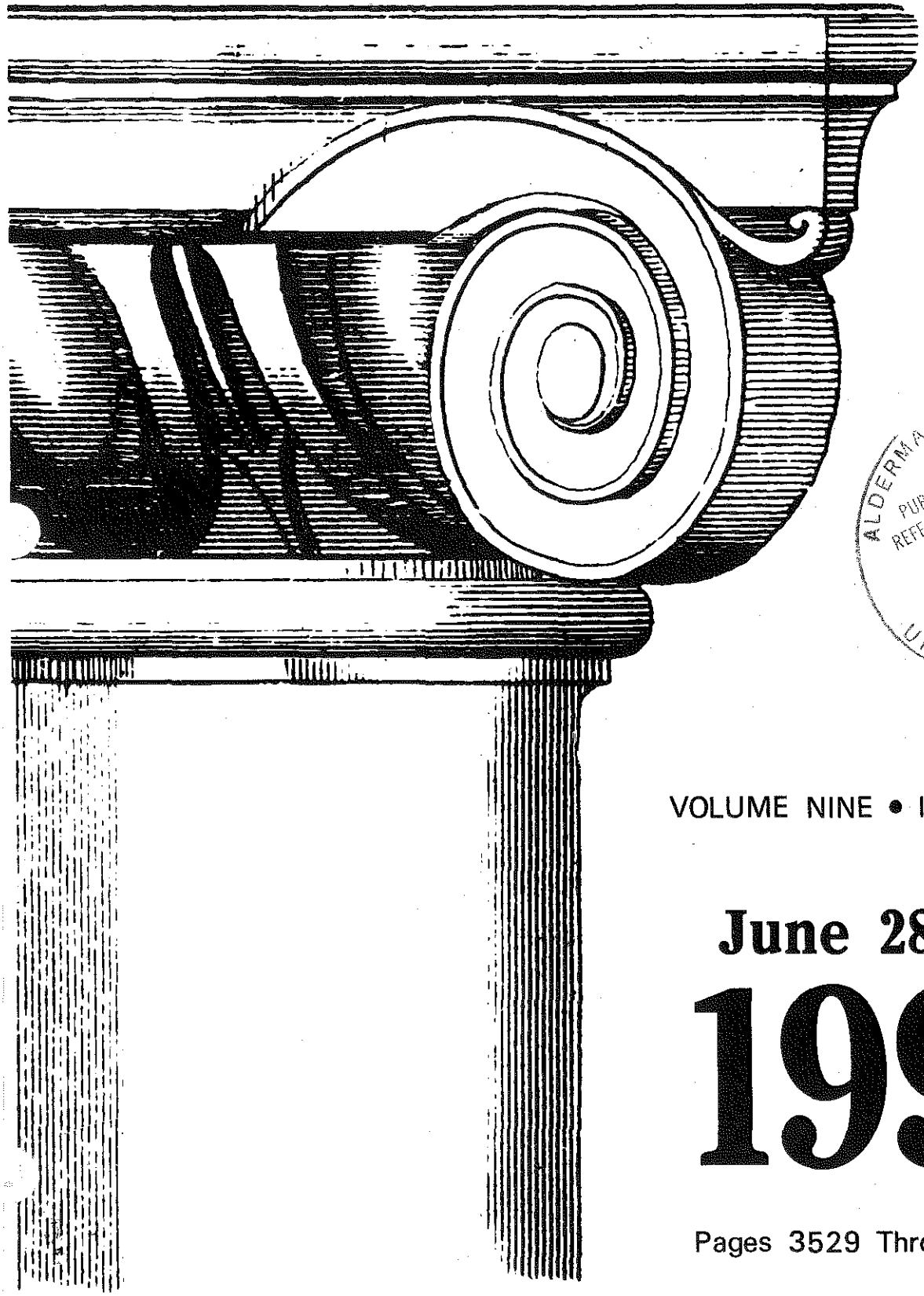
THE VIRGINIA REGISTER

OF REGULATIONS



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VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

January 1993 through April 1994

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Volume 9 - 1993	
Dec. 23	Jan. 11, 1993
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Jan. 20	Feb. 8
Feb. 3	Feb. 22
Feb. 17	Mar. 8
Mar. 3	Mar. 22
Mar. 17	Apr. 5
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† Indicates entries since last publication of the Virginia Register

STATE AIR POLLUTION CONTROL BOARD

Notice is hereby given in accordance with this agencyparticipation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-99-05. Regulation for the Control of Emissions from Fleet Vehicles.** The purpose of the proposed action is to develop a regulation that will conform to the federal and state requirements for control of emissions from fleet vehicles in the Northern Virginia, Richmond and Hampton Roads ozone nonattainment areas.

Public meeting: A public meeting will be held by the department in House Committee Room Four, State Capitol Building, Richmond, Virginia, at 10:30 a.m. on Thursday, July 8, 1993, 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 on the group, notify the agency contact in writing by close of business Monday, June 14, 1993, 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 by Thursday, June 24, 1993. If you are selected to be on the group, you are encouraged to attend the public meeting mentioned above and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation language for department consideration through the collaborative approach of regulatory negotiation and consensus.

Public hearing plans: 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 National Ambient Air Quality Standard for ozone is 0.12 parts per million (ppm) and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. Ozone is formed when volatile organic compounds and nitrogen oxides in the ambient air react together in the presence of sunlight. When concentrations of ozone in the ambient air exceed the EPA 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 have been identified as ozone nonattainment areas according to new provisions of the 1990 Clean Air Act (Act); therefore, over 3.5 million Virginia citizens are being exposed to air quality that does not meet the federal health standard for ozone.

States are required to develop plans to ensure that areas will come into compliance with the federal health standard. Failure to develop adequate programs to meet the ozone air quality standard: (i) will result in the continued violations of the standard to the detriment of public health and welfare, (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 implementation of sanctions by EPA, such as prohibition of new major industrial facilities and loss of federal funds for sewage treatment plant development and highway construction. Although the EPA has been reluctant to impose these sanctions in the past, the new Act now includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

Of the consequences resulting from failure to develop an adequate program to control ozone concentrations in the ambient air, the most serious consequence will be the adverse impact on public health and welfare. Ozone not only affects people with impaired respiratory systems, such as asthmatics, but also many people with healthy lungs, both children and adults. It can cause shortness of breath and coughing when healthy adults are exercising, and more serious effects in the young, old, and infirmed.

Northern Virginia has been identified by EPA as having a serious ozone air pollution problem. The problem originates in large part from motor vehicle emissions including fleet vehicles. A vehicle emissions inspection program has been in place in Northern Virginia for 10 years to help reduce these emissions; however, substantially greater emission reductions are now required. The 1990 amendments to the Clean Air Act have required the fleet owners in the Northern Virginia nonattainment area to purchase vehicles that conform to stricter exhaust emission standards. These vehicles are known as Clean Fuel Fleet (CFF) vehicles.

In addition, the 1993 General Assembly adopted legislation that requires a clean fuel fleet program in the Richmond and Hampton Roads nonattainment areas. The legislation requires fleet owners to include an increasing percentage of CFF vehicles in their fleet purchases beginning in the 1998 model year. As more and more vehicles in the affected fleets become CFF vehicles the total emissions from the fleets will decrease. This, in turn, can

substantially reduce the amount of volatile organic compounds emitted to the ambient air, thereby reducing the formation of ozone and lowering ozone concentrations.

Alternatives:

1. Adopt regulations which will provide for implementation of a clean fuel fleets program to satisfy the provisions of state law and the Clean Air Act and associated EPA regulations and policies.

2. Make alternative regulatory changes to those required by the Act. For example, one control measure that has been identified as an equivalent alternative to the clean fuel fleets program is a low emissions vehicle (LEV) program; however, legal authority to adopt a LEV program does not exist.

3. Take no action to adopt regulations and continue to operate fleets in violation of the Act and risk sanctions by EPA.

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

Applicable federal requirements: The 1990 amendments to the Clean Air Act delineates nonattainment areas as to the severity of the pollution problem. Nonattainment areas are now classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification is subject to successively more stringent control measures. Areas with higher classification of nonattainment must meet the requirements of all the areas in lower classifications. Virginia's nonattainment areas are marginal for the Hampton Roads nonattainment area, moderate for the Richmond nonattainment area, and serious for the Northern Virginia nonattainment area.

Section 246 (a) of Part C of Title II of the federal Act requires CFF programs in all urbanized areas with 1980 populations of 250,000 or more (as defined by the Bureau of Census) that are classified as serious or above ozone nonattainment areas.

The Act requires that a percentage of all new fleet vehicles purchased by each affected fleet operator in serious nonattainment areas (Northern Virginia) in model year 1998 and thereafter be clean-fuel vehicles. In addition, the law further requires that the vehicles shall use clean alternative fuels when operating in the covered areas. Fleet operators have their choice of CFF vehicles and type of clean fuel to be used and requires that the choice of fuel be made available to fleet operators. The phase-in requirements for new purchases are:

Vehicle Type & Gross Vehicle Weight (GVW)	Model Year 1998	Model Year 1999	Model Year 2000
Light-duty vehicles and trucks up to 6,000 lbs GVW	30%	50%	70%
Light-duty trucks between 6,000 and 8,500 GVW	30%	50%	70%
Heavy-Duty trucks above 8,500 GVW	50%	50%	50%

[1] Interpretation that LDTs over 6,000 GVW are included in the same phase-in schedule as LTDs below 6,000 pounds GVW.

Credit shall be provided to fleet operators for the purchase of more clean-fuel vehicles than required and/or the purchase of CFF vehicles which meet more stringent standards than required. Credits may be used to demonstrate compliance or may be sold or traded for other fleet operators to demonstrate compliance. Credits may be held or banked for later use with no decrease in the credit value.

In addition to the federal requirement for Northern Virginia, legislation passed by the Virginia General Assembly also requires the CFF program to be implemented in the Richmond and Hampton Roads areas. This requirement is not only for fleet vehicles registered in the affected nonattainment areas, but also applies to motor vehicles NOT registered in the nonattainment areas, but have either (i) a base of operations or (ii) a majority of their annual travel in one or more of the mentioned localities.

The law also provides for the development of regulations by the State Corporation Commission and the Department of Environmental Quality to ensure the availability of clean alternative fuels to affected fleet operators should it be deemed necessary.

Statutory Authority: § 46.2-1179.1 of the Code of Virginia (Chapters 234 and 571 of the 1993 Acts of Assembly).

Written comments may be submitted until the close of business Thursday, July 8, 1993, to the Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Mary E. Major, Senior Policy Analyst, Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-7913.

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Alcoholic Beverage Control Board intends to consider amending regulations entitled: **VR 125-01-1 through 125-01-7. Regulations of the Virginia Alcoholic Beverage Control Board.** The purpose of the proposed action is to receive information from

industry, the general public, and licensees of the board concerning adopting, amending, or repealing the board's regulations. A public hearing will be held on Wednesday, October 27, 1993, at 10 a.m. in the First Floor Hearing Room, 2901 Hermitage Road, Richmond, Virginia, to receive comments from the public.

Statutory Authority: §§ 4-7(1), 4-11, 4-36, 4-69.2, 4-72.1, 4-98.14, and 4-103(b) of the Code of Virginia.

Written comments may be submitted until June 30, 1993.

Contact: Robert N. Swinson, Administrator to the Board, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Corrections intends to consider promulgating regulations entitled: **VR 230-30-001:1. Minimum Standards for Jails and Lockups.** The purpose of the proposed action is to establish minimum standards for the administration and programs in jails and lockups.

Statutory Authority: §§ 53.1-5; 53.1-68 and 53.1-131 of the Code of Virginia.

Written comments may be submitted until July 14, 1993.

