; provided that an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. The review and written approval by the designated supervisor of the opening of each new client account;
2. The frequent examination of all client accounts to detect and prevent irregularities or abuses;
3. The prompt review and written approval by a designated supervisor of all advisory transactions by investment advisor representatives and of all correspondence pertaining to the solicitation or execution of all advisory transactions by investment advisor representatives;
4. The prompt review and written approval of the handling of all client complaints.

E. Every investment advisor who has designated more than one supervisor pursuant to subsection C of this section shall designate from among its partners, officers, or other qualified investment advisor representatives, a person or group of persons who shall:

1. Supervise and periodically review the activities of the supervisors designated pursuant to subsection C of this section; and
2. No less often than annually inspect each business office under his supervision to ensure that the written procedures are being enforced.

All supervisors designated pursuant to this subsection E shall exercise reasonable supervision over the supervisors under their responsibility to insure compliance with this subsection.

21 VAC 5-80-210. Exclusions from definition of "investment advisor" and "federal covered advisor."

A. The terms "investment advisor" and "federal covered advisor" do not include any person engaged in the investment advisory business whose only client in this Commonwealth is one (or more) of the following:

1. An investment company as defined in the Investment Company Act of 1940 (~~45 USC §§ 80a-1 through 80a-64~~).
2. An insurance company licensed to transact insurance business in this Commonwealth.

3. A bank, a bank holding company as defined in the Bank Holding Company Act of 1956 (~~42 USC § 1841 et seq.~~), a trust subsidiary organized under Article 3.1 (§ 6.1-32.1 et seq.) of Chapter 2 of Title 6.1 of the Code of Virginia, a savings institution, a credit union, or a trust company if the entity is either (i) authorized or licensed to transact such business in this Commonwealth or (ii) organized under the laws of the United States.

4. A broker-dealer so registered under the Act and under the Securities and Exchange Act of 1934 (~~15 USC §§ 78a through 78kk.~~)

5. An employee benefit plan with assets of not less than \$5,000,000.

6. A governmental agency or instrumentality.

B. Any investment advisor or federal covered advisor who (i) does not have a place of business located within this Commonwealth and (ii) during the preceding 12-month period has had fewer than six clients who are residents of this Commonwealth other than those listed in subsection A of this section is excluded from the registration and notice filing requirements of the Act.

21 VAC 5-80-220. Performance based fees.

A. In accordance with § 13.1-503 C of the Act, an investment advisor may enter into, extend, or renew any investment advisory contract to provide for compensation to the investment advisor on the basis of a share of the capital gains upon, or the capital appreciation of, the funds or any portion of the funds of a client, provided that the following conditions of this section are satisfied.

B. Nature of the client:

1. a. The client entering into the contract subject to this section must be a natural person or a company, as defined in subdivision ~~B~~ 2 of this subsection and in the definition of "company" in subsection F of this section, who immediately after entering into the contract has at least \$500,000 under the management of the investment advisor; or

b. A person who the registered investment advisor (and any person acting on his behalf) entering into the contract reasonably believes, immediately prior to entering into the contract, is a natural person or a company, as defined in subdivision ~~B~~ 2 of this subsection and in the definition of "company" in subsection F of this section, whose net worth at the time the contract is entered into exceeds \$1,000,000. (The net worth of a natural person may include assets held jointly with such person's spouse.)

2. The term "company" as used in subdivision ~~B~~ 1 of this ~~section~~ subsection does not include:

a. A private investment company, as defined in subsection F of this section;

b. An investment company registered under the Investment Company Act of 1940 (~~15 USC §§ 80a-1 through 80a-64~~); or

c. A business development company, as defined in ~~section~~ § 202 (a) (22) of the Investment Advisers Act of 1940 (~~15 USC §§ 80b-1 through 80b-21 80b-2(a)(22)~~);-

unless each of the equity owners (other than the investment advisor entering into a contract under this section) of any such company identified in this subdivision 2, is a natural person or company described in this subsection B.

C. Compensation formula. The compensation paid to the advisor under this section with respect to the performance of any securities over a given period shall be based on a formula which:

1. Includes, in the case of securities for which market quotations are readily available, the realized capital losses and unrealized capital depreciation of the securities over the period;

2. Includes, in the case of securities for which market quotations are not readily available:

a. The realized capital losses of the securities over the period and

b. If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

3. Provides that any compensation paid to the advisor under this section is based on the gains less the losses (computed in accordance with subdivisions ~~C~~ 1 and 2 of this ~~section~~ subsection) in the client's account for a period of not less than one year.

D. Disclosure. In addition to the disclosure requirements of Form ADV, the advisor shall disclose to the client, or the client's independent agent, prior to entering into an advisory contract permitted by this section, all material information concerning the proposed advisory arrangement including the following:

1. That the fee arrangement may create an incentive for the advisor to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

2. Where relevant, that the advisor may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

3. The time period which will be used to measure investment performance throughout the term of the contract and its significance in the computation of the fee;

4. The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the advisor believes the index is appropriate; and

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5. Where an advisor's compensation is based on the unrealized appreciation of securities for which market quotations are not readily available, how such securities will be valued and the extent to which the valuation will be independently determined.

E. Arms-length contract. The investment advisor (and any person acting on its behalf) who enters into the contract must reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties and that the client (or in the case of a client which is a company as defined in subsection F of this section, the person, representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in subsection F of this section.

F. Definitions. For the purpose of this section:

The term "~~affiliate~~" "*affiliated person*" has the same meaning as in ~~section~~ § 2 (a) (3) of the Investment Company Act of 1940 (*15 USC § 80a-2(a)(3)*).

The term "client's independent agent" means any person agreeing to act as the client's agent in connection with the contract other than:

1. The investment advisor acting in reliance upon this section, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor, or an interested person of the investment advisor as defined in this subsection;
2. A person who receives, directly or indirectly, any compensation in connection with the contract from the investment advisor, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor or an interested person of the investment advisor as defined in this subsection; or
3. A person with any material relationship between himself (or an affiliated person of such person) and the investment advisor (or an affiliated person of the investment advisor) that exists, or has existed at any time during the previous two years.

The term "company" has the same meaning as in ~~section~~ § 202 (a) (5) of the Investment Advisers Act of 1940 (*15 USC § 80b-2(a)(5)*).

The term "interested person" as used in the definition of "client's independent agent" of this section means:

1. Any member of the immediate family of any natural person who is an affiliated person of the investment advisor;
2. Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee,

executor, or guardian of any legal interest in, any security issued by the investment advisor or by a controlling person of the investment advisor if the beneficial or legal interest of the person in any security issued by the investment advisor or by a controlling person of the investment advisor:

- a. Exceeds one tenth of one percent of any class of outstanding securities of the investment advisor or a controlling person of the investment advisor; or
- b. Exceeds 5.0% of the total assets of the person (seeking to act as the client's independent agent); or

3. Any person or partner or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment advisor.

The term "private investment company" means a company which would be defined as an investment company under ~~section~~ § 3 (a) of the Investment Company Act of 1940 (*15 USC § 80a-3(a)*) but for the exception provided from that definition by ~~section~~ § 3 (c) (1) of such Act.

The term "securities for which market quotations are readily available" in subsection C of this section has the same meaning as in Rule 2a-4 (a) (1) under the Investment Company Act of 1940 (17 CFR 270.2a-4 (a) (1)).

The term "securities for which market quotations are not readily available" in subsection C of this section means securities not described in the above paragraph.

21 VAC 5-80-250. Employment of investment advisor representative by more than one investment advisor or federal covered advisor.

A. *In accordance with § 13.1-504 C of the Act, an investment advisor representative (representative) may be employed by more than one investment advisor or federal covered advisor (employing advisor) if all of the following conditions are satisfied:*

1. *Each employing advisor is under common ownership and control as defined in subsection B of this section.*
2. *Each employing advisor is registered or has filed notice, as the case may be, in accordance with 21 VAC 5-80-10.*
3. *Each employing advisor consents in writing to the employment of the representative as an investment advisor representative by each of the other employing advisors.*
4. *The representative is registered in accordance with 21 VAC 5-80-70 by and on behalf of each employing advisor.*
5. *Each employing advisor executes an Investment Advisor Representative Multiple Employment Agreement (Form S.A.15), and the executed agreement is filed with the commission at its Division of Securities and Retail Franchising prior to the representative transacting business in Virginia on behalf of such advisor.*

6. A new Investment Advisor Representative Multiple Employment Agreement is executed and filed with the commission at its Division of Securities and Retail Franchising within 15 days after any information in a current agreement on file with the commission becomes materially deficient, incomplete or inaccurate.

B. The term "common ownership and control" as used herein means possession of at least a 50% ownership interest in each employing advisor by the same individual or individuals.

CHAPTER 85. FORMS - SECURITIES ACT.

21 VAC 5-85-10. Adopted securities forms.

The commission adopts for use under the Act the forms contained in the appendix (not included in the Virginia Administrative Code) and listed below.

Broker-Dealer and Agent Forms

Form BD - Uniform Application for Broker-Dealer Registration (2/98).

~~Form S.A.1 - Supplemental Information for Commonwealth of Virginia to Be Furnished with Form BD (rev. 7/97).~~

Agreement for Inspection of Records (rev. 7/98).

Form S.A.11 - Broker-Dealer's Surety Bond (rev. 1982).

Form S.A.2 - Application for Renewal of a Broker-Dealer's Registration (rev. 11/96).

Form S.D.4 - Application for Renewal of Registration as an Agent of an Issuer (1997).

Form S.D.4.A - Non-NASD Broker-Dealer or Issuer Agents to be Renewed Exhibit (1974).

Form S.D.4.B - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with no disciplinary history (1974).

Form S.D.4.C - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with disciplinary history (1974).

Form BDW - Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer (rev. 4/89).

Rev. Form U-4 - Uniform Application for Securities Industry Registration or Transfer (11/97).

Rev. Form U-5 - Uniform Termination Notice for Securities Industry Registration (11/97).

Investment Advisor and Investment Advisor Representative Forms

Form ADV - Uniform Application for Registration of Investment Advisors (rev. 7/97).

Agreement for Inspection of Records (rev. 7/98).

Surety Bond Form.

Rev. Form U-4 - Uniform Application for Securities Industry Registration or Transfer (11/97).

Rev. Form U-5 - Uniform Termination Notice for Securities Industry Registration (11/97).

Form S.A.3 - Affidavit for Waiver of Examination (rev. 11/96).

Form S.A.14 - Consent to Service of Process for Notice Filing as a Federal Covered Advisor (7/97).

Form S.A.15 - Investment Advisor Representative Multiple Employment Agreement (7/98).

Securities Registration Forms

Form U-1 - Uniform Application to Register Securities (7/81).

Form U-2 - Uniform Consent to Service of Process (7/81).

Form U-2a - Uniform Form of Corporate Resolution (7/81).

Form S.A.4 - Registration by Notification - Original Issue (rev. 11/96).

Form S.A.5 - Registration by Notification - Non-Issuer Distribution (rev. 11/96).

Form S.A.6 - Registration by Notification - Pursuant to 21 VAC 5-30-50 Non-Issuer Distribution "Secondary Trading" (1989).

Form S.A.8 - Registration by Qualification (7/91).

Form S.A.10 - Request for Refund Affidavit (Unit Investment Trust) (7/90).

Form S.A.12 - Escrow Agreement (1971).

Form S.A.13 - Impounding Agreement (7/58).

Form VA-1 - Parts 1 and 2 - Notice of Limited Offering of Securities (rev. 11/96).

Form NF - Uniform Investment Company Notice Filing (4/97).

VA.R. Doc. No. R98-236; Filed June 29, 1998, 10:19 a.m.

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(Rev. 7/98)

AGREEMENT FOR INSPECTION OF RECORDS

(Name of Issuer, Broker-Dealer or Agent)

(hereinafter "Applicant") hereby agrees and represents as a condition of registration of its securities or of granting its application for registration as a broker-dealer or as an agent under the Securities Act of Virginia:

I.

- (A) That all of Applicant's records, immediately upon the request of the Commission, will be made available for inspection by the Commission and reproduction for the Commission in the office where such records are maintained;
- (B) That all of Applicant's records (or legible copies of same, or print-outs of same, if automated) pertaining to a securities transaction any part of which occurred or is to occur within the Commonwealth of Virginia will be made available for inspection by the Commission in the office of the Commission's Division of Securities and Retail Franchising within 48 hours after request of the Commission for same;
- (C) That the term "records" shall mean and include all books, papers, documents, tapes, films, photographs or other materials, regardless of physical form or characteristics, (1) that are maintained for the recordation or storage of information prepared, used or to be used in connection with a securities transaction or (2) that were used or are to be used in connection with a securities transaction; and
- (D) That the address at which the records are maintained is _____

_____ and that if this address changes, then the Applicant immediately will give written notification to the Commission of the correct address.

II.

The Applicant understands:

- (A) That failure to comply with the terms of Part I of this Agreement may be considered grounds for the institution of a proceeding to revoke a broker-dealer's or agent's registration or the effectiveness of a registration statement.
- (B) That any issuer, broker-dealer or agent subject to an investigation made by the Commission may be required to pay the actual cost of the investigation ~~including \$20 per day for the time of the investigator.~~

(Signature of Agent)

(Name of Issuer or Broker-Dealer)

(Date)

By: _____
(Signature)

(Typed or Printed Name of Signer)

(Contact Person)

(Title)

(Telephone Number)

(Date)

(Rev. 7/98)

AGREEMENT FOR INSPECTION OF RECORDS

(Name of Investment Advisor)

(hereinafter "Applicant") hereby agrees and represents as a condition of granting application for registration as an investment advisor under the Virginia Securities Act:

I.

- (A) That all of Applicant's records, immediately upon the request of the Commission, will be made available for inspection by the Commission and reproduction for the Commission in the office where such records are maintained;
- (B) That all of Applicant's records (or legible copies of same, or print-outs of same, if automated) pertaining to the investment advisory business any part of which occurred or is to occur within the Commonwealth of Virginia will be made available for inspection by the Commission in the office of the Commission's Division of Securities and Retail Franchising within 48 hours after request of the Commission for same;
- (C) That the term "records" shall mean and include all books, papers, documents, tapes, films, photographs or other materials, regardless of physical form or characteristics, (1) that are maintained for the recordation or storage of information prepared, used or to be used in connection with the investment advisory business or (2) that were used or are to be used in connection with the investment advisory business; and
- (D) That the address at which the records are maintained is _____

_____ and that if this address changes, then the Applicant immediately will give written notification to the Commission of the correct address.

II.

The Applicant understands:

- (A) That failure to comply with the terms of Part I of this Agreement may be considered grounds for the institution of a proceeding to revoke an investment advisor's registration.
- (B) That any investment advisor subject to an investigation made by the Commission may be required to pay the actual costs of the investigation ~~including \$20 per day for the time of the investigator.~~

(Name of Investment Advisor)

By: _____
(Signature)

(Typed or Printed Name of Signer)

(Title)

(Date)

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Rev. 7/97

SUPPLEMENTAL INFORMATION FOR COMMONWEALTH OF VIRGINIA TO BE FURNISHED WITH FORM BD

Full name of applicant exactly as stated on Form BD _____ Date _____

~~Answer the following questions and supply the information required:~~

1. ~~Is the applicant "in good standing" in its state of organization? Yes _____ No _____.~~
2. ~~Submit a check payable to Treasurer of Virginia in the amount of \$200. (§ 13.1-505 F of the Code of Virginia)~~
3. ~~The following must be submitted along with the Form BD:~~
 - a. ~~A completed Agreement for Inspection of Records. (21 VAC 5-20-10 B 4)~~
 - b. ~~A copy of the firm's written supervisory procedures. Sole proprietorships are excluded. (21 VAC 5-20-10 B 5)~~
4. ~~Financial reports pursuant to 21 VAC 5-20-80.~~
 - a. ~~Broker-dealers subject to the Securities Exchange Act of 1934 (15 USC §§ 78a-78jj), must attach one copy of the applicant's latest financial statement, which need not be audited, reflecting computation of net capital.~~
 - b. ~~All other broker-dealers must attach one copy of applicant's latest audited financial statement and,~~
 - c. ~~Attach one copy of applicant's latest Joint Regulatory Report or FOCUS Report or,~~
 - d. ~~Furnish one copy of applicant's latest unaudited financial statement. (If applicant's latest audited financial statement required by subsection a is not dated within 90 days preceding the filing of this application, the *unaudited financial statement must be dated within the 90 day period* and attested to by an officer or director of the applicant).~~
 - e. ~~Attach a copy of all currently effective subordination agreements if applicable.~~
5. ~~Broker-Dealer bond.~~

~~The surety bond must be executed if the broker-dealer is not subject to the Securities Exchange Act of 1934, and does not have a net worth in excess of \$25,000. (§ 13.1-505 B of the Code of Virginia and 21 VAC 5-20-300). Attached is the required surety bond in the penal amount of \$_____.~~
6. ~~Exam requirements for principals.~~

~~See definition of "Principal" under 21 VAC 5-20-70 A 2.~~

~~Applicant must comply with either a or b below.~~

 - a. ~~All principals of applicant have obtained a minimum passing grade of 70% on the USASLE (Uniform Securities Agent State Law Exam), Series 63, the Uniform Combined State Law Examination, Series 66, or on a similar examination designated by the Director of the Division of Securities and Retail Franchising. (21 VAC 5-20-70 A 1) Yes _____ No _____~~
 - b. ~~At least two principals of applicant have been registered with the SEC or the NASD as a general securities principal (21 VAC 5-20-70 A 2). The NASD requires general securities principals to take and successfully pass the Series 24 Exam. Yes _____ No _____~~

PROVIDE EVIDENCE OF THE ABOVE IN THE FORM OF AN NASD EXAM REPORT.

S.A. 15 (7/98)

INVESTMENT ADVISOR REPRESENTATIVE MULTIPLE EMPLOYMENT AGREEMENT

As a condition of _____
(print or type individual's name and CRD Number)
being employed as an investment advisor representative ("Representative") by each investment advisor ("Advisor") identified below, each Advisor hereby consents to the employment of Representative as an investment advisor representative by and on behalf of each of the undersigned Advisors.

Type/Print Advisor's Name/CRD#

By: _____
Signature

Name of Signer (Type/Print)

Title of Signer (Type/Print)

Date

Type/Print Advisor's Name/CRD#

By: _____
Signature

Name of Signer (Type/Print)

Title of Signer (Type/Print)

Date

Type/Print Advisor's Name/CRD#

By: _____
Signature

Name of Signer (Type/Print)

Title of Signer (Type/Print)

Date

Type/Print Advisor's Name/CRD#

By: _____
Signature

Name of Signer (Type/Print)

Title of Signer (Type/Print)

Date

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Title of Regulation: **21 VAC 5-120-10 et seq. Virginia Trademark and Service Mark Regulations (adding 21 VAC 5-120-10 through 21 VAC 5-120-110).**

Statutory Authority: §§ 12.1-13 and 59.1-92.19 of the Code of Virginia.

Effective Date: July 1, 1998.

AT RICHMOND, JUNE 24, 1998

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC980020

Ex Parte, in re: Adoption of regulations pursuant to § 59.1-92.19 of the Code of Virginia (Virginia Trademark and Service Mark Act (1998))

ORDER ADOPTING REGULATIONS

On or about May 4, 1998, the Division of Securities and Retail Franchising ("Division") mailed to persons whose trademarks or service marks are registered or pending registration under the Virginia Trademark and Service Mark Act (§ 59.1-77 et seq. of the Code of Virginia) currently in effect, and to other interested persons, summary notice of proposed regulations and forms designed to implement the new Virginia Trademark and Service Mark Act (1998) ("Act").¹ The notice also invited the filing of written comments and included information about requesting a hearing with respect to any objections to the proposals. Similar notice was published in several newspapers in general circulation throughout the Commonwealth and in "The Virginia Register of Regulations," Vol. 14, Issue 17, May 11, 1998, p. 2420. The notice stated that the proposed regulations and forms establish the requirements, procedures and fees under the Act pertaining to registering trademarks and service marks, renewing such registrations, and filing assignments and name changes, as well as establish the classification of goods and services. One comment letter was filed. No one requested to be heard, and, consequently, no hearing was held.

The comment letter was submitted on behalf of the Legislation Committee of the Intellectual Property Section of the Virginia Bar Association. The Division has advised the Commission that this Committee worked closely with the General Assembly and the Division during the legislative process resulting in enactment of the Act.

The Committee recommended three technical, minor changes to the proposed regulations. The Division recommends that two of these changes be accepted and, accordingly, that the regulations be modified by including the

term "drawing" in the definition of "Exhibit" in 21 VAC 5-120-10 and by adding a new regulation, 21 VAC 5-120-90, to clarify that the Commission's Rules of Practice and Procedure, so far as practicable, apply to petitions for cancellation of a mark. The Committee and the Division agreed that the third change, modification of the forms, is not necessary.

The Commission, upon consideration of the proposed regulations, the comment letter, and the recommendation of the Division, is of the opinion and finds that the proposed regulations should be modified as set forth above and adopted.

Accordingly, IT IS ORDERED THAT:

The comment letter and evidence of mailing and publication of notice of the proposed regulations be filed in and made a part of the record of this case.

The proposed regulations previously noticed be, and they hereby are, modified as described above and adopted, effective July 1, 1998. A copy of the regulations as hereby adopted is attached to and made a part of this order.

This matter is dismissed from the Commission's docket and the papers herein be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent to each of the following by the Division of Securities and Retail Franchising: The Commission's Division of Information Resources; BNA's Patent, Trademark and Copyright Journal, c/o The Bureau of National Affairs, 1231 25th Street, NW, Washington, D.C. 20037; Michael Heltzer, International Trademark Association, 1133 Avenue of the Americas, New York, New York 10036; all persons who submitted written comments; and, such other persons as the Division deems appropriate.

Agency Contact: Copies of the regulation may be obtained from Thomas D. Gouldin, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9051. There may be a charge for copies.

CHAPTER 120.

VIRGINIA TRADEMARK AND SERVICE MARK ACT.

PART I.

GENERAL ADMINISTRATION.

21 VAC 5-120-10. Definitions.

As used in the Virginia Trademark and Service Mark Act (1998), the following regulations and forms pertaining to trademarks and service marks, and instructions of the State Corporation Commission, the following meanings shall apply:

"Act" means the Virginia Trademark and Service Mark Act (1998) contained in Chapter 6.1 (§ 59.1-92.1 et seq.) of Title 59.1 of the Code of Virginia.

"Application" means all information required by the forms prescribed by the State Corporation Commission as well as any additional information required by the State Corporation Commission and any required fees.

"Commission" means the State Corporation Commission.

¹ This Act is contained in Chapter 819 of the 1998 Acts of the General Assembly, and takes effect on July 1, 1998.

“Division” means the Securities and Retail Franchising Division of the State Corporation Commission.

“Exhibit” means an image [or drawing] of the mark on a separate sheet of paper without any extraneous markings.

“Mark” means any trademark or service mark entitled to registration under the Act, whether registered or not.

“Specimen” means evidence demonstrating use, as that term is defined in § 59.1-92.2 of the Act, of a mark in the ordinary course of trade in the Commonwealth of Virginia.

21 VAC 5-120-20. Authority; severability.

A. Pursuant to the authority granted by Chapter 6.1 (§ 59.1-92.1 et seq.) of Title 59.1 of the Code of Virginia, the following regulations and forms regarding the administration and implementation of the Virginia Trademark and Service Mark Act (1998) have been adopted.

The intent of these regulations and forms is to supplant written and unwritten administrative policies. The division, acting by such person or persons as the division director may designate, shall have authority to perform all acts under the Act which the State Corporation Commission itself could perform but subject to review by the State Corporation Commission under its Rules of Practice and Procedure (5 VAC 5-10-10 et seq.).

B. Should any provision or application of these regulations be held invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions or applications of these regulations and forms are declared to be severable.

21 VAC 5-120-30. Classification of regulatory standards.

Regulations are regulatory standards adopted and promulgated and shall be considered the highest level of policy applied by the State Corporation Commission.

Forms are regulatory standards adopted for the purpose of implementing the Act by prescribing initial basic requirements for completing various applications and reports filed with the State Corporation Commission. The forms required by the State Corporation Commission are set forth in [~~21 VAC 5-120-100~~ 21 VAC 5-120-110] and have the same force and effect as regulations.

Statements made orally or in writing by personnel of the division or other State Corporation Commission personnel in response to inquiries or otherwise and not specifically identified and promulgated as regulations shall not be considered regulatory standards of the State Corporation Commission and shall not be considered binding upon the State Corporation Commission in connection with specific decisions undertaken by the State Corporation Commission thereafter. The State Corporation Commission may refuse to answer any question based upon a hypothetical situation.

21 VAC 5-120-40. Application of regulations.

All regulations shall be applied collectively, to the extent relevant, in connection with specific determinations made by

the division or the State Corporation Commission in the course of administering the Act. The captions of these regulations are for convenience only. Should there be a conflict between the caption and the text of a regulation [,] the text will control.

Because regulations and forms cannot adequately anticipate all potential application requirements, the failure to satisfy all regulatory standards of the State Corporation Commission will not necessarily foreclose the possibility of a favorable disposition of a matter pending before the State Corporation Commission, and similarly will not necessarily preclude an unfavorable disposition if the specific characteristics and circumstances so warrant.

PART II.

REGISTRATION AND PROTECTION OF TRADEMARKS AND SERVICE MARKS.

21 VAC 5-120-50. Application for registration.

A. Application for registration of a mark shall be filed with the division on and in full compliance with forms prescribed by the State Corporation Commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee and information are submitted:

1. Executed and notarized Form TM 1, Application for Registration of a Trademark or Service Mark.
2. The registration fee in the amount of \$30 per classification requested. The check must be made payable to the Treasurer of Virginia.
3. A specimen of the mark as used by the applicant (see definition of “use” in § 59.1-92.2 of the Act).
4. An exhibit of the mark.
5. Classification of the mark (see Classification of goods and services, [~~21 VAC 5-120-90~~ 21 VAC 5-120-100]).
6. Any other information the State Corporation Commission may require.

21 VAC 5-120-60. Expiration.

The registration of a mark shall be effective for a term of five years from the date of registration. The registration will expire if not renewed within six months prior to the expiration date.

21 VAC 5-120-70. Renewals.

An application for renewal of the registration must be filed within six months prior to the expiration date of the registration. A registration may be renewed for a five-year period from the date of expiration upon receipt of a completed application on Form TM 2, Application for Renewal of Registration of a Trademark or Service Mark, a specimen of the mark as used at the time the renewal application is

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filed, and the \$30 renewal fee per classification made payable to the Treasurer of Virginia.

21 VAC 5-120-80. Assignments and name change.

A. Any mark and its registration shall be assignable with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignments shall be by instruments in writing duly executed and may be filed with the State Corporation Commission upon payment of a \$30 fee made payable to the Treasurer of Virginia.

B. An applicant or registrant, as the case may be, effecting a change of name may file a Certificate of Name Change [of an Applicant or Registrant] , Form TM 3, with the State Corporation Commission upon payment of a \$30 fee made payable to the Treasurer of Virginia.

[21 VAC 5-120-90. Cancellation procedures.

Proceedings upon petitions filed with the commission pursuant to § 59.1-92.10 A 3 of the Code of Virginia shall conform, as nearly as practicable, to the State Corporation Commission's Rules of Practice and Procedure (5 VAC 5-10-10 et seq.).]

PART III.

CLASSIFICATION OF GOODS AND SERVICES.

[21 VAC 5-120-90 21 VAC 5-120-100] . Classification of goods and services.

The application for registration or renewal of registration of a mark shall identify the class(es) of goods or services with which the mark is actually being used. The following classes of goods and services are established for convenience of administration of the Act:

Goods.

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers, and artists.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps, perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.

5. Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use [;] food

for babies; plasters, materials for dressings; material for stopping teeth, dental wax, disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements; incubators for eggs.

8. Hand tools and implements (hand operated); cutlery; side arms; razors.

9. Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.

10. Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopedic articles; suture materials.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air, or water.

13. Firearms; ammunition and projectiles; explosives, fireworks.

14. Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery, adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); playing cards; printer's type; printing blocks.