Contact: Mike Howerton, Chief of Operations, Division of Community Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3251.

DEPARTMENT OF GENERAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Departement of General Services intends to consider repealing regulations entitled: **VR 330-02-06. Regulations for Approval of Laboratories to Analyze Public Drinking Water Supplies.** The purpose of the proposed action is to carry out the provisions of the Federal Safe Drinking Water Act, PL93-523; Chapter 6, Article 2, of Title 32.1 of the Code of Virginia; and Federal Regulations 40 CFR 141. These regulations will be replaced by VR 330-02-06:1.

Statutory Authority: Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia and 40 CFR 141.

Written comments may be submitted until July 14, 1993.

Contact: Dr. James L. Pearson, Director, Division of Consolidated Laboratory Services, 1 North 14th Street, Richmond, VA 23219, telephone (804) 786-7905.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Departement of General Services intends to consider promulgating regulations entitled: **VR 330-02-06:1. Regulations for the Certification of Laboratories Analyzing Drinking Water.** The purpose of the proposed action is to carry out the provisions of the Federal Safe Drinking Water Act, PL93-523; Chapter 6, Article 2, of Title 32.1 of the Code of Virginia; and Federal Regulations 40 CFR 141. Provides the mechanism to assure that laboratories are capable of providing valid data for compliance under the Safe Drinking Water Act.

Statutory Authority: Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia and 40 CFR 141.

Written comments may be submitted until July 14, 1993.

Contact: Dr. James L. Pearson, Director, Division of Consolidated Laboratory Services, 1 North 14th Street, Richmond, VA 23219, telephone (804) 786-7905.

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider repealing regulations entitled: **VR 355-19-06. Rules and Regulations Governing the Sanitary Control of Oysters, Clams and Other Shellfish.** The purpose of the proposed action is to replace current regulations with updated regulations.

Statutory Authority: § 28.2-801 of the Code of Virginia.

Written comments may be submitted until July 15, 1993.

Contact: Keith Skiles, Program Manager, Department of Health, Division of Shellfish Sanitation, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7937.

BOARD OF HEALTH PROFESSIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

public participation guidelines that the Board of Health Professions intends to consider promulgating regulations entitled: **Regulations Governing Practitioner Self-Referral.** The purpose of the proposed action is to implement the Board of Health Professions' authority to administer and enforce the Virginia Practitioner Self-Referral Act. This is a request for general comments on proposed rulemaking only. Proposed regulations, when developed, will be submitted for comment under the provisions of the Administrative Process Act, and a public hearing will be held on the proposed regulations.

Statutory Authority: Chapter 869 of the 1993 Acts of Assembly.

NOTE: EXTENSION OF COMMENT PERIOD
Written comments may be submitted until July 14, 1993.

Contact: Richard D. Morrison, Ph.D., Executive Director, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or facsimile (804) 662-9114.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider promulgating regulations entitled: **Financial Administration: Hospital Credit Balance Reporting.** The purpose of the proposed action is to require hospitals to report and refund Medicaid credit balances which may result from overpayments. Hospitals failing to comply will be penalized, similarly to the Medicare penalty. DMAS will not be holding public hearings for this proposed regulation.

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

Written comments may be submitted until July 28, 1993, to Jesse Garland, Director, Division of Fiscal Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-01. Regulations Governing the Practice of Medicine, Oseopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed regulation is to add §§ 2.1 D and 2.4 to specify professorial, fellowship, internship and residency limited licensure.

Statutory Authority: §§ 54.1-2400, 54.1-2936 and 54.1-2937 of the Code of Virginia.

Written comments may be submitted until July 2, 1993, to Hilary H. Conner, M.D., Executive Director, 6606 West Broad Street, Richmond, VA 23229.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., Richmond, VA 23229, telephone (804) 662-9908.

DEPARTMENT OF STATE POLICE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider amending regulations entitled: **VR 545-01-07. Motor Vehicle Safety Inspection Rules and Regulations.** The purpose of the proposed action is to revise the Motor Vehicle Safety Inspection Rules and Regulations to be consistent with recent changes in state law, federal regulations, nationally accepted standards and automotive practices. Minor technical and administrative changes are included.

Statutory Authority: §§ 46.2-909, 46.2-1002, 46.2-1011, 46.2-1018, 46.2-1022, 46.2-1023, 46.2-1024, 46.2-1025, 46.2-1052, 46.2-1053, 46.2-1056, 46.2-1058, 46.2-1063, 46.2-1065, 46.2-1070, 46.2-1090.1, 46.2-1093, 46.2-1163, 46.2-1164, 46.2-1165 and 46.2-1171 of the Code of Virginia.

Written comments may be submitted until July 27, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, Safety Division, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

REAL ESTATE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider amending regulations entitled: **VR 585-01-1. Real Estate Board Regulations.** The purpose of the proposed action is to undertake a review and seek public comments on all its regulations for promulgation, amendment and repeal as is deemed necessary in its mission to regulate Virginia real estate licensees.

Statutory Authority: § 54.1-200 of the Code of Virginia.

Written comments may be submitted until July 1, 1993.

Contact: Joan L. White, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

VIRGINIA RACING COMMISSION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider amending regulations entitled: **VR 662-01-01. Public Participation Guidelines for Adoption or Amendment of Regulations.** The purpose of the proposed action is to bring the Virginia Racing Commission's public participation guidelines into conformance with the recent changes to the Administrative Process Act.

Statutory Authority: §§ 9-6.14:7.1 and 59.1-369 of the Code of Virginia.

Written comments may be submitted until July 29, 1993.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-20-1. Financial Assurance Regulations of Solid Waste Facilities.** The purpose of the proposed action is to amend the Financial Assurance Regulations to be consistent with EPA criteria for municipal solid waste facilities, consider alternative mechanisms for financial responsibility and liability and to incorporate changes necessary to comply with 1993 legislation.

The current regulations are not consistent with the requirements of EPA Guideline Criteria for Municipal Solid Waste Facilities and must be amended to allow Virginia to become authorized for the full solid waste management program. Financial assurance for liability coverage requires environmental insurance which may not be readily available to many permitted facilities. The Code of Virginia in § 10.1-1410 requires the Waste Management Board to promulgate regulations. There are no appropriate alternatives to the amendment of existing regulations to assure effectiveness.

The purpose is to amend existing regulations to incorporate requirements contained in EPA Guidelines for Municipal Solid Waste Facilities and EPA Financial Assurance Guidelines for local governments which are under development by EPA. It is proposed to revise the applicability of the regulations, the liability coverage requirements and financial assurance mechanisms to be more efficient and effective in the establishment of funds necessary for facility closure and post-closure care of permitted facilities.

Comments are requested on the intended action to include recommendations on the regulations. Comments are requested on the costs and benefits of the regulations, amendments, and any proposed alternatives.

There will be a public meeting to solicit comments on the intended regulatory action on June 17, 1993 at 10 a.m. at the Department of Environmental Quality, WCB Board Room, 4900 Cox Road, Glen Allen, Virginia.

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia.

Written comments may be submitted until July 1, 1993, to W. Gulevich, Department of Environmental Quality, 101 North 14th Street, 11th Floor, Richmond, Virginia 23219.

Contact: William F. Gilley, Regulatory Services Manager, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-22. Virginia Pollution Abatement (VPA) General Permit for Animal Feeding Operations.** The purpose of the proposed action is to adopt a general permit for animal feeding operations which establishes standard language for the limitations and monitoring requirements necessary to regulate the activities of this category of operations under the VPA permit program.

The basis for this regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys of investigations, and § 62.1-44.21 authorizes the board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on

the quality of state waters.

Need: This proposed regulatory action is needed in order to establish appropriate and necessary permitting of the pollutant management activities at animal feeding operations and to further streamline the permitting process.

Substance and purpose: General permits may be issued for categories of dischargers that (i) involve the same or similar types of operations; (ii) manage the same or similar types of wastes; (iii) require the same effluent limitations or operating conditions; and (iv) require the same or similar monitoring. The purpose of this proposed regulatory action is to adopt a general permit for animal feeding operations with may operate and maintain treatment works for waste storage, treatment or recycle and which may perform land application of wastewater or sludges. The intent of this proposed general permit regulation is to establish standard language for the limitations and monitoring requirements necessary to regulate the activities of this category of operations under the VPA permit program. The possibility exists that more than one general permit may be developed to cover certain activities in this category of operations.

Estimated impact: There are several hundred animal feeding operations, including both concentrated and intensified operations, that may be required to be permitted under the VPA permit program and which may qualify for this proposed general permit. Adoption of these regulations will allow for the streamlining of the permit process as its relates to the covered categories of activities. Coverage under the general permit would reduce the paperwork, time and expense of obtaining a permit for the owners and operators in this category. Adoption of the proposed regulation would also reduce the manpower needed by the board for permitting these activities.

Alternatives: There are several alternatives for compliance with state requirements to permit pollutant management activities at animal feeding operations. One is the issuance of an individual VPA permit to each facility. The others include adopting general VPA permits to cover specific operations in this category of activities including concentrated and intensified operations.

Public meetings: The board's staff will hold public meetings at 7 p.m. on Thursday, June 3, 1993, at the Rockingham County Administrative Center, Board of Supervisors Room, 20 East Gay Street, Harrisonburg; at 7 p.m. on Thursday, June 17, 1993, at the Norfolk City Council Chamber, 810 Union Street, City Hall, Norfolk; and at 7 p.m. on Thursday, June 24, 1993, at the Roanoke County Administration Center, Community Room, 338 Brambleton Avenue, S.W., Roanoke, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Doneva Dalton at the address below or by telephone at (804) 527-5162. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, May 17, 1993.

Applicable laws and regulations: State Water Control Law, Clean Water Act, and Permit Regulation (VR 680-14.01).

Statutory Authority: § 62.1-44 15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on June 30, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Water Division, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-21-00. Water Quality Standards (VR 680-21-07.1.b Potomac Embayment Standards).** The purpose of the proposed action is to consider amendments to the Potomac Embayment Standards.

Need: The Board adopted the Potomac Embayment Standards (PES) in 1971 to address serious nutrient enrichment problems evident in the Virginia embayments and Potomac River at the time. These standards apply to sewage treatment plants discharging into Potomac River embayments in Virginia from Jones Point to the Route 301 bridge and for expansions of existing plants discharging into the nontidal tributaries of these embayments.

Based upon these standards, several hundred million dollars were spent during the 1970s and 1980s upgrading major treatment plants in the City of Alexandria and the Counties of Arlington, Fairfax, Prince William, and Stafford. Today these localities operate highly sophisticated advanced wastewater treatment plants which have contributed a great deal to the dramatic improvement in the water quality of the upper Potomac estuary.

Even before the planned upgrades at these facilities were completed, questions arose over the high capital and operating costs that would result from meeting all of the requirements contained in the PES. Questions also arose due to the fact that the PES were blanket effluent standards that applied equally to different bodies of water. Therefore, in 1978, the Board committed to reevaluate the PES. In 1984, a major milestone was reached when the Virginia Institute of Marine Science (VIMS) completed state-of-the-art models for each of the embayments. The Board then selected the Northern Virginia Planning District Commission (NVPDC) to conduct waste load allocation studies of the Virginia embayments using the VIMS models. In 1988, these studies were completed and

effluent limits were developed for each major facility that would protect the embayments and the mainstream of the Potomac River. However, the PES were not amended to refelect the results of these efforts.

Since the PES have not been amended or repealed, VPDES permits have included the PES standards as effluent limits. Since the plants cannot meet all of the requirements of the PES, the plant owners have operated under consent orders or consent decrees with operating effluent limits for the treatment plants that were agreed upon by the owners and the Board.