17. Rubber, gutta-percha, gum asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes not of metal.

18. *Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins; hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.*

19. *Building materials (nonmetallic); rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.*

20. *Furniture [τ ;] mirrors [τ ;] picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.*

21. *Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semiworked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.*

22. *Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.*

23. *Yarns and thread for textile use.*

24. *Textiles and textile goods, not included in other classes; bed and table covers.*

25. *Clothing, footwear, headgear.*

26. *Lace and embroidery [τ ;] ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.*

27. *Carpets, rugs, mats and matting [τ ;] linoleum and other materials for covering existing floors; wall hangings (nontextile).*

28. *Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.*

29. *Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.*

30. *Coffee, tea, cocoa, sugar, rice, tapioca, sago, [and] artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery [τ ;] honey [τ ;] treacle; yeast [τ ;] baking powder; salt [τ ;] mustard; vinegar [τ ;] sauces (condiments); spices; ice.*

31. *Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds [τ ;] natural plants and flowers; foodstuffs for animals [τ ;] malt.*

32. *Beer, mineral and aerated waters and other nonalcoholic drinks, fruit drinks and fruit juices; syrups and other preparations for making beverages.*

33. *Alcoholic beverages (except beers).*

34. *Tobacco, smokers articles [τ ;] matches.*

Services.

35. *Advertising; business management; business administration; office functions.*

36. *Insurance, financial affairs; monetary affairs; real estate affairs.*

37. *Building construction; repair, installation services.*

38. *Telecommunications.*

39. *Transport; packaging and storage of goods; travel arrangement.*

40. *Treatment of materials.*

41. *Education; providing of [:] training [÷ ,] entertainment [÷ and] sporting and cultural activities.*

42. *Providing of [÷] food and drink; temporary accommodation; medical, hygienic and beauty care; veterinary and agricultural services; legal services; scientific and industrial research; computer programming; services that cannot be placed in other classes.*

PART IV.

FORMS FOR TRADEMARKS AND SERVICE MARKS.

[~~21 VAC 5-120-100~~ 21 VAC 5-120-110] . Trademark and service mark forms.

The State Corporation Commission adopts for use under the Act the forms listed below:

Form TM 1 - Application for Registration of a Trademark or Service Mark ([eff.] 7/98).

Form TM 2 - Application for Renewal of Registration of a Trademark or Service Mark ([eff.] 7/98).

Form TM 3 - Certificate of Name Change of an Applicant or Registrant ([eff.] 7/98).

VA.R. Doc. No. R98-235; Filed June 29, 1998, 10:20 a.m.

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TM 1 (7/98)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION FOR REGISTRATION OF A TRADEMARK OR SERVICE MARK
(Please type or print)

Applicant (owner) name and address:

Contact person name and address:

_____ Daytime phone: _____ Fax number: _____

Applicant is a: _____ Applicant's state or jurisdiction of formation: _____
(entity type i.e. corporation, partnership, etc)

Kind of mark (check one): Trademark Service Mark

Identify the trademark or service mark (or attach an exhibit of the exact mark): _____

Class number(s) of goods or services (see [~~21 VAC 5-120-90~~ 21 VAC 5-120-100]): _____

Describe the product(s) or service(s) the mark represents (identifies): _____

Date mark was first used anywhere by applicant or applicant's predecessor: _____

Date mark was first used in Virginia by applicant or applicant's predecessor: _____

PLEASE NOTE: A specimen of the mark must accompany this application.

The applicant asserts that it is the owner of this mark and that the mark is in use in the Commonwealth of Virginia. No other person has registered this mark or has the right to use this mark in Virginia, either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such person, to cause confusion or mistake, or to deceive.

(NOTE: The application must be signed in the name of the applicant, either by the applicant or by a person authorized by the applicant. The application must be sworn to by the person who signed the name of the applicant.)

Signature: _____ Date: _____

Signer's Name: _____ Title: _____
(print or type)

State of: _____, County/City of: _____, to-wit:

The foregoing application was subscribed and sworn to before me by _____

on the _____ day of _____, 19____.

My Commission Expires: _____ Notary Public: _____

TM 2 (7/98)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION FOR RENEWAL OF REGISTRATION OF A TRADEMARK
OR SERVICE MARK
(Please type or print)

Applicant (owner) name and address:

Contact person name and address:

_____ Daytime phone: _____ Fax number: _____

Applicant is a: _____ Applicant's state or jurisdiction of formation: _____
(entity type i.e. corporation, partnership, etc)

On the _____ day of _____, 19____, the mark identified below was registered in the name of:

Identify the trademark or service mark (or attach an exhibit of the exact mark):

Class number(s) of goods or services:

Describe the product(s) or service(s) the mark represents (identifies): _____

PLEASE NOTE: A specimen of the mark must accompany this application.

If the applicant is not the registrant named above, the applicant is the assignee to whom a new certificate was issued on the _____ day of _____, 19_____.

The applicant asserts that it is the owner of this mark and that the mark has been and is still in use in the Commonwealth of Virginia. No other person has the right to use this mark in Virginia, either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such person, to cause confusion or mistake, or to deceive.

(NOTE: The application must be signed in the name of the applicant, either by the applicant or by a person authorized by the applicant. The application must be sworn to by the person who signed the name of the applicant.)

Signature: _____ Date: _____

Signer's Name: _____ Title: _____
(print or type)

State of: _____, County/City of: _____, to-wit:

The foregoing application was subscribed and sworn to before me by: _____

on the _____ day of _____, 19_____.

My Commission Expires: _____ Notary Public: _____

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TM 3 (7/98)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

CERTIFICATE OF NAME CHANGE OF AN APPLICANT OR REGISTRANT
(Please type or print)

Applicant/Registrant name and address:

Contact person name and address:

_____ Daytime phone: _____ Fax number: _____

Prior name of applicant/registrant and address:

Applicant is a: _____ Applicant's state or jurisdiction of formation: _____
(entity type i.e. corporation, partnership, etc)

Kind of mark (check one): Trademark ___ Service Mark ___ Date name change effective: _____

Identify each trademark or service mark for which the name change is applicable (or attach an exhibit of the exact mark(s)):

Describe the product(s) or service(s) the mark represents (identifies): _____

(NOTE: The certificate must be signed in the name of the applicant, either by the applicant or by a person authorized by the applicant. The certificate must be sworn to by the person who signed the name of the applicant.)

Signature: _____ Date: _____

Signer's Name: _____ Title: _____
(print or type)

State of: _____, County/City of: _____, to-wit:

The foregoing certificate was subscribed and sworn to before me by: _____

on the _____ day of _____, 19____.

My Commission Expires: _____ Notary Public:

EMERGENCY REGULATIONS

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **State Plan for Medical Assistance Relating to Diagnosis Related Groupings: Reimbursement and Utilization Review for Inpatient Services.**

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-100 and 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 and 12 VAC 30-60-25).

12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates--Inpatient Hospital Care (amending 12 VAC 30-70-200 through 12 VAC 30-70-500).

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 335 V of Chapter 464 of the 1998 Acts of Assembly.

Effective Dates: July 1, 1998, through June 30, 1999.

Summary:

1. REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Diagnosis Related Groupings - Reimbursement and Utilization Review Requirements for Inpatient Hospital Services. This regulation will provide the administrative authority that DMAS needs to operate this reimbursement and utilization control system.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Diagnosis Related Groupings - Reimbursement and Utilization Review Requirements for Inpatient Hospital Services. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Robert W. Lauterberg, Acting Director
Department of Medical Assistance Services
Date: May 8, 1998

3. CONCURRENCES:

/s/ Claude A. Allen
Secretary of Health and Human Resources
Date: June 22, 1998

4. ACTION:

/s/ James S. Gilmore, III
Governor
Date: June 29, 1998

5. FILED WITH:

/s/ Jane D. Chaffin
Deputy Registrar of Regulations
Date: June 30, 1998

DISCUSSION

6. BACKGROUND: The sections of the State Plan affected by this action are Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (Attachment 4.19-A (VR 460-03-4.1910)(12 VAC 30-70-200 et seq.)), the Narrative for the Amount, Duration, and Scope of Services (Supplement 1 to Attachments 3.1 A&B (VR 460-03-3.1100)(12 VAC 30-50-100, 30-50-105)), and Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1-C (VR 460-02-3.1300)(12 VAC 30-60-20 and 12 VAC 30-60-25)).

HISTORY

In December 1990, the Department of Medical Assistance Services (DMAS) and the Virginia Hospital and Healthcare Association (VHHA) (formerly the Virginia Hospital Association) signed a settlement agreement, putting an end to a multi-year litigation brought under the provisions of the federal Boren Amendment (the Social Security Act § 1902(a)(13) repealed in 1997). This agreement prescribed a reimbursement methodology for hospitals, to be in effect during state fiscal years 1992 through 1996. It also required that starting January 1995, DMAS and the VHHA form a Joint Task Force and develop a reimbursement methodology for the time period following June 30, 1996, on which date the agreement would lapse.

DMAS and the VHHA formed the Joint Task Force which produced a reimbursement system design that is the basis of these regulations. In support of the need to implement the system timely, the 1996 General Assembly (Chapter 912 Item 322J1.) authorized implementation of a new reimbursement system, based on DRGs but still including elements of the per diem methodology, and required that it be effective July 1, 1996. DMAS promulgated emergency regulations followed by permanent regulations, via the APA Article 2 process, in 1996 through 1997.

PRESENT

The current reimbursement system is a one-third per diem methodology and two-thirds DRG methodology system for inpatient hospital services. The transitioning from the prospective methodology over to the DRG methodology by one-third each year was prescribed by the Joint Task Force referenced above. The Task Force and enrolled provider hospitals are expecting a three-thirds DRG system to be effective July 1, 1998. In support of this effort, the 1998 General Assembly authorized the agency's action to pursue obtaining the Governor's approval to promulgate emergency regulations. This transitioning over to the DRG system, and the full DRG system, as well, have been designed to be budget neutral for the Commonwealth.

Additional features of this DRG payment system include disproportionate share adjustment payments, medical education costs, capital costs, the handling of psychiatric and rehabilitation inpatient hospital cases, and state teaching hospital costs. These elements are being addressed as follows. Additional payments to hospitals with a "disproportionate share" of Medicaid patients will continue

under these regulations but will be targeted to a smaller group of hospitals that have a very high proportion of Medicaid and low income patients. Medical education and capital costs continue to be paid as they have been in the past -- that is, based on reasonable cost incurred. Psychiatric and rehabilitation inpatient hospital cases will continue to be paid on a per diem basis into the foreseeable future and the current payment methodologies remain unchanged in this package. State teaching hospitals will continue to be treated as a separate peer group in this methodology.

This package also addresses the issues of service prior authorization and service utilization review which must parallel the payment methodology. Without the parallel elements of prior authorization and utilization review, DMAS would have significantly less control over its DRG reimbursement disbursements. At such time as the agency converts over to only the DRG system, the agency will no longer require specific regulatory limits on the coverage of inpatient hospital services. Examples of several limits which will be eliminated with the full conversion to DRGs are: the restriction of coverage to 21 days within a 60 day period for the same or similar diagnoses, non-coverage of Saturday/Sunday admissions, non-coverage of inpatient hospital admissions for certain types of surgeries which have been designated as mandatory outpatient surgeries, non-coverage of inpatient hospital days prior to surgical dates, non-coverage of Medicare co-insurance for hospital care after the 21 day limit on the inpatient hospital stay. Under the previous per diem methodology, DMAS required limits such as these to control inpatient hospital expenditures as much as possible.

At the same time that DMAS has been undergoing considerable regulatory activity in this area of DRGs, the agency's computer system has been undergoing modification as well. At the present time, the fiscal agent has not completed the necessary changes and the claims processing system for DRGs is not implementable. DMAS must continue to pay claims, which are received daily, from hospitals with some sort of methodology. Consequently, DMAS plans to retain, in the interim, its partial per diem/DRG methodology until such time as the system programming changes are complete and the fiscal agent is ready to turn on the new DRG claims processing system. This emergency regulation will give the agency the authority to operate in such a manner until all systems (computer, operational and regulatory) can be brought together at completion. In addition, parts of these regulations have been rewritten/reordered to make them more clear.

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

Without an emergency regulation, this amendment to the State Plan or regulation cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the July 1, 1998, effective date established by the General Assembly in Chapter 464 of the Acts of the Assembly item 335 (V).

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

9. **FISCAL/BUDGETARY IMPACT:** All hospitals that provide services to Medicaid recipients, except for some long-term and government operated hospitals, are affected by this regulation. For FY '97, DMAS spent \$487,206,000 for inpatient hospital services. No additional budget impact is forecast. Hospitals have been consulted and the VHHA is in support of the methodology that these regulations will implement.

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

10. **RECOMMENDATION:** Recommend approval of this request to adopt this emergency regulation to become effective July 1, 1998. From its effective date, this regulation is to remain in force for one full year or until superseded by final, permanent regulations. Without an effective emergency regulation, the Department would lack the authority to administer its inpatient hospital reimbursement and utilization control regulations consistent with this DRG methodology.

11. **APPROVAL SOUGHT FOR VR 460-02-4.1910 (12 VAC 30-70-200 et seq.) and VR 460-03-3.1100, VR 460-02-3.1300 (12 VAC 30-50-100, 30-50-105 and 12 VAC 30-60-20 and 30-60-25).**

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

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

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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 provided at general acute care hospitals and free-standing psychiatric hospitals.

A. Enrolled providers.

1. Preauthorization of all inpatient hospital services will be performed. This applies to both general acute care hospitals and free-standing psychiatric hospitals. Non-authorized 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 pre-authorization, an appropriate length of stay will be assigned *when required*, using the current HCIA Length of Stay by Diagnosis and Operation as guidelines.

a. Admission review.

(1) 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 *until such time as DMAS goes to a Diagnostic Related Grouping (DRG) payment methodology. At such time, only psychiatric hospitalizations will be assigned an initial length of stay. If the admission is for a surgical procedure that requires prior authorization, the hospital must ensure that the physician has obtained the prior authorization for the planned procedure from DMAS before the request authorization for the hospital admission is made. (Refer to 12 VAC 30-50-140)* Adverse authorization decisions shall have available a reconsideration process as set out below.

(2) 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, *until such time as DMAS goes to a Full DRG payment methodology. At such time, only psychiatric admissions shall have an initial length of stay assigned.* Adverse authorization decisions shall have available a reconsideration process as set out below.

b. Concurrent review. ~~This element of review shall end for non-psychiatric 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 below. *This element of review shall end for non-psychiatric claims with the full implementation of the DRG reimbursement methodology.*

c. 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 below.

d. Reconsideration process.

(1) Providers requesting reconsideration must do so upon verbal notification of denial.

(2) 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 reviewers' 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 ~~appeals~~ *appeal* rights.

(3) If higher level review is requested, the authorization request will be held in suspense and referred to the Utilization Management Supervisor (UMS). The UMS shall have one working day to render a decision. 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. The case remains in suspense and is referred to DMAS Medical Support for the last step of reconsideration.

(4) DMAS Medical Support will review all case specific medical information. Medical Support shall have two working days to render a decision. 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.

e. Appeals process.

(1) Recipient appeals. Upon receipt of a denial letter, recipient shall have the right to appeal the

adverse decision. Under the Client Appeals regulations, at 12 VAC 30-110-Part I the recipient shall have 30 days from the date of the denial letter to file an appeal.

(2) Provider appeals. If the reconsideration steps are exhausted and the provider continues to disagree, upon receipt of the denial letter, the provider shall have 30 days from the date of the denial letter 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 *Code of Virginia* §9-6.14:1 *et seq.*

2. Cosmetic surgical procedures shall not be covered unless performed for physiological reasons and require DMAS prior approval.

3. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment to health or life of the mother if the fetus were carried to term.

4. 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 and/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, and/or treatment plan, will not be authorized for payment. Claims which exceed 21 days per admission within 60 days with a different diagnosis and/or treatment plan, will be considered for authorization, if 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 non-psychiatric admissions shall cease with dates of service on or after July 1, 1998. The limit for coverage of 21 days for non-psychiatric admissions shall cease when DMAS implements a Full DRG payment methodology.~~

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 hospitals hospitalizations]~~ hospitalizations 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/psychiatric, as appropriate, examination. The admission and length of stay must be medically justified and pre-authorized via the admission and concurrent or retrospective review processes described above.

Medically unjustified days in such hospitalizations shall not be authorized for payment.

5. *Mandatory lengths of stay.*

a. 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.

b. *Reserved for mastectomy treatment.*

6. Coverage in free-standing 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 12VAC 30-50-105.

7. 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 Medical Support. Inpatient hospitalization related to kidney transplantation will require pre-authorization at the time of admission, and concurrently, for length of stay *via the admission, concurrent and retrospective review processes described above.* Cornea transplants do not require preauthorization of the procedure, but inpatient hospitalization related to such transplants will require pre-authorization for admission, and concurrently, for length of stay *as described above.* 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 reimbursement does not include pre- and post-hospitalization for the

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transplant procedure or pre-transplant 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 Attachment 3.1 E.

8. Coverage of Observation Beds. *Reserved.*

9. 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 review. Hospitals must submit the required DMAS forms corresponding to the ~~beforementioned~~ *aforementioned* 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.

12 VAC 30-50-105.

B. ~~Non-Enrolled Cost Reporting Providers.~~ (Non-participating/out of state). ~~The full DRG inpatient reimbursement methodology shall become effective July 1, 1998, for these providers and the same reviews, criteria, and requirements shall apply as are applied to enrolled, in-state, participating hospitals.~~

1. Inpatient hospital services, when rendered by non-enrolled cost reporting providers, shall not require preauthorization with the exception of transplants as described in subsection 10 below. ~~However, these inpatient~~ *Inpatient* hospital services claims will be suspended from payment and manually reviewed for medical necessity as described in subsections 2-10 below using criteria specified by DMAS *until such time as DMAS implements Full DRG payment methodology. At such time, all inpatient hospital services claims from non-cost reporting providers will suspend from payment and shall be manually reviewed for medical necessity of the admission for non-psychiatric hospital stays and for medical necessity for the admission and length of stay for psychiatric hospital stays using criteria as designated by DMAS.*

2. 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 seven of this section.)

Inpatient hospital services will be reviewed for appropriateness of the admission and length of stay.

3. Cosmetic surgical procedures shall not be covered unless performed for physiological reasons and require DMAS prior approval.

4. 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.

5. 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.

6. 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.

7. 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 and/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, and/or treatment plan, will not be reimbursed. Claims which exceed 21 days per admission within 60 days with a different diagnosis and/or treatment plan, will be considered for reimbursement, if medically justified. The admission and length of stay must be medically justified and pre-authorized via the admission and concurrent review processes described above. 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.~~ *for non-psychiatric hospitalizations at such time as DMAS implements Full DRG payment methodology.*

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 hospitalizations 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/psychiatric, as appropriate, examination.

8. 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.

9. 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 admission is medically justified or meets one of the exceptions.

10. 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, and heart 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 and heart 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 pre-transplant 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 transplant is at the allowed Medicaid rate.

Standards for coverage of organ transplant services are in 12 VAC 30-50-540.

11. Coverage of observation beds. *Reserved.*

12. 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 review of the required DMAS forms corresponding to the beforementioned 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 30-60-10. Institutional care.

Institutional care will be provided by facilities qualified to participate in Title XVIII and/or Title XIX.

12 VAC 30-60-20. Utilization Control: General Acute Care Hospitals (enrolled providers).

A. Prior authorization required. The Commonwealth of Virginia 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 *planned* inpatient hospital stays shall be preauthorized prior to admission. ~~Services rendered without such prior authorization shall not be covered, except as stated in b. and c. below.~~

2. ~~If a provider has rendered inpatient services to an individual who later is determined to be Medicaid eligible, it shall be the provider's responsibility to obtain the required authorization prior to billing the DMAS for these services. If a Medicaid eligible individual is admitted to inpatient hospital care, on a Saturday, Sunday or holiday, or after normal working hours, it shall be the provider's responsibility to obtain the required authorization on the next work day following such admission.~~

3. ~~If a Medicaid eligible individual is admitted to inpatient hospital care, on a Saturday, Sunday or holiday, or after normal working hours, it shall be the provider's responsibility to obtain the required authorization on the next work day following such admission. If a provider has rendered inpatient services to an individual who later is determined to be Medicaid eligible, it shall be the provider's responsibility to obtain the required authorization prior to billing the DMAS for these services.~~

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 *inpatient hospital* claims for individuals over the age of 21 which suspend for exceeding the 21 day limit per admission in a 60 day period for the same or similar diagnoses prior to

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reimbursement for the stay *until such time as DMAS implements DRG payment methodology. At such time only psychiatric inpatient hospital claims will suspend for this review. This suspend shall cease with dates of service on or after July 1, 1998. DMAS shall review all claims which suspend 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. *DMAS shall review all claims which suspend 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.*

B. To determine that the DMAS enrolled hospital providers are in compliance with the regulations governing hospital utilization control found in the *Code of Federal Regulations*, 42 CFR, Chapter IV, Subpart C, §§456.50-456.145, 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. Copy of the general hospital's Utilization Management Plan to determine compliance with the regulations found in the 42 CFR §§456.100 through 456.145.
2. List of current Utilization Management Committee members and physician advisors to determine that the committee's composition is as prescribed in the 42 CFR §§456.105 through 456.106.
3. Verification of Utilization Management Committee meetings since the last annual audit, including dates and list of attendees to determine that the committee is meeting according to their Utilization Management meeting requirements
4. 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 the 42 CFR §§456.141 through 456.145.
5. Topic of one on-going Medical Care Evaluation Study to determine the hospital is in compliance with the 42 CFR §456.145.
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 the 42 CFR §§456.60 and 456.80. If any of the required documentation does not meet the requirements found in

the 42 CFR §§456.60 and 456.80, reimbursement may be retracted.

7. The hospitals may appeal in accordance with the *Code of Virginia* §9-6.14:1 et seq. any adverse decision resulting from such audits 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 30-60-25. 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 free-standing 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.

C. *If a Medicaid eligible individual is admitted in an emergency to a free-standing psychiatric hospital on a Saturday, Sunday, holiday, or after normal working hours, it shall be the provider's responsibility to obtain the required authorization on the next work day following such an admission.*

~~D.~~ In each case for which payment for free-standing 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 free-standing psychiatric hospital consistent with §456.160.
2. The physician, or 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 free-standing 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 the 42 CFR §456.170.
4. Before admission to a free-standing 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 the 42 CFR §§456.180 and 441.155.

~~D.E.~~ If the eligible individual is 21 years of age or older, then, in order to qualify for Medicaid payment for this service, he must be at least 65 years of age.

~~E.F.~~ If younger than 21 years of age, it shall be documented that the individual requiring admission to a free-

standing 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 free-standing psychiatric hospital *and before authorization* for psychiatric services resulting from an EPSDT screening, a certification of the need for services as defined at 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. *Code of Virginia*) shall be required.

~~4. If a Medicaid eligible individual is admitted in an emergency to a free-standing psychiatric hospital on a Saturday, Sunday, holiday, or after normal working hours, it shall be the provider's responsibility to obtain the required authorization on the next work day following such an admission.~~

5.4. The absence of any of the above required documentation shall result in DMAS's denial of the requested preauthorization and coverage of subsequent hospitalization.

F.G. To determine that the DMAS enrolled mental hospital providers are in compliance with the regulations governing mental hospital utilization control found in the 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. Copy of the mental hospital's Utilization Management Plan to determine compliance with the regulations found in the 42 CFR §§456.200 through 456.245.
2. List of current Utilization Management Committee members and physician advisors to determine that the committee's composition is as prescribed in the 42 CFR §§456.205 through 456.206.
3. Verification of Utilization Management Committee meetings, including dates and list of attendees to determine that the committee is meeting according to their Utilization Management meeting requirements.
4. 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 the 42 CFR §§456.241 through 456.245.

5. Topic of one on-going Medical Care Evaluation Study to determine the hospital is in compliance with 42 CFR §456.245.

6. From a list of randomly selected paid claims, the free-standing 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 *Code of Virginia* §§16.1-335 through 16.1-348 and 42 CFR §§441.152, 456.160, 456.170, and §§456.180 through 456.181. If any of the required documentation does not support the admission and continued stay, reimbursement may be retracted.

7. The hospitals may appeal in accordance with the *Code of Virginia* §9-6.14:1 et seq. any adverse decision resulting from such audits 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.

PART V. INPATIENT HOSPITAL PAYMENT SYSTEM.

Article 1. Application of Payment Methodologies.

12 VAC 30-70-200. Application of payment methodologies.

~~The state agency will pay for inpatient hospital services under the methodologies and during the time periods specified in this part. During state fiscal years (SFY) 1997 and 1998, the state agency's methodology for inpatient hospital services in general acute care hospitals will transition from a per diem methodology to a DRG-based methodology. Article 2 (12 VAC 30-70-210) describes the special rules that apply during the transition period. Article 3 (12 VAC 30-70-220 et seq.) describes the DRG methodology that will apply (at a specified transition percentage) during the transition period and that will remain after the transition is over. Article 4 (12 VAC 30-70-400 et seq.) describes the revised per diem methodology that will apply in part during the transition, but that will cease to apply after the transition is over.~~

~~For inpatient hospital services in general acute care hospitals and rehabilitation hospitals occurring before July 1, 1996, reimbursement shall be based on the methodology described in Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130), which language, until July 1, 1996, was Attachment 4.19-A of the State Plan for Medical Assistance Services. The provisions contained in Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130) shall not be effective after June 30, 1996, except as otherwise provided in this part.~~

~~For inpatient hospital services that are psychiatric or rehabilitation services and that are provided in general acute~~

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~~care hospitals, distinct part units of general acute care hospitals, freestanding psychiatric facilities licensed as hospitals, or rehabilitation hospitals on and after July 1, 1996, reimbursement shall be based on a methodology described in Articles 2, 3 and 4 of this part. This methodology implements a transition from revised per diem rates taken from the previous methodology (12 VAC 30-70-10 through 12 VAC 30-70-130) to different per diem rates that will be used in the context of the DRG methodology. These services shall not be reimbursed by means of DRG per case rates. For freestanding psychiatric facilities licensed as hospitals] there shall be no transition period, but the new per diem rates are to be implemented effective July 1, 1996. Also effective for those services rendered on or after July 1, 1996, the professional component for the care rendered in such freestanding psychiatric facilities licensed as hospitals may be billed separately by the attending professional who is enrolled in Medicaid. Inpatient hospital services that are provided in long stay hospitals and state-owned rehabilitation hospitals shall be subject to the provisions of 12 VAC 30-70-10 through 12 VAC 30-70-130, which until July 1, 1996, was Attachment 4.19-A of the State Plan for Medical Assistance Services. The state agency will pay for inpatient hospital services in general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals under a DRG-based methodology. This methodology uses both per case and per diem payment methods. Article 2 (12 VAC 30-70-220 et seq.) describes the DRG-based methodology, including both the per case and the per diem methods. Article 3 (12 VAC 30-70-400 et seq.) describes a per diem methodology that applied to a portion of payment to general acute care hospitals during state fiscal years 1997 and 1998, and that will continue to apply to patient stays with admission dates prior to July 1, 1996. Inpatient hospital services that are provided in long stay hospitals and state-owned rehabilitation hospitals shall be subject to the provisions of Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130). Until claims can be processed and paid by the DRG payment methodology, interim payments to hospitals will continue to be made by the per diem payment methodology described at Article 3 (12 VAC 30-70-400) and cost settled at the DRG amount when the hospitals' cost reports are settled at year end. The limit of coverage for adults of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply in the processing of claims (interim payments). Transplant services shall not be subject to the provisions of this part. They shall continue to be subject to 12 VAC 30-50-100 through 12 VAC 30-50-310 and 12 VAC 30-50-540.~~

12 VAC 30-70-201. Prior notice of onset of claims processing system.

DMAS shall provide prior notice to the onset of the DRG claims process system in the Virginia Register of Regulations as well as direct notices to all affected hospitals. As DMAS develops regulations, it shall consult with affected provider groups.

Article 2.