In 1991, several Northern Virginia jurisdictions with embayment treatment plants submitted a petition to the Board requesting that the Board address the results of the VIMS/NVPDC studies and that the PES be replaced with a descriptive process for establishing effluent limits for these plants to meet water quality standards. The petitioners claimed the current standards do not allow for scientifically based permit limits.

A Board staff workgroup was formed to consider the changes to the PES recommended by the petitioners. At their June 1991 meeting, the Board authorized holding a public hearing to solicit comments on proposed amendments based upon the recommendations of the work group. These amendments would allow permit by permit development of appropriate effluent limits for the affected discharges using the Board's Permit Regulation and Water Quality Standards Regulation. They would also apply a total phosphorus effluent limit of 0.18 mg/l which is the regionally agreed limit to protect the embayments and the upper Potomac estuary from nurtient enrichment.

Based upon the request of Fairfax County, a hearing was not scheduled on the proposed amendments so the petitioners could consider revisions to their original petition. By letter dated October 28, 1992, Fairfax County requested the Board to proceed with a revised petition to change the PES. The revised petition was supported by the Counties of Arlington, Prince William, and Stafford and the Alexandria Sanitation Authority.

Substance and purpose: The purpose of this proposed regulatory action is to consider amendments to the Potomac Embayment Standards.

Under the recent petition from the Northern Virginia localities for amending the PES, minimum effluent limits are retained in the Standards and state-of-the-art modeling is required to be performed for construction of any major new plant or expansion of an existing plant.

Information on the following issues would help the board develop appropriate amendments to the PES:

- adopting the amendments included with the revised petition from the local governments,

- repealing the Potomac Embayment Standards and using the Permit Regulation and Water Quality Standards Regulation to determine effluent limits,

- replacing the standards with a comprehensive policy to protect the embayments (similar to the approach used with the Occoquan Policy),

- coverage of existing small sewage treatment plants and single family home discharges by the Potomac Embayment Standards.

Estimated impact: Amendments to the Potomac Embayment Standards would impact eight major and several smaller sewage treatment plants discharging to the Potomac embayments. Upgrading the existing treatment plants to meet the current standards would cost millions of dollars. The alternatives identified thus far for amending the current standards would result in significant cost savings.

Alternatives: Three alternatives have so far been identified: 1. no change to the current standards; 2. amend the standards to remove specific effluent limits and rely on the Permit Regulation and Water Quality Standards Regulation (approach previously authorized for hearing by the Board); or 3. amend the standards by changing the specific effluent limits (local government petition).

Public meeting: The Board will hold a public meeting to receive views and comments on the local government petition as well as other comments on amending the Potomac Embayment Standards. The meeting will be held at 7:00 p.m. on Wednesday, July 14, 1993, Fairfax County Government Center, Conference Center, Rooms 4 & 5, 12000 Government Center Parkway, Fairfax.

Accessibility to persons with disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Doneva Dalton at the address below or by telephone at (804) 527-5162. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, June 28, 1993.

Statutory Authority: § 62.1-44 15(3a) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on July 23, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Alan E. Pollock, Chesapeake Bay Program, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5155.

For information concerning Proposed Regulations, see information page.

Symbol Key

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

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

Title of Regulation: **VR 240-01-5. Rules Relating to Compulsory Minimum Training Standards for Dispatchers.**

Statutory Authority: § 9-170 of the Code of Virginia.

Public Hearing Date: October 6, 1993 - 9 a.m.
Written comments may be submitted until August 28, 1993.
(See Calendar of Events section for additional information)

Summary:

The proposed regulations would amend the dispatcher classroom and on-the-job training required for dispatchers of law-enforcement personnel to allow greater flexibility for the certified training academies and their membership to meet the training demands for their dispatchers. Additionally, the amendments provide that each dispatcher attending dispatcher classroom training successfully complete each performance based training and testing objective designated for such training, and expands the dispatcher training extension provisions available to the agency administrators.

VR 240-01-5. Rules Relating to Compulsory Minimum Training Standards for Dispatchers.

§ 1. Definitions.

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

"Academy director" means the chief administrative officer of a certified training academy.

"Agency administrator" means any chief of police, sheriff, or agency head of a state or local law-enforcement agency.

~~*"Approved training school"* means a training school which provides instruction of at least the minimum training standards mandated by the department and has been approved by the department for the specific purpose of training dispatchers.~~

"Board" means the Criminal Justice Services Board.

"Certified training academy" means a training school which provides instruction of at least the minimum training standards mandated by the board and has been approved by the department for the specific purpose of training criminal justice personnel.

"Department" means the Department of Criminal Justice Services.

"Director" means the chief administrative officer of the department.

"Dispatcher" means any person employed by or in any local or state government agency either full or part-time whose duties include the dispatching of law-enforcement personnel.

~~*"School director"* means the chief administrative officer of an approved training school.~~

§ 2. Compulsory minimum training standards.

A. Pursuant to the provisions of § 9-170(8) of the Code of Virginia, the board establishes the following as the compulsory minimum training standards for dispatchers:

	Hours
1. Classroom training	*40*
~~1.~~ *a.* Introduction and role of dispatcher	~~2~~
~~2.~~ *b.* Interpersonal and psychological job factors	~~8~~
~~a. Minimum of 2 hours on crisis problems, situations, and intervention~~	
~~b. Minimum of 1 hour practical exercises~~	
~~3.~~ *c.* Operating procedures	~~16~~
~~4. Elective studies~~	~~8~~
~~5.~~ *d.* Rules and regulations governing communications	~~2~~
~~6.~~ *e.* Emergency communications plans/disasters	~~3~~
f. Liability	

g. Elective studies

(1) Cultural diversity;

(2) Communicating with difficult people;

(3) Effective listening skills; or

(4) Optional job related subjects (selected at discretion of the certified training academy and subject to the provisions of § 7 A)

~~7.~~ *h.* Testing and evaluation ..... ~~1~~

~~Total classroom hours~~ ..... ~~40~~

~~8. On-the-job training (O.J.T.)~~

2. On-the-job training *40*

a. On-the-job training will include a minimum of 40 hours of local training with selected experienced personnel. Local departments or agencies will follow the format as set forth below in subdivision b. On-the-job training must be completed and the appropriate form forwarded to the department as stated in subsection A of § 4.

b. On-the-job training local.

(1) Agency/department policies, procedures, regulations

(2) Agency/department geographical area

(3) Agency/department telephonic system and equipment operations

(4) Agency/department radio system and equipment operations

(5) Structure of local government

(6) Local ordinances

(7) Legal documents and requirements

(8) ~~Other agencies/resources (local/state/federal)~~ *Governmental and private agency resources*

(9) Other training if applicable:

(a) Emergency medical dispatcher

(b) VCIN/NCIC

Total hours *80*

§ 3. Applicability.

A. All dispatchers employed by or in any local or state government agency whose duties include the dispatching of law-enforcement personnel ~~and who was~~ hired on or after July 1, 1988, must meet compulsory minimum training standards herein established, unless provided otherwise in accordance with subsection B of § 3.

B. The director may grant an exemption or partial exemption of the compulsory minimum training standards established herein, in accordance with § 9-173 of the Code of Virginia.

§ 4. Time requirement for completion of training.

A. Every dispatcher who is required to comply with the compulsory minimum training standards must satisfactorily complete the required training set forth in § 2 of these regulations, within 12 months of the date of appointment as a dispatcher, unless provided otherwise in accordance with subsection B of § 4.

B. The director may grant an extension of the time limit for completion of the *compulsory* minimum training ~~required upon presentation of evidence by the agency administrator that such dispatcher was unable to complete the required training within the specified time limit due to illness, injury, military service, special duty assignment required and performed in the public interest, or other prudent reasons. The agency administrator must request such extension prior to expiration of any time limit.~~ *standards under the following conditions:*

1. The chief of police, sheriff or agency administrator shall present written notification that the dispatcher was unable to complete the required training within the specified time limit due to:

a. Illness;

b. Injury;

c. Military service;

d. Special duty assignment required and performed in the public interest;

e. Administrative leave involving the determination of worker's compensation or disability retirement issues, or suspension pending investigation or adjudication of a crime; or

f. Any other reason documented by the agency administrator. Such reason must be specific and any approval granted shall not exceed 90 days.

2. Any extension granted under subdivision 1 e of this subsection shall require the dispatcher to complete compulsory minimum training prior to resuming job duties. Requests may be granted for periods not to exceed 12 months.

3. The agency administrator must request such

extension prior to expiration of any time limit.

§ 5. How compulsory minimum training standards may be attained.

A. The compulsory minimum training standards shall be attained by attending and satisfactorily completing ~~an approved~~ *the required dispatcher training at a certified* training ~~school~~ *academy and completion of on-the-job training as applicable .*

B. Dispatchers attending ~~an approved~~ *compulsory minimum training at a certified* training ~~school~~ *academy* are required to attend all classes and should not be placed on duty or call except in cases of emergency.

§ 6. Approved training schools.

A. ~~Dispatcher training schools must be approved by the department prior to the first scheduled class. Approval is requested by making application to the director on forms provided by the department. The director may approve those schools which, on the basis of curricula, instructors, facilities, and examinations, provide the required minimum training. One application for all mandated training shall be submitted prior to the beginning of each fiscal year. A curriculum listing the subject matter, instructors, dates, and times for the entire proposed training session shall be submitted to the department 30 days prior to the beginning of each such proposed session. The 30-day requirement may be waived for good cause shown by the school director.~~ *Dispatcher classroom training may only be provided by a certified training academy. The certified training academy shall submit to the department the curriculum and other information as designated, within time limitations established by the department.*

B. Each ~~school~~ *academy* director will be required to maintain a file of all current lesson plans and supporting materials for each subject contained in the compulsory minimum training standards.

C. ~~Schools which are approved will be~~ *A certified training academy is* subject to inspection and review by the director or staff.

D. The department may suspend the ~~approval~~ *certification* of ~~an approved~~ *a certified* training ~~school~~ *academy* upon written notice, which shall contain the reason(s) upon which the suspension is based, to the school's director. The ~~school's~~ *academy's* director may request a hearing before the director or his designee. The request shall be in writing and must be received by the department within 15 days of the date of notice of suspension. The ~~school's~~ *academy's* director may appeal the director or designee's decision to the board.

E. The department may revoke the ~~approval~~ *certification* of any ~~approved~~ *certified* training ~~school~~ *academy* upon written notice which shall contain the reason(s) upon which the revocation is based to the school's director. The ~~school's~~ *academy's* director may request a hearing before the director or his designee. The request shall be in writing and must be received by the department within 15 days of the date of the notice of revocation. The ~~school's~~ *academy's* director may appeal the director or designee's decision to the board.

§ 7. Grading.

A. ~~All written examinations shall include a minimum of two questions for each hour of mandatory instruction. This requirement likewise includes the classroom instruction on performance oriented subject matter. However, for those subjects which exceed five hours of instruction, 10 questions will suffice as an acceptable minimum.~~ *Each certified training academy shall test each student in accordance with the objectives in the document entitled "Performance Based Training and Testing Objectives for Compulsory Minimum Training Standards for Dispatchers." Any certified training academy providing training in accordance with subdivision 1 g (4) of § 2 of these regulations shall be required to develop performance based training and testing objectives and test for any optional job related subjects selected.*

B. ~~All dispatchers must obtain a minimum grade of 70% in each grading category to satisfactorily complete the compulsory minimum training standards. Any dispatcher who fails to obtain the minimum 70% in any grading category will be required to take all subjects comprising that grading category in a subsequent approved training school. A dispatcher may be tested and retested as may be necessary within the time limits of § 4 of these regulations and each academy's written policy. A dispatcher shall not be certified as having complied with compulsory minimum training standards unless all applicable requirements have been met.~~ *Every individual attending compulsory minimum training shall satisfactorily complete each required performance objective and any optional job related subject performance objective, where applicable. Any individual who fails to satisfactorily complete any performance objective or objectives in any subject will be required to attend that subject in a subsequent approved dispatcher training school and satisfactorily complete the required performance objective or objectives.*

~~C. Approved dispatcher training schools shall maintain accurate records of all tests, grades and testing procedures. Academy training records must be maintained in accordance with the provisions of these regulations and §§ 42.1-76 through 42.1-91 of the Code of Virginia.~~

~~D. The school director shall complete a grade report on each dispatcher on forms approved by the department.~~

§ 8. Failure to comply with rules and regulations.