Transition Period. *DRG-Based Payment Methodology.*

12 VAC 30-70-210. Transition period reimbursement rules. Reserved.

12 VAC 30-70-220. General.

A. ~~Effective July 1, 1996, the state agency's reimbursement methodology for inpatient hospital services shall begin a transition from a prospective per diem to a prospective diagnosis-related groupings (DRG) methodology. During the transition period, reimbursement of operating costs shall be a blend of a prospective DRG methodology (described in Article 3 of this part) and a revised prospective per diem methodology (described in Article 4 of this part). The transition period shall be SFY1997 and 1998, after which a DRG methodology alone shall be used. Effective July 1, 1998, the DRG payment system described in this article shall apply to inpatient hospital services provided in enrolled general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals, unless otherwise noted.~~

B. ~~Tentative payment during the transition period. During the transition period claims will be tentatively paid on the basis of the revised per diem methodology only. Payment of claims based on DRG rates shall begin July 1, 1998. The following methodologies shall apply under the DRG payment system:~~

1. ~~As stipulated in 12 VAC 30-70-230, operating payments for DRG cases that are not transfer cases shall be determined on the basis of a hospital specific operating rate per case times relative weight of the DRG to which the case is assigned.~~
2. ~~As stipulated in 12 VAC 30-70-240, operating payments for per diem cases shall be determined on the basis of a hospital specific operating rate per day times the covered days for the case with the exception of payments for per diem cases in freestanding psychiatric facilities. Payments for per diem cases in freestanding psychiatric facilities licensed as hospitals shall be determined on the basis of a hospital specific rate per day that represents an all-inclusive payment for operating and capital costs.~~
3. ~~As stipulated in 12 VAC 30-70-250, operating payments for transfer cases shall be determined as follows: (i) the transferring hospital shall receive an operating per diem payment, not to exceed the DRG operating payment that would have otherwise been made and (ii) the final discharging hospital shall receive the full DRG operating payment.~~
4. ~~As stipulated in 12 VAC 30-70-260, additional operating payments shall be made for outlier cases. These additional payments shall be added to the operating payments determined in subdivisions 1 and 3 of this subsection.~~

5. As stipulated in 12 VAC 30-70-270, payments for capital costs shall be made on an allowable cost basis.

6. As stipulated in 12 VAC 30-70-280, payments for direct medical education costs shall be made on an allowable cost basis.

7. As stipulated in 12 VAC 30-70-290, payments for indirect medical education costs shall be made quarterly on a prospective basis.

8. As stipulated in 12 VAC 30-70-300, payments to hospitals that qualify as disproportionate share hospitals shall be made quarterly on a prospective basis.

C. ~~Final operating reimbursement during the transition period. During the transition period settlement of each hospital fiscal year will be carried out as provided in 12 VAC 30-70-460. Each hospital's final reimbursement for services that accrue to each state fiscal year of the transition shall be based on a blend of the prospective DRG methodology and the revised per diem methodology. For services to patients admitted and discharged in SFY1997 the blend shall be 1/3 DRG and 2/3 revised per diem. For services to patients admitted after June 30, 1996, and discharged during SFY1998 the blend shall be 2/3 DRG and 1/3 revised per diem. Settlements shall be completed according to hospital fiscal years, but after June 30, 1996, changes in rates and in the percentage of reimbursement that is based on DRGs vs. per diem rates, shall be according to state fiscal year. Services in freestanding psychiatric facilities licensed as hospitals shall not be subject to the transition period phase-in of new rates, or to settlement at year end; the new system rates for these providers shall be fully effective on July 1, 1996. In hospital fiscal years that straddle the implementation date (years starting before and ending after July 1, 1996) operating costs must be settled partly under the old and partly under the new methodology. The terms used in this article shall be defined as follows:~~

~~1. Days related to discharges occurring before July 1, 1996, shall be settled under the previous reimbursement methodology (see 12 VAC 30-70-10 through 12 VAC 30-70-130).~~

~~2. Stays with admission date before July 1, 1996, and discharge date after June 30, 1996, shall be settled in two parts, with days before July 1, 1996, settled on the basis of the previous reimbursement methodology (see 12 VAC 30-70-10 through 12 VAC 30-70-130), and days after June 30, 1996, settled at 100% of the hospital's revised per diem rate as described in Article 4 (12 VAC 30-70-400 et seq.) of this part. The DRG reimbursement methodology shall not be used in the settlement of any days related to a stay with an admission date before July 1, 1996.~~

~~3. Stays with admission dates on and after July 1, 1996, shall be settled under the transition methodology. All cases admitted from July 1, 1996, onward shall be settled based on the rates and transition rules in effect in the state fiscal year in which the discharge falls. The only exception shall be claims for rehabilitation cases~~

~~with length of stay sufficient that one or more interim claims are submitted. Such claims for rehabilitation cases shall be settled based on rates and rules in effect at the time of the end date ("through" date) of the claim, whether or not it is the final or discharge claim.~~

~~1. The "base year" is the state fiscal year for which data is used to establish the DRG relative weights, the hospital case-mix indices, the base year standardized operating costs per case, and the base year standardized operating costs per day. The base year will change when the DRG payment system is rebased and recalibrated. For State Fiscal Year 1999, the base year shall be State Fiscal Year 1997.~~

~~2. "Groupable cases" are DRG cases having coding data of sufficient quality to support DRG assignment.~~

~~3. "DRG cases" are medical/surgical cases subject to payment on the basis of DRGs and include groupable, ungroupable, and transfer cases. DRG cases do not include per diem cases.~~

~~4. "Ungroupable cases" are cases assigned to DRG 469 (principal diagnosis invalid as discharge diagnosis) and DRG 470 (ungroupable) as determined by the AP-DRG Grouper.~~

~~5. "Per diem cases" are cases subject to per diem payment and include (i) covered psychiatric cases in general acute care hospitals and distinct part units (DPUs) of general acute care hospitals (hereinafter "acute care psychiatric cases"), (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals (hereinafter "freestanding psychiatric cases"), and (iii) rehabilitation cases in general acute care hospitals and rehabilitation hospitals (hereinafter "rehabilitation cases").~~

~~Psychiatric cases are cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see the Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3.1 A&B (12 VAC 30-50-95 through 12 VAC 30-50-310). The limit of coverage of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply to adult psychiatric cases.~~

~~6. "Transfer cases" are DRG cases involving patients (i) who are transferred from one general acute care hospital to another for related care or (ii) who are discharged from one general acute care hospital and admitted to another for the same or a similar diagnosis within five days of that discharge. Similar diagnoses shall be defined as ICD-9-CM diagnosis codes possessing the same first three digits.~~

~~7. "Readmissions" occur when patients are readmitted to the same hospital for the same or a similar diagnosis within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as a new case. Similar diagnoses shall be~~

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defined as ICD-9-CM diagnosis codes possessing the same first three digits.

8. "Outlier cases" are those DRG cases, including transfer cases, in which the hospital's adjusted operating cost for the case exceeds the hospital's operating outlier threshold for the case.

9. The "operating cost-to-charge ratio" equals the hospital's total operating costs, less any applicable operating costs for a psychiatric DPU, divided by the hospital's total charges, less any applicable charges for a psychiatric DPU. In the base year, this ratio shall be calculated for each hospital by (i) calculating the average of the ratio over the most recent five years for which data are available and (ii) trending the hospital specific average forward from the mid-point of the five year period with a statewide trend factor. For State Fiscal Year 1999, data for State Fiscal Years 1991 through 1995 shall be used. The statewide trend factor shall be the average of the four annual statewide aggregate factors of change that occurred in the five year period. This trend factor shall be compounded from the mid point of the five year period to the base year.

10. The "capital cost-to-charge ratio" equals the hospital's total capital costs, less any applicable capital costs for a psychiatric DPU, divided by the hospital's total charges, less any applicable charges for a psychiatric DPU. In the base year, this ratio shall be calculated as described in subdivision 7 of this subsection.

11. The "psychiatric operating cost-to-charge ratio" for the psychiatric DPU of a general acute care hospital is the hospital's operating costs for a psychiatric DPU divided by the hospital's charges for a psychiatric DPU. In the base year, this ratio shall be calculated as described in subdivision 7 of this subsection, using data from psychiatric DPUs.

12. The "psychiatric capital cost-to-charge ratio" for the psychiatric DPU of a general acute care hospital is the hospital's capital costs for the psychiatric DPU divided by the hospital's charges for the psychiatric DPU. In the base year, this ratio shall be calculated as described in subdivision 7 of this subsection, using data from psychiatric DPUs.

13. The "statewide average labor portion of operating costs" is a fixed percentage applicable to all hospitals. The percentage shall be periodically revised using the most recent reliable data from the VHSCRC/VHI.

14. The "Medicare wage index" and the "Medicare geographic adjustment factor" are published annually in the Federal Register by the Health Care Financing Administration. The indices and factors used in this article shall be those in effect in the base year.

15. The "outlier operating fixed loss threshold" is a fixed dollar amount applicable to all hospitals that shall be calculated in the base year so as to result in an

expenditure for outliers operating payments equal to 5.1 percent of total operating payments for DRG cases. The threshold shall be updated in subsequent years using the same inflation values applied to hospital rates.

16. The "outlier adjustment factor" is a fixed factor published annually in the Federal Register by the Health Care Financing Administration. The factor used in this article shall be the one in effect in the base year.

17. The "DRG relative weight" is the average standardized costs for cases assigned to that DRG divided by the average standardized costs for cases assigned to all DRGs.

18. The "hospital case-mix index" is the weighted average DRG relative weight for all cases occurring at that hospital.

19. The "base year standardized costs per case" reflects the statewide average hospital costs per discharge for DRG cases in the base year. The standardization process removes the effects of case-mix and regional variations in wages and geography from the claims data and places all hospitals on a comparable basis.

20. The "base year standardized costs per day" reflect the statewide average hospital costs per day for per diem cases in the base year. The standardization process removes the effects of regional variations in wages and geography from the claims data and places all hospitals on a comparable basis. Base year standardized costs per day were calculated separately, but using the same calculation methodology, for the different types of per diem cases identified in subdivision 4 of this subsection.

21. A "disproportionate share hospital" is a hospital that meets the following criteria:

a. A Medicaid utilization rate in excess of 15 percent, or a low-income patient utilization rate exceeding 25 percent (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

b. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

c. Subdivision 21b of this subsection does not apply to a hospital:

(1) At which the inpatients are predominantly individuals under 18 years of age; or

(2) Which does not offer nonemergency obstetric services as of December 21, 1987.

22. The "Medicaid utilization percentage" is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days for a given hospital fiscal year. The Medicaid utilization percentage includes days associated with inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers.

23. "Type One" hospitals are those hospitals that were state-owned teaching hospitals on January 1, 1996. "Type Two" hospitals are all other hospitals.

24. "Cost" means allowable cost as defined in Supplement 3 and by Medicare principles of reimbursement.

D. Capital cost reimbursement. During the transition period capital cost shall be reimbursed as a pass-through as described in 12 VAC 30-70-10 through 12 VAC 30-70-130, except that paid days and charges used to determine Medicaid allowable cost in a fiscal period for purposes of capital cost reimbursement shall be the same as those accrued to the fiscal period for operating cost reimbursement. Effective July 1, 1998, capital cost shall be reimbursed as described in Article 4 (12 VAC 30-70-400 et seq.) of this part. Until capital costs are fully included in prospective rates the provisions of 12 VAC 30-70-70 regarding recapture of depreciation shall remain in effect. Reimbursement of capital cost for freestanding psychiatric facilities licensed as hospitals shall be included in their per diem rates as provided in Article 4 (12 VAC 30-70-400 et seq.) of this part, and shall not be treated as a pass-through during the transition period or afterward. *The All Patient Diagnosis Related Groups (AP-DRG) Grouper shall be used in the DRG payment system. Effective July 1, 1998, and until notification of a change is given, Version 14.0 of this grouper shall be used. DMAS shall notify hospitals by means of a Medicaid Memo when updating the system to later grouper versions.*

E. Disproportionate Share Hospital (DSH) payments during the transition. Effective July 1, 1996, DSH payments shall be fully prospective amounts determined in advance of the state fiscal year to which they apply, and shall not be subject to settlement or revision based on changes in utilization during the year to which they apply. Payments prospectively determined for each state fiscal year shall be considered payment for that year, and not for the year from which data used in the calculation was taken. Payment of DSH amounts determined under this methodology shall be made on a quarterly basis.

For patient days occurring before July 1, 1996, DSH reimbursement shall be determined under the previous methodology and settled accordingly (12 VAC 30-70-10 through 12 VAC 30-70-130). Effective for days occurring July 1, 1996, and after, DSH reimbursement made through prospective lump sum amounts as described in this section shall be final and not subject to settlement except when necessary due to the limit in subdivision 2 e of this

subsection. After July 1, 1998, DSH reimbursement shall be as provided in Article 4 (12 VAC 30-70-400 et seq.) of this part.

1. Definition. A disproportionate share hospital shall be a hospital that meets the following criteria:

a. A Medicaid utilization rate in excess of 15%, or a low income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

b. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

e. Subdivision 1 b of this subsection does not apply to a hospital:

(1) At which the inpatients are predominantly individuals under 18 years of age; or

(2) Which does not offer nonemergency obstetric services as of December 21, 1987.

2. Payment adjustment.

a. A disproportionate share hospital's additional payment shall be based on the type of hospital and on the hospital's Medicaid utilization percentage. There shall be two types of hospitals: (i) Type One, consisting of hospitals that were state-owned teaching hospitals on January 1, 1996, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization percentage is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days. Each eligible hospital with a Medicaid utilization percentage above 15% shall receive a disproportionate share payment.

b. For Type One hospitals, the disproportionate share payment shall be equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 15%, times 11, times the hospital's Medicaid operating reimbursement, times 1.3186 in SFY1997, and 1.3782 in SFY1998 and (ii) the hospital's Medicaid utilization percentage in excess of 30%, times 11, times the hospital's Medicaid operating reimbursement, times 1.3186 in SFY1997, and 1.3782 in SFY1998.

c. For Type Two hospitals, the disproportionate share payment shall be equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 15%, times the hospital's Medicaid operating reimbursement, times 1.0964 in SFY1997, and 1.1476 in SFY1998 and (ii) the hospital's Medicaid utilization percentage in excess of 30%, times the hospital's

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Medicaid operating reimbursement, times 1.0964 in SFY1997, and 1.1476 in SFY1998.

d. For hospitals which do not qualify under the 15% inpatient Medicaid utilization rate, but do qualify under the low-income patient utilization rate, exceeding 25% in subdivision 1 a of this subsection, the disproportionate share payment amount for Type One hospitals shall be equal to the product of the hospital's low-income utilization in excess of 25%, times 11, times the hospital's Medicaid operating reimbursement. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of the hospital's low-income utilization in excess of 25%, times the hospital's Medicaid operating reimbursement.

e. OBRA 1993 § 13621 Disproportionate Share Adjustment Limit.

(1) Limit on amount of payment. No payments made under subdivision E 2 of this section shall exceed any applicable limitations upon such payments established by federal law or regulations and OBRA 1993 § 13621. A payment adjustment during a fiscal year shall not exceed the sum of:

(a) Medicaid allowable costs incurred during the year less Medicaid payments, net of disproportionate share payment adjustments, for services provided during the year, and

(b) Costs incurred in serving persons who have no insurance less payments received from those patients or from a third party on behalf of those patients. Payments made by any unit of the Commonwealth or local government to a hospital for services provided to indigent patients shall not be considered to be a source of third party payment.

(2) During state fiscal year 1995, the limit in this section shall apply only to hospitals which are owned or operated by a state or an instrumentality or unit of government within the state. During this year such a hospital, if it is one whose Medicaid inpatient utilization rate is at least one standard deviation above the mean inpatient utilization rate in the state or if it has the largest number of Medicaid days of any such hospital in the Commonwealth for the previous state fiscal year, shall be allowed a limit that is 200% of the limit described above which the Governor certifies to the Secretary of the U. S. Department of Health and Human Services that such amount (the amount by which the hospital's payment exceeds the limit described above) shall be used for health services during the year.

3. Source data for calculation of eligibility and payment adjustment. Each hospital's eligibility for DSH payment, and the amount of the DSH payment in state fiscal year 1997, shall be based upon Medicaid utilization in hospital fiscal years ending in calendar year 1994, and

on projected operating reimbursement in state fiscal year 1997, estimated on the basis of 1994 utilization. After state fiscal year 1997, each new year's DSH payments shall be calculated using the most recent reliable utilization and projection data available. For the purpose of calculating DSH payments, each hospital with a Medicaid-recognized Neonatal Intensive Care Unit (NICU) (a unit having had a unique NICU operating cost limit under subdivision 6 of 12 VAC 30-70-60), shall have its DSH payment calculated separately for the NICU and for the remainder of the hospital as if the two were separate and distinct providers.

For freestanding psychiatric facilities licensed as hospitals, DSH payment shall be based on the most recent filed Medicare cost report available before the beginning of the state fiscal year for which a payment is being calculated. The primary data sources used in the development of the DRG payment methodology were the Department's hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all enrolled, cost-reporting general acute care hospitals, including Type One hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals, including Type One hospitals. The following table identifies key data elements that were used to develop the DRG payment methodology and that will be used when the system is recalibrated and rebased.

Data Elements for DRG Payment Methodology

Data Elements	Source
Total charges for each groupable case	Claims history file
Number of groupable cases in each DRG	Claims history file
Total number of groupable cases	Claims history file
Total charges for each DRG case	Claims history file
Total number of DRG cases	Claims history file
Total charges for each acute care psychiatric case	Claims history file
Total number of acute care psychiatric days for each acute care hospital	Claims history file
Total charges for each freestanding psychiatric case	Claims history file
Total number of psychiatric days for each freestanding psychiatric hospital	Claims history file
Total charges for each rehabilitation case	Claims history file

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<i>Total number of rehabilitation days for each acute care and freestanding rehabilitation hospital</i>	<i>Claims history file</i>
<i>Operating cost-to-charge ratio for each hospital</i>	<i>Cost report file</i>
<i>Operating cost-to-charge ratio for each freestanding psychiatric facility licensed as a hospital</i>	<i>VA Health Service Cost Review Council/VHI</i>
<i>Psychiatric operating cost-to-charge ratio for the psychiatric DPU of each general acute care hospital</i>	<i>Medicare cost report</i>
<i>Capital cost-to-charge ratio for each hospital</i>	<i>Cost report file</i>
<i>Capital cost-to-charge ratio for each freestanding psychiatric facility licensed as a hospital</i>	<i>VA Health Service Cost Review Council/VHI</i>
<i>Psychiatric capital cost-to-charge ratio for the psychiatric DPU of each general acute care hospital</i>	<i>Medicare cost report</i>
<i>Statewide average labor portion of operating costs</i>	<i>VA Health Service Cost Review Council/VHI</i>
<i>Medicare wage index for each hospital</i>	<i>Federal Register</i>
<i>Medicare geographic adjustment factor for each hospital</i>	<i>Federal Register</i>
<i>Outlier operating fixed loss threshold</i>	<i>Claims History File</i>
<i>Outlier adjustment factor</i>	<i>Federal Register</i>

F. ~~Direct medical education (DMedEd). During the transition period (July 1996 through June 1998), DMedEd costs shall be reimbursed in the same way as under the previous methodology (12 VAC 30-70-10 through 12 VAC 30-70-130). This methodology does not and shall not include the DMedEd reimbursement limitation enacted for the Medicare program effective July 1, 1985. Reimbursement of DMedEd shall include an amount to reflect DMedEd associated with services to Medicaid patients provided in hospitals but reimbursed by capitated managed care providers. This amount shall be estimated based on the number of days of care provided by the hospital that are reimbursed by capitated managed care providers. Direct medical education shall not be a reimbursable cost in freestanding psychiatric facilities licensed as hospitals. DMedEd will be paid in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end settlement.~~

G. ~~Final payment adjustment fund (PAF) payment for certain hospitals. Hospitals receiving payments for Medicaid patients from managed care providers enrolled in Medallion~~

~~II shall be paid a separate lump sum amount, based on the continuation of capitation rates during July 1, 1996, through December 31, 1996, that do not reflect adjustments made to hospital per diem and DRG payments on July 1, 1996. Each of these hospitals shall be paid a final PAF amount. It shall be equal to a hospital specific PAF per diem times the number of Medallion II days that occur in the hospital in July 1, 1996, through December 31, 1996. The PAF per diem shall be based on a revision of the PAF calculation that was carried out for the SFY1996 PAF payment that was made in August 1995. The revision shall be the hospital ceiling, DSH per diem, and cost report data used in the calculation from the cost reports that would be used under the PAF methodology if a SFY1997 PAF calculation were to be done. The "paid days" data used in this calculation shall be the same as that used in the SFY1996 calculation. Pending the calculation of the final PAF payment in the settlement of the relevant time period for the affected hospitals, an interim payment shall be made. The interim payment shall be equal to 1/2 the PAF payment made to the same hospitals for SFY1996.~~

~~H. Adjusting DRG rates for length of stay (LOS) reductions from 1995 Appropriations Act. If it is demonstrated that there are savings directly attributable to LOS reductions resulting from utilization initiatives directed by the 1995 Appropriations Act as agreed to and evaluated by the Medicaid Hospital Payment Policy Advisory Council, these savings, up to a maximum of \$16.9 million in SFY1997, shall be applied as a reduction to SFY1997 and 1998 DRG rates used for settlement purposes.~~

~~I. Service limits during the transition period. The limit of coverage for adults of 21 days in a 60 day period for the same or similar diagnosis shall continue to apply in the processing of claims and in the per diem portion of settlement during the transition period. This limit shall not apply in the DRG portion of reimbursement, except for covered psychiatric cases. Psychiatric cases are cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see 12 VAC 30-50-100 through 12 VAC 30-50-340.~~

12 VAC 30-70-230. Operating payment for DRG cases.

A. ~~The operating payment for DRG cases that are not transfer cases shall be equal to the hospital specific operating rate per case, as determined in 12 VAC 30-70-310, times the DRG relative weight, as determined in 12 VAC 30-70-380.~~

B. Exceptions.

1. *Special provisions for calculating the operating payment for transfer cases are provided in 12 VAC 30-70-250.*
2. *Readmissions shall be considered a continuation of the same stay and shall not be treated as a new case.*

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12 VAC 30-70-240. Operating payment for per diem cases.

A. The operating payment for acute care psychiatric cases and rehabilitation cases shall be equal to the hospital specific operating rate per day, as determined in subsection A of 12 VAC 30-70-320, times the covered days for the case.

B. The payment for freestanding psychiatric cases shall be equal to the hospital specific rate per day for freestanding psychiatric cases, as determined in subsection B of 12 VAC 30-70-320, times the covered days for the case.

12 VAC 30-70-250. Operating payment for transfer cases.

A. The operating payment for transfer cases shall be determined as follows:

1. A transferring hospital shall receive the lesser of (i) a per diem payment equal to the hospital's DRG operating payment for the case, as determined in 12 VAC 30-70-230, divided by the arithmetic mean length of stay for the DRG into which the case falls times the length of stay for the case at the transferring hospital or (ii) the hospital's full DRG operating payment for the case, as determined in 12 VAC 30-70-230. The transferring hospital shall be eligible for an outlier operating payment, as specified in 12 VAC 30-70-260, if applicable criteria are satisfied.

2. The final discharging hospital shall receive the hospital's full DRG operating payment, as determined in 12 VAC 30-70-230. The final discharging hospital shall be eligible for an outlier operating payment, as specified in 12 VAC 30-70-260, if applicable criteria are satisfied.

B. Exceptions.

1. Cases falling into DRGs 456, 639, or 640 shall not be treated as transfer cases. Both the transferring hospital and the final discharging hospital shall receive the full DRG operating payment.

2. Cases transferred to or from a psychiatric or rehabilitation DPU of a general acute care hospital, a freestanding psychiatric facility licensed as a hospital, or a rehabilitation hospital shall not be treated as transfer cases.

12 VAC 30-70-260. Outlier operating payment.

A. An outlier operating payment shall be made for outlier cases. This payment shall be added to the operating payments determined in 12 VAC 30-70-230 and 12 VAC 30-70-250. Eligibility for the outlier operating payment and the amount of the outlier operating payment shall be determined as follows:

1. The hospital's adjusted operating cost for the case shall be estimated. This shall be equal to the hospital's total charges for the case times the hospital's operating cost-to-charge ratio, as defined in subsection C of 12 VAC 30-70-220, times the adjustment factor specified in 12 VAC 30-70-330.

2. The adjusted outlier operating fixed loss threshold shall be calculated as follows:

a. The outlier operating fixed loss threshold shall be multiplied by the statewide average labor portion of operating costs, yielding the labor portion of the outlier operating fixed loss threshold. Hence, the non-labor portion of the outlier operating fixed loss threshold shall constitute one minus the statewide average labor portion of operating costs times the outlier operating fixed loss threshold.

b. The labor portion of the outlier operating fixed loss threshold shall be multiplied by the hospital's Medicare wage index, yielding the wage adjusted labor portion of the outlier operating fixed loss threshold.

c. The wage adjusted labor portion of the outlier operating fixed loss threshold shall be added to the non-labor portion of the outlier operating fixed loss threshold, yielding the wage adjusted outlier operating fixed loss threshold.

3. The hospital's outlier operating threshold for the case shall be calculated. This shall be equal to the wage adjusted outlier operating fixed loss threshold times the adjustment factor specified in 12 VAC 30-70-330 plus the hospital's operating payment for the case, as determined in 12 VAC 30-70-230 or 12 VAC 30-70-250.

4. The hospital's outlier operating payment for the case shall be calculated. This shall be equal to the hospital's adjusted operating cost for the case minus the hospital's outlier operating threshold for the case. If the difference is less than or equal to zero, then no outlier operating payment shall be made. If the difference is greater than zero, then the outlier operating payment shall be equal to the difference times the outlier adjustment factor.

B. An illustration of the above methodology is found in 12 VAC 30-70-500.

C. The outlier operating fixed loss threshold shall be recalculated using base year data when the DRG payment system is recalibrated and rebased. The threshold shall be calculated so as to result in an expenditure for outlier operating payments equal to 5.1 percent of total operating payments, including outlier operating payments, for DRG cases. The methodology described in subsection A of this section shall be applied to all base year DRG cases on an aggregate basis, and the amount of the outlier operating fixed loss threshold shall be calculated so as to exhaust the available pool for outlier operating payments.

12 VAC 30-70-270. Payment for capital costs.

A. Until regulations for prospective payment of capital costs are promulgated, capital costs shall continue to be paid on an allowable cost basis and settled at the hospital's fiscal year end, following the methodology described in Supplement III (12 VAC 30-70-10 through 12 VAC 30-70-130).

B. The exception to the policy immediately is that the hospital-specific rate per day for services in freestanding

psychiatric facilities licensed as hospitals, as determined in 12 VAC 30-70-320, shall be an all-inclusive payment for operating and capital costs.

C. DMAS plans to implement prospective payment for capital costs for all DRG cases, acute care psychiatric cases, and rehabilitation cases. The implementation date will be determined later. Under prospective payment for capital costs, the Department will calculate a hospital specific capital rate and a statewide capital rate, and the two rates will be blended during a transition period. In successive years of the transition period, the statewide capital rate will comprise an increasing portion of the blended rate, until payment for capital costs is entirely based on the statewide capital rate. The two rates will be calculated as follows:

1. The hospital specific capital rate will approximate the hospital's average capital cost per case for DRG cases or the hospital's average capital cost per day for per diem cases. Initially, this rate will be based on settled cost reports for hospital fiscal years ending in a State Fiscal Year to be established in future regulations. Capital obligated after July 1, 1997 shall not be included in the calculation of the hospital specific capital rate.

2. The statewide capital rate will approximate the statewide average capital cost per case for DRG cases or the statewide average capital cost per day for per diem cases. Initially, this rate will be based on settled cost reports for hospital fiscal years ending in State Fiscal Year 1997.

D. Until prospective payment for capital costs is implemented, the provisions of 12 VAC 30-70-70 regarding recapture of depreciation shall remain in effect.

12 VAC 30-70-280. Payment for direct medical education costs.

A. Until the Department notifies hospitals otherwise, direct medical education shall continue to be paid on an allowable cost basis. Payments for direct medical education costs shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end.

B. Final payment for direct medical education costs shall be equal to the hospital's Medicaid utilization percentage times the hospital's total direct medical education costs. As defined in subsection C of 12 VAC 30-70-220, the Medicaid utilization percentage includes days associated with inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers.

C. Direct medical education shall not be a reimbursable cost in freestanding psychiatric facilities licensed as hospitals.

12 VAC 30-70-290. Payment for indirect medical education costs.

A. Hospitals shall be eligible to receive payments for indirect medical education. These payments recognize the increased use of ancillary services associated with the educational process and the higher case-mix intensity of teaching hospitals. The payments for indirect medical

education shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end.

B. Final payment for IME shall be determined as follows:

1. Type One hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows:

$$\text{IME Percentage for Type One Hospitals} = [1.89 \times ((1 + r)^{0.405} - 1)]$$

2. Type Two hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows:

$$\text{IME Percentage for Type Two Hospitals} = [1.89 \times ((1 + r)^{0.405} - 1)] \times 0.4043$$

In both equations, *r* is the ratio of full-time equivalent residents to staffed beds, excluding nursery beds. The IME payment shall be calculated each year using the most recent reliable data regarding the number of full-time equivalent residents and the number of staffed beds, excluding nursery beds. Thus, for State Fiscal Year 1999, data for State Fiscal Year 1995 shall be used.

C. An additional IME payment shall be made for inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers. Until complete and reliable encounter data are available from capitated managed care providers, which would permit the development of a case-mix index for these patients, this payment shall be equal to the hospital's hospital specific operating rate per case, as determined in 12 VAC 30-70-310, times the hospital's HMO discharges times the hospital's IME percentage, as determined in subsection B of this section.

12 VAC 30-70-300. Payment to disproportionate share hospitals.

A. Payments to disproportionate share hospitals (DSH) shall be prospectively determined in advance of the state fiscal year to which they apply. The payments shall be made on a quarterly basis, shall be final, and shall not be subject to settlement except when necessary due to the limit in subsection E of this section.

B. Hospitals qualifying under the 15 percent inpatient Medicaid utilization rate shall receive a DSH payment based on the hospital's type and the hospital's Medicaid utilization percentage.

1. Type One hospitals shall receive a DSH payment equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 15 percent, times 11, times the hospital's Medicaid operating reimbursement, times 1.4433 and (ii) the hospital's Medicaid utilization percentage in excess of 30 percent, times 11, times the hospital's Medicaid operating reimbursement, times 1.4433.

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2. Type Two hospitals shall receive a DSH payment equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 15 percent, times the hospital's Medicaid operating reimbursement, times 1.2074 and (ii) the hospital's Medicaid utilization percentage in excess of 30 percent, times the hospital's Medicaid operating reimbursement, times 1.2074.

C. Hospitals qualifying under the 25 percent low-income patient utilization rate shall receive a DSH payment based on the hospital's type and the hospital's low-income utilization rate.

1. Type One hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25 percent, times 11, times the hospital's Medicaid operating reimbursement.

2. Type Two hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25 percent, times the hospital's Medicaid operating reimbursement.

D. No DSH payments shall exceed any applicable limitations upon such payments established by federal law or regulations and OBRA 1993 §13621. A payment adjustment during a fiscal year shall not exceed the sum of:

1. Medicaid allowable costs incurred during the year less Medicaid payments, net of disproportionate share payment adjustments, for services provided during the year. Costs and payments for Medicaid recipients enrolled in capitated managed care programs shall be considered Medicaid costs and payments for the purposes of this section.

2. Costs incurred in serving persons who have no insurance less payments received from those patients or from a third party on behalf of those patients. Payments made by any unit of the Commonwealth or local government to a hospital for services provided to indigent patients shall not be considered to be a source of third party payment.

E. Each hospital's eligibility for DSH payment and the amount of the DSH payment shall be calculated each year using the most recent reliable utilization data and projected operating reimbursement data available. The utilization data used to determine eligibility for DSH payment and the amount of the DSH payment shall include days for Medicaid recipients enrolled in capitated managed care programs. For State Fiscal Year 1999, utilization data for State Fiscal Year 1995 shall be used.

1. Each hospital with a Medicaid-recognized Neonatal Intensive Care Unit (NICU), a unit having had a unique NICU operating cost limit under subdivision 6 of 12 VAC 30-70-60, shall have its DSH payment calculated separately for the NICU and for the remainder of the hospital as if the two were separate and distinct providers.

2. For freestanding psychiatric facilities licensed as hospitals, DSH payment shall be based on the most recent filed Medicare cost report available before the beginning of the state fiscal year for which a payment is being calculated.

12 VAC 30-70-310. Hospital specific operating rate per case.

The hospital specific operating rate per case shall be equal to the labor portion of the statewide operating rate per case, as determined in 12 VAC 30-70-330, times the hospital's Medicare wage index plus the non-labor portion of the statewide operating rate per case.

12 VAC 30-70-320. Hospital specific operating rate per day.

A. The hospital specific operating rate per day shall be equal to the labor portion of the statewide operating rate per day, as determined in subsection A of 12 VAC 30-70-340, times the hospital's Medicare wage index plus the non-labor portion of the statewide operating rate per day.

B. The hospital specific rate per day for freestanding psychiatric cases shall be equal to the hospital specific operating rate per day, as determined in subsection A of this section, plus the hospital specific capital rate per day. The hospital specific capital rate per day shall be equal to the statewide capital rate per day, as determined in subsection B of 12 VAC 30-70-340, times the hospital's Medicare geographic adjustment factor.

12 VAC 30-70-330. Statewide operating rate per case.

A. The statewide operating rate per case shall be equal to the base year standardized operating costs per case, as determined in 12 VAC 30-70-360, times the inflation values specified in 12 VAC 30-70-350 times the adjustment factor specified in subsection B of this section.

B. The adjustment factor shall be determined separately for Type One and Type Two hospitals and shall be the ratio of the following two numbers:

1. The numerator of the factor is the aggregate total Medicaid operating payments to affected hospitals in hospital fiscal years ending in the calendar year ending six months prior to the start of the state fiscal year used as the base year. That is, for State Fiscal Year 1999, the base year shall be State Fiscal Year 1997, and the calendar year that ends six months prior to the start of State Fiscal Year 1997 is Calendar Year 1995.

2. The denominator of the factor is the aggregate total Medicaid allowable operating cost as determined from settled cost reports from the same hospitals in the same year.

12 VAC 30-70-340. Statewide operating rate per day.

A. The statewide operating rate per day shall be equal to the base year standardized operating costs per day, as determined in subsection B of 12 VAC 30-70-370, times the

inflation values specified in 12 VAC 30-70-350 times the adjustment factor specified in subsection C of this section.

B. The statewide capital rate per day shall be equal to the base year standardized capital costs per day, as determined in subsection D of 12 VAC 30-70-370, times the inflation values specified in 12 VAC 30-70-350 times the adjustment factor specified in subsection C of this section.

C. The adjustment factor for acute care psychiatric cases and rehabilitation cases shall be the one specified in subsection B of 12 VAC 30-70-330. For freestanding psychiatric cases, this factor shall be further adjusted to reflect the fact that the hospital specific rate per day for such cases, as determined in subsection B of 12 VAC 30-70-320, represents an all-inclusive payment for operating and capital costs and that capital costs are being passed-through.

12 VAC 30-70-350. Updating rates for inflation.

Each July, the DRI-Virginia moving average values as compiled and published by DRI/McGraw-Hill under contract with the Department shall be used to update the base year standardized operating costs per case, as determined in 12 VAC 30-70-360, and the base year standardized operating costs per day, as determined in 12 VAC 30-70-370, to the midpoint of the upcoming state fiscal year. The most current table available prior to the effective date of the new rates shall be used to inflate base year amounts to the upcoming rate year. Thus, corrections made by DRI/McGraw-Hill in the moving averages that were used to update rates for previous state fiscal years shall be automatically incorporated into the moving averages that are being used to update rates for the upcoming state fiscal year.

12 VAC 30-70-360. Base year standardized operating costs per case.

A. For the purposes of calculating the base year standardized operating costs per case, base year claims data for all DRG cases, including outlier cases, shall be used. Base year claims data for per diem cases shall not be used. Separate base year standardized operating costs per case shall be calculated for Type One and Type Two hospitals. In calculating the base year standardized operating costs per case, a transfer case shall be counted as a fraction of a case based on the ratio of its length of stay to the arithmetic mean length of stay for cases assigned to the same DRG as the transfer case.

B. Using the data elements identified in subsection E of 12 VAC 30-70-220, the following methodology shall be used to calculate the base year standardized operating costs per case:

1. The operating costs for each DRG case shall be calculated by multiplying the hospital's total charges for the case by the hospital's operating cost-to-charge ratio, as defined in subsection C of 12 VAC 30-70-220.
2. The standardized operating costs for each DRG case shall be calculated as follows:

a. The operating costs shall be multiplied by the statewide average labor portion of operating costs, yielding the labor portion of operating costs. Hence, the non-labor portion of operating costs shall constitute one minus the statewide average labor portion of operating costs times the operating costs.

b. The labor portion of operating costs shall be divided by the hospital's Medicare wage index, yielding the standardized labor portion of operating costs.

c. The standardized labor portion of operating costs shall be added to the non-labor portion of operating costs, yielding standardized operating costs.

3. The case-mix neutral standardized operating costs for each DRG case shall be calculated by dividing the standardized operating costs for the case by the hospital's case-mix index.

4. The base year standardized operating costs per case shall be calculated by summing the case-mix neutral standardized operating costs for all DRG cases and dividing by the total number of DRG cases.

5. The base year standardized operating costs per case shall be reduced by 5.1 percent to create a pool for outlier operating payments. Eligibility for outlier operating payments and the amount of the outlier operating payments shall be determined in accordance with 12 VAC 30-70-260.

C. Because the current cost report format does not separately identify psychiatric costs, claims data shall be used to calculate the base year standardized operating costs per case, as well as the base year standardized operating costs per day described in 12 VAC 30-70-320. At such time as the cost report permits the separate identification of psychiatric costs and the DRG payment system is recalibrated and rebased, cost report data shall be used to calculate the base year standardized operating costs per case and base year standardized operating costs per day.

12 VAC 30-70-370. Base year standardized operating costs per day.

A. For the purpose of calculating the base year standardized operating costs per day, base year claims data for per diem cases shall be used. Base year claims data for DRG cases shall not be used. Separate base year standardized operating costs per day shall be calculated for Type One and Type Two hospitals.

B. Using the data elements identified in subsection E of 12 VAC 30-70-220, the following methodology shall be used to calculate the base year standardized operating costs per day:

1. The operating costs for each per diem case shall be calculated by multiplying the hospital's total charges for the case by the hospital's operating cost-to-charge ratio, as defined in subsection C of 12 VAC 30-70-220.

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2. The standardized operating costs for each per diem case shall be calculated as follows:

a. The operating costs shall be multiplied by the statewide average labor portion of operating costs, yielding the labor portion of operating costs. Hence, the non-labor portion of operating costs shall constitute one minus the statewide average labor portion of operating costs times the operating costs.

b. The labor portion of operating costs shall be divided by the hospital's Medicare wage index, yielding the standardized labor portion of operating costs.

c. The standardized labor portion of operating costs shall be added to the non-labor portion of operating costs, yielding standardized operating costs.

3. The base year standardized operating costs per day for acute care psychiatric cases shall be calculated by summing the standardized operating costs for acute care psychiatric cases and dividing by the total number of acute care psychiatric days. This calculation shall be repeated separately for freestanding psychiatric cases and rehabilitation cases.

C. For general acute care hospitals with psychiatric DPUs, the psychiatric operating cost-to-charge ratio shall be used in the above calculations.

D. The following methodology shall be used to calculate the base year standardized capital costs per day for freestanding psychiatric cases:

1. The capital costs for each freestanding psychiatric case shall be calculated by multiplying the hospital's total charges for the case by the hospital's capital cost-to-charge ratio.

2. The capital costs for each freestanding psychiatric case shall be divided by the hospital's Medicare geographic adjustment factor, yielding standardized capital costs.

3. The base year standardized capital costs per day for freestanding psychiatric cases shall be calculated by summing the standardized capital costs for freestanding psychiatric cases and dividing by the total number of freestanding psychiatric days.

12 VAC 30-70-380. DRG relative weights and hospital case-mix indices.

A. For the purposes of calculating DRG relative weights and hospital case-mix indices, base year claims data for all groupable cases shall be used. Base year claims data for ungroupable cases and per diem cases shall not be used. In calculating the DRG relative weights, a transfer case shall be counted as a fraction of a case based on the ratio of its length of stay to the arithmetic mean length of stay for cases assigned to the same DRG as the transfer case.

B. Using the data elements identified in subsection E of 12 VAC 30-70-220, the following methodology shall be used to calculate the DRG relative weights:

1. The operating costs for each groupable case shall be calculated by multiplying the hospital's total charges for the case by the hospital's operating cost-to-charge ratio, as defined in subsection C of 12 VAC 30-70-220. Similarly, the capital costs for each groupable case shall be calculated by multiplying the hospital's total charges for the case by the hospital's capital cost-to-charge ratio, as defined in subsection C of 12 VAC 30-70-220.

2. The standardized operating costs for each groupable case shall be calculated as follows:

a. The operating costs shall be multiplied by the statewide average labor portion of operating costs, yielding the labor portion of operating costs. Hence, the non-labor portion of operating costs shall constitute one minus the statewide average labor portion of operating costs times the operating costs.

b. The labor portion of operating costs shall be divided by the hospital's Medicare wage index, yielding the standardized labor portion of operating costs.

c. The standardized labor portion of operating costs shall be added to the non-labor portion of operating costs, yielding the standardized operating costs.

3. The standardized capital costs for each groupable case shall be calculated by dividing the capital costs for the case by the hospital's Medicare geographic adjustment factor.

4. The average standardized cost per DRG shall be calculated by summing the standardized operating costs and the standardized capital costs for all groupable cases in the DRG and dividing that amount by the number of groupable cases classified in the DRG.

5. The average standardized cost per case shall be calculated by summing the standardized operating costs and standardized capital costs for all groupable cases and dividing that amount by the total number of groupable cases.

6. The average standardized cost per DRG shall be divided by the average standardized cost per case to determine the DRG relative weight.

C. Statistical outliers shall be eliminated from the calculation of the DRG relative weights. Within each DRG, cases shall be eliminated if (i) their standardized costs per case are outside of 3.0 standard deviations of the mean of the log distribution of the standardized costs per case and (ii) their standardized costs per day are outside of 3.0 standard deviations of the mean of the log distribution of the standardized costs per day. To eliminate a case, both conditions must be satisfied.

D. In calculating the DRG relative weights, a threshold of five cases shall be set as the minimum number of cases

required to calculate a reasonable DRG relative weight. In those instances where there are five or fewer cases, the Department's Medicaid claims data shall be supplemented with Medicaid claims data from another state. The DRG relative weights calculated according to this methodology will result in an average case weight that is different from the average case weight before the supplemental claims data was added. Therefore, the DRG relative weights shall be normalized by an adjustment factor so that the average case weight after the supplemental claims data were added is equal to the average case weight before the supplemental claims data were added.

E. The DRG relative weights shall be used to calculate a case-mix index for each hospital. The case-mix index for a hospital is calculated by summing, across all DRGs, the product of the number of groupable cases in each DRG and the relative weight for each DRG and dividing this amount by the total number of groupable cases occurring at the hospital.

12 VAC 30-70-390. Recalibration and Rebasing Policy.

A. The Department recognizes that claims experience or modifications in federal policies may require adjustment to the DRG payment system policies provided in this part. The state agency shall recalibrate (evaluate and adjust the DRG relative weights and hospital case-mix indices) and rebase (review and update the base year standardized operating costs per case and the base year standardized operating costs per day) the DRG payment system at least every other year. Recalibration and rebasing shall be done in consultation with the Medicaid Hospital Payment Policy Advisory Council noted in 12 VAC 30-70-490. When rebasing is carried out, if new rates are not calculated before their required effective date, hospitals required to file cost reports and freestanding psychiatric facilities licensed as hospitals shall be settled at the new rates, for discharges on and after the effective date of those rates, at the time the hospitals' cost reports for the year in which the rates become effective are settled.

Article 3.

Diagnosis-Related Groups (DRG) Reimbursement Methodology. Other Provisions for Payment of Inpatient Hospital Services.

12 VAC 30-70-220. General.

A. Reimbursement of operating costs for cases which are subject to DRG rates shall be equal to the relative weight of the DRG in which the patient falls, times the hospital specific operating rate per case. Reimbursement of outliers, transfer cases, cases still subject to per diem reimbursement, capital costs, and medical education costs shall be as provided in this article.

B. The All Patient Diagnosis Related Groups (AP-DRG) Grouper shall be used in the DRG reimbursement methodology. Effective July 1, 1996, and until notification of a change is given, Version 12 of this grouper shall be used. DMAS shall notify hospitals by means of a Medicaid memo when updating the system to later grouper versions.

12 VAC 30-70-230. Calculation of DRG weights and hospital case mix indices.

A. The relative weight measures the cost and, therefore, the reimbursement level of each DRG relative to all other DRGs. The hospital case mix index measures the hospital's average case mix complexity (costliness) relative to all other hospitals.

B. The relative weight for each DRG was determined by calculating the average standardized cost for cases assigned to that DRG, divided by the average standardized cost for cases assigned to all DRGs. For the purpose of calculating relative weights, groupable cases (cases having coding data of sufficient quality to support DRG assignment) and transfer cases (groupable cases where the patient was transferred to another hospital) were used. Ungroupable cases and rehabilitation, psychiatric, and transplant cases were not used. DMAS' hospital computerized claims history file for discharges in hospital fiscal years ending in calendar year 1993 was used. All available data from all enrolled, cost-reporting general acute care hospitals were used, including data from state-owned teaching hospitals. Cost report data from hospital fiscal years ending in calendar year 1993 were also used.

C. Before relative weights were calculated for each DRG, each hospital's total charges were disaggregated into operating charges and capital charges, based on the ratio of operating and capital cost to total cost. Operating charges and capital charges were standardized for regional variation, and then both operating charges and capital charges were reduced to costs using ratios of costs to charges (RCCs) obtained from the Medicaid cost report database. Direct medical education costs were eliminated from the relative weight calculations since such costs will be addressed outside the DRG rates. These steps, detailed in subsection D of this section, were completed on a case-by-case basis using the data elements identified in the following table.

Data Elements for Relative Weight and Case Mix Index Calculations

Data Elements	Source
Total charges for each groupable case	Claims Database
Total charges for each transfer case	Claims Database
Ratio of operating costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of capital costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of Direct Medical Education costs to total costs for each hospital	Medicaid Cost Report Database
Statewide average labor portion of operating costs	Virginia Health Services Cost Review Council
Medicare wage index for each hospital	Federal Register
Medicare Geographic Adj. Factor (GAF) for each hospital	Federal Register
RCC for each hospital	Medicaid Cost Report Database

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D. Steps in calculation of relative weights.

1. The total charges for each case were split into operating charges, capital charges, and Direct Medical Education charges using hospital specific ratios obtained from the cost report database.
2. The operating charges obtained in Step 1 were standardized for regional variations in wages. This involved three substeps.
 - a. The operating charges were multiplied by 59.77% yielding the labor portion of operating charges.
 - b. The labor portion of operating charges was divided by the hospital specific Medicare wage index yielding the standardized labor portion of operating charges.
 - c. The standardized labor portion of operating charges was added to the nonlabor portion of operating charges (40.23%) yielding standardized operating charges.
3. The standardized operating charges were multiplied by the hospital specific RCC yielding standardized operating costs.
4. The capital charges obtained in Step 1 were divided by the hospital specific Medicare geographic adjustment factor (GAF) yielding standardized capital charges.
5. The standardized capital charges were multiplied by the hospital specific cost-to-charge ratio yielding standardized capital costs.

These five steps were repeated for all groupable cases and transfer cases. Once this was done, the cases were sorted by DRG category resulting in the total cases and the total standardized cost of each DRG. Total cost divided by total cases yielded the average standardized cost of each DRG. The average standardized cost of each DRG was divided by the average standardized cost across all DRGs yielding the relative weight for each DRG. To address the unavailability of charge data related to adult hospital days beyond 21 days, an adjustment was estimated for certain DRGs and added to the weights as calculated above. This adjustment for adult days over 21 is necessary only until the first recalibration of weights becomes effective in July 1998 (see 12 VAC 30-70-380).

The relative weights were then used to calculate a case-mix index for each hospital. The case-mix index for a hospital was determined by summing for all DRGs the product of the number of groupable cases and transfer cases in each DRG and the relative weight for each DRG. This sum was then divided by the total number of cases yielding the case-mix index. This process was repeated on a hospital-by-hospital basis.

12 VAC 30-70-240. Calculation of standardized costs per case.

A. Standardized costs per case were calculated using all DRG cases (groupable, ungroupable, and transfer cases). Cases entirely subject to per diem rather than DRG reimbursement and cases from state-owned teaching

hospitals were not used. Using the data elements identified in the following table, the seven steps outlined in subsection B of this section were completed on a case-by-case basis.

Data Elements for Standardized Costs Per Case Calculations

Data Elements	Source
Total charges for each groupable case	Claims Database
Total charges for each ungroupable case	Claims Database
Total charges for each transfer case	Claims Database
Ratio of operating costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of capital costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of Direct Medical Education costs to total costs for each hospital	Medicaid Cost Report Database
Statewide average labor portion of operating costs	Virginia Health Services Cost Review Council
Medicare wage index for each hospital	Federal Register
Medicare GAF for each hospital	Federal Register
RCC for each hospital	Medicaid Cost Report Database
Case-mix index for each hospital	Calculated
Total number of groupable cases	Claims Database
Total number of ungroupable cases	Claims Database
Total number of transfer cases	Claims Database

B. Steps in calculation of standardized cost per case.

1. The total charges for each case were split into operating charges, capital charges, and Direct Medical Education charges using hospital specific ratios obtained from the cost report database.
2. The operating charges obtained in Step 1 were standardized for regional variations in wages. This involved three substeps.
 - a. The operating charges were multiplied by 59.77% yielding the labor portion of operating charges.
 - b. The labor portion of operating charges was divided by the hospital specific Medicare wage index yielding the standardized labor portion of operating charges.
 - c. The standardized labor portion of operating charges was added to the nonlabor portion of operating charges (40.23%) yielding standardized operating charges.
3. The standardized operating charges were multiplied by the hospital specific RCC yielding standardized operating costs.
4. The capital charges obtained in Step 1 were divided by the hospital specific Medicare geographic adjustment factor (GAF) yielding standardized capital charges.
5. The standardized capital charges were multiplied by the hospital specific cost-to-charge ratio yielding standardized capital costs.

~~6. The standardized operating costs obtained in Step 3 were divided by the hospital specific case mix index yielding case mix neutral standardized operating costs.~~

~~7. The standardized capital costs obtained in Step 5 were divided by the hospital specific case mix index yielding case mix neutral standardized capital costs.~~

~~These seven steps were repeated for all DRG cases. Once this was done, the case mix neutral standardized operating costs for all DRG cases were summed and an average was calculated. This yielded what is referred to as standardized operating costs per case. A similar average was computed for capital yielding standardized capital costs per case.~~

~~12 VAC 30-70-250. Calculation of statewide operating rate per case for SFY1997.~~

~~The statewide operating rate per case that shall be used to calculate the DRG portion of operating reimbursement for cases admitted and discharged in state fiscal year 1997 is equal to the standardized operating cost per case, updated to the midpoint of SFY1997 and multiplied by an additional factor. The update shall be done by multiplying the standardized operating cost per case by the DRI-Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS. The additional factor is equal to 0.6247. This factor is the ratio of two numbers:~~

~~1. The numerator of the factor is the aggregate amount of operating reimbursement for hospitals included in the data base used for the calculations described above that DMAS and the Virginia Hospital and Healthcare Association (VHHA) jointly determined would be made by Medicaid in state fiscal year 1997 if the rate methodology in effect on June 30, 1996, were to continue. This amount was further adjusted by agreement between DMAS and the VHHA to carry out specific policy agreements with respect to various elements of reimbursement.~~

~~2. The denominator of the factor is the estimated aggregate operating amount for the same hospitals identified in subdivision 1 of this section, calculated using the standardized operating cost per case and standardized operating cost per day as calculated in 12 VAC 30-70-230 and 12 VAC 30-70-320, and adjusted for inflation as in subdivision 1.~~

~~12 VAC 30-70-260. Calculation of statewide capital rate per case. (Reserved)~~

~~12 VAC 30-70-270. Hospital specific operating rate per case.~~

~~Each hospital specific operating rate per case shall be the labor portion of the statewide operating rate per case multiplied by the Medicare wage index applicable to the hospital's geographic location plus the nonlabor portion of the statewide operating rate per case. The Medicare wage index shall be the one in effect for Medicare in the base~~

~~period used in the calculation of the standardized costs per case (1993 for the calculation of 1997 rates).~~

~~12 VAC 30-70-280. Hospital specific capital rate per case (geographic adjustment). (Reserved)~~

~~12 VAC 30-70-290. Outliers.~~

~~A. An outlier case shall be one whose estimated cost exceeds the applicable DRG payment plus the applicable fixed loss threshold.~~

~~B. Total payment for an outlier case shall be calculated according to the following methodology (an example of the application of this methodology is found in 12 VAC 30-70-500):~~

~~1. The operating cost for the case shall be estimated. Operating cost for the case shall be the charges for the case times the hospital's operating cost to charge ratio based on the hospital's cost report data in the base period used to establish the rates in effect in the period for which outlier payment is being calculated.~~

~~2. The hospital specific operating cost amount for the DRG shall be calculated. This shall be equal to the sum of the labor portion of the standardized operating cost per case times the Medicare wage index, and the nonlabor portion of the standardized operating cost per case, multiplied by the relative weight applicable to the case.~~

~~3. The hospital specific operating cost outlier threshold is calculated as follows:~~

~~a. An outlier fixed loss threshold times the statewide average labor portion of operating cost times the Medicare wage index for the hospital, plus~~

~~b. The nonlabor portion of the fixed loss threshold, plus~~

~~c. The DRG operating cost amount for the case (subdivision 2 above).~~

~~4. The case specific excess over the hospital specific operating outlier threshold is calculated. This shall be equal to the difference between the estimated operating cost for the case (subdivision 1 above) and the hospital specific operating cost outlier threshold (subdivision 3 above), multiplied by the cost adjustment factor for outliers.~~

~~5. The total payment for the case is calculated. This shall be equal to the sum of the DRG operating cost amount for the case (subdivision 2 above) and the case specific excess over the hospital specific operating threshold (subdivision 4 above), multiplied by the factor that is used to adjust the standardized operating cost per case in 12 VAC 30-70-250.~~

~~C. Data element definitions. Factors and variables used in the above calculation and not already defined are defined as follows:~~

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1. The "outlier fixed loss threshold" is a fixed dollar amount in SFY1997, applicable to all hospitals, that shall be adjusted each year. It shall be calculated each year, based on the most recent available estimates so as to result in a total operating expenditure for outliers equal to 5.1% of total operating expenditures, including outliers. In SFY1997, this amount shall be \$15,483. If in any year revised estimates are unavailable the previous year's value shall be used updated for inflation using the same factor applied to hospital rates.

2. The "statewide average labor proportion of operating cost" is a fixed percentage, equal to .5977. This figure may be updated with revised data when rates are rebased/recalibrated.

3. The "adjustment factor for outliers" is a fixed factor, published by Medicare in the Federal Register, and equal to 0.80. This figure shall be updated based on changes to the Medicare factor, upon the next rebasing of the system described in this part.

4. The "Medicare wage index applicable to the hospital" is as published by the Health Care Financing Administration in the year used as the base period.

12 VAC 30-70-300. Transfers and readmissions.

A. Transfer cases shall be defined as (i) patients transferred from one general acute care hospital to another and (ii) patients discharged from one general acute care hospital and admitted to another for the same or similar diagnosis (similar diagnoses shall be defined as ones with the first three digits the same) within five days of that discharge.

B. Readmissions shall be defined as cases readmitted to the same hospital for the same or similar diagnosis within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as a new admission or case (a separate DRG payment shall not be made).

C. Exceptions:

1. Cases falling into DRGs 456, 639, or 640 shall not be treated as transfer cases, but the full DRG rate shall be paid to the transferring hospital. These DRGs are designed to be populated entirely with transfer patients.

2. Cases transferred to or from a distinct part psychiatric or rehabilitation units of a general acute care hospital shall not be treated as transfer cases.