~~Dispatchers~~ *Individuals* attending ~~an approved~~ *a certified* training ~~school~~ *academy* shall comply with the rules and regulations promulgated by the department and any other

rules and regulations within the authority of the ~~school~~ *academy* director. The ~~school~~ *academy* director shall be responsible for enforcement of all rules and regulations established to govern the conduct of attendees. If the ~~school~~ *academy* director considers a violation of the rules and regulations detrimental to the welfare of the ~~school~~ *academy* , the ~~school~~ *academy* director may expel the ~~dispatcher~~ *individual* from the ~~school~~ *certified training academy* . Notification of such action shall immediately be reported , in writing, to the agency administrator of the dispatcher and the director.

§ 9. Administrative requirements.

A. Reports will be required from the agency administrator and ~~school~~ *academy* director on forms approved or provided by the department and at such times as designated by the director.

B. The agency administrator shall , within the time requirement set forth in subsection A of § 4 , forward a properly executed on-the-job training form to the department for each dispatcher.

C. The ~~school~~ *academy* director shall, within 30 days upon completion of ~~an approved~~ *the dispatcher* training ~~school, comply with the following:~~ , *submit to the department a roster containing the names of those individuals who have satisfactorily completed all classroom training requirements.*

~~1. Prepare a grade report on each dispatcher maintaining the original for academy records and forwarding a copy to the agency administrator of the dispatcher; and~~

~~2. Submit to the department a roster containing the names of those dispatchers who have satisfactorily completed all training requirements and, if applicable, a revised curriculum for the training session.~~

D. The ~~school~~ *academy* director shall furnish each instructor with a ~~complete set of course resumes and~~ *the performance based training and testing* objectives for the assigned subject matter.

E. Each certified training academy shall maintain accurate records of all tests, grades and testing procedures. Dispatcher training records shall be maintained in accordance with the provisions of these regulations and §§ 42.1-67 through 42.1-91 of the Code of Virginia.

~~§ 10. Effective date.~~

~~These regulations shall be effective on and after July 5, 1989, and until amended or rescinded.~~

STATE EDUCATION ASSISTANCE AUTHORITY

Title of Regulation: **VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs Under Title IV, Part B of the Higher Education Act of 1965 as amended.**

Statutory Authority: § 23-38.33:1 C 7 of the Code of Virginia.

Public Hearing Date: August 5, 1993 - 10 a.m.
Written comments may be submitted through August 27, 1993.
(See Calendar of Events section for additional information)

Summary:

These regulations incorporate changes to federal statute and regulations, delete some lender due diligence requirements and respond to changes in federal interest reimbursement.

VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs Under Title IV, Part B of the Higher Education Act of 1965 as amended.

PART I.
DEFINITIONS.

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

"Abbreviated due diligence" means a series of collection activities as described in ~~U.S. Department of Education bulletin 88-G-138, Section (E) issued on March 11, 1988~~ *34 CFR 682, Appendix D* .

"Administrative hold" means the postponement of guarantee processing for applications from a given school or lender.

"Bankruptcy" means the judicial action to declare a person insolvent and take his assets, if any, under court administration.

"Borrower" means a student or parent to whom a *federal* Stafford, *federal* PLUS or *federal* SLS loan has been made.

"Capitalization of interest" means the addition of accrued interest to the principal balance of a loan to form a new principal balance.

"Comaker" means one of two independent signers on a *federal* PLUS promissory note or repayment agreement who are jointly and individually responsible for repayment. Comakers shall be treated as borrowers in all due diligence activities.

"Consolidation" means the ~~aggregation of~~ *federal*

consolidation loan program which combines multiple loans into a single Title IV, Part B loan.

"Default" means a condition of delinquency that persists for at least 180 days, or for 240 days in the case of quarterly-billed loans.

"Deferment" means postponement of ~~conversion to repayment status or postponement of~~ installment payments for reasons authorized by statute.

"Delinquency" means the failure to make an installment payment when due, failure to comply with other terms of the note, or failure to make an interest payment when due, when the borrower and the lender have previously agreed to a set interest repayment schedule.

"Disbursement" means the issuance of proceeds of a student loan by a lender or its agent.

"Due diligence" means minimum reasonable care and diligence in processing, making, servicing, and collecting loans as specified by the U.S. Department of Education, federal and state statute and by the State Education Assistance Authority.

"Edvantage" means the program established by the SEAA that guarantees long-term, variable interest loans to students, their families and other interested parties to help them meet the cost of higher education.

"Endorser" means a person who agrees to share the maker's liability on a note by signing the note or repayment agreement.

"Forbearance" means a temporary suspension of repayment of interest or principal or both, ~~or~~ *the* acceptance of payments less than the statutory minimum *payment, or allowing the borrower an extension of time for making payment* on terms agreed upon in writing by the lender and the borrower.

"Grace period" means a single continuous period between the date that the borrower ceases at least half-time studies at an eligible school and the time when the loan enters ~~an active~~ *the* repayment period.

"Guarantee" means the SEAA's legal obligation to repay the holder the outstanding principal balance plus accrued interest in case of a duly filed claim for default, bankruptcy, total and permanent disability, or death of the borrower *or the death of the student on whose behalf a federal PLUS loan was made* .

"Guarantee fee" means the fee paid to the SEAA in consideration for its guarantee.

"Interest" means the charge made to the borrower for the use of a lender's money.

"Interest benefits" means the payment of interest on behalf of a qualifying *federal* Stafford loan borrower by the U.S. Department of Education while the borrower is in school, in grace, or in a period of authorized deferment.

"Lender" means any financial institution or qualifying school meeting the eligibility requirements of the U.S. Department of Education and having a participation agreement with the SEAA.

"Limit" means the authority of the SEAA to limit school and lender loan volume or numbers of loans in accordance with 34 CFR 668 Subpart G and VR 275-01-2.

"Non-Virginia resident" means any loan applicant who does not indicate Virginia residency on an application for a loan or does not indicate a permanent home address in the Commonwealth of Virginia.

"Non-Virginia proprietary school" means any school that has an assigned OE number that is registered by the U.S. Department of Education in a state other than Virginia, and meets one of the following criteria:

1. Is not classified by the Internal Revenue Service as a tax exempt entity, or

2. Has been defined by the U.S. Department of Education as a proprietary school or as a vocational school.

"OE number" means the identification number assigned by the U.S. Department of Education upon its approval of eligibility for a participating school or lender.

"Participation agreement" means the contract setting forth the rights and responsibilities of the lender and the SEAA.

"Permanent and total disability" means the inability to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death.

"PLUS" means the *federal PLUS loan* program established under Title IV, Part B of the Higher Education Act that authorizes long-term low interest loans available to parents of dependent undergraduate ~~, graduate and professional~~ students, to help them meet the cost of education.

"Repayment period" means the period of time from the day following the end of the grace period if any, to the time a loan is paid in full or is cancelled due to default the borrower's ~~death,~~ total and permanent disability, ~~or~~ discharge in bankruptcy *, or the borrower's or student's death* .

"Satisfactory repayment arrangement" means a schedule agreed upon by the SEAA on a case-by-case basis to repay a defaulted loan in the shortest time possible according to

the borrower's financial ability to repay the loan.

"School" means any school approved by the U.S. Department of Education for participation in the Title IV, Part B programs.

"SLS" means the *federal SLS loan* program established under Title IV, Part B of the Higher Education Act that authorizes long-term low-interest loans available to independent undergraduate, graduate and professional students, and to certain dependent undergraduate students, to help them meet the cost of education.

"Stafford" loan means the *federal Stafford loan* program established under Title IV, Part B of the Higher Education Act that makes long-term low-interest subsidized *and unsubsidized* loans available to undergraduate, graduate and professional students to help them meet the cost of education.

"State Education Assistance Authority (SEAA)" means the designated guarantor for Title IV, Part B loans in the Commonwealth of Virginia.

"Suspend" means the authority of the SEAA to temporarily withdraw school and lender program participation in accordance with 34 CFR 668 Subpart G and VR-275-01-2.

"Terminate" means the authority of the SEAA to cease school and lender program participation in accordance with 34 CFR 668 Subpart G and VR 275-01-2.

"Title IV, Part B" means that portion of the federal Higher Education Act authorizing federally-guaranteed student loans, including *federal* Stafford, *federal* PLUS, *federal* SLS and *federal* consolidation loans.

PART II.
PARTICIPATION.

§ 2.1. Borrower eligibility.

A. Requirements.

In order to be eligible for a Virginia Title IV, Part B loan, the student/parent borrower shall meet all of the federal eligibility requirements as well as the following criteria:

1. For a repeat borrower, unless he has borrowed less than the annual maximum, ~~seven months~~ *30 weeks* shall have elapsed between the first day of the previous loan period and the first day of the loan period, for any subsequent application ~~or the student for whom the proceeds are being borrowed shall have advanced to a higher grade level~~ .

2. Neither borrower nor comaker nor endorser may be in default on any previous Title IV, Part B or Edvantage loans; however, a borrower who has defaulted and has since made ~~full restitution to the SEAA including any costs incurred by the SEAA in its collection effort~~ *at least six consecutive monthly payments under satisfactory repayment arrangements* is considered eligible.

3. The status of a student applying for a ~~Stafford or PLUS~~ *Title IV, Part B* loan will be reviewed for the ~~seven-month~~ *30-week* time lapse from the first day of the previous loan period ~~, or grade level progression,~~ on the basis of all previous SEAA-guaranteed loans made for or by that student. ~~The status of a student applying for a SLS loan will be reviewed for the one academic year or seven-month time lapse from the first day of the previous loan period, on the basis of all previous SEAA-guaranteed loans made for or by that student.~~

4. Non-Virginia resident borrowers attending non-Virginia proprietary schools are not eligible to receive SEAA-guaranteed loans.

B. Lender of last resort.

Eligible Stafford loan borrowers who are denied access to loans by two or more eligible lenders may submit loan applications to the Lender of Last Resort program. Borrower applications submitted to the Lender of Last Resort program must pass a credit check and borrowers must complete a debt-management counseling session with the SEAA or its designee.

C. Rights.

Discrimination on the basis of race, creed, color, sex, age, national origin, marital status, or physically handicapped condition is prohibited in any loan program using the SEAA guarantee.

§ 2.2. Lender participation.

A. Requirements.

A lender may participate in the Title IV, Part B program in Virginia by executing a participation agreement with the SEAA. Lenders may participate in any or all programs.

B. Limitation/suspension/termination.

The SEAA reserves the right to limit, suspend, or terminate the participation of a lender in Title IV, Part B programs in Virginia under terms consistent with the regulations of the SEAA and state and federal law.

§ 2.3. School participation.

A. Requirements.

Any school approved by the U.S. Department of Education for participation in Title IV, Part B programs is

eligible for the Virginia Title IV, Part B programs. Summer school courses are eligible. Correspondence courses for which there is not a residential component, and home study courses are not eligible.