D. Transfer methodology. When two general acute care hospitals provide inpatient services to a patient defined as a transfer case:

1. The transferring hospital shall receive the lesser of (i) a per diem payment equal to the DRG payment for the transferring hospital, divided by the arithmetic mean length of stay for the DRG in all hospitals for which data are available, times the patient's length of stay at the transferring hospital or (ii) the full DRG payment for the transferring hospital. The transferring hospital shall be

eligible for outlier payments if the applicable criteria are met.

2. The receiving hospital, if it is the final discharging hospital, shall receive DRG payment. A receiving hospital that later transfers the patient to another hospital, including the first transferring hospital, shall be reimbursed as a transferring hospital. Only the final discharging hospital shall receive DRG payment. The receiving hospital shall be eligible for outlier payments if the applicable criteria are met.

12 VAC 30-70-310. Per diem reimbursement in the DRG methodology.

Cases that will continue to be reimbursed on a per diem basis are (i) covered psychiatric cases in general acute care hospitals and psychiatric units of general acute care hospitals, (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals, and (iii) rehabilitation cases in both general acute care and rehabilitation hospitals. Psychiatric cases are cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see the Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3.1A&B (12 VAC 30-50-95 through 12 VAC 30-50-310).

12 VAC 30-70-320. Calculation of standardized costs per day.

A. Standardized operating costs per day and standardized capital costs per day were calculated separately, but using the same calculation methodology, for psychiatric cases in general acute care hospitals, psychiatric acute care in freestanding psychiatric facilities licensed as hospitals, and rehabilitation cases (per diem cases). Using the data elements identified in the following table, the first five steps outlined below were completed on a case-by-case basis.

Data Elements for Calculating Total Costs for Per Diem Cases

Data Elements	Source
Total charges for each acute care psychiatric case	Claims Database
Total charges for each freestanding acute care psychiatric case	Claims Database
Total charges for each rehabilitation case	Claims Database
Ratio of operating costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of capital costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of Direct Medical Education costs to total costs for each hospital	Medicaid Cost Report Database
Statewide average labor portion of operating costs	Virginia Health Services Cost Review Council
Medicare wage index for each hospital	Federal Register
Medicare GAF for each hospital	Federal Register

RCC for psychiatric distinct part unit for each hospital	Medicare Cost Report
RCC for each hospital	Medicaid Cost Report Database
Number of acute care psychiatric days at each hospital	Claims Database
Number of freestanding acute care psychiatric days at freestanding psychiatric facilities licensed as hospitals	Claims Database
Number of rehabilitation days at each acute care hospital and freestanding rehabilitation hospital	Claims Database

B. Steps in calculation of standardized cost per day.

1. The total charges for the case were split into operating charges, capital charges, and Direct Medical Education charges using hospital specific ratios obtained from the cost report database.
2. The operating charges obtained in Step 1 were standardized for regional variations in wages. This involved three substeps.
 - a. The operating charges were multiplied by 59.77% yielding the labor portion of operating charges.
 - b. The labor portion of operating charges was divided by the hospital specific Medicare wage index yielding the standardized labor portion of operating charges.
 - c. The standardized labor portion of operating charges was added to the nonlabor portion of operating charges (40.23%) yielding standardized operating charges.
3. The standardized operating charges were multiplied by the hospital specific RCCs yielding standardized operating costs.
4. The capital charges obtained in Step 1 were divided by the hospital specific Medicare geographic adjustment factor (GAF) yielding standardized capital charges.
5. The standardized capital charges were multiplied by the hospital specific RCCs yielding standardized capital costs.

These five steps were repeated for all per diem cases. The standardized operating costs for per diem cases were then summed and divided by the total number of per diem days yielding the standardized operating costs per day for per diem cases. Similarly, the standardized capital costs for per diem cases were summed and divided by the total number of per diem days yielding the standardized capital costs per day for per diem cases. These two calculations were done separately for psychiatric cases in freestanding psychiatric facilities licensed as hospitals, for psychiatric cases in general acute care hospitals (including distinct part units) and for rehabilitation cases.

C. Where general acute care hospitals had psychiatric distinct part units (DPUs) reported on their cost reports, separate RCCs were calculated for the DPUs and used in

lieu of the hospital specific RCCs. Since DPU specific RCCs are generally higher than hospital specific RCCs, this had the effect of increasing the estimated costs of acute care psychiatric cases. Overall hospital RCCs were used for freestanding acute care psychiatric cases and rehabilitation cases, as well as for psychiatric cases at general acute care hospitals without a psychiatric DPU.

12 VAC 30-70-330. Calculation of statewide operating rate per day.

The statewide hospital operating rate per day that shall be used to calculate the DRG system portion of operating reimbursement for psychiatric and rehabilitation cases admitted and discharged in SFY1997 is equal to the standardized operating cost per day updated to the midpoint of SFY1997 and multiplied by an additional factor. The update shall be done by multiplying the standardized operating cost per day by the DRI Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS. The additional factor for per diem cases in general acute care hospitals and rehabilitation hospitals is equal to 0.6290, and 0.6690 for freestanding psychiatric facilities licensed as hospitals. These factors were calculated so that per diem cases will be reimbursed the same percentage of cost as DRG cases based on the data used for rate calculation.

Per diem rates used for acute care hospitals during the transition shall be operating rates only and capital shall be reimbursed on a pass-through basis. Per diem rates used for freestanding psychiatric facilities licensed as hospitals shall be inclusive of capital. The capital-inclusive statewide per diem rate for freestanding psychiatric facilities licensed as hospitals shall be the standardized cost per day calculated for such hospitals adjusted for the wage index and the geographic adjustment factor (GAF) and multiplied by the factor above.

12 VAC 30-70-340. Calculation of hospital specific operating rate per day.

Each hospital specific operating rate per day shall be the labor portion of the statewide operating rate per day multiplied by the Medicare wage index applicable to the hospital's geographic location plus the nonlabor portion of the statewide operating rate per day. The Medicare wage index shall be the one in effect for Medicare in the base period used in the calculation of the standardized costs per case (1993 for the calculation of 1997 rates).

The hospital specific rate per day for freestanding psychiatric facilities licensed as hospitals shall be inclusive of capital cost, and shall have a capital portion which shall be adjusted by the GAF and added to the labor and nonlabor operating elements calculated as described above. The geographic adjustment factor shall be taken from the same time period as the Medicare wage index.

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~~12 VAC 30-70-350. Prospective per case reimbursement of capital after transition period (1998). (Reserved)~~

~~12 VAC 30-70-360. Indirect medical education (IME).~~

~~Hospitals with programs in graduate medical education shall receive a rate adjustment for associated indirect costs. This reimbursement for IME costs recognizes the increased use of ancillary services associated with the educational process and the higher case mix intensity of teaching hospitals. The IME adjustment shall employ the equation shown below.~~

$$\text{IME percentage} = 1.89 \times ((1 + r)^{0.405} - 1)$$

~~In this equation, r is the ratio of interns and residents to staffed beds. The IME adjustment shall be the IME percentage, times 0.4043, times operating reimbursement for DRG cases and per diem cases.~~

~~12 VAC 30-70-370. Updating rates for inflation.~~

~~DRG system rates in SFY1997 shall be as provided in 12 VAC 30-70-270 and 12 VAC 30-70-340. Rates for state fiscal years after SFY1997 shall be updated for inflation as follows:~~

~~1. The statewide operating rate per case as calculated in 12 VAC 30-70-250 and the statewide rates per day as calculated in 12 VAC 30-70-310 shall be converted to a price level at the midpoint of state fiscal year 1993, using the same inflation values as were used to establish the amounts used in subdivision 1 of 12 VAC 30-70-250. The resulting rates are the base period operating rates per case and the base period rates per day.~~

~~2. Rates shall be updated each July first by increasing the 1993 base period rates to the midpoint of the upcoming state fiscal year using the DRI-Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS. The most current table available prior to the effective date of the new rates shall be used. By means of this method, each year, corrections made by DRI/McGraw-Hill in the moving averages that were used to update rates for previous years shall automatically be incorporated as adjustments to the update calculation used for the upcoming year. For each new year's rate calculation that uses a base year prior to 1997, the inflation values shall be the DRI/McGraw-Hill values plus two percentage points for each year through SFY1997.~~

~~12 VAC 30-70-380. Recalibration/rebasing policy.~~

~~DMAS recognizes that claims experience during the transition period or modifications in federal policies may require adjustment to the DRG system policies provided in this part. The state agency shall recalibrate (evaluate and adjust the weights assigned to cases) and rebase (review and update as appropriate the cost basis on which the rate is developed) the DRG system at least every other year. The first such recalibration and rebasing shall be done prior to full implementation of the DRG methodology in SFY1999. Recalibration and rebasing shall be done in consultation with~~

~~the Medicaid Hospital Payment Policy Advisory Council noted in 12 VAC 30-70-490.~~

~~12 VAC 30-70-390. Disproportionate Share Hospital (DSH) payments after transition period (1998). (Reserved)~~

~~Article 4.~~

~~Revised Per Diem Methodology.~~

~~12 VAC 30-70-400. Determination of per diem rates.~~

~~Each hospital's revised per diem rate or rates to be used during the transition period (SFY 1997 and SFY 1998) shall be based on the hospital's previous peer group ceiling or ceilings that were established under the provisions of 12 VAC 30-70-10 through 12 VAC 30-70-130, with the following adjustments:~~

~~1. All operating ceilings will be increased by the same proportion to effect an aggregate increase in reimbursement of \$40 million in SFY1997. This adjustment incorporates in per diem rates the systemwide aggregate value of payment that otherwise would be made through the payment adjustment fund. This adjustment will be calculated using estimated 1997 rates and 1994 days.~~

~~2. Starting July 1, 1996, operating ceilings will be increased for inflation to the midpoint of the state fiscal year, not the hospital fiscal year. Inflation shall be based on the DRI-Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS, increased by two percentage points per year. The most current table available prior to the effective date of the new rates shall be used.~~

~~For services to be paid at SFY1998 rates, per diem rates shall be adjusted consistent with the methodology for updating rates under the DRG methodology (12 VAC 30-70-370).~~

~~3. There will be no disproportionate share hospital (DSH) per diem.~~

~~4. To pay capital cost through claims, a hospital specific adjustment to the per diem rate will be made. At settlement of each hospital fiscal year, this per diem adjustment will be eliminated and capital shall be paid as a pass-through.~~

~~5. This methodology shall be used after the transition period to reimburse days of hospital stays with admission dates before July 1, 1996.~~

~~6. This methodology shall be used after the transition period to make interim payments until such time as the DRG payment methodology is operational.~~

~~12 VAC 30-70-410. State university teaching hospitals.~~

~~For hospitals that were state owned teaching hospitals on January 1, 1996, all the calculations which support the determination of hospital specific rate per case and rate per day amounts under the DRG reimbursement methodology shall be carried out separately from other hospitals, using~~

cost data taken only from state university teaching hospitals. Rates to be used effective July 1, 1996, shall be determined on the basis of cost report and other applicable data pertaining to the facility fiscal year ending June 30, 1993 from the most recent year for which reliable data are available at the time of rebasing. For these hospitals the factors used to establish rates shall be as listed below according to the section in Article 3 (12 VAC 30-70-220 et seq.) of this part where corresponding factors for other hospitals are set forth:

1. ~~12 VAC 30-70-250. 0.8432~~
2. ~~12 VAC 30-70-330. 0.8470~~

12 VAC 30-70-420. Reimbursement of nonenrolled non-cost reporting-general acute care hospital providers.

~~During the transition period, nonenrolled general acute care hospitals (general acute care hospitals that are not required to file cost reports) shall be reimbursed according to the previous methodology for such hospitals (12 VAC 30-70-120 A). Effective with discharges after June 30, 1998, these hospitals shall be paid based on DRG rates unadjusted for geographic variation. Non-Cost-reporting general acute care hospitals (general acute care hospitals that are not required to file cost reports) shall be paid based on the methodology specified in 12 VAC 30-70-120 until such time as the Department can implement the DRG claims payment methodology. Once the DRG claims payment methodology is operational, non-cost-reporting general acute care hospitals shall be paid based on the statewide operating rate per case (12 VAC 30-70-330) plus the statewide average capital rate (12 VAC 30-70-270) estimated at the time of rebasing (12 VAC 30-70-220). Effective with discharges after the operational date of the DRG claims payment system, these hospitals shall be paid based on DRG rates unadjusted for geographic variation. General acute care hospitals shall not file cost reports if they have less than 1000 days per year (in the most recent provider fiscal year) of inpatient utilization by Virginia Medicaid recipients, inclusive of patients in managed care capitation programs.~~

Prior approval must be received from DMAS when a referral has been made for treatment to be received from a nonenrolled acute care facility (in-state or out-of-state), except in the case of an emergency or because medical resources or supplementary resources are more readily available in another state.

12 VAC 30-70-430. Medicare upper limit.

For participating and nonparticipating facilities, the state agency will pay no more in the aggregate for inpatient hospital services than the amount it is estimated would be paid for the services under the Medicare principles of reimbursement, as set forth in 42 CFR 447.253(b)(2) or the lesser of reasonable cost or customary charges in 42 CFR 447.250.

12 VAC 30-70-440. Determination of reasonable and adequate rates. Repealed.

~~In accordance with 42 CFR 447.250 through 42 CFR 447.272 which implements §1902(a)(13)(A) of the Social Security Act, the state agency establishes payment rates for services that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. To establish these rates Virginia uses the Medicare principles of cost reimbursement in determining the allowable costs for Virginia's reimbursement system. Allowable costs will be determined from the filing of a uniform cost report by participating providers.~~

12 VAC 30-70-450. Cost reporting requirements.

Except for ~~nonenrolled non-cost reporting hospitals~~ general acute care hospitals and freestanding psychiatric facilities licensed as hospitals, all hospitals shall submit cost reports. All cost reports shall be submitted on uniform reporting forms provided by the state agency and by Medicare. Such cost reports shall cover a 12-month period. Any exceptions must be approved by the state agency. The cost reports are due not later than 150 days after the provider's fiscal year end. All fiscal year end changes must be approved 90 days prior to the beginning of a new fiscal year. If a complete cost report is not received within 150 days after the end of the provider's fiscal year, the program shall take action in accordance with its policies to ensure that an overpayment is not being made. When cost reports are delinquent, the provider's interim rate shall be reduced to zero. The reductions shall start on the first day of the following month when the cost report is due. After the delinquent cost report is received, desk reviewed, and a new prospective rate established, the amounts withheld shall be computed and paid. If the provider fails to submit a complete cost report within 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to the state agency. The cost report will be judged complete when the state agency has all of the following:

1. Completed cost reporting form or forms provided by DMAS, with signed certification or certifications.
2. The provider's trial balance showing adjusting journal entries.
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of changes in financial position, and footnotes to the financial statements. Multi-level facilities shall be governed by 12 VAC 30-70-450 (5 below).
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report.
5. Hospitals which are part of a chain organization must also file:
 - a. Home office cost report;

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- b. Audited consolidated financial statements of the chain organization including the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, the management report, and footnotes to the financial statements;
 - c. The hospital's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows;
 - d. Schedule of restricted cash funds that identify the purpose of each fund and the amount;
 - e. Schedule of investments by type (stock, bond, etc.), amount, and current market value.
6. Such other analytical information or supporting documents requested by the state agency when the cost reporting forms are sent to the provider.

12 VAC 30-70-460. Hospital settlement.

A. During the transition period claims will be processed and tentative payment made using per diem rates. Settlements will be carried out to ensure that the correct blend of DRG and per diem-based payment is received by each general acute care and rehabilitation hospital and to settle reimbursement of pass-through costs. There shall be no settlement of freestanding psychiatric facilities licensed as hospitals except with respect to disproportionate share hospital (DSH) payment, if necessary (see 12 VAC 30-70-210 E 3).

B. The transition blend percentages which determine the share of DRG system and of revised per diem system reimbursement that is applicable in a given period shall change with the change of the state fiscal year, not the hospital fiscal year.

C. If a hospital's fiscal year does not end June 30, its first year ending after June 30, 1996, contains one or more months under the previous methodology, a "split" settlement shall be done of that hospital's fiscal year. Services rendered through June 30, 1996, shall be reimbursed under the previous reimbursement methodology and services rendered after June 30, 1996, will be reimbursed as described in subsection G of this section.

D. For cases subject to settlement under the blend of DRG and per diem methodologies (cases with an admission date after June 30, 1996), the date of discharge determines the year in which any inpatient service or claim related to the case shall be settled. This shall be true for both the DRG and the per diem portions of settlement. Interim claims tentatively paid in one hospital fiscal year that relate to a discharge in a later hospital fiscal year, shall be voided and reprocessed in the latter year so that the interim claim shall not be included in the settlement of the first year, but in the settlement of the year of discharge. An exception to this shall be rehabilitation cases, the claims for which shall be settled in the year of the "through" date of the claim.

E. A single group of cases with discharges in the appropriate time period shall be the basis of both the DRG and the per diem portion of settlement. These cases shall be based on claims submitted and, if necessary, corrected by 120 days after the providers FYE. Cases which are based on claims that lack sufficient information to support grouping to a DRG category, and which the hospital cannot correct, shall be settled for purposes of the DRG portion of settlement based on the lowest of the DRG weights.

F. Reimbursement for services in freestanding psychiatric facilities licensed as hospitals shall not be subject to settlement.

G. During the transition period settlements shall be carried out according to the following formulas.

1. Settlement of a hospital's first fiscal year ending after July 1, 1996:

a. Operating reimbursement shall be equal to the sum of the following:

(1) Paid days occurring in the hospital's fiscal year before July 1, 1996, times the per diem in effect before July 1, 1996.

(2) Paid days occurring after June 30, 1996, but in the hospital fiscal year, that are related to admissions that occurred before July 1, 1996, times the revised system per diem that is effective on July 1, 1996.

(3) DRG system payment for DRG and psychiatric cases admitted after June 30, 1996, and discharged within the hospital fiscal year times 1/3.

(4) DRG system payment for rehabilitation claims having a "from" date of July 1, 1996, or later and a "through" date within the hospital fiscal year times 1/3.

(5) Paid days from the cases and claims in subdivisions 1 a (3) and (4) of this subsection, times the revised system per diem that is effective on July 1, 1996, times 2/3.

b. DSH reimbursement shall be equal to paid days from the start of the hospital fiscal year through June 30, 1996, times the DSH per diem effective before July 1, 1996. There shall be no settlement of DSH after July 1, 1996, as the lump sum amount shall be final.

c. Pass-throughs shall be settled as previously based on allowable cost related to days paid in subdivisions 1 a (1), (2), and (5) of this subsection.

2. Settlement of a hospital's second fiscal year ending after July 1, 1996:

a. Operating reimbursement shall be equal to the sum of the following:

(1) Days occurring in the hospital fiscal year related to admissions that occurred before July 1, 1996,

times the revised system per diem that is effective at the time.

(2) DRG system payment for DRG and psychiatric cases discharged in the hospital fiscal year, but before July 1, 1997, times 1/3.

(3) DRG system payment for rehabilitation claims having a "through" date within the hospital fiscal year but before July 1, 1997, times 1/3.

(4) Covered days from the cases and claims and in subdivisions 2 b and c of this subsection, times the revised system per diem that is effective on July 1, 1996, times 2/3.

(5) DRG system payment for DRG and psychiatric cases discharged from July 1, 1997, through the end of the hospital fiscal year, times 2/3.

(6) DRG system payment for rehabilitation claims having a "through" date from July 1, 1997, through the end of the hospital fiscal year, times 2/3.

(7) Covered days from the cases and claims and in subdivisions 2 a (5) and (6), times the revised system per diem that is effective on July 1, 1997, times 1/3.

b. DSH reimbursement shall be the predetermined lump sum amount.

c. Pass-throughs shall be settled as previously, based on allowable cost related to days paid in subdivisions 2 a (1), (4), and (7).

12 VAC 30-70-470. Underpayments.

When the settlement of a hospital fiscal year indicates that an underpayment has occurred, the state agency shall pay the additional amount to the hospital within 60 days of completion of the settlement.

12 VAC 30-70-480. Refund of overpayments.

A. Lump sum payment. When the settlement of a hospital fiscal year indicates that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where the state agency discovers an overpayment during desk review, field audit, or final settlement, the state agency shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken unless the hospital disputes the state agency's determination of the overpayment. If the hospital disputes the state agency's determination, recovery, if any, shall be undertaken after the issue date of any administrative decision issued by the state agency after an informal fact finding conference.

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

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

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a hospital demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the director) may approve a repayment schedule of up to 36 months.

A hospital shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the hospital submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the hospital withdraws from the program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

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

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

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

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

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12 VAC 30-70-490. Medicaid Hospital Payment Policy Advisory Council.

In order to ensure the ongoing relevance and fairness of the prospective payment system for hospital services, the Director of the Department of Medical Assistance Services shall appoint a Medicaid Hospital Payment Policy Advisory Council. The council shall be composed of four hospital or health system representatives nominated by the Virginia Hospital and Healthcare Association, two senior department staff and one representative each from the Department of Planning and Budget and the Joint Commission on Healthcare. This council will be charged with evaluating and developing recommendations on payment policy changes in areas that include, but are not limited to, the following: (i) utilization reductions directly attributable to the 1995 Appropriations Act utilization initiative and any necessary adjustments to SFY1997 and 1998 DRG rates; (ii) the update and inflation factor to apply to the various components of the delivery system; (iii) the treatment of capital and medical education costs; (iv) the mechanisms and budget implication of recalibration and rebasing approaches; (v) the disproportionate share payment fund and allocation mechanisms; and (vi) the timing and final design of an outpatient payment methodology.

12 VAC 30-70-500. Outlier Payment Methodology Illustration.

(Dollar amounts and other values are for illustration purposes only.)

Assume the following:

Outlier Operating Fixed Loss Threshold	\$15,483.00
Outlier Adjustment Factor	0.8000
Hospital X Operating Cost-to-Charge Ratio	0.7200
Hospital X Medicare Wage Index	0.9413
Statewide Average Labor Portion of Operating Costs	0.5977
Hospital X Billed Charges for Case Y	\$100,000.00
Hospital X Operating Payment for Case Y (Hospital Operating Rate per Case (\$2,309.98) X Relative Weight (3.1790) for Case Y)	\$7,343.43
Adjustment Factor	0.6247

Step 1 Calculate Hospital X Adjusted Operating Cost for Case Y:

Hospital X Billed Charges for Case Y		\$100,000.00
Hospital X Operating Cost-to-Charge Ratio	x	0.7200
Hospital X Operating Costs for Case Y		\$72,000.00
Adjustment Factor	x	0.6247
Hospital X Adjusted Operating Cost for Case Y		\$44,978.40

Step 2 Calculate Wage Adjusted Outlier Operating Fixed Loss Threshold:

Outlier Operating Fixed Loss Threshold		\$15,483.00
Statewide Average Labor Portion of Operating Costs	x	0.5977
Labor Portion of Outlier Operating Fixed Loss Threshold		\$9,254.19
Hospital X Medicare Wage Index	x	0.9413
Wage Adjusted Labor Portion of		\$8,710.97
Hospital X Outlier Operating Fixed Loss Threshold		
Non-Labor Portion of Outlier Operating Fixed Loss Threshold	+	\$6,228.81
Wage Adjusted Outlier Operating Fixed Loss Threshold		\$14,939.78

Step 3 Calculate Hospital X Outlier Operating Threshold for Case Y:

Wage Adjusted Outlier Operating Fixed Loss Threshold		\$14,939.78
Adjustment Factor	x	0.6247
Adjusted Outlier Operating Fixed Loss Threshold		\$9,332.88
Hospital X Operating Payment for Case Y	+	\$7,343.43
Hospital X Outlier Operating Threshold for Case Y		\$16,676.31

**Step 4 Calculate Hospital X
Operating Outlier Payment
for Case Y:**

Hospital X Adjusted Operating Cost for Case Y			\$44,978.40
Hospital X Outlier Operating Threshold for Case Y	-		\$16,676.31
			\$28,302.09
Hospital X Outlier Operating Costs for Case Y			\$28,302.09
Outlier Adjustment Factor	×	<u>0.8000</u>	
Hospital X Outlier Operating Payment for Case Y			\$22,641.67

VA.R. Doc. No. R98-269; Filed June 30, 1998, 3:36 p.m.

Title of Regulation: 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-170).

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 335 O of Chapter 464 of the 1998 Acts of Assembly.

Effective Dates: July 1, 1998, through June 30, 1999.

Summary:

1. **REQUEST:** The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Medicare/Medicaid Coinsurance and Deductibles. This regulation will permit DMAS to pay providers' claims for coinsurance and deductibles at the lower Medicaid rate rather than the higher Medicare rate.

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

/s/ Robert W. Lauterberg, Acting Director
Department of Medical Assistance Services
Date: May 19, 1998

3. **CONCURRENCES:**

/s/ Claude A. Allen
Secretary of Health and Human Resources
Date: June 8, 1998

4. **ACTION:**

/s/ James S. Gilmore, III
Governor
Date: June 9, 1998

5. **FILED WITH:**

/s/ Jane D. Chaffin
Deputy Registrar of Regulations
Date: June 23, 1998

DISCUSSION

6. **BACKGROUND:** The section of the State Plan affected by this action is Methods and Standards for Establishing Payment Rates: Payment of Medicare Part A and Part B Deductibles and Coinsurance (Supplement 2 to Attachment 4.19-B (VR 460-03-4.1920 (12 VAC 30-80-170))).

Section 4714 of the Balanced Budget Act of 1997 authorizes Medicaid agencies to calculate coinsurance for dual eligibles (individuals who are eligible for both Medicare and Medicaid coverage) based on the Medicaid reimbursement rate rather than the Medicare rate, which is now the case. DMAS implemented the policy of using the Medicare rate based on a lawsuit, Rehabilitation Ass'n of Va., Inc. v. Kozlowski, 42 F.3d 1444 (4th Cir.1994). In Rehabilitation Ass'n., the court held that DMAS's policy of calculating the coinsurance for dual eligibles based on the Medicaid rate was invalid. After this decision, DMAS's regulations at Supplement 2 to Attachment 4.19-B of the State Plan were amended to provide for payment at the Medicare rate instead of the Medicaid rate.

Pursuant to § 4714 of the Balanced Budget Act of 1997, item 335.O of Chapter 464 of the 1998 Acts of the Assembly requires DMAS to amend the State Plan and all necessary regulations so that payments for coinsurance for dual eligibles shall be calculated based on the Medicaid rate. Additionally, the Health Care Financing Administration (HCFA) has advised all states' Medicaid programs that if the agency were ordered by a court before August 5, 1997, to pay full Medicare cost-sharing, then that state agency must pursue legal action in order to secure relief from the court's injunction to enable the agency to pay based on the Medicaid rate.

This issue is of considerable importance since Medicare rates are usually substantially higher than Medicaid rates. Traditionally, Medicare pays 80% of the Medicare approved payment rate for Part B services and leaves the Medicare patient with a 20% co-payment for the service. For example, if a physician provides a Medicare covered service which has a Medicare rate of \$100, Medicare pays the physician \$80 and the patient pays \$20. For those individuals who are eligible for both Medicare and Medicaid, referred to as dual eligibles, the Medicaid program is responsible for the co-payment.

The controversy, that led to the previously referenced lawsuit Rehabilitation Ass'n., occurs if the Medicaid rate for the physician's service is below the \$100 Medicare rate. Prior to the court's decision in the lawsuit, if the Medicaid rate was \$88, DMAS reimbursed the provider \$8 in order to bring total reimbursement up to the Medicaid approved rate. This previous payment policy was consistent with Medicaid policy for recipients who have private health care insurance. After the court's order, DMAS was required to pay the full co-

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payment amount up to the Medicare rate. In the example above, DMAS has had to pay the full \$20 instead of the lower \$8 amount. Consequently, DMAS's expenditures for dual eligibles have escalated rapidly as is further discussed in the following fiscal impact section.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to promulgate permanent regulations in a manner consistent with the Administrative Process Act (Code § 9-6.14:1, et seq.)

Item 335.O also requires the Office of the Attorney General, on behalf of DMAS, to pursue whatever legal actions are appropriate to obtain relief from the court's decision in Rehabilitation Ass'n. The Office of the Attorney General has obtained relief from the order, issued by the U.S. District Court for the Eastern District of Virginia, which required DMAS to calculate coinsurance for dual eligibles based on the Medicare rate.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. The General Assembly has reduced Medicaid's funding for fiscal years 1999 and 2000 by the amount that DMAS would have paid for deductibles and coinsurance between the Medicaid and Medicare limits. Therefore, an emergency regulation is needed to meet the July 1, 1998, effective date permitted by the Appropriations Act language and necessitated by the funding loss.