B. Foreign schools.

Applications and correspondence regarding loans for students and PLUS borrowers attending foreign schools shall be completed in English and all sums shall be stated in U.S. dollars.

C. Limitation/suspension/termination.

The SEAA reserves the right to limit, suspend, or terminate the participation of a school in the Virginia Title IV, Part B programs under terms consistent with the regulations of the SEAA and state and federal law.

PART III.
LOAN PROCESS.

§ 3.1. Lender responsibilities.

A. Due diligence.

In making, processing, servicing and collecting Title IV, Part B loans, the lender shall exercise due diligence as outlined in 34 CFR § 682. In addition, the ~~lender shall:~~ *SEAA requires lenders to request preclaims and supplemental preclaims assistance on a schedule specified by the agency .*

~~1. Mail delinquency letters to delinquent borrowers for each delinquency cycle regardless of whether telephone contact is established with the borrower.~~

~~2. Exercise due diligence with respect to endorsers by performing the following activities:~~

~~a. 31 through 60 days delinquent: The lender shall notify the endorser, in writing, of the borrower's delinquency and the endorser's secondary responsibility for repayment.~~

~~b. 60 through 90 days delinquent: The SEAA may require the lender to request preclaims assistance during this period.~~

~~c. 61 through 150 days delinquent: During each 30-day period comprising this period, the lender shall send at least two forceful collection letters and attempt to contact the endorser by telephone to cure the delinquency. The letters shall also warn the endorser that, if the delinquency is not cured, the lender will assign the loan to the SEAA, which in turn will report the default to a credit bureau, thereby damaging the endorser's credit rating, and may bring suit against both the borrower and endorser to compel repayment of the loan.~~

~~d. 120 to 270 days delinquent: The SEAA may require the lender to request supplemental preclaims assistance during this period.~~

~~e. 151 through 180 days delinquent: During this period the lender shall send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to all national credit bureaus. The lender shall allow the endorser at least 30 days to respond to the final demand letter and to make payments sufficient to bring the loan out of default before filing a default claim with the SEAA or reporting the default to a credit bureau.~~

~~3. Exceptions to telephone requirements. A lender need not attempt to contact by telephone any borrower:~~

~~a. Who is incarcerated;~~

~~b. Who is 150 or more days delinquent following the lender's receipt of a payment on the loan, a dishonored check received from the drawee as a payment on the loan or the expiration of an authorized deferment or forbearance.~~

~~B. Skip tracing.~~

~~The lender shall initiate skip tracing efforts during the enrollment, grace or repayment period within 10 days of receipt of information that the borrower's, comaker's or endorser's address or telephone number is invalid. These efforts shall include but not be limited to (i) contacting endorser, (ii) relatives, (iii) references, (iv) the post office, (v) telephone directory assistance, (vi) credit bureau organizations, (vii) creditors, and (viii) the borrower's last educational institution of record. In addition, for loans for which the lender receives indication of an invalid telephone number or address on or after January 1, 1993, the lender shall perform the following:~~

~~1. 1-30 days after learning that an address or telephone number is invalid, the lender shall attempt to locate the address and phone number using at least the skip tracing methods described in this section. These efforts must be completed within 30 days of receiving indication that the address or phone number is invalid.~~

~~2. In each 90-day period after the initial skiptracing efforts described in this section, the lender shall make at least one follow-up attempt during each of these periods to locate the borrower's, comaker's or endorser's current address. During each period the lender shall make at least one attempt to locate the borrower's, comaker's or endorser's telephone number through directory assistance.~~

~~3. In the event that the loan is delinquent or becomes delinquent during the lenders efforts to locate a valid~~

address or phone number, the lender must conduct skiptracing efforts during each 90-day period following the initial skiptracing efforts that are as comprehensive as those required during the initial 30-day period.

4. If the lender obtains a current address or telephone number before the date of default, the lender shall resume collection activities designated for the appropriate delinquency period.

5. If the lender obtains a current address after the 150th day of delinquency (210th day for loans billed quarterly), but prior to filing the default claim, the lender shall send the borrower, endorser and comaker a final demand letter and allow 30 days to respond before filing a default claim.

C. Quarterly-billed loans.

Due diligence requirements for quarterly-billed loans are as follows:

1. 1 - 15 days delinquent: Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

2. 16 - 120 days delinquent: Unless exempted under subdivision 7 of this subsection, the lender during this period shall engage in at least two diligent efforts to contact the borrower by telephone and send at least two collection letters urging the borrower to cure the delinquency.

3. 121 - 240 days delinquent: Unless exempted under subdivision 7 of this subsection, the lender during this period shall engage in at least two diligent efforts to contact the borrower by telephone and send at least two collection letters urging the borrower to cure the delinquency and warning the borrower that if the delinquency is not cured, the lender will assign the loan to the SEAA who, in turn, will report the default to all national credit bureaus, and that the agency may bring suit against the borrower to compel repayment of the loan.

4. 110 - 130 days delinquent: The lender shall request preclaim assistance from the SEAA.

5. At no point during any period may the lender permit the occurrence of a gap in collection activity, as defined in federal regulations of more than 45 days (60 days in the case of a transfer).

6. Final demand. On or after the 210th day of delinquency, the lender shall send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender shall allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and make payments sufficient to bring the loan current before filing a default claim on the loan.

7. Exceptions to telephone requirements. A lender need not attempt to contact by telephone any borrower:

a. Who is incarcerated;

b. Who is 150 or more days delinquent following the lender's receipt of a payment on the loan, a dishonored check received from the drawee as a payment on the loan or the expiration of an authorized deferment or forbearance.

D. *B.* Disbursement.

1. Stafford and SLS *Title IV, Part B* loan proceeds shall be disbursed in a check or checks made copayable to the borrower and the school, shall include the borrower's social security number, and shall be mailed to the financial aid office of the school named on the application.

2. PLUS loan proceeds shall be disbursed in a check payable to the parent, and shall be mailed to the parent's permanent address indicated on the application. PLUS disbursements may be made copayable to the parent and the school indicated on the loan application at the agreement of the school and lender. In these cases, checks shall indicate the student's name and Social Security number and, unless authorized by the promissory note, the lender must retain in its file the borrower's authorization to make the check copayable. *which indicates the student's name and Social Security number.*

3. Loan proceeds for a student attending a foreign school shall be made payable to the borrower and mailed to the borrower's permanent address indicated on the application.

4. Loan proceeds may be disbursed by other funds transfer method approved by the SEAA and the U.S. Department of Education.

§ 3.2. School responsibilities.

A. General.

The school shall reply promptly to inquiries made by the SEAA or the lender concerning student borrowers. The school shall return the Student Status Confirmation Report

to the SEAA within 30 days of its receipt. The SEAA reserves the right to place an administrative hold on institutions not complying with this requirement.

B. Certification.

1. The school shall certify the loan application no later than the last day of the loan period indicated on the application.

2. In the case of a loan processed electronically, the school must transmit the school certification data on or before the last day of the loan period.

3. The SEAA must have received a paper application/promissory note on or before the 30th day following the last day of the enrollment period indicated on the application , *or the student's last date of attendance if the enrollment period was not completed* . ~~However, applications through the Lender of Last Resort program as described in § 2.1 B must be received on or before the 60th day following the last day of the loan period indicated on the application.~~

4. The certification of the financial aid officer's own loan application, the application of a spouse or dependent of a financial aid officer or an application where conflict of interest exists, is not sufficient. In any of these cases, the application shall be accompanied by certification of the immediate supervisor of the financial aid officer.

PART IV.
ACTIVE LOAN.

§ 4.1. Guarantee fee.

A. The SEAA schedule of guarantee fees on Stafford, SLS and PLUS loans shall be set from time to time by the SEAA Board of Directors, subject to any limits and conditions set forth in federal regulations.

B. A loan cannot be sold or transferred until the guarantee fee has been paid in full.

C. Although the SEAA is not obliged to return any fee, it may refund a guarantee fee at the request of the lender when a loan is cancelled before disbursement, or when the school returns the funds by the 120th day following disbursement.

D. Lenders who wish to reinstate a cancelled guarantee six months or later after a cancellation may be required to pay a reinstatement fee to the SEAA in addition to the guarantee fee. The amount of the reinstatement fee shall be set from time to time by the SEAA Board of Directors. The SEAA will not charge a reinstatement fee in cases in which the guarantee was cancelled as a result of SEAA error.

§ 4.2. Capitalization of interest.

~~A. Capitalization.~~

~~1. Before resorting to capitalization of interest in the case of a Stafford loan forbearance, the lender shall first make every effort to get the borrower (or endorser, where applicable) to make full payment of interest due, or if that is not possible, payment of interest as it accrues.~~

~~2. Except in the case of delinquent SLS loans, the borrower must agree in writing to any capitalization of interest.~~

~~3. During periods of forbearance or deferment for which interest is to be capitalized, the lender shall contact the borrower at least quarterly to remind him of the obligation to repay the loan.~~

~~B. Guarantee on interest.~~

The SEAA will guarantee capitalized interest, and the interest accruing therefrom, under the following conditions, and where the lender has exercised due diligence:

1. The SEAA will pay interest on those loans not eligible for interest benefits where interest has accrued and has been capitalized during the in-school and grace periods, and during any eligible periods of deferment.

2. The SEAA will pay interest that has accrued during the period from the date the first repayment installment was required until it was made (as in the case of the borrower's unanticipated early departure from school).

~~3. The SEAA will pay interest that has not been paid during a period of forbearance, or where the lender and the borrower agree, in writing where required, to accrue and capitalize the interest.~~

§ 4.3. Repayment.

A. Minimum loan payment.

Except in the case of forbearance, any exception to federally established minimum loan payments must receive SEAA approval in advance.

B. Repayment forms.

The SEAA must approve the use of repayment instruments other than the SEAA repayment agreement furnished to lenders.

C. Consolidation.

The note(s) for any loans consolidated shall be marked "paid by renewal" and retained in the borrower's file.

§ 4.4. Forbearance.

A. Eligibility.

The SEAA reserves the right to require lenders to receive advance approval of forbearances and to disallow such forbearance.

B. Duration.

Total forbearance is limited to a maximum of ~~24~~ *36* months, except:

~~1. In the case of a period of school enrollment the lender may grant a forbearance until the time the borrower has completed his studies at a nonparticipating school.~~

~~2. In the case of a late conversion to repayment or in cases in which the lender learns that a borrower is no longer eligible for a deferment earlier granted, the lender may grant a forbearance through the time at which he learns of the event which disqualifies the loan for grace or deferment plus a reasonable period for placing the loan into active repayment status.~~

~~3. In the case in which a lender places a loan into administrative forbearance during the automatic stay period during bankruptcy proceedings.~~

1. Conditions stated in 34 CFR 682.211 (f) and (g) do not count against the borrowers total forbearance eligibility.

~~4.~~ *2.* In addition, lenders may grant a maximum of nine months forbearances in order to allow loans ineligible for interest benefits to mature at the same time as loans qualifying for interest benefits.

~~C. Renewal.~~

~~Lenders shall not renew a forbearance in which the borrower owes past due interest. In such cases, the borrower must request, in writing, where required, that outstanding interest be capitalized or must pay the interest charges before any subsequent forbearance is granted by the lender.~~

PART V.
CLAIMS.

§ 5.1. Death claims.

To file a claim arising from the death of the borrower, the lender shall complete and send to the SEAA the appropriate SEAA form(s), a certified copy of the death certificate or similar verifiable proof, the promissory note(s) and any *signed* repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application(s) in the cases of loans made without a combined application/note, *a collection history* and any support documents the lender may be able to furnish. The lender must submit the claim within 60 days of receiving verifiable proof that the borrower has died.

§ 5.2. Total and permanent disability claims.

To file a claim arising from the total and permanent disability of the borrower, the lender shall complete and send to the SEAA the appropriate SEAA form(s), the completed federal form(s), signed by a qualified physician (either an M.D. or D.O.), the promissory note(s) and any *signed* repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application(s) in the case of loans made without a combined application/note, *a collection history* and any support documents the lender may be able to furnish. The lender must submit the claim within 60 days of determining that the borrower has been certified totally and permanently disabled.

§ 5.3. Default claims.

To file a claim in the event of default, the lender shall complete and send to the SEAA the appropriate SEAA form(s). The default claim shall include the lenders proof that due diligence requirements have been met, the promissory note(s) and any *signed* repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application in cases of loans made without a combined application/note, *a collection history* and any support documents the lender may be able to furnish.

§ 5.4. Bankruptcy claims.

A. Lender responsibilities.

~~The lender shall determine that a bankruptcy petition has been filed when the lender receives the Notice of First Meeting of Creditors in which the student loan debt is listed. The lender shall not attempt to collect the loan and shall file a proof of claim with the bankruptcy court within 30 days of the receipt of the Notice of First Meeting of Creditors. The lender shall determine if the loan has been in repayment for more than seven years, exclusive of any deferment or forbearance period(s), on the date the lender receives the Notice of First Meeting of Creditors and the lender shall determine if the borrower has filed a Petition for Undue Hardship.~~

~~1. The lender shall file a Chapter 7 bankruptcy claim within 30 days of receipt of the Notice of First Meeting of Creditors if the loan has been in repayment for more than seven years.~~

~~2. The lender shall file a Chapter 7 bankruptcy claim within 10 days of receiving notification that the borrower filed a Petition for Undue Hardship if the loan has been in repayment for less than seven years.~~

~~3. The lender shall hold the loan in an administrative forbearance status until the Chapter 7 bankruptcy is concluded if the loan has been in repayment for less than seven years and no Petition for Undue Hardship was filed. When the bankruptcy action is concluded, the loan shall resume the same status it was in prior to the time the bankruptcy action was filed.~~

~~4. The lender shall file a bankruptcy claim within 30 days of receipt of a notice that a Chapter 13 bankruptcy petition has been filed by the borrower.~~

~~5. If a loan was obtained with a comaker, and only one party has the obligation to repay the loan discharged in bankruptcy, the other remains obligated to repay the loan. In such cases, the lender shall not submit a bankruptcy claim to the SEAA and shall attempt to collect the loan from the other borrower. If the loan was obtained with an endorser and the borrower's obligation to repay the loan is discharged through bankruptcy, the endorser is not obligated to repay the loan. If the endorser's obligation to repay the loan is discharged through bankruptcy, the borrower remains obligated to repay the loan.~~

1. When receiving a Notice of First Meeting of Creditors, the lender shall handle the loan as described by the U.S. Department of Education in 34 CFR 682.402, 682.511 and other federal guidance.

~~6.~~ *2. In addition,* in the event that the lender receives notice of an adversary proceeding after filing the claim, *or in the event that the lender is directed by the court to file a proof of claim after filing the claim with the guarantor,* the lender shall forward notice of the hearing to the SEAA Default Collections department by telephone or facsimile within five business days.

B. Documentation.

To file a claim for a qualifying bankruptcy the lender shall complete and send to the SEAA the appropriate completed SEAA form, the notice of bankruptcy, written evidence of the lender's efforts to determine if the borrower filed a hardship petition, an assignment to the guarantee agency of the lenders proof of claim, the promissory note(s) and any *signed* repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application in cases of loans made without a combined application/note, *a collection history,* and any support documents the lender may be able to furnish, as well as any other information that may help the SEAA form the basis for an objection or an exception to the bankruptcy discharge.

§ 5.5. Payment of interest on claims.

A. Default claims (monthly/quarterly).

The SEAA will pay interest for a maximum of ~~360/420~~ *330/390* days in the case of a qualifying default claim. The allowable interest includes up to 270/330 days for the lender to prepare and submit a qualifying default claim and up to ~~90~~ *60* days for the SEAA's review of the claim and payment processing. Claim interest payment may not exceed federal reinsurance eligibility ~~by more than 30 days~~ .

B. Death and disability claims.

The SEAA will pay interest for no more than ~~150~~ *120* days after the date on which the lender determines that the borrower has been certified totally and permanently disabled or that the borrower has died. Claim interest payment may not exceed federal reinsurance eligibility ~~by more than 30 days~~ .

C. Bankruptcy claims.

The SEAA will pay interest for no more than ~~120~~ *90* days after the date on which a lender receives notice of the first meeting of creditors for a qualifying Chapter 7 bankruptcy or a Chapter 13 bankruptcy. The SEAA will pay interest for no more than ~~100~~ *70* days after the date on which the lender determines that the borrower has filed a Petition for Undue Hardship in the case of a Chapter 7 bankruptcy. Claim interest payment may not exceed federal reinsurance eligibility ~~by more than 30 days~~ . *This limitation on claim interest does not include delinquent interest due at the time the borrower filed bankruptcy.*

D. Claims returned to lender.

No interest is paid for the period of time during which an incomplete claim has been returned to the lender. For claims which are first rejected on or after January 1, 1993, in the event that the lender believes a claim has been returned in error, the lender can appeal to the SEAA for the payment of interest during the return period, not to exceed 30 days of interest. In the case of qualifying claims submitted under subdivision 2 of § 5.6 for which abbreviated due diligence is required, the SEAA will pay no more interest than is reinsured by the federal government.

§ 5.6. Return of claims for inadequate documentation.

For claims which are first rejected on or after January 1, 1993, lenders must observe the following:

1. Lenders must resubmit returned claims within 60 days of the date the claim was returned by the SEAA.

2. Lenders may not resubmit more than once a claim that has been returned to the lender for inadequate documentation unless the lender has performed abbreviated due diligence and provides all required documentation. This provision does not apply if the claim was returned as a result of SEAA error.

§ 5.7. Repurchase and reclaim.

A. If the SEAA determines that a claim has been paid in error or, in the case of a bankruptcy claim in which a hardship petition has been filed, the court determines the loan to be nondischargeable, the SEAA may require the lender to repurchase the loan.

B. If a lender determines that a claim has been submitted in error, the lender may reclaim the loan or may repurchase the loan if the claim has been paid.

PART VI.
ASSIGNMENT TO SERVICER OR SECONDARY MARKET.

§ 6.1. Servicing.

The lender may negotiate the servicing of loans under this program with a servicing agency. The servicer will be regarded as the lender's agent, and the lender will continue to be bound by the terms of these regulations.

§ 6.2. Secondary market.

The lender may negotiate the sale of loans under this program to a secondary market. No loan may be sold to any entity that is not party to a participation agreement with the SEAA except with the written permission of the SEAA. The lender or the secondary market shall notify the SEAA promptly of the assignment of any loans to a secondary market.

DEPARTMENT OF HEALTH (STATE BOARD OF)

REGISTRAR'S NOTICE: Due to its length, the regulation entitled "VR 355-17-100, Sewage Collection and Treatment Regulations," is not being published. However, a summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia, and at the Department of Health, 1500 East Main Street, Main Street Station, Richmond, Virginia. Copies of the regulation are available from the Department of Health.

Title of Regulation: **VR 355-17-02. Sewerage Regulations (REPEALING).**

Title of Regulation: **VR 355-17-100. Sewage Collection and Treatment Regulations.**

Statutory Authority: §§ 32.1-164 and 62.1-44.19 of the Code of Virginia.

Public Hearing Dates:
July 20, 1993 - 7 p.m.
July 21, 1993 - 7 p.m.
July 22, 1993 - 7 p.m.
July 23, 1993 - 7 p.m.
Written comments may be submitted until August 31, 1993.
(See Calendar of Events section for additional information)

Summary:

The proposed regulations (VR 355-17-100) provide standards for the design, construction and operation of Sewage Collection Systems and Sewage Treatment Works. Standards are provided for the use of sewage sludge, including land application for either agricultural or nonagricultural use. Upon adoption of these regulations, construction and operation permits will be issued to applicants by the State Health Commissioner upon completion of technical evaluations of submitted engineering documents by the Environmental Engineering Staff of the Office of Water Programs. The issuance of such permits will be required upon the filing of a complete permit application with the Department of Environmental Quality, Water Division. The existing regulations (VR 355-17-02) will be repealed concurrently with the adoption of VR 355-17-100.

* * * * * * * * *

Title of Regulation: **VR 355-40-400. Regulations Governing the Virginia Medical Scholarship Program.**

Statutory Authority: §§ 32.1-12, 32.1-122.5, 32.1-122.5:1, 32.1-122.6 and 32.1-122.6:01 of the Code of Virginia.

Public Hearing Date: August 24, 1993 - 9 a.m.
Written comments may be submitted through August 27, 1993.
(See Calendar of Events section for additional information)

Summary:

The proposed revisions make scholarship funds available for the medical students from Southwest Virginia attending the James H. Quillen College of Medicine at East Tennessee State University during the forthcoming academic year.

The amendments identify the cities and counties of Southwest Virginia. Residents of Southwest Virginia who attend James H. Quillen College of Medicine at East Tennessee University are eligible to receive scholarships of those funded by the General Assembly.

VR 355-40-400. Regulations Governing the Virginia Medical Scholarship Program.

PART I.
GENERAL INFORMATION.

§ 1.1. Authority.

Title 32.1, Chapter 6, § 32.1-122.6 B of the Code of Virginia requires the State Board of Health, after consultation with the Medical College of Virginia, the University of Virginia School of Medicine, and the Medical College of Hampton Roads, to promulgate regulations to administer the Virginia Medical Scholarship Program.

§ 1.2. Purpose.

These regulations set forth the criteria for eligibility, circumstances under which awards will be made, and the process for awarding Virginia medical scholarships to medical students; the general terms and conditions applicable to the obligation of each recipient of a medical scholarship to practice medicine in a medically underserved area of Virginia, as identified by the Board of Health by regulation, or to practice medicine in a designated state facility as defined in these regulations; and penalties for a recipient's failure to fulfill the practice requirements of the Virginia Medical Scholarship Program. ~~These regulations and the Regulations for Determining Virginia Medically Underserved Areas supersede and replace Definitions of "Practice of Family Medicine" and "Areas of Need" under State Medical Scholarship Program which were adopted by the Board of Health and became effective December 1, 1979.~~

§ 1.3. Administration.

The State Health Commissioner, as executive officer of the Board of Health, shall administer this program. Any requests for variance from these regulations shall be considered on an individual basis by the board in regular session.

§ 1.4. Applicability.

These regulations shall apply to all recipients who begin fulfillment of their scholarship obligation on July 1, 1990, or later; provided that approval given by the Commissioner prior to the effective date of these regulations shall remain in full force and effect.

~~§ 1.5. Effective date.~~

~~These regulations shall be effective on June 1, 1991.~~

PART II.
DEFINITIONS.

§ 2.1. Definitions.

Unless the context clearly indicates a contrary interpretation, the words and terms used in these regulations shall have the following meanings:

"Accredited internship" means a graduate medical education program of one year duration accredited by the Liaison Committee on Graduate Medical Education.

"Accredited residency" means a graduate medical education program in family practice medicine, general internal medicine, pediatric medicine or obstetrics and gynecology accredited by the Liaison Committee on Graduate Medical Education.

"Approved by the medical school from which the graduate matriculated" means that medical school affirms that the graduate has accepted placement in an accredited residency or internship at a hospital or institution located in Virginia, or affirms that such placement has been accepted in a program not located in Virginia due to such placement through the match.