8. NEED FOR EMERGENCY ACTION: The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with Chapter 464 of the 1998 Acts of the Assembly, Item 335.O, he must adopt this Plan change. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because the Appropriation Act requires this regulation to be effective within 280 days from the enactment of the law. As such, this regulation may be adopted without public comment with the prior approval of the Governor. Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department will adopt permanent regulations consistent with the Administrative Process Act (Code § 9-6.14:1).

9. FISCAL/BUDGETARY IMPACT: There are no localities which are uniquely affected by these regulations as they apply statewide. The federal Balanced Budget Act of 1997 § 4714 clarified that states have the authority to limit the Medicaid reimbursement for Medicare deductibles, coinsurance and copayments for services covered by

Medicaid to the difference between the Medicaid rate for the service and Medicare payment. Prior to this clarification there had been considerable controversy as to whether state Medicaid programs were legally liable up to Medicare's reimbursement rates or Medicaid's rates for dual eligibles.

As a result of the earlier referenced lawsuit decision, DMAS was required to change its reimbursement policies so that it provided the full reimbursement up to the Medicare approved rate. A budget amendment was passed in the 1996 General Assembly that provided \$23,195,000 (\$11,266,000 GF) in FY 1997 and \$28,999,000 (\$14,079,000 GF) in FY 1998 to provide for the increased costs involved. DMAS has experienced a significant increase in expenditures for dual eligibles. The table below shows the growth in expenditures for dual eligibles for the most affected service types. Expenditures increased from FY 1996 to FY 1997 by over \$24 million, and further growth is forecasted for FY 1998.

<u>FY</u>	<u>Nursing Home</u>	<u>Physicians</u>	<u>Outpatient Hospital</u>
1993	\$ 8,449,687	\$11,981,475	\$14,702,682
1994	5,765,346	14,342,295	15,976,588
1995	3,829,553	14,123,209	19,969,607
1996	3,780,329	12,187,074	20,556,187
1997	11,474,152	22,458,507	26,843,061
1998*	16,660,502	25,808,684	27,167,848

* FY 1998 is a forecast

The total increase in expenditures for the services listed above when comparing FY 1998 to FY 1996 is approximately \$37 million, DMAS estimates that approximately \$30 million of this amount is due to the policy change of paying Medicare rates for dual eligibles. DMAS believes it is consistent and equitable to reimburse providers for Medicare/Medicaid dual eligibles using the same methodology that is currently utilized to reimburse providers of services to Medicaid recipients with other third party insurance.

10. RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective July 1, 1998. From its effective date, this regulation is to remain in force for one full year or until superseded by permanent final regulations. Without an effective emergency regulation, the Department would lack the authority to quickly modify the State Plan for Medical Assistance regarding payments for coinsurance and deductibles at the Medicaid rate instead of the Medicare rate.

11. REGULATIONS AVAILABILITY AND WRITTEN COMMENTS: This regulation is available from either Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Dept. of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219 (at (804) 786-7959 or (804) 371-8854, respectively). Written comments may be directed to the Regulatory Coordinators. Submitted comments may be reviewed at DMAS during regular working hours. The agency does not intend to hold public hearings on this issue.

12. APPROVAL SOUGHT FOR VR 460-03-4.1922 (12 VAC 30-80-170).

Emergency Regulations

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

12 VAC 30-80-170. Payment of Medicare Part A and Part B Deductible/Coinsurance.

Except for a nominal recipient copayment (as specified in 12 VAC 30-20-150 and 12 VAC 30-20-160), if applicable, the Medicaid agency uses the following general method for payment:

1. Payments are limited to state plan rates and payment methodologies for the groups and payments listed below and designated with the letters "SP."

For specific Medicare services which are not otherwise covered by this state plan, the Medicaid agency uses Medicare payment rates unless a special rate or method is set out.

Not applicable. There are no special rates or methods used for specific Medicare services which are not otherwise covered by this state plan.

2. Payments are up to the full amount of the Medicare rate for the groups and payments listed below, and designated with the letters "MR."

~~Dual eligibles and QMBs for all state plan covered services.~~

3. Payments are up to the amount of a special rate, or according to a special method for the groups and payments listed below and designated with the letters "NR."

4. Any exceptions to the general methods used for a particular group or payment are specified.

Payment of Medicare Part A and Part B Deductible/Coinsurance

QMBs:	Part A	MR SP	Deductibles	MR SP	Coinsurance
	Part B	MR SP	Deductibles	MR SP	Coinsurance
Other Medicaid Recipients	Part A	MR SP	Deductibles	MR SP	Coinsurance
	Part B	MR SP	Deductibles	MR SP	Coinsurance
Dual Eligible (QMB Plus)	Part A	MR SP	Deductibles	MR SP	Coinsurance
	Part B	MR SP	Deductibles	MR SP	Coinsurance

VA.R. Doc. No. R98-265; Filed June 23, 1998, 10:26 a.m.

Title of Regulation: 12 VAC 30-120-10 et seq. **Waivered Services (Part VI: Medallion II) (amending 12 VAC 30-120-360 and 12 VAC 30-120-370).**

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 335 M of Chapter 464 of the 1998 Acts of Assembly.

Effective Dates: July 1, 1998, through June 30, 1999.

Summary:

1. **REQUEST:** The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled 12-Month HMO Enrollment Periods. This regulation will establish enrollment periods for Medicaid enrollees in the Medallion II Program.

2. **RECOMMENDATION:** Recommend approval of the Department's request to take an emergency adoption action regarding 12-Month HMO Enrollment Periods. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Robert W. Lauterberg, Acting Director
Department of Medical Assistance Services
Date: May 29, 1998

3. **CONCURRENCES:**

/s/ Claude A. Allen
Secretary of Health and Human Resources
Date: June 8, 1998

4. **ACTION:**

/s/ James S. Gilmore, III
Governor
Date: June 8, 1998

5. **FILED WITH:**

/s/ Jane D. Chaffin
Deputy Registrar of Regulations
Date: June 23, 1998

DISCUSSION

6. **BACKGROUND:** The regulations affected by this action are Medallion II Definitions (12 VAC 30-120-360) and Medallion II enrollees (12 VAC 30-120-370).

The federal Balanced Budget Act of 1997 makes changes to the Social Security Act related to changing enrollment in HMOs. Prior to the new legislation, states were required to allow Medicaid recipients enrolled in HMOs to change HMOs within two months of their request to change. This requirement essentially had the effect of permitting recipients to change HMOs almost every month, depending upon when they requested the change. Continuous changing prohibited any real management of care on the part of the HMOs and created significant administrative burdens on both the HMOs and DMAS. Several HMOs currently under contract with DMAS have requested on multiple occasions that DMAS change its policy to restrict recipients to one HMO for more than two months, consistent with commercial plans. Unfortunately, federal law at the time prohibited such a restriction.

As a result of the recent changes in the Balanced Budget Act, the federal law now provides that states may restrict the recipients in HMOs to changing only during specified open enrollment periods. States are required to have open enrollment at least once every 12 months. Based on the support of the HMOs and DMAS, the Governor included language in his budget directing DMAS to implement such an enrollment period policy. The General Assembly

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approved the budget and the Governor subsequently signed the bill into law on April 14, 1998.

This package restricts disenrollment of Medicaid recipients enrolled in HMOs to specific open enrollment periods, unless they can show just cause. Recipients with sufficient justification will still be permitted to change HMOs immediately, consistent with federal law. The enrollment period policy would apply as long as recipients remain eligible for Medicaid HMO participation, so this policy will not serve to extend enrollment if a recipient loses eligibility.

Requiring recipients to stay with one particular HMO for a specified enrollment period presents an advantage to all parties involved. The implementation of this enrollment period policy will promote the public welfare by giving the recipients a medical "home." This stability will allow the HMOs to manage the care, track the recipients, and provide continuity of care. HMOs will be able to provide effective preventive care for recipients that currently change HMOs on a regular basis. The state will benefit in the reduction of administrative costs associated with continuous changes of enrollment.

Some recipients may view this change as a disadvantage, since their HMO transfer actions will be restricted to a set time period. However, recipients are provided a venue for changing plans if they have sufficient reasons for requesting disenrollment, as well as an annual open enrollment period. The reasons provided are quality of care reasons and will serve to discourage unnecessary change. Recipients are also provided with the ability to appeal any decision made by DMAS. DMAS anticipates no other negative issues associated with this change.

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

Chapter 464 of the 1998 Virginia Acts of Assembly, Item 335.M, requires DMAS to implement an enrollment period of 12 months for all Medicaid recipients enrolled in Medallion II HMOs, consistent with the provisions of the federal Balanced Budget Act of 1997. DMAS is directed to promulgate the regulations necessary to implement the enrollment periods within 280 days of enactment of the law.

Without an emergency regulation, this amendment to the regulations cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation

is needed to meet the effective date established by the General Assembly.

8. NEED FOR EMERGENCY ACTION: The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with Chapter 464, Item 335.M, he is to implement enrollment periods for Medallion II recipients. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because the appropriation act requires this regulation to be effective within 280 days from the enactment of the law. As such, this regulation may be adopted without public comment with the prior approval of the Governor. Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

9. FISCAL/BUDGETARY IMPACT: This change will affect all recipients enrolled in Medallion II HMOs, as well as all HMOs under contract with DMAS for the Medallion II Program. There will not be a fiscal impact to recipients as a result of this change. This change may result in a slight savings as a result of the reduction in administrative activities necessary for continuously changing enrollment. The potential reduction in administrative burdens will apply to both the HMOs and the Commonwealth. There are no localities which are uniquely affected by these regulations as they apply statewide.

10. APPROVAL SOUGHT FOR 12 VAC 30-120-360 and 12 VAC 30-120-370.

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

12 VAC 30-120-360. Definitions.

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

"Appeal" means any written communication from a client or his representative which clearly expresses that he wants to present his case to a reviewing authority.

"Area of residence" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means the payment issued to an HMO contractor by DMAS on behalf of a client, in return for which the HMO accepts responsibility for the services to be provided under a contract.

"Client," "clients," "recipient" or "enrollee" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

~~*"CMP"* means a competitive medical plan with current Medicare contracts.~~

"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"Disenrollment" means a change in enrollment from one Medallion II HMO plan to another.

"DMAS" means the Department of Medical Assistance Services.

"Eligible person" means any person determined by DMAS as eligible to receive services and benefits under the State Plan for Medical Assistance.

"Emergency services" means services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect to result in:

1. Placing the client's health or, with respect to a pregnant woman, the health of the woman or her unborn child in serious jeopardy;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part.

"Foster care" means a child who received either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"Grievance" means any request by a client, or a provider on behalf of a client, to an HMO to resolve a dispute regarding coverage or payment for services under the Medallion II Program.

"Health care plan" means any arrangement in which any health maintenance organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"HMO" means a health maintenance organization, as licensed by the State Corporation Commission's Bureau of Insurance, which undertakes to provide or arrange for one or more health care plans.

"Network" means doctors, hospitals or other health care providers who participate or contract with an HMO and as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services.

"Nonparticipating provider" means a facility not in the HMO's network or a provider not in the HMO's network practicing at a facility not in the HMO's network.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

"Subsidized adoption" means any child for whom an adoption assistance agreement is in effect.

12 VAC 30-120-370. Medallion II enrollees.

A. DMAS shall determine enrollment in Medallion II. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Program.

B. The following individuals shall be excluded from participating in Medallion II. Individuals not meeting the exclusion criteria must participate in the Medallion II program.

1. Individuals who are inpatients in state mental hospitals;
2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;
3. Individuals who are placed on spend-down;
4. Individuals who are participating in federal waiver programs for home-based and community-based Medicaid coverage;
5. Individuals who are participating in foster care or subsidized adoption programs;
6. Individuals who are in the third trimester of pregnancy upon initial assignment to Medallion II and who request exclusion. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid;
7. Individuals who are in their ninth month of pregnancy, when they are or will be automatically assigned or reassigned, and were not in the Medicaid HMO to which they were assigned or reassigned within the last seven months, if they are seeking care from a provider (physician or hospital or both) not affiliated with the HMO to which they were previously assigned. Exclusion requests may be made by the HMO, a provider, or the recipient. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid and do not meet any other exclusion;
8. Individuals who live outside their area of residence for greater than 60 days except those individuals placed there for medically necessary services funded by the HMO;
9. Individuals who enter into a Medicaid approved hospice program in accordance with DMAS criteria;
10. Individuals with any other comprehensive group or individual health insurance coverage;
11. Individuals who have been preassigned to an HMO but have not yet been enrolled, who are inpatients in hospitals other than those listed in subdivisions 1 and 2 of this subsection, until the first day of the month following discharge;
12. Individuals who have been preassigned to an HMO but have not yet been enrolled, who are scheduled for surgery which is scheduled to be within 30 days of initial enrollment into the HMO, which requires an inpatient

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hospital stay, until the first day of the month following discharge; and

13. Individuals who have been preassigned to an HMO but have not yet been enrolled, who have been diagnosed with a terminal condition and who have a life expectancy of six months or less, if they request exclusion. The client's physician must certify the life expectancy.

C. Medallion II managed care plans shall be marketed to recipients, and recipients shall be enrolled in those plans, exclusively through an independent marketing broker under contract to DMAS.

D. Clients shall be enrolled as follows:

1. All eligible persons, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in Medallion II.

2. Clients shall receive a Medicaid card from DMAS during the interim period, and shall be provided authorized medical care in accordance with DMAS' procedures, after eligibility has been determined to exist.

3. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted HMOs. These letters shall indicate a preassigned HMO, determined as provided in subsection E of this section, in which the client will be enrolled if he does not make a selection within a period specified by DMAS of not less than 45 days.

4. The effective date of coverage in the Medallion II program for newly eligible individuals under the Virginia Medical Assistance Program (except for those specified under subdivision 6 of this subsection) and individuals who move from the area of their Medallion II HMO shall be assigned to an HMO as described in subdivision 3 of this subsection.

5. A child born to a woman enrolled with an HMO will be enrolled with the HMO from birth until the last day of the third month including the month of birth, unless otherwise specified by the Medicaid Managed Care Health Benefits Manager. For instance, a child born during the month of February will be automatically enrolled until April 30. By the end of that third month, the child will be disenrolled unless the Medicaid Managed Care Health Benefits Manager specifies continued enrollment. If the child remains an inpatient in a hospital at the end of that third month, the child shall automatically remain enrolled until the last day of the month of discharge, unless this child's parent requests disenrollment.

6. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their previous HMO without going through preassignment and selection.

E. Clients who do not select an HMO as described in subdivision D 3 of this section shall be assigned to an HMO as follows:

1. MEDALLION primary care physicians will be asked to select the HMO in which their MEDALLION clients will be enrolled.

2. Clients currently enrolled in "Options" shall be assigned to the HMO in which they participated under "Options" if that HMO contracts with DMAS for Medallion II.

3. Clients not assigned pursuant to subdivision 1 or 2 of this subsection shall be assigned to the HMO of another family member, if applicable.

4. All other clients shall be assigned to an HMO on a basis of approximately equal number by HMO in each locality.

~~F. HMO enrolled recipients shall be permitted to change HMOs, upon request to the Medicaid Managed Care Health Benefits Manager. The disenrollment will be effective no later than the first day of the second month following the request. Following their initial enrollment into an HMO, recipients shall be restricted to that HMO until the next open enrollment period, unless appropriately disenrolled or excluded by the Department. The enrollment period shall not extend coverage for those recipients who lose eligibility during the enrollment period.~~

~~Clients in State Plan defined HMOs which are also CMPs or are federally qualified HMOs will be permitted to change HMOs upon request to the Medicaid Managed Care Health Benefits Manager only:~~

~~1. During DMAS specified open enrollment periods; During the first 90 calendar days of enrollment in an HMO, a client may disenroll from that HMO to enroll into another HMO for any reason. Such disenrollment shall be effective no later than the first day of the second month after the month in which the client requests disenrollment.~~

~~2. During the first month of the six-month enrollment period;~~

~~3. If a combination of complex medical factors of the client, in the sole discretion of DMAS, would be better served under another contracted HMO; or~~

~~4. 2. During the remainder of the enrollment period, the client may only disenroll from one HMO into another upon determination by DMAS that good cause exists as determined under subsection H of this section.~~

G. ~~DMAS will inform those HMOs which are CMPs, or are federally qualified HMOs, of open enrollment periods. Open enrollment periods will occur at a minimum of twice per calendar year and will be held no more than six months apart. CMPs and federally qualified HMOs will notify their enrolled recipients of open enrollment periods no less than 30 days before the start of each new period of enrollment and at least twice each year. The Department shall conduct an annual open enrollment for all Medallion II participants. The open enrollment period shall be the 60 calendar days before the end of the enrollment period. Prior to the open~~

enrollment period, DMAS will inform the recipient of the opportunity to remain with the current HMO or change to another HMO, without cause, for the following year. Enrollment selections will be effective on the first of the next month following the open enrollment period. Recipients who do not make a choice during the open enrollment period will remain with their current HMO.

H. Disenrollment for good cause may be requested at any time. After the first 90 days of enrollment in an HMO, clients must request disenrollment from the Department based on good cause. The request must be made in writing to DMAS and cite the reasons why the client wishes to disenroll. Good cause for disenrollment shall include the following:

1. A recipient's desire to seek services from a federally qualified health center which is not under contract with the current HMO but is under contract to another HMO available to the recipient; or
2. Performance or nonperformance of service to the recipient by an HMO or one or more of its providers which is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care, lack of access to necessary specialty services covered under the State Plan, or other reasons; or
3. A client has a combination of complex medical factors that, in the sole discretion of DMAS, would be better served under another contracted HMO or provider.

DMAS shall determine whether good cause exists for disenrollment.

Good cause for disenrollment shall be deemed to exist and the disenrollment shall be granted if DMAS fails to take final action on a valid request prior to the first day of the second month after the request.

The DMAS determination concerning good cause for disenrollment may be appealed by the client in accordance with the department's client appeals process at 12 VAC 30-110-10 through 12 VAC 30-110-380.

The current HMO shall provide, within two working days of a request from DMAS, information necessary to determine good cause.

VA.R. Doc. No. R98-264; Filed June 23, 1998, 10:25 a.m.



GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Title of Regulation: **19 VAC 30-70-1 et seq. Motor Vehicle Safety Inspection Rules and Regulations.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. The changes are necessary to comport with federal and state law. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: June 17, 1998

VA.R. Doc. No. R98-51; Filed June 24, 1998, 11:38 a.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

MOTOR VEHICLE DEALER BOARD

Title of Regulation: **24 VAC 22-30-10 et seq. Motor Vehicle Dealer Advertising Practices and Enforcement Regulations.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: June 17, 1998

VA.R. Doc. No. R97-526; Filed June 24, 1998, 11:38 a.m.



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the Internet at <http://dls.state.va.us/>]**

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

Governor George Allen issued and made effective Executive Order Number Fifteen (94) on June 21, 1994. This Executive Order was published in *The Virginia Register of Regulations* on July 11, 1994 (10:21 VA.R. 5457-5461 July 11, 1994). The Executive Order directs state agencies to conduct a comprehensive review of all existing regulations to be completed by January 1, 1997, and requires a schedule for the review of regulations to be developed by the agency and published in *The Virginia Register of Regulations*. This section of the *Virginia Register* has been reserved for the publication of agencies' review schedules. Agencies will receive public comment on the following regulations listed for review.

DEPARTMENT OF SOCIAL SERVICES

Pursuant to Executive Order Number Fifteen (94), the Department of Social Services is currently reviewing the below listed regulation to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number Fifteen (94) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

The regulation is:

22 VAC 40-730-10 et seq., Investigation of Child Abuse and Neglect in Out of Family Complaints. Contact: Jesslyn Cobb, Program Consultant, Child Protective Services Unit, telephone (804) 692-2215, FAX (804) 692-2209.

Written comments may be submitted until August 19, 1998, in care of the above listed contact at 730 East Broad Street, Richmond, VA 23219-1849, or by facsimile to the above listed number.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Establishment of a Title V Program Mailing List for the Air Operating Permits Program

Statutory authorities: Title V of the federal Clean Air Act Amendments of 1990 (P. L. 101-549); Virginia Air Pollution Control Law, § 10.1-1300 et seq. of the Code of Virginia.

Regulations: 9 VAC 5-80-270; 9 VAC 5-80-670.

Contact person: Charles Ellis, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219. Telephone (804) 698-4016; FAX (804) 698-4510; e-mail chellis@deq.state.va.us.

Discussion: Background. The Department of Environmental Quality is required to notify the public as it prepares to issue air operating permits under Title V of the federal Clean Air Act. The public participation elements of the regulations applicable to this permit program state that such notice is required, through general circulation newspaper advertising in the area where the permit applicant's facility is located and also by way of a mailing list of people who have asked for the opportunity to make comments on draft Title V permits prior to their issuance. (See Regulations for the Control and Abatement of Air Pollution, 9 VAC 5-80-270 B.)

An identical requirement applies to Title IV acid rain permits (see 9 VAC 5-80-670). The mailing list developed for Title V permits was derived from the existing mailing list for PSD permit actions. It will also apply to Title IV acid rain permits. Thus it will allow the department to notify people interested in any or all of these three types of permit actions: Title V operating permits; Title IV acid rain permits; and PSD permits.

The department will provide copies of its public notices concerning Title V air permits to people whose addresses appear on the mailing list. Interested persons may choose to be notified by mail, e-mail, or FAX. In addition, the department will transmit copies of its public notices to EPA, affected states, and other entities as appropriate in each case.

It should be noted that there are likely to be approximately 350 Title V permits issued statewide over the coming two years. The list being developed will be used for notifications concerning all of these Title V permits.

Comment period. A 30-day comment period is allowed for all permit public notices; this time may be extended if a public hearing is requested and granted due to the time necessary for public notice of the hearing and the 15-day comment period which is required to follow the hearing.

Responding to this notice: how to get on the mailing list. People who wish to have their names placed on the mailing list may contact Charles Ellis by mail, telephone, FAX, or e-mail using the address information given above. Please indicate your choice between mail, e-mail, or FAX as the method of notification, but provide your mailing address in

any case. You need not choose between the permit type to be reviewed; please choose any or all of the three permit types offered.

Questions. Questions may be directed to Charles Ellis by mail, telephone, FAX, or e-mail as given above.

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER SEVEN (98)

VIRGINIA'S INSTANT GAME LOTTERY 425; "TRUCKS & BUCKS," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery (425), "Trucks & Bucks." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Director, Legislative and Regulatory Affairs
Date: May 7, 1998

VA.R. Doc. No. C98-1392; Filed June 18, 1998, 11:20 a.m.

DIRECTOR'S ORDER NUMBER EIGHT (98)

"WINNING COMBINATIONS," VIRGINIA LOTTERY RETAILER PROMOTIONAL PROGRAM RULES.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate "Winning Combinations," the Virginia Lottery Retailer Promotional Program Rules for the lottery retailer incentive program which will be conducted from Monday, May 11, 1998, through Sunday, July 5, 1998. These rules amplify and conform to the duly adopted State Lottery Board regulations.

These rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until July 31, 1998, unless otherwise extended by the Director.

/s/ David L. Norton
Director, Legislative and Regulatory Affairs
Date: May 11, 1998

VA.R. Doc. No. C98-1393; Filed June 18, 1998, 11:21 a.m.

DIRECTOR'S ORDER NUMBER NINE (98)

VIRGINIA'S INSTANT GAME LOTTERY 127; "BIG CATCH," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 127, "Big Catch." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Director, Legislative and Regulatory Affairs
Date: June 15, 1998

VA.R. Doc. No. C98-1605; Filed June 18, 1998, 11:21 a.m.

DIRECTOR'S ORDER NUMBER TEN (98)

VIRGINIA'S INSTANT GAME LOTTERY 128; "HEATWAVE '98," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 128; "Heatwave '98." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Director, Legislative and Regulatory Affairs
Date: June 15, 1998

VA.R. Doc. No. C98-1606; Filed June 18, 1998, 11:21 a.m.

DIRECTOR'S ORDER NUMBER ELEVEN (98)

VIRGINIA'S INSTANT GAME LOTTERY 308; "BONANZA BINGO," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Sections 9-6.14:4.1 B (15) and 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's Instant Game Lottery 308, "Bonanza Bingo." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ David L. Norton
Director, Legislative and Regulatory Affairs
Date: June 15, 1998

VA.R. Doc. No. C98-1607; Filed June 18, 1998, 11:21 a.m.

STATE WATER CONTROL BOARD

Proposed Consent Special Order Blue Ridge Partners, Inc.

The State Water Control Board and, through the Director of the Department of Environmental Quality, the State Air Pollution Control Board (boards) propose to issue a Consent Special Order (order) to Blue Ridge Partners, Inc. (BRP) regarding BRP's gasoline dispensing facility (facility) located at 2717 North Pershing Drive in Arlington, Virginia.

The order provides, among other things, that BRP, in accordance with the State Water Control Law and regulations: submit a completed Notification for Underground Storage Tanks Form by August 31, 1998; submit a Site Characterization Report; and install a new UST system that complies with 9 VAC 25-580-60 by December 22, 1998. In addition, the order provides that BRP, in accordance with State Air Control Law and regulations: shut down the facility's gas dispensing operation by July 31, 1998; and complete construction, installation, and testing of a CARB-Certified Stage II Vapor Recovery System prior to reopening the gasoline dispensing operation.

General Notices/Errata

On behalf of the boards, the Department of Environmental Quality's Northern Virginia Regional Office received written comments relating to the order through July 18, 1998.

Contact: Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address, or call (703) 583-3886, in order to examine or to obtain a copy of the Order.

**Proposed Consent Special Order
United States Marine Corps
Marine Corps Base, Quantico, Virginia
Quantico Industrial Facility**

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to the United States Marine Corps, Marine Corps Base, Quantico, Virginia (permittee) regarding the Quantico Industrial Facility (facility) located in Stafford County, Virginia.

The facility is subject to VPDES Permit No. VA002151. The order provides, among other things, that the permittee: connect Quantico Industrial Facility outfalls 071 and 005 to Stafford County's Aquia Advanced Wastewater Treatment Plant and eliminate all discharges from those outfalls by September 30, 1999; and operate the facility in a workman-like manner in order to ensure that it produces the best quality effluent of which it is capable until the connection is complete. The permittee has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office received written comments relating to the order through July 18, 1998.

Contact: Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address, or call (703) 583-3886, in order to examine or to obtain a copy of the order.

**Proposed Consent Special Order
Mountain Energy, Inc.
Elite Tipples, Inc. Siding #1
Elite Tipples, Inc. Bruton Siding**

The State Water Control Board proposes to take an enforcement action against the above listed owners of coal loading facilities. Under the terms of the Proposed Special Orders, the owners of these facilities have agreed to be bound by the terms and conditions of a schedule of compliance contained in the appendix of the orders. The requirements contained in the orders bring the facilities into compliance with state law and protect water quality.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive comments relating to the Proposed Special Orders until August 20, 1998. Comments should be addressed to Dallas Sizemore, Department of Environmental Quality, Southwest Regional

Office, P.O. Box 1688, Abingdon, Virginia 24212 and should refer to the Consent Special Order.

The Proposed Special Orders may be examined at the Department of Environmental Quality, 355 Deadmore Street, Abingdon, Virginia.

A copy of the order may be obtained in person or by mail from the above office.

**Proposed Consent Special Order
Rapidan Service Authority
RSA-Madison Sewage Treatment Plant**

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to the Rapidan Service Authority (permittee) regarding the RSA-Madison Sewage Treatment Plant (STP) located in Madison County, Virginia.

The STP is subject to VPDES Permit No. VA0022845. The order provides, among other things, that the permittee submit a PER for upgrading the STP's solids treatment unit and chlorine disinfection unit; operate the STP in a workman-like manner to ensure the STP produces the best quality effluent while the upgrade is taking place; and complete construction of the upgrade and bring both treatment units on-line by September 1, 2000. The permittee has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through July 25, 1998. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address, or call (703) 583-3886, in order to examine or to obtain a copy of the order.