"Board" or *"Board of Health"* means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Designated state facility" means a facility operated by the Virginia Departments of Corrections, Youth and Family Services, or Mental Health, Mental Retardation and Substance Abuse Services.

~~*"Interest at the prevailing bank rate for unsecured debt"*~~ *"Interest at the prevailing bank rate for similar amounts of unsecured debt"* means the prime lending rate as published in the Wall Street Journal on the last day of the month in which the decision to repay is communicated to the commissioner by the recipient, plus two percentage points.

"The match" means the National Resident Matching Program, a nationwide system by which medical school graduates are placed in graduate medical education programs by mutual agreement.

"Medically underserved area" means a geographic area in Virginia designated by the State Board of Health in accordance with the rules and regulations for the identification of medically underserved areas.

"Participating medical school" means the Eastern Virginia Medical School of the Medical College of Hampton Roads, or the Medical College of Virginia of the Virginia Commonwealth University, or the School of Medicine of the University of Virginia, or the Quillen School of Medicine of East Tennessee State University.

"Practice" means the practice of medicine by a recipient in one of the designated primary care specialties in ~~an~~ *a specific geographic* area determined to be medically underserved or in a designated state facility in fulfillment of the recipient's scholarship obligation.

"Primary care" means the specialties of family practice medicine, general internal medicine, pediatric medicine, or obstetrics and gynecology.

"Recipient" or *"scholarship recipient"* means an eligible medical student or graduate medical student who enters into a contract with the commissioner and receives one or more scholarship awards via the Virginia Medical Scholarship Program.

"Southwest Virginia" means those cities and counties in Virginia that are located in Planning Districts 1, 2, and 3; they include: Bland County, City of Bristol, Buchanan County, Carroll County, Dickenson County, City of Galax, Grayson County, Lee County, City of Norton, Russell County, Scott County, Smith County, Tazewell County, Washington County, Wise County, and Wythe County.

"Virginia medical scholarship" means an award of $10,000 made to a student enrolled in a ~~Virginia~~ *participating* medical school or to a graduate student of a ~~Virginia~~ *participating* medical school pursuing the first year of graduate training at a hospital or institution approved by the ~~Virginia~~ *participating* medical school that the graduate attended as a medical student and for which the medical student or graduate medical student entered a contractual obligation to repay.

~~*"Virginia medical school"* means the Eastern Virginia Medical School of the Medical College of Hampton Roads, or the Medical College of Virginia of the Virginia Commonwealth University, or the School of Medicine of the University of Virginia.~~

PART III.
SCHOLARSHIP AWARDS.

§ 3.1. Eligible applicants.

Any currently enrolled student in full-time attendance at a ~~Virginia~~ *participating* medical school or a graduate of such school who has accepted placement in, but not entered the first year of an accredited internship or accredited residency approved by the medical school from which the graduate matriculated, shall be eligible for the Virginia medical scholarship. Preference for the scholarship award shall be given to: residents of the Commonwealth over nonresidents; residents from medically underserved areas of Virginia as determined by the Board of Health in accordance with the provisions of its regulations for that purpose; and students or first year graduates from racial minorities. Additionally, preference shall be given to first-year graduates serving in approved internships or primary care residencies in Virginia over first-year graduates in approved out-of-state internships or residencies. *Virginia medical scholarships available for medical students enrolled at the Quillen School of Medicine of East Tennessee State University shall only be awarded to matriculating students from Southwest Virginia.*

§ 3.2. Scholarship amount.

A Virginia medical scholarship award shall be $10,000 for each academic year and shall be awarded to the recipient upon or following the recipient's execution of a contract with the commissioner for scholarship repayment.

§ 3.3. Distribution of scholarships.

Annually, by May 1 of each calendar year, the commissioner shall inform the deans of the ~~Virginia~~ *participating* medical schools of the number of medical school scholarships that are available for the schools' medical students during the next academic year. The annual number of medical scholarships available for award at each ~~Virginia~~ *participating* medical school shall be uniformly distributed among the schools, and shall be equal, and shall be based upon funds appropriated by the Virginia General Assembly *; except that the number of Virginia medical scholarships available for medical students from Southwest Virginia attending the Quillen School of Medicine of East Tennessee State University shall be limited to the number established by the Virginia General Assembly by law* . The deans of the respective ~~Virginia~~ *participating* medical schools shall annually nominate qualified students or first-year residents, in accordance with the criteria for preference enumerated in § 3.1 of these regulations, to receive scholarships. The number of nominees submitted to the commissioner at this time will not exceed the number of scholarships that are available for each medical school. The State Health Commissioner shall award scholarships to the nominees of the deans at the ~~Virginia~~ *participating* medical schools in accordance with the number of scholarships available for each medical school. Any scholarships that have not been awarded following the initial annual distribution among the medical schools shall be available for redistribution to qualified students in any of the medical schools at the discretion of an awards committee consisting of the commissioner, who shall serve as chairman and ex officio member without vote, and the deans of the medical schools or their designees. The awards committee shall convene for this purpose only when the scholarships available to one or more of the medical school exceed the number of qualified nominees by the dean(s). A scholarship shall be awarded to qualified students based upon majority vote of the awards committee. Individual scholarship recipients may be nominated for and receive a maximum of five scholarships.

PART IV.
CONTRACTS.

§ 4.1. Contract provisions.

Prior to the award of a scholarship, the commissioner shall enter into a contract with the recipient. The contract shall:

1. Provide that the recipient will pursue the medical course of the school nominating the recipient for the award until the recipient's graduation or will pursue the recipient's first year of primary care graduate

training in an accredited internship or residency program approved by the school nominating the recipient for the award and, upon completing a term not to exceed three* years as an intern or resident in an approved program, will promptly begin and thereafter continuously engage in full-time primary care practice in a medically underserved area of Virginia, or in a designated state facility, for a period of years equal to the number of annual scholarships received. At any time prior to entering practice, the scholarship recipient shall be allowed to select a future practice location from the listing of medically underserved areas maintained by the board, and the recipient shall be allowed to fulfill the scholarship repayment obligation in the preselected medically underserved area. However, after making an initial selection of a medically underserved area in which to practice, the recipient may not alter the decision until the recipient is fully prepared to enter practice, at which time the recipient must choose from the current list of medically underserved areas maintained by the board or the preselected medically underserved area.

2. Provide that the recipient repaying the scholarship obligation by practicing primary care medicine in a medically underserved area will provide services to persons who are unable to pay for the service and will participate in all government sponsored insurance programs designed to assure access of covered persons to medical care services.

3. Provide that the recipient repaying the scholarship obligation by practicing primary care medicine on a full-time basis in a medically underserved area will maintain office hours convenient for the population of the area to have access to the recipient's services.

4. Provide that the recipient will not voluntarily obligate himself for more than the minimum period of military service required of physicians by the laws of the United States;

5. Provide that upon completion of the minimum period of military service, the recipient will promptly begin and thereafter continuously engage in full-time primary care practice in a medically underserved area of Virginia, or in a designated state facility, for the period of years equal to the number of scholarships received.

6. Provide for termination of the contract by the recipient while the recipient is enrolled in medical school, upon the recipient's notice and immediate repayment to the Commonwealth of the total amount of the scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt, computed from the date of receipt of funds by the recipient.

7. Provide that if the recipient fails to maintain satisfactory academic progress, the recipient may, upon certification of the commissioner, be relieved of the contract obligation to engage in full-time primary care practice in a medically underserved area, or in a designated state facility, upon repayment to the Commonwealth of the total amount of scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt, computed from the date of receipt of funds by the recipient.

8. Provide that if the recipient becomes permanently disabled so as not to be able to engage in primary care practice, the recipient may, upon certification of the commissioner, be relieved of the obligation under the contract to engage in full-time primary care practice in an underserved area, or in a designated state facility, upon repayment to the Commonwealth of the total amount of scholarship funds received plus interest on such amount computed at 8.0% per annum from the date of receipt of scholarship funds. For recipients completing part of the practice obligation prior to becoming permanently disabled, the total amount of scholarship funds received, and owed, shall be reduced by the amount of the annual scholarship award multiplied by the number of years practiced. Unusual hardship may be reviewed for variance by the board on a case-by-case basis.

9. Provide that if the recipient expires prior to entering primary care practice or subsequent to entering practice in a designated medically underserved area or state facility, the scholarship indebtedness shall be forgiven.

10. Provide that any recipient of a scholarship, who fails or refuses to fulfill the obligation to practice primary care medicine in a medically underserved area or designated state facility for a period of years equal to the number of annual scholarships received, shall reimburse the Commonwealth three times the total amount of the scholarship funds received plus interest on the tripled obligation amount at the prevailing bank rate of interest for similar amounts of unsecured debt.

11. Provide that for a recipient who fulfills part of the contractual obligation by practicing primary care medicine in a medically underserved area, or in a designated state facility, for one or more years, the total amount of scholarship funds received, and owed, shall be reduced by the amount of the annual scholarship multiplied by the number of years practiced in the appropriate area or facility, and the remainder tripled as provided in subdivision 10 of this section. Partial years of practice may be credited beyond the one year minimum practice requirement.

§ 4.2. Repayment.

A. Unless repayment is forgiven as specified in subdivision 9 of § 4.1 or by special variance as provided

in subdivisions 6, 7 and 8 of § 4.1 all scholarships shall be repaid to the Commonwealth, either by the recipient's practice of primary care medicine in a medically underserved area, or designated state facility, or through cash payments as specified in subdivisions 10 and 11 of § 4.1.

B. Repayment by practice.

It is the intent of the Virginia Medical Scholarship Program that recipients repay their scholarship obligation by practice. Each recipient electing to repay by practice shall notify the commissioner in writing of his proposed practice location not more than 30 days after completing his approved residency program. After receiving written approval of his practice location from the commissioner, the recipient shall begin his approved practice not more than 90 days after completing his primary care residency program. A recipient will receive one year of credit toward fulfillment of his scholarship obligation for each 12 months of full-time (minimum of 40 hours per week) continuous primary care practice. Absences from the practice in excess of seven weeks per 12-month practice period for maternity leave, illness, vacation, or any other purpose shall not be credited toward repayment and will extend the recipient's total obligation by the number of weeks of excess absence. Any recipient who partially completes a scholarship obligation by practicing for one year or longer in an approved practice will be required to fulfill the remainder of the scholarship obligation by cash repayment in accordance with subsection C of this section. Credit for partial years of service, beyond the one-year minimum practice requirement, will be applied toward fulfillment of the scholarship obligation.

C. Cash repayment.

Cash repayment by recipients who terminate their contracts prior to the completion of training shall be made in accordance with subdivisions 6 and 7 of § 4.1 and by recipients who become disabled before fulfilling the practice obligation in accordance with subdivision 8 of § 4.1. Cash repayment by recipients who otherwise fail or refuse to fulfill their practice obligation shall be made in accordance with subdivisions 10 and 11 of § 4.1.

D. Cash repayment amount.

The full amount to be repaid by a recipient who fails or refuses to fulfill the practice obligation shall be determined in the following manner: the annual amount of the scholarship for the year the recipient obtained the scholarship multiplied by three, plus interest (current bank rate of interest on a similar amount of unsecured debt) calculated from the date of receipt of funds by the recipient until the scholarship is fully repaid. Repeat the above calculation for each scholarship that the recipient obtained and add the sums of the calculations to determine the total amount due to be repaid to the Commonwealth.