**Proposed Consent Special Order
Stafford County Board of Supervisors
Aquia Advanced Wastewater Treatment Facility**

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to the Stafford County Board of Supervisors (permittee) regarding the Aquia Advanced Wastewater Treatment Facility (facility) located in Stafford County, Virginia.

The facility is subject to VPDES Permit No. VA0060968. The order provides, among other things, that the permittee: complete on-going repairs to and upgrade of the facility's six sandfilters, including any required lead abatement, and return the rehabilitated sandfilters to operation by July 1, 1998; and operate the facility in a workman-like manner in order to ensure that it produces the best quality effluent of which it is capable during the on-going upgrade and repairs. The permittee has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office received written comments relating to the order through June 16, 1998.

Contact: Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia, 22193. Please write or visit the Woodbridge address, or call (703) 583-3886, in order to examine or to obtain a copy of the order.

- RR08

VIRGINIA CODE COMMISSION

Notice to Subscribers

Beginning with Volume 14, Issue 18 of the Virginia Register (14:18 VA.R. May 25, 1998), a new section was added to the Register. The new section entitled, "Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed" lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 1998 VAC Supplement includes final regulations published through *Virginia Register* Volume 14, Issue 10 dated February 2, 1998). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

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 for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material 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/register/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

CALENDAR OF EVENTS

Symbol Key

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

 Location accessible to handicapped

 Teletype (TTY)/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) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY , or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD FOR ACCOUNTANCY

July 20, 1998 - 10 a.m. -- Open Meeting

July 21, 1998 - 8 a.m. -- Open Meeting

Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia.

An open meeting to discuss regulatory review, committee reports, disciplinary cases and other matters requiring board action. Call the board office to confirm date and time of 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: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TTY 

BOARD OF AGRICULTURE AND CONSUMER SERVICES

July 21, 1998 - 9 a.m. -- Open Meeting

Eastern Shore Virginia Chamber of Commerce, U. S. Route 13, Melfa, Virginia.

A regular meeting to discuss Virginia agriculture and consumer protection. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, P.O. Box 1163, Room 211, Richmond, VA 23218, telephone (804) 786-3538 or FAX (804) 371-7679.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Aquaculture Advisory Board

August 11, 1998 - 10:30 a.m. -- Open Meeting

Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia. 

A regular meeting to discuss issues related to Virginia aquaculture. 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 appropriate accommodation.

Contact: T. Robins Buck, Secretary, Virginia Aquaculture Advisory Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 211, Richmond, VA 23219, telephone (804) 371-6094 or FAX (804) 371-7679.

Virginia Small Grains Board

July 28, 1998 - 8 a.m. -- Open Meeting

Richmond Airport Hilton, 5501 Eubank Road, Sandston, Virginia. 

A meeting to (i) hear FY 1997-98 project reports, (ii) receive FY 1998-99 project proposals, and (iii) allocate funding for FY 1998-99 projects. Additionally, action will be taken on any other new business that comes 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 accommodation in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Virginia Small Grains Board, Washington Bldg., 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

Virginia Soybean Board

August 6, 1998 - 2:30 p.m. -- Open Meeting
Colonial Acres Farm, 7031 South Laburnum Avenue, Richmond, Virginia. ☎

A meeting to discuss checkoff revenues and the financial status of the board following the end of the fiscal year ending June 30, 1998. The Virginia 1998 Corn and Soybean Conference financial report will be discussed along with the Ag-Expo plans for the upcoming event, as well as reports from the Chairman of the United Soybean Board representatives, and from other committees. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Phil Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Virginia Soybean Board, Washington Bldg., 1100 Bank St., Suite 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

Virginia Winegrowers Advisory Board

July 21, 1998 - 10 a.m. -- Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ☎

A regular meeting to elect officers for the upcoming year, including a new chairman, and to conduct regular business including discussion of committee reports. 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 Mary E. Davis-Barton at least five days before the meeting date so that suitable arrangements can be made.

Contact: Mary E. Davis-Barton, Secretary, Virginia Winegrowers Advisory Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 1010, Richmond, VA 23219, telephone (804) 371-7685 or FAX (804) 786-3122.

STATE AIR POLLUTION CONTROL BOARD

August 10, 1998 - 9 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Training Room, Richmond, Virginia.

A meeting to discuss the proposed establishment of requirements to govern the use of mediation and alternative dispute resolution in regulation development and permit issuance.

Contact: Dr. Kathleen Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413.

† **September 10, 1998 - 9 a.m.** -- Public Hearing
Department of Environmental Quality, 629 East Main Street, Training Room, 1st Floor, Richmond, Virginia.

September 28, 1998 -- Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution Control (Rev. ZZ); 9 VAC 5-20-10 et seq. General Provisions; 9 VAC 5-40-10 et seq. Existing Stationary Sources; 9 VAC 5-50-10 et seq. New and Modified Stationary Sources.** The regulation amendments concern provisions covering municipal solid waste (MSW) landfills and are summarized below.

Facilities to which the rule applies are MSW landfills which commenced construction, reconstruction, or modification before May 30, 1991. In the Northern Virginia VOC Control Area, the design capacity applicability criteria is 1.0 million megagrams (Mg) or more; the emission rate applicability criteria is emissions of nonmethane organic compounds (NMOCs) greater than or equal to 23 Mg per year. In the remainder of the Commonwealth, the design capacity applicability criteria and the emissions rate applicability criteria are 2.5 million Mg in capacity and 50 Mg per year or more in emissions, respectively.

Landfills with a design capacity equal to or greater than the design capacity applicability criteria must determine their NMOC emissions. If the NMOC emission rate is less than the emission rate applicability criteria, the landfill must submit an emission report, and recalculate the NMOC emission rate until it is equal to or greater than the emission rate applicability criteria or the landfill is closed. If the calculated NMOC emission rate is equal to or greater than the emission rate applicability criteria, a collection and control system design plan must be submitted, followed by the installation of a collection and control system.

Active collection systems must be designed to handle the maximum expected gas flow rate at a sufficient

Calendar of Events

extraction rate and be designed to minimize off-site gas migration. Passive collection systems must be installed with liners, then either destroy the collected gas or treat it for sale or use. Operational standards direct how landfills must operate collection systems in order to minimize emissions and operate safely. Test methods and procedures are provided in order for sources to calculate the NMOC emission rate. Once the NMOC emission rate is established, the landfill is classified as Tier 1, 2, or 3 depending on whether the NMOC emission rate is less than or greater than the emission rate applicability criteria; if the NMOC concentration is determined using a specific sampling procedure; or if the NMOC mass emission rate is determined using specific equations.

Compliance is determined through specific methods. Monitoring of operations is achieved through the installation of various sampling ports and devices. Reporting and recordkeeping requirements are delineated. Finally, installation of emission collection and control equipment capable of meeting the standards must be accomplished by 30 months after the rule's effective date.

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: Facilities located in the Northern Virginia VOC Control Area (Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, City of Alexandria, City of Fairfax, City of Falls Church, City of Manassas, City of Manassas Park) must meet more restrictive design capacity applicability criteria and emission rate applicability criteria. These special criteria are required in order to meet emission reduction requirements for serious nonattainment areas (as required by Part D of the federal Clean Air Act), rather than to meet requirements for designated pollutants (§ 111(d) of the federal Clean Air Act) and have been in place since 1996.

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 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

Tidewater Regional Office
Department of Environmental Quality
5636 Southern Boulevard
Virginia Beach, Virginia
Ph: (757) 518-2000

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., September 28, 1998, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482 or (804) 698-4021/TTY ☎

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Architect Section

† **August 5, 1998 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct general 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/TTY 

Land Surveyor Section

July 22, 1998 - 3 p.m. -- Open Meeting
ESI, 8401 Arlington Boulevard, Fairfax, Virginia. 

A meeting to conduct a training seminar to include updates to the board's rules and regulations and enforcement actions. 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/TTY 

† **August 26, 1998 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct general 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/TTY 

Professional Engineer Section

† **August 20, 1998 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct general 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/TTY 

VIRGINIA BOARD FOR ASBESTOS AND LEAD

August 25, 1998 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 5 West,
Richmond, Virginia. 

A meeting to conduct routine business. 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 board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY , or e-mail asbestos@dpor.state.va.us.

VIRGINIA COUNCIL ON ASSISTIVE TECHNOLOGY

† **September 2, 1998 - 9 a.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: VCAT Staff, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-9990, toll-free 1-800-552-5019 or 1-800-464-9950/TTY 

AUCTIONEERS BOARD

NOTE: CHANGE IN MEETING DATE

July 23, 1998 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

Calendar of Events

A meeting to conduct general 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/TTY ☎

BOARD FOR BRANCH PILOTS

July 27, 1998 - 9:30 a.m. -- Open Meeting

July 30, 1998 - 9:30 a.m. -- Open Meeting

Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: 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/TTY ☎

VIRGINIA STATE CHILD FATALITY REVIEW TEAM

July 22, 1998 - 10 a.m. -- Open Meeting

State Corporation Commission, Tyler Building, 7th Floor Conference Room, Richmond, Virginia. ♿

A meeting hosted by the Office of the Chief Medical Examiner to review confidential cases of child death. Announcements and business will be discussed from 10 to 10:45 a.m. This portion of the meeting is open to the public.

Contact: Suzanne J. Keller, Coordinator, Virginia State Child Fatality Review Team, 9 N. 14th St., Richmond, VA 23219, telephone (804) 786-1047 or FAX (804) 371-8595.

COMPENSATION BOARD

July 30, 1998 - 11 a.m. -- Open Meeting

Ninth Street Office Building, 202 North Ninth Street, 10th Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly board meeting.

Contact: Cindy Waddell, Administrative Assistant, Compensation Board, 202 N. 9th St., 10th Floor, Richmond, VA 23219, telephone (804) 786-0786 or FAX (804) 371-0235.

COMMONWEALTH COMPETITION COUNCIL

July 29, 1998 - 2 p.m. -- Open Meeting

General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

An organizational meeting to elect the chairman and vice chairman.

Contact: Peggy Robertson, Executive Assistant, Commonwealth Competition Council, James Madison Bldg., 109 Governor St., P.O. Box 1475, Richmond, VA 23218-1475, telephone (804) 786-0240 or FAX (804) 786-1594.

DEPARTMENT OF CONSERVATION AND RECREATION

August 20, 1998 - 9:30 a.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, Conference Room B, Richmond, Virginia.

A meeting for development of model ordinance and educational materials regarding wetlands, riparian buffers and environment erosion control structures. Public comments will be received at the end of the meeting.

Contact: Leon E. App, Agency Regulatory Coordinator, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-4570 or FAX (804) 786-6141.

BOARD FOR CONTRACTORS

† **July 22, 1998 - 7 p.m.** -- Open Meeting

Roanoke County Administration Center, 5204 Bernard Drive, Roanoke, Virginia. ♿

† **July 29, 1998 - 7 p.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4W, Richmond, Virginia. ♿

A meeting to allow citizens, tradesmen and contractors to comment on the proposed regulations that will add backflow prevention device workers to the trades regulated by the tradesman program of the Board for Contractors.

Contact: Geralde W. Morgan, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-6166 or FAX (804) 367-2474.

BOARD OF CORRECTIONAL EDUCATION

† **July 20, 1998 - 2 p.m.** -- Open Meeting

Department of Correctional Education, James Monroe Building, 101 North 14th Street, 7th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss general business.

Contact: Patty Ennis, Board Clerk, Board of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314.

BOARD OF CORRECTIONS

August 11, 1998 - 9:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting of the Correctional Services Committee to discuss correctional services matters which may be presented to the board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

August 12, 1998 - 8:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. 

A meeting of the Administration Committee to discuss administrative matters which may be presented to the full board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

August 12, 1998 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. 

A meeting of the full board to discuss matters which may be presented.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

August 5, 1998 - 10 a.m. -- Open Meeting
Department for the Deaf and Hard-of-Hearing, Koger Center, 1602 Rolling Hills Drive, Suite 203, Richmond, Virginia. 

A quarterly meeting of the Advisory Board for the Department for the Deaf and Hard-of-Hearing. Public comment will be received with advance notice.

Contact: Beverly Chamberlain, Executive Secretary, Department for the Deaf and Hard-of-Hearing, Ratcliffe Bldg., 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229, telephone (804) 662-9705/Voice/TTY , FAX 1-800-552-7917 or toll-free 1-800-552-7917/Voice/TTY 

BOARD OF DENTISTRY

July 24, 1998 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The Special Conference Committee will meet to hear 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/TTY 

DISABILITY SERVICES COUNCIL

July 29, 1998 - 11 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf will be provided)

A meeting to review the FY 1999 Rehabilitative Services Incentive Fund (RSIF) Competitive Proposals for approval.

Contact: LaDonna Rogers, Administrative Staff Assistant, Disability Services Council, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7154/Voice/TTY, toll-free 1-800-552-5019 or 1-800-464-9950/TTY 

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

† **August 4, 1998 - 11 a.m.** -- Open Meeting
Virginia Economic Development Partnership, 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 Personnel Committee to review personnel policies and compensation for the Virginia Economic Development Partnership.

Contact: Pandy Brazeau, Administrative Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218-0798, telephone (804) 371-8106 or FAX (804) 371-8112.

Virginia Tourism Corporation

† **July 29, 1998 - 10 a.m.** -- Open Meeting
Virginia Economic Development Partnership, 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 to discuss strategic planning and budgets related to the Virginia Tourism Corporation. The agenda is available upon request.

Calendar of Events

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 East Byrd St., Richmond, VA 23219, telephone (804) 371-8174, FAX (804) 786-1919 or (804) 371-0327/TTY ☎

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

September 3, 1998 - 5:30 p.m. -- Open Meeting
6610 Public Safety Way, Chesterfield, Virginia.

A regular meeting.

Contact: Lynda G. Furr, Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

DEPARTMENT OF ENVIRONMENTAL QUALITY

July 20, 1998 - 7 p.m. -- Public Hearing
King George County Administration Building, King George, Virginia.

A public hearing to receive comment on the issuance of a proposed modified permit for the storage of hazardous waste at the Naval Surface Warfare Center in Dahlgren, Virginia.

Contact: Doug Brown, Department of Environmental Quality, Office of Waste Permitting, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4182.

† **July 22, 1998 - 7 p.m.** -- Public Hearing
Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, Virginia.

A public hearing to receive comment on an application from StarMark of Virginia, Inc., to modify and operate a wooden cabinet manufacturing facility at 1 Millrace Drive in the Lynchburg Industrial Park, Lynchburg, Virginia. An information briefing will be conducted before the hearing, starting at 6:30 p.m. Written comments may be submitted until the close of business on August 6, 1998.

Contact: Allen Armistead, Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (804) 582-5120.

August 11, 1998 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Training Room, Richmond, Virginia.

A meeting to discuss and exchange ideas and information concerning the proposed regulation, 9 VAC 20-170-10 et seq., Transportation of Solid and Medical Wastes on State Waters, including the costs and benefits of the proposed action.

Contact: Lily Choi, Environmental Engineer Senior, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4054 or FAX (804) 698-4032.

Virginia Ground Water Protection Steering Committee

July 21, 1998 - 9 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia. ☎

A regularly scheduled 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.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

August 12, 1998 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎

A meeting of the Regulatory and Bylaws Committee to discuss crematory regulations. Public comments will be received for 15 minutes at the beginning of the meeting.

Contact: Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9523.

BOARD OF GAME AND INLAND FISHERIES

† **August 20, 1998 - 9 a.m.** -- Open Meeting
† **August 21, 1998 - 9 a.m.** -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board will meet and adopt 1998-1999 hunting seasons and bag limits for migratory waterfowl (ducks and coots, geese and brant, swan, gallinules and moorhens) and falconry, based on frameworks provided by the U.S. Fish and Wildlife Service. The board may also review possible proposals for legislation for the 1999 Session of the General Assembly, will select meeting dates for 1999 board meetings, and may discuss other general and administrative issues. The board may hold an executive session before the public session begins on August 20. If the board completes its entire agenda on August 20, it may not convene on August 21.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2311.

† **September 14, 1998 - 7 p.m.** -- Public Hearing
Jefferson Forest High School, Perrowville Road, Forest, Virginia. (Interpreter for the deaf provided upon request)

† **September 15, 1998 - 7 p.m.** -- Public Hearing
Fort Defiance High School, State Route 616, Fort Defiance, Virginia. (Interpreter for the deaf provided upon request)

† **September 16, 1998 - 7 p.m.** -- Public Hearing
Wytheville Community College, 1000 East Main Street, Wytheville, Virginia. (Interpreter for the deaf provided upon request)

† **September 17, 1998 - 7 p.m.** -- Public Hearing
James City-Williamsburg Community Center, 5301 Longhill Road, Williamsburg, Virginia. (Interpreter for the deaf provided upon request)

† **September 17, 1998 - 7 p.m.** -- Public Hearing
Lee Hill Community Center, 1 Hugh Cosner Drive, Fredericksburg, Virginia. (Interpreter for the deaf provided upon request)

The Virginia Department of Game and Inland Fisheries (DGIF) is hosting five public meetings in September to receive suggestions from hunters, trappers, and all other interested parties for changes to the state hunting and trapping regulations. Interested individuals are invited to join the DGIF staff to discuss these regulations and department programs. The suggestions received will be considered by department staff as they develop recommendations for presentation to the Board of Game and Inland Fisheries in the spring of 1999.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2311.

DEPARTMENT OF GENERAL SERVICES

Design-Build/Construction Management Review Board

July 20, 1998 - 11 a.m. -- Open Meeting

August 17, 1998 - 11 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review requests submitted by localities for the use of the design-build or construction management type of contract. Public comments will be taken. The chairman may cancel the meeting if there is no business for the board's consideration. Please contact the Division of Engineering and Buildings to confirm meeting date and time.

Contact: Sandra H. Williams, Board Clerk, Division of Engineering and Buildings, Department of General Services,

805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TTY

BOARD FOR GEOLOGY

† **July 23, 1998 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks in advance of the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, or (804) 367-9753/TTY

STATE BOARD OF HEALTH

† **August 6, 1998 - 10 a.m.** -- Open Meeting
Eastern Virginia Medical School, 825 Fairfax Avenue, Hofheimer Hall, 7th Floor, President's Board Room, Norfolk, Virginia. (Interpreter for the deaf provided upon request)

A work session of the board.

Contact: Paul W. Matthias, State Board of Health, P.O. Box 2448, Suite 214, Richmond, VA 23218, telephone (804) 371-2909 or FAX (804) 786-4616.

† **August 7, 1998 - 9 a.m.** -- Open Meeting
Eastern Virginia Medical School, 825 Fairfax Avenue, Hofheimer Hall, 7th Floor, President's Board Room, Norfolk, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Paul W. Matthias, State Board of Health, P.O. Box 2448, Suite 214, Richmond, VA 23218, telephone (804) 371-2909 or FAX (804) 786-4616.

September 21, 1998 -- 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 proposed amendments include additions to and deletions from the reportable disease list, changes to the list of conditions and laboratory tests reportable by directors of laboratories, and other changes to enhance disease surveillance and control in the Commonwealth.

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

Calendar of Events

Contact: Diane Woolard, Ph.D., M.P.H., Director, 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/TTY ☎

DEPARTMENT OF HEALTH PROFESSIONS

August 14, 1998 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Health Practitioners' Intervention Program Committee to meet with the committee's contractor and representatives to review reports, policies and procedures for the Health Practitioners' Intervention Program. The committee will meet in open session for general discussion of the program. The committee may meet in executive session for the purpose of consideration of specific requests from applicants or participants in the program.

Contact: John W. Hasty, Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9424, FAX (804) 662-9114 or (804) 662-7197/TTY ☎

BOARD FOR HEARING AID SPECIALISTS AND BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **July 30, 1998 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

The Joint Task Force Committee of the Board of Audiology and Speech-Language Pathology and the Board for Hearing Aid Specialists will meet to finalize a draft for the merger of the two boards.

Contact: Senita Booker, Administrative Staff Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9111, FAX (804) 662-9523 or (804) 662-7197/TTY ☎

VIRGINIA HIGHER EDUCATION TUITION TRUST FUND

† **July 30, 1998 - 10 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia. ♿

A regular meeting of the board of directors.

Contact: Libby Dutton, Director of Administration, Virginia Higher Education Tuition Trust Fund, James Monroe Building, 101 N. 14th St., 5th Floor, Richmond, VA 23219, telephone (804) 786-0730, FAX (804) 786-2453, toll-free 1-888-567-0540 or 1-800-253-0737/TTY ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

August 4, 1998 - 9 a.m. -- Open Meeting
September 1, 1998 - 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

July 21, 1998 - 11 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ♿

The annual meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) elect a chairman and vice chairman; (iii) consider for approval and ratification mortgage loan commitments under its various programs; (iv) review the authority's operations for the prior month; and (v) 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. The annual meetings of the shareholders and Board of Directors of Housing for Virginia, Inc., a corporation wholly owned by the authority, will be held following the meeting of the authority's Board of Commissioners.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540.

STATEWIDE INDEPENDENT LIVING COUNCIL

July 22, 1998 - 1 p.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Executive Committee.

Contact: Jim Rothrock, Statewide Independent Living Council Staff, 1802 Marriott Rd., Richmond, VA 23229, telephone (804) 673-0119, FAX (804) 282-7112, toll-free 1-800-552-5019/Voice/TTY ☎, or e-mail jarothrock@aol.com.

July 23, 1998 - 10 a.m. -- Open Meeting
Department for the Visually Handicapped, 395 Azalea Avenue, Library and Resource Center, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct regular business.

Contact: Jim Rothrock, Statewide Independent Living Council Staff, 1802 Marriott Rd., Richmond, VA 23229, telephone (804) 673-0119, FAX (804) 282-7112, toll-free 1-800-552-5019/Voice/TTY ☎, or e-mail jarothro@aol.com.

COUNCIL ON INFORMATION MANAGEMENT

† **August 11, 1998 - 10 a.m.** -- Open Meeting
University of Virginia, Charlottesville, Virginia. ♿

A regularly scheduled meeting of the Land Records Management Task Force.

Contact: Bill Shinar, Virginia Geographic Information Network Coordinator, Washington Bldg., 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622, FAX (804) 371-7952 or toll-free 1-800-828-1120/TTY ☎

† **August 14, 1998 - 10 a.m.** -- Open Meeting
Council on Information Management, Washington Building, 1100 Bank Street, 9th Floor, Richmond, Virginia. ♿

A regular meeting of Virginia Geographic Information Network Advisory Board.

Contact: Bill Shinar, Virginia Geographic Information Network Coordinator, Washington Bldg., 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622, FAX (804) 371-7952 or toll-free 1-800-828-1120/TTY ☎

VIRGINIA ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

July 30, 1998 - 9:30 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿

A meeting to conduct regular business.

Contact: Adele MacLean, Secretary, Virginia Advisory Commission on Intergovernmental Relations, 805 E. Broad St., Room 702, Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TTY ☎

DEPARTMENT OF LABOR AND INDUSTRY

August 5, 1998 - 9:30 a.m. -- Open Meeting
Department of Labor and Industry, Powers-Taylor Building, 13th South 13th Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the subcommittee of the Apprenticeship Council.

Contact: Bev Donati, Assistant Program Director, Apprenticeship Program, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, or (804) 786-2376/TTY ☎

† **September 17, 1998 - 10 a.m.** -- Open Meeting
Centreville Adult and Community Education Center, 5757 Spindle Court, Centreville, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the Apprenticeship Council.

Contact: Bev Donati, Assistant Program Director, Apprenticeship Program, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, or (804) 786-2376/TTY ☎

STATE LAND EVALUATION ADVISORY COUNCIL

August 11, 1998 - 10 a.m. -- Open Meeting
September 22, 1998 - 10 a.m. -- Open Meeting
Virginia 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

July 20, 1998 - 10 a.m. -- Open Meeting
Commission on Local Government, Eighth Street Office Building, 805 East Broad Street, Room 702, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

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, Eighth Street Office Bldg., 805 E. Broad St., Room 702, Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TTY ☎

August 28, 1998 - 10:30 a.m. -- Open Meeting
Franklin area; site to be determined.

A regular meeting to receive oral presentations regarding the City of Franklin-Southampton County Voluntary Settlement Agreement. 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, Eighth Street Office Bldg., 805 E. Broad St., Room 702, Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TTY ☎

Calendar of Events

August 28, 1998 - 7 p.m. -- Public Hearing
Franklin area; site to be determined.

A public hearing regarding the City of Franklin-Southampton County Voluntary Settlement Agreement. 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, Eighth Street Office Bldg., 805 E. Broad St., Room 702, Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TTY ☎

LONGWOOD COLLEGE

Board of Visitors

July 23, 1998 - 1 p.m. -- Open Meeting
Longwood College, Lancaster Building, Room 215, Farmville, Virginia.

A meeting of the Academic Affairs and Student Affairs Committees to conduct routine business.

Contact: Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

July 23, 1998 - 3 p.m. -- Open Meeting
Longwood College, Lancaster Building, Room 215, Farmville, Virginia.

A meeting of the Finance Committee to conduct routine business.

Contact: Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

July 24, 1998 - 9 a.m. -- Open Meeting
Longwood College, Lancaster Building, Room 215, Farmville, Virginia.

A meeting of the board to conduct routine business.

Contact: Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

VIRGINIA MANUFACTURED HOUSING BOARD

July 28, 1998 - 1 p.m. -- Open Meeting
Ramada Plaza Resort Hotel, Oceanfront at 57th Street, Virginia Beach, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular monthly meeting held in conjunction with the Virginia Manufactured Housing Association's Annual Conference.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Manufactured Housing Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160 or (804) 371-7089/TTY ☎

MARINE RESOURCES COMMISSION

July 28, 1998 - 9 a.m. -- Open Meeting

August 25, 1998 - 9 a.m. -- Open Meeting

September 22, 1998 - 9 a.m. -- Open Meeting

Marine Resources Commission, 2600 Washington Avenue, Room 403, Newport News, Virginia. ☎ (Interpreter for the deaf provided upon request)

The commission will hear and decide the following marine environmental matters at 9 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 the following fishery management items at approximately noon: 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/TTY ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

September 4, 1998 -- 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 allow clinical nurse specialists-psychiatric to be directly enrolled and reimbursed for Medicaid services rendered.

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

Public comments may be submitted until September 4, 1998, to Sally Rice, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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.

September 18, 1998 -- 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.** The proposed regulations clarify DMAS' coverage of breast reconstructive procedures and prostheses and establish parameters for the coverage of outpatient observation beds.

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

Public comments may be submitted until September 18, 1998, to Bonnie Winn, R.N., Manager, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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.

Pharmacy Liaison Committee

August 3, 1998 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia.

A regular meeting.

Contact: Marianne Rollings, Pharmacy Services, Client Services, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268.

BOARD OF MEDICINE

August 7, 1998 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The Executive Committee will meet in open and closed session to (i) review disciplinary files requiring administrative action, (ii) adopt amendments for approval of promulgation of regulations as presented, (iii) interview applicants, and (iv) act on other issues that

come before the board. The chairman will entertain public comments on agenda items for 15 minutes following adoption of the agenda.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TTY 

August 8, 1998 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 3 and 4, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

The Credentials Committee will meet in open and closed session to (i) conduct general business, (ii) interview and review medical credentials of applicants applying for licensure in Virginia, and (iii) act on other issues that come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TTY 

† September 9, 1998 - 9 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

September 18, 1998 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-110-10 et seq. Regulations Governing the Practice of Licensed Acupuncturists.** Amendments are proposed pursuant to Executive Order 15 (94) which called for agencies to simplify, clarify and reduce the burden of regulations. Proposed amendments would reduce the application fee from \$200 to \$150, eliminate the undergraduate education requirements, eliminate the requirement for an applicant from another state to have an approved tutorial, and specify that an applicant whose acupuncture education was in English is not required to take the Test of English as a Foreign Language. Another amendment changes the required time for examination by the referring doctor from six months to three months prior to referral.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.9 of the Code of Virginia.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

Calendar of Events

Informal Conference Committee

July 24, 1998 - 9 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

August 6, 1998 - 10:30 a.m. -- Open Meeting
Patrick Henry Hotel, 617 South Jefferson Street, Roanoke, Virginia.

† August 19, 1998 - 9:30 a.m. -- Open Meeting
Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

September 3, 1998 - 10:30 a.m. -- Open Meeting
Roanoke Airport Marriott, 2801 Hershberger Road, Roanoke, Virginia.

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 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) 662-9517 or (804) 662-7197/TTY ☎

STATE BOARD OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† July 30, 1998 - Time to be announced -- Open Meeting
† July 31, 1998 - Time to be announced -- Open Meeting
Hampton Inn, 401 East Nelson Street, Lexington, Virginia. ♿
(Interpreter for the deaf provided upon request)

A regular meeting. Public comments will be received.

Contact: Marlene Butler, State Board Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-7945 or FAX (804) 371-2308.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

August 25, 1998 - 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 1999. Copies of these applications are available for review at the Office of Mental Health and Substance Abuse Services, on the 12th Floor of the James Madison Building, and at each

community services board office. Comments may be made at the hearing or in writing no later than August 25, 1998, 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 may call Sterling Deal. 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 23218, telephone (804) 371-2148, FAX (804) 371-0091 or (804) 371-8977/TTY ☎

VIRGINIA MILITARY INSTITUTE

August 29, 1998 - 8:30 a.m. -- Open Meeting
Virginia Military Institute, Preston Library, Turman Room, Lexington, Virginia. ♿

A meeting of the Board of Visitors to elect a president, vice presidents and secretary, and to hear committee reports. The board will provide an opportunity for public comment immediately after the superintendent's comments, beginning at approximately 9 a.m.

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/TTY ☎

MOTOR VEHICLE DEALER BOARD

July 20, 1998 - 9 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Committees of the board will meet as follows:
Transaction Recovery Fund Committee - 9 a.m.
Licensing Committee - 10 a.m.
Dealer Practices Committee - 1:30 p.m.
Advertising Committee - 3 p.m.

Contact: Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

July 21, 1998 - 9:30 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the board to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided

upon request by contacting the board. A public comment period will be provided at the beginning of the meeting. Public comments will be subject to the board's guidelines for public comment.

Committees of the board will meet as follows:
Finance Committee - 8:45 a.m.
Franchise Review and Advisory Committee - 9 a.m.

Contact: Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

VIRGINIA MUSEUM OF NATURAL HISTORY

† **August 8, 1998 - 9 a.m.** -- Open Meeting
Sheraton Four Points Hotel, 900 Prices Fork Road, Blacksburg, Virginia. 

A meeting of the Board of Trustees to include reports from the development, executive, finance, legislative, marketing, nominating, outreach, personnel, planning and facilities, and research and collections committees. Public comment will be received following approval of the minutes of the April meeting.

Contact: Rhonda J. Knighton, Executive Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8600 or (540) 666-0360, or (540) 666-8638/TTY 

COMMONWEALTH NEUROTRAUMA INITIATIVE ADVISORY BOARD

July 23, 1998 - 9:30 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly board meeting.

Contact: Charlotte Neal, Board Administrator, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288-0300, telephone (804) 662-7082, toll-free 1-800-552-5019 or 1-800-464-9950/TTY 

BOARD OF NURSING

July 20, 1998 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A Special Conference Committee, comprised of two or three members of the Board of Nursing, 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/TTY 

July 20, 1998 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The Education Special Conference Committee will meet to review proposals and reports from nursing and nurse aide education programs and prepare recommendations for the board. Public comments 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/TTY 

July 20, 1998 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A panel of the board will conduct formal hearings. Public comments 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/TTY 

July 21, 1998 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the board to consider matters relating to education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. Public comments will be received during an open forum beginning at 11 a.m. until noon. Beginning at 1 p.m., a panel of the board will conduct formal hearings with licensees and certificate holders.

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/TTY 

July 21, 1998 - 1:30 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing on the draft of proposed regulations which allows registered nurses to delegate selected tasks and procedures to appropriately trained unlicensed persons. Comments may also be submitted in writing to the address below or by e-mail to nursebd@dhp.state.va.us until July 24, 1998.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA

Calendar of Events

23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TTY ☎

July 22, 1998 - 8:30 a.m. -- Open Meeting

July 23, 1998 - 8:30 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct formal hearings with licensees and certificate holders. Public comments 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/TTY ☎

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† **August 12, 1998 - 10 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

September 18, 1998 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **18 VAC 90-20-10 et seq. Regulations of the Board of Nursing.** Amendments are proposed pursuant to Executive Order 15 (94), which called for agencies to simplify and clarify regulations and eliminate unnecessary requirements. Amendments also include: (i) requirements for nurses to wear identification indicating their name and type of licensure; (ii) establishment of a standard protocol for persons with prescriptive authority to operate adult vaccine clinics; and (iii) an increase in the renewal fee for certified nurse aides in order to operate the investigative and disciplinary functions related to that program.

Statutory Authority: § 54.1-2400 and Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

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 or FAX (804) 662-9943.

BOARDS OF NURSING AND MEDICINE

† **September 9, 1998 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

September 18, 1998 -- 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 Boards of Nursing and

Medicine intend to amend regulations entitled: **18 VAC 90-30-10 et seq. Regulations Governing the Licensure of Nurse Practitioners.** The proposed amendments are the board's response to the review of regulations pursuant to Executive Order 15 (94). The proposed amendments clarify several definitions, add a requirement for guidelines on "availability" in the protocol between the nurse practitioner and supervising physician, and eliminate the process for board approval of a nurse practitioner education program.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

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 or FAX (804) 662-9943.

BOARD OF NURSING HOME ADMINISTRATORS

† **August 5, 1998 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

September 18, 1998 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing Home Administrators intends to amend regulations entitled: **18 VAC 95-20-10 et seq. Regulations of the Board of Nursing Home Administrators.** Pursuant to Executive Order 15 (94) to clarify, simplify and reduce the number of regulations, less restrictive requirements are proposed for the definition of "full-time employment," for notification of a change of address, and for continuing education. Amendments also clarify application, licensure, and preceptorship requirements.

Statutory Authority: § 54.1-2400 and Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111 or FAX (804) 662-9943.

BOARD FOR OPTICIANS

† **August 14, 1998 - 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, disciplinary cases and other matters requiring board action. 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/TTY ☎

BOARD OF OPTOMETRY

† **September 16, 1998 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

September 18, 1998 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled: **18 VAC 105-20-10 et seq. Regulations of the Virginia Board of Optometry.** Amendments are proposed pursuant to Executive Order 15 (94), which called agencies to simplify and clarify regulations and eliminate unnecessary requirements. Proposed amendments provide for a listing of approved providers of continuing education courses and eliminate the burden and expense of submitting for board approval all of the materials for each course offered.

Statutory Authority: § 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Contact: Elizabeth Carter, Executive Director, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or FAX (804) 662-9943.

DEPARTMENT OF STATE POLICE

August 21, 1998 -- Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to amend regulations entitled: **19 VAC 30-70-1 et seq. Motor Vehicle Safety Inspection Rules and Regulations.** The purpose of the proposed action is to amend existing administrative regulations governing vehicle inspections to comply with mandates of the amended sections of the Code of Federal Regulations and the Code of Virginia.

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

Contact: Captain W. Steven Flaherty, Safety Officer, Department of State Police, P.O. Box 27472, Richmond, VA 23261, telephone (804) 378-3479, FAX (804) 378-3487 or toll-free 1-800-553-3144.

VIRGINIA POLLUTION PREVENTION ADVISORY COMMITTEE

† **July 29, 1998 - 10:30 a.m.** -- Open Meeting
Department of Environmental Quality, 4949-A Cox Road, Glen Allen, Virginia. ♿

The committee will meet to advise the Department of Environmental Quality on its voluntary pollution prevention program.

Contact: Sharon K. Baxter, Pollution Prevention Manager, 3302 Floyd Avenue, Richmond, VA 23221, telephone (804) 698-4344 or toll-free 1-800-592-5482.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

† **August 3, 1998 - 9:30 a.m.** -- Public Hearing
Fairfax County Government Center, 12000 Government Center Parkway, Conference Rooms 4 and 5, Fairfax, Virginia. ♿

A public hearing in connection with the board's study of the need to regulate electrologists. The study is the result of House Joint Resolution 204 and Senate Joint Resolution 128 of the 1998 Session of the Virginia General Assembly. 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: Debra L. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519 or (804) 367-9753/TTY ☎

† **August 3, 1998 - 1:30 p.m.** -- Public Hearing
Fairfax County Government Center, 12000 Government Center Parkway, Conference Rooms 4 and 5, Fairfax, Virginia. ♿

A public hearing in connection with the board's study of the need to regulate cemeteries. The study is the result of House Bill 1077 and Senate Bill 700 of the 1998 Session of the Virginia General Assembly. 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: Debra L. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519 or (804) 367-9753/TTY ☎

Calendar of Events

September 14, 1998 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A general business meeting.

Contact: Debra S. Vought, Agency Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519 or (804) 367-9753/TTY 

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

† **August 14, 1998 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. 

A meeting to (i) conduct general board business, (ii) consider committee reports, (iii) discuss correspondence and any other matters under the jurisdiction of the board, including regulatory review.

Contact: Evelyn Brown, Executive Director, or Joyce Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912 or FAX (804) 662-9943.

VIRGINIA RACING COMMISSION

† **August 19, 1998 - 9:30 a.m.** -- Open Meeting
Administrative Building, 12007 Courthouse Circle, New Kent,
Virginia. 

A monthly meeting to include a report from Colonial Downs concerning the forthcoming thoroughbred race meeting.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Dr., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

REAL ESTATE APPRAISER BOARD

July 21, 1998 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting. The department fully complies with the Americans with Disabilities Act.

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/TTY 

REAL ESTATE BOARD

† **August 13, 1998 - 8 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 of the Real Estate Education Committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TTY 

† **August 13, 1998 - 8 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 of the Fair Housing Committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TTY 

† **August 13, 1998 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8526, FAX (804) 367-2475, or (804) 367-9753/TTY 

RECYCLING MARKETS DEVELOPMENT COUNCIL

† **August 11, 1998 - 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 brainstorming session. Call 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

STATE REHABILITATION ADVISORY COUNCIL

† **August 10, 1998 - 11 a.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Kay Magill, SRAC Liaison, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7527, FAX (804) 662-7696, toll-free 1-800-552-5019/TTY  and Voice, or (804) 464-9950/TTY 

VIRGINIA RESOURCES AUTHORITY

August 11, 1998 - 9 a.m. -- Open Meeting
The Martha Washington Inn, 150 West Main Street, Abingdon, Virginia.

A meeting to approve minutes of the prior meeting, to review the authority's operations for the prior month, and to consider other matters and take other actions as the authority may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Executive Director, Virginia Resources Authority, P.O. Box 1300, Richmond, VA 23218, telephone (804) 644-3100 or FAX (804) 644-3109.

VIRGINIA RETIREMENT SYSTEM

August 20, 1998 - 9 a.m. -- Open Meeting
Virginia Retirement System, 1200 East Main Street, Richmond, Virginia. 

A regular meeting. No public comment will be received.

Contact: Darla Kestner, Administrative Staff Assistant, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218-2500, telephone (804) 649-8059, FAX (804) 371-0613, toll-free 1-888-827-3847, or (804) 649-5089/TTY 

September 10, 1998 - Noon -- Open Meeting
Virginia Retirement System, 1200 East Main Street, Richmond, Virginia. 

A regular meeting of the Investment Advisory Committee. There may be in attendance at any time during the meeting three or more members of the Board of Trustees, or any of their subcommittees. No public comment will be received.

Contact: Darla Kestner, Administrative Staff Assistant, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218-2500, telephone (804) 649-8059, FAX (804) 371-0613, toll-free 1-888-827-3847, or (804) 649-5089/TTY 

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **July 28, 1998 - 10 a.m.** -- Open Meeting
Department of Business Assistance, 707 East Main Street, 3rd Floor, Main Board Room, Richmond, Virginia. 

A meeting of the Loan Committee to review applications for loans submitted to the authority for approval. The time indicated is subject to being moved to 8:30 a.m. in the event the VSBFA Board of Directors decides to combine meeting dates with the VSBFA Loan Committee.

Contact: Cathleen M. Surface, Executive Director, Virginia Small Business Financing Authority, 707 E. Main St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-8254 or FAX (804) 225-3384.

STATE BOARD OF SOCIAL SERVICES

August 7, 1998 - 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 40-35-5 et seq. Virginia Independence Program**. The purpose of the proposed amendment is to amend the Virginia Independence Program by adding the Targeted Jobs Grant Program. This program provides employers with grants of up to \$1,000 per employee when they hire and retain individuals who have been receiving Temporary Assistance to Needy Families.

Statutory Authority: §§ 63.1-25 and 63.1-25.3 of the Code of Virginia

Contact: David E. Olds, Employment Services Program Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-2251 or FAX (804) 692-1709.

COMMONWEALTH TRANSPORTATION BOARD

† **August 19, 1998 - 2 p.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

Calendar of Events

Contact: Shirley J. Ybarra, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675.

† **August 20, 1998 - 10 a.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

Contact: Shirley J. Ybarra, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675.

TRANSPORTATION SAFETY BOARD

† **September 9, 1998 - 9 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review highway safety issues and federal funding.

Contact: Angelisa C. Jennings, Senior Management Analyst, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-2026 or FAX (804) 367-6031.

TREASURY BOARD

NOTE: CHANGE IN MEETING DATE

† **August 26, 1998 - 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.

BOARD FOR THE VISUALLY HANDICAPPED

July 21, 1998 - 1 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, FAX (804) 371-3157, toll-free 1-800-622-2155, or (804) 371-3140/TTY

DEPARTMENT FOR THE VISUALLY HANDICAPPED

† **July 24, 1998 - 10 a.m.** -- Open Meeting
Virginia Rehabilitation Center for the Blind and Visually Impaired, 401 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to accept comments from the public on the implementation of nonvisual access technology in the Commonwealth and projected costs of implementing this technology pursuant to Item 410 of Chapter 464 of the 1998 Acts of Assembly.

Contact: Joseph A. Bowman, Deputy Commissioner, Department for the Visually Handicapped, 395 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145, FAX (804) 371-3157, toll-free 1-800-622-2155, or (804) 371-3140/TTY

VIRGINIA WASTE MANAGEMENT BOARD

August 10, 1998 - 9 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia.

A meeting to discuss the proposed establishment of requirements to govern the use of mediation and alternative dispute resolution in regulation development and permit issuance.

Contact: Dr. Kathleen Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413.

STATE WATER CONTROL BOARD

August 5, 1998 - 1 p.m. -- Public Hearing
Town Hall, 510 7th Street, Council Chambers, Altavista,
Virginia.

September 4, 1998 - 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-
430-10 et seq. Roanoke River Basin Water Quality
Management Plan.** The purpose of the proposed
action is to amend the plan to change the wasteload
allocations for selected VPDES permitted discharges.

The Department of Environmental Quality invites
comments on this intended amendment to the Roanoke
River Basin Water Quality Management Plan, including
any alternatives. Copies of the draft proposed regulation
may be obtained by contacting the Department of
Environmental Quality. To obtain a copy and for further
information, please contact Jon van Soestbergen at the
address and telephone number below.

The Department of Environmental Quality invites
comments on costs and benefits of this intended
amendment to the Roanoke River Basin Water Quality
Management Plan. Comments may be submitted to Jon
van Soestbergen at the address below.

The proposed regulatory amendments will affect the
following communities: Town of Clarksville, Town of
Boydton, Mecklenburg County.

The Department of Environmental Quality analyzed
different alternatives in preparing this proposed
regulatory amendment. Additional information regarding
these analyses is available from Jon van Soestbergen at
the address below.

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

Contact: Jon van Soestbergen, P.E., Department of
Environmental Quality, Piedmont Regional Office, 4949-A
Cox Road, Glen Allen, VA 23060-6296, telephone (804) 527-
5043.

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August 5, 1998 - 1 p.m. -- Public Hearing
Town Hall, 510 7th Street, Council Chambers, Altavista,
Virginia.

September 4, 1998 - 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-
440-10 et seq. Upper Roanoke River Subarea Water
Quality Management Plan.** The purpose of the

proposed action is to change the wasteload allocation
for two segments of the Roanoke River.

The Department of Environmental Quality invites
comments on this intended amendment to the Upper
Roanoke River Subarea Water Quality Management
Plan, including any alternatives. Copies of the draft
proposed regulation may be obtained by contacting
Dr. Michael J. Scanlan at the address and telephone
number below.

The Department of Environmental Quality invites
comments on costs and benefits of this intended
amendment to the Upper Roanoke River Subarea Water
Quality Management Plan. Comments may be
submitted to Dr. Michael J. Scanlan at the address
below.

The proposed regulatory amendments will affect the
communities of Altavista, in Campbell County and
communities served by the Roanoke Regional Water
Pollution Control Plan in Roanoke, Virginia (Botetourt
County, Roanoke County, Town of Vinton and the cities
of Roanoke and Salem).

The Department of Environmental Quality analyzed
different alternatives in preparing this proposed
regulatory amendment. Additional information regarding
these analyses is available from Dr. Michael J. Scanlan
at the address below.

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

Contact: Dr. Michael J. Scanlan, Department of
Environmental Quality, West Central Regional Office, 3019
Peters Creek Road, Roanoke, VA 24019, telephone (540)
562-6723.

August 10, 1998 - 9 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
Training Room, Richmond, Virginia.

A meeting to discuss the proposed establishment of
requirements to govern the use of mediation and
alternative dispute resolution in regulation development
and permit issuance.

Contact: Dr. Kathleen Sands, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4413.

† **September 9, 1998 - 7 p.m.** -- Open Meeting

† **September 10, 1998 - 2 p.m.** -- Open Meeting
Virginia War Memorial, 621 South Belvidere Street,
Auditorium, Richmond, Virginia.

A meeting to receive comments from the public on
whether the board should propose amendments
regarding the numerical criteria for metals, mixing zones
to provide specific protection to endangered and
threatened species, the listing of endangered species
and application of the antidegradation policy to all state
activities.

Calendar of Events

Contact: Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111.

INDEPENDENT

STATE LOTTERY BOARD

July 28, 1998 - 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: David L. Norton, Esq., Director, Legislative and Regulatory Affairs, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7109 or FAX (804) 692-7775.

LEGISLATIVE

CHESAPEAKE BAY PARTNERSHIP COUNCIL

† **July 27, 1998 - 2 p.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Conference Room, 6th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Please call Shannon Varner, Division of Legislative Services, (804) 786-3591, with any questions regarding the agenda. Individuals requiring interpreter services or special assistance should contact Anne Howard at least 10 days prior to the meeting.

Contact: Anne R. Howard, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 

VIRGINIA CODE COMMISSION

September 16, 1998 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Street, Speaker's Conference Room, 6th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to continue with the recodification of Titles 2.1 and 9 of the Code of Virginia.

Contact: Jane Chaffin, Registrar of Regulations, General Assembly Bldg., 910 Capitol Street, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625 or e-mail jchaffin@leg.state.va.us.

COMMISSION ON COORDINATION OF SERVICES TO FACILITATE SELF-SUFFICIENCY AND SUPPORT OF PERSONS WITH PHYSICAL AND SENSORY DISABILITIES (HJR 274)

July 22, 1998 - 9 a.m. -- Open Meeting

September 15, 1998 - 9 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Brian Parsons or Barbara Etnner at the Virginia Board for People with Disabilities, (804) 786-0016. Individuals requiring interpreter services or other special assistance should contact the Committee Operations Office at least 10 working days prior to the meeting.

Contact: Barbara Regen, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 

HOUSE COMMITTEE ON EDUCATION

† **August 24, 1998 - 9:30 a.m.** -- Open Meeting

† **August 25, 1998 - 9:30 a.m.** -- Open Meeting
Graves Mountain Lodge, Syria, Virginia.

The House Committee on Education, the Senate Committee on Education and Health, and the State Board of Education will meet jointly in a retreat setting. The agenda will center around dialogue between the participating groups and presentations of the latest developments in education-related computer software by technology providers. Questions regarding the meeting should be addressed to Kathy Harris or Brenda Edwards, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact Committee Operations at least 10 working days prior to the meeting.

Contact: Barbara Regen, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 

JOINT SUBCOMMITTEE EXAMINING THE POTENTIAL FOR ELECTRIC UTILITY INDUSTRY RESTRUCTURING WITHIN VIRGINIA (SJR 91, 1998)

August 18, 1998 - 10 a.m. -- Open Meeting

General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Individuals requiring interpreter services or other accommodations should call or write

Thomas C. Gilman seven working days before the meeting.

Contact: Thomas C. Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

COMMISSION ON ACCESS AND DIVERSITY IN HIGHER EDUCATION IN VIRGINIA (HJR 226, 1998)

August 28, 1998 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Please call Brenda Edwards, Division of Legislative Services, (804) 786-3591, with any questions regarding the agenda. Individuals requiring interpreter services or special assistance should contact Dawn Smith.

Contact: Dawn B. Smith, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

INTERSTATE ROUTE 73 COMMUNICATIONS COMMITTEE (HJR 153, 1998)

† **October 8, 1998 - 10 a.m.** -- Open Meeting
Henry County Administration Building, Kings Mountain Road, Board Room, Martinsville, Virginia.

A regular meeting. Questions regarding the meeting should be addressed to Alan Wambold, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the Committee Operations at least 10 working days prior to the meeting.

Contact: Barbara Regen, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

JOINT SUBCOMMITTEE STUDYING THE REMEDIAL SUMMER SCHOOL PROGRAM (HJR 62, 1998)

July 29, 1998 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Conference Room, 6th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Please call Brenda Edwards, Division of Legislative Services, (804) 786-3591, with any questions regarding the agenda. Individuals requiring interpreter services or special assistance should contact Dawn Smith.

Contact: Dawn B. Smith, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

CHRONOLOGICAL LIST

OPEN MEETINGS

July 20

- Accountancy, Board for
- † Correctional Education, Board of
- General Services, Department of
 - Design-Build/Construction Management Review Board
- Local Government, Commission on
- Motor Vehicle Dealer Board
 - Advertising Committee
 - Dealer Practices Committee
 - Licensing Committee
 - Transaction Recovery Fund Committee
- Nursing, Board of
 - Education Special Conference Committee
 - Special Conference Committee

July 21

- Accountancy, Board for
- Agriculture and Consumer Services, Board of
- Agriculture and Consumer Services, Department of
 - Virginia Winegrowers Advisory Board
- Environmental Quality, Department of
 - Virginia Ground Water Protection Steering Committee
- Housing Development Authority, Virginia
- Motor Vehicle Dealer Board
 - Finance Committee
 - Franchise Review and Advisory Committee
- Nursing, Board of
- Real Estate Appraiser Board
- Visually Handicapped, Board for the

July 22

- Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, Board for
 - Land Surveyor Section
- Child Fatality Review Team, Virginia State
- † Contractors, Board for
- Disabilities, Commission on Coordination of Services to Facilitate Self-Sufficiency and Support of Persons with Physical and Sensory
 - Independent Living Council, Statewide
- Nursing, Board of

July 23

- Auctioneers Board
- † Geology, Board for
- Independent Living Council, Statewide
- Longwood College
 - Academic Affairs and Student Affairs Committees
 - Finance Committee
- Neurotrauma Initiative Advisory Board, Commonwealth
- Nursing, Board of

Calendar of Events

July 24

Dentistry, Board of
Longwood College
- Board of Visitors
Medicine, Board of
- Informal Conference Committee
† Visually Handicapped, Department for the

July 27

Branch Pilots, Board for
† Chesapeake Bay Partnership Council

July 28

Agriculture and Consumer Services, Department of
- Virginia Small Grains Board
Lottery Board, State
Manufactured Housing Board, Virginia
Marine Resources Commission
† Small Business Financing Authority, Virginia
- Loan Committee

July 29

Competition Council, Commonwealth
† Contractors, Board for
Disability Services Council
† Economic Development Partnership, Virginia
- Virginia Tourism Corporation
† Pollution Prevention Advisory Committee, Virginia
Remedial Summer School Program, Joint
Subcommittee Studying the

July 30

Branch Pilots, Board for
Compensation Board
† Hearing Aid Specialists, Board for and Audiology and
Speech-Language Pathology
- Joint Task Force Committee
Intergovernmental Relations, Virginia Advisory
Commission on
† Mental Health, Mental Retardation and Substance
Abuse Services, State Board of

July 31

† Higher Education Tuition Trust Fund, Virginia
† Mental Health, Mental Retardation and Substance
Abuse Services, State Board of

August 3

Medical Assistance Services, Department of
- Pharmacy Liaison Committee

August 4

† Economic Development Partnership, Virginia
- Personnel Committee
Hopewell Industrial Safety Council

August 5

† Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
- Architect Section
Deaf and Hard-of-Hearing, Virginia Department for the
Labor and Industry, Department of

- Apprenticeship Council

August 6

Agriculture and Consumer Services, Department of
- Virginia Soybean Board
† Health, State Board of
Medicine, Board of
- Informal Conference Committee

August 7

† Health, State Board of
Medicine, Board of
- Executive Committee

August 8

Medicine, Board of
- Credentials Committee
† Museum of Natural History, Virginia
- Board of Trustees

August 10

Air Pollution Control Board, State
† Rehabilitation Advisory Council, State
Waste Management Board, Virginia
Water Control Board, State

August 11

Agriculture and Consumer Services, Department of
- Virginia Aquaculture Advisory Board
Corrections, Board of
- Correctional Services Committee
Environmental Quality, Department of
† Information Management, Council on
- Land Records Management Task Force
Land Evaluation Advisory Council, State
† Recycling Markets Development Council
Resources Authority, Virginia

August 12

Corrections, Board of
- Administration Committee
Funeral Directors and Embalmers, Board of

August 13

† Real Estate Board
- Fair Housing Committee
- Real Estate Education Committee

August 14

Health Professions, Department of
- Health Practitioners' Intervention Program
Committee
† Information Management, Council on
- Geographic Information Network Advisory Board,
Virginia
† Opticians, Board for
† Professional Counselors, Marriage and Family
Therapists and Substance Abuse Treatment
Professionals, Board of

August 17

General Services, Department of
- Design-Build/Construction Management Review
Board

August 18

Electric Utility Restructuring Within Virginia, Joint Subcommittee Examining the Potential for

August 19

† Medicine, Board of
- Informal Conference Committee
† Racing Commission, Virginia
† Transportation Board, Commonwealth

August 20

† Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Professional Engineer Section
Conservation and Recreation, Department of
† Game and Inland Fisheries, Board of
Retirement System, Virginia
† Transportation Board, Commonwealth

August 21

† Game and Inland Fisheries, Board of

August 24

† Education, House Committee on

August 25

Asbestos and Lead, Virginia Board for
† Education, House Committee on
Marine Resources Commission

August 26

† Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Land Surveyor Section
† Treasury Board

August 28

Higher Education in Virginia, Commission on Access and Diversity in
Local Government, Commission on

August 29

Military Institute, Virginia
- Board of Visitors

September 1

Hopewell Industrial Safety Council

September 2

† Assistive Technology, Virginia Council on

September 3

Emergency Planning Committee, Local - Chesterfield County
Medicine, Board of
- Informal Conference Committee

September 9

† Safety Board, Transportation
† Water Control Board, State

September 10

Retirement System, Virginia

- Investment Advisory Committee
† Water Control Board, State

September 14

Professional and Occupational Regulation, Board for

September 15

Disabilities, Commission on Coordination of Services to Facilitate Self-Sufficiency and Support of Persons with Physical and Sensory

September 16

Code Commission, Virginia

September 17

† Labor and Industry, Department of
- Apprenticeship Council

September 22

Land Evaluation Advisory Council, State
Marine Resources Commission

October 8

† Interstate Route 73 Communications Committee

PUBLIC HEARINGS

July 20

Environmental Quality, Department of

July 21

Nursing, Board of

July 22

† Environmental Quality, Department of

August 3

† Professional and Occupational Regulation, Board for

August 5

† Nursing Home Administrators, Board of
Water Control Board, State

August 12

† Nursing, Board of

August 25

Mental Health, Mental Retardation and Substance Abuse Services, Department of

August 28

Local Government, Commission on

September 9

† Medicine, Board of
† Nursing and Medicine, Boards of

September 10

† Air Pollution Control, State

September 14

† Game and Inland Fisheries, Board of

September 15

† Game and Inland Fisheries, Board of

Calendar of Events

September 16

- † Game and Inland Fisheries, Board of
- † Optometry, Board of

September 17

- † Game and Inland Fisheries, Board of