E. Cash repayment schedule.

Any scholarship to be repaid in cash payments due to the recipient's failure to enter into an approved practice shall be repaid within two years of the completion of the recipient's graduate training. Any scholarship to be repaid in cash payments due after partial repayment by practice shall be paid within two years of the recipient's departure from his approved practice. Failure of any recipient to complete a schedule of cash repayments within the required two years or to enter the practice of primary care medicine in a medically underserved area, or designated state facility, shall be cause for the commissioner to refer the matter to the Attorney General for disposition. The Attorney General shall take such action as the Attorney General deems proper to ensure reimbursement to the Commonwealth. If court action is required to collect a delinquent scholarship account, the recipient shall be responsible for the court costs and reasonable attorney's fees incurred by the Commonwealth in such collection.

PART V.
RECORDS AND REPORTING.

§ 5.1. Reporting requirements.

Reporting requirements of medical schools and scholarship recipients are as follows:

1. Each ~~Virginia~~ *participating* medical school shall maintain accurate records of the status of scholarship recipients until the recipients graduate from medical school and during any postgraduate year that a scholarship is awarded. The medical schools shall provide a report listing the status of each recipient annually to the commissioner.

2. Each scholarship recipient shall, during the post-scholarship award period as an intern or resident, report his location and status to the commissioner and to the medical school where he received scholarship award(s) annually, during the month of July. In addition, each scholarship recipient shall, during his period of obligated practice, report his status annually to the commissioner. The report shall include sufficient information as requested by the commissioner to verify compliance with the practice requirements of the scholarship contract. Additionally, any scholarship recipient shall immediately inform the commissioner of any change in his practice location or change in his practice status. For purposes of this provision, notification within 10 days of any such change shall be considered immediate notification.

* NOTE: A variance (of one additional year) to the maximum three-year residency limitation will be available to medical scholarship recipients who choose to complete an obstetrics/gynecology residency program upon their request.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: **VR 615-08-1. Virginia Energy Assistance Program.**

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

Public Hearing Date: July 12, 1993 - 10 a.m.
Written comments may be submitted through August 27, 1993.
(See Calendar of Events section for additional information)

Summary:

The amendments propose several changes to the fuel cooling assistance components of the Energy Assistance Program. In fuel assistance, households applying for assistance will be allowed to establish or maintain one $5,000 savings account for education expenses or the purchase of a primary residence without penalty in the calculation of benefit amounts. Households receiving utility subsidies that must pay some heating expenses out-of-pocket will not have their benefit reduced. Additionally, income exempt in Food Stamps, ADC or Medicaid will be considered exempt in the determination of eligibility for fuel assistance. The amendments to the cooling assistance component eliminate cooling assistance beginning in FY 93-94.

VR 615-08-1. Virginia Energy Assistance Program.

PART I.
DEFINITIONS.

§ 1.1. *Definitions.*

The following words and terms, when used herein, shall have the following meaning unless the context indicates otherwise:

"Department" means the Department of Social Services.

"Disabled person" means a person receiving Social Security disability, Railroad Retirement Disability, 100% Veterans Administration disability, Supplemental Security Income as disabled, or an individual who has been certified as permanently and totally disabled for Medicaid purposes.

"Elderly person" means anyone who is 60 years of age or older.

"Energy-related," "weather-related," or "supply shortage emergency" means a household has: no heat or an imminent utility cut-off; inoperable or unsafe heating equipment; major air infiltration of housing unit; or a need for air conditioning because of medical reasons.

"Fiscal year" means ~~October 1~~ *June 1* through ~~September 30~~ *May 31* .

"Household" means an individual or group of individuals who occupies a housing unit and functions as an economic unit by: purchasing residential energy in common (share heat); or, making undesignated payments for energy in the form of rent (heat is included in the rent).

"Poverty guidelines" means the Poverty Income Guidelines as established and published annually by the Department of Health and Human Services.

"Primary heating system" means the system that is currently used to heat the majority of the house.

"Program year" means the specified timeframe established *by the board* for ~~each~~ *all* of the program components ~~by the department~~ *implemented during the fiscal year* .

"Resources" means cash, checking accounts, savings account, saving certificates, stocks, bonds, money market certificates, certificates of deposit, credit unions, Christmas clubs, mutual fund shares, promissory notes, deeds of trust, individual retirement accounts, prepaid funeral expenses in excess of $900, or any other similar resource which can be liquidated in not more than 60 days.

PART II.
FUEL ASSISTANCE.

§ 2.1. *Eligibility criteria; transfer of resources.*

The purpose of the fuel assistance component is to provide heating assistance to eligible households to offset the costs of home *heating* energy that are excessive in relation to household income.

A. Eligibility criteria.

1. Income limits. Maximum income limits shall be at or below 130% of the Poverty Guidelines. In order to be eligible for fuel assistance, a household's income must be at or below the maximum income limits. *Income not counted in the determination of eligibility includes any income, both earned and unearned, that is considered exempt in Food Stamps, AFDC, or Medicaid.*

2. Resource limits. The resource limit for a household containing an elderly or disabled person shall be $3,000. The resource limit for all other households shall be $2,000. *In addition, applicants for and recipients of energy assistance are allowed to establish or maintain one $5,000 savings account for education expenses or the purchase of a primary residence without a penalty in the calculation of benefit amounts.* In order to be eligible for fuel assistance, a household's resources must be at or below the amount specified.

3. Alien status. Any alien who has obtained the status of an alien lawfully admitted for temporary residence is ineligible for a period of five years from the date such status was obtained. This shall not apply to a Cuban or Haitian entrant or to an alien who is an aged, blind or disabled individual.

B. Resource transfer.

Any applicant of fuel assistance shall be ineligible for that fuel season if he improperly transfers or otherwise improperly disposed of his legal or equitable interest in nonexempt liquid resources without adequate compensation within one year of application for fuel assistance.

Compensation that is adequate means goods, services or money that approximates the value of the resources.

This policy does not apply if any of the following occur:

1. The transfer was not done in an effort to become eligible for fuel assistance;

2. The resource was less than the allowable resource limit;

3. The disposition or transfer was done without the person's full understanding.

§ 2.2. Benefits.

Benefit ~~levels~~ *amounts* shall be ~~established~~ based on income in relation to household size, fuel type, *living arrangements, vulnerability factors,* and geographic area, with the highest benefit given to households with the least income and the highest energy need.

Geographic areas are the six climate zones for Virginia recognized by the National Oceanic and Atmospheric Administration and the United States Department of Commerce. The six climate zones are: Northern, Tidewater, Central Mountain, Southwestern Mountain, Eastern Piedmont, and Western Piedmont.

~~Each year, the Division of Energy within the Department of Mines, Minerals and Energy will supply data on the average costs of various fuels.~~

Each year the benefit amounts for each household shall be determined by state computer using the following method:

~~A.~~ *1.* The following factors for each household will be assigned a point value:

Gross monthly income - *based on a percentage of 130% of poverty*

Living arrangements - *based on household's status*

Primary heat type - *based on unit cost and consumption data*

Climate zone - *based on number of heating degree days*

Vulnerability

Person 60 years of age or older

Disabled person in HH

Child under 16

Point values will be determined by department staff.

~~B.~~ *2.* The total points of all households will be determined *by the computer* .

~~C.~~ *3.* The available benefit dollars will be divided by the point total to determine a point value *by the computer* .

~~D.~~ *4.* The household's benefit amount will be calculated by multiplying the household's point total by the *dollar* value per point.

§ 2.3. Exceptions.

All households responsible for paying all or some of their heating costs will be assigned the same point value.

Benefits will be the same for all households, except for the following:

1. Roomers occupying only one room will be entitled to a maximum benefit that is one-half of the maximum benefit that other households with the same income, household size, geographic area, and fuel type are entitled to receive.

2. Subsidized households will be entitled to the maximum benefits set out in this subdivision depending on whether heat is included in their rent. If heat is included in their rent but they are responsible for excess fuel usage charges, their maximum benefit will be one-quarter of the benefit that other households with the same income, household size, geographic area and fuel type are entitled to receive.

§ ~~2.3.~~ *§ 2.4. Application period.*

The application period for fuel assistance shall begin not earlier than September 1 and shall end not later than March 31 each year. The Board of Social Services shall set specific dates within that period for acceptance of fuel assistance applications.

PART III.
CRISIS ASSISTANCE.

§ 3.1. *Eligibility criteria; benefits.*

The purpose of the crisis assistance component is to assist households with energy-related, weather-related or supply shortage emergencies. This component is intended to meet energy emergencies that cannot be met by the fuel assistance component or other local resources.

A. Eligibility criteria.

In order to be eligible for crisis assistance, a household shall meet the following criteria:

1. All of the fuel assistance criteria as set forth in Part II, § 2.1;

2. Have an energy-related, weather-related or supply shortage emergency as defined in Part I;

3. Other resources cannot meet the emergency (including fuel assistance);

4. ~~Did not receive~~ *Previous* crisis assistance *received* during the current fiscal year *did not exceed established maximum* ;

5. For assistance with primary heat source, did not receive fuel assistance in current program year.

B. Benefits.

~~An eligible household can receive no more than $200 for Crisis Assistance during any federal fiscal year, unless the assistance is for the rebuilding or replacement of heating equipment or purchase of heating equipment where none exists, in which case the maximum amount of assistance shall be $700.~~ *The benefit amounts for crisis assistance shall be determined by the Virginia Board of Social Services.*

The following forms of assistance shall be provided:

1. Repairs, replacement or rebuilding of inoperable or unsafe heating equipment, including necessary maintenance cost of heating equipment and the purchase of supplemental equipment.

2. Payment of electricity when it is needed to operate the primary heating equipment. ~~Payment will be limited to $200 maximum.~~ Assistance may be provided once every five years.

3. A one-time-only payment per fuel type of a heat-related utility security deposit.

4. Providing space heaters.

5. Providing emergency shelter.

6. Purchase 30-day supply of home heating fuel when the household is out of fuel or to prevent the disconnection of a primary utility heat source. Assistance will be provided during a specified timeframe. The Board of Social Services will establish maximum payment amounts.

§ 3.2. *Application period.*

The application period for crisis assistance shall begin not earlier than September 1 and shall end not later than March ~~31~~ *15* each year. The Board of Social Services shall set specific dates within that period for the acceptance of crisis assistance applications.

~~PART IV.~~
~~COOLING ASSISTANCE.~~

~~§ 4.1. Cooling Assistance is an optional component of the Energy Assistance Program that is designed to provide help to persons medically in need of cooling assistance due to the heat.~~

~~Local agencies who choose this option will be given a separate allocation that will be based on a percentage of their crisis allocation and will provide the assistance no earlier than June 15 through no later than August 31.~~

~~A. Eligibility criteria.~~

~~In order to be eligible for cooling assistance, a household must meet all of the fuel assistance eligibility criteria and must be in critical medical need of cooling.~~

~~B. Benefits.~~

~~The assistance is limited to: no more than $200 for repairing or renting a fan or air conditioner, purchasing a fan, or paying an electric bill or security deposit; or no more than $400 for purchasing an air conditioner.~~

PART ~~V.~~ *IV.*
ADMINISTRATIVE COSTS.

§ ~~5.1.~~ *4.1. Administrative costs.*

Local administrative expenditures for the implementation of the Energy Assistance Program shall not be reimbursed in excess of ~~7.0%~~ *a percentage* of *the* program grant allocation *as established by the Board of Social Services* .

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Title of Regulation: **VR 615-45-5. Investigation of Child Abuse and Neglect in Out of Family Complaints.**

Statutory Authority: §§ 63.1-25 and 63.1-248.6 of the Code of Virginia.

Public Hearing Date: July 30, 1993 - 9 a.m.
Written comments may be submitted until August 28, 1993.
(See Calendar of Events section for additional information)

Summary:

This regulation establishes policy for investigation of child abuse and neglect in out of family complaints. It establishes, by definition, out of family situations that are appropriate for such investigation.

VR 615-45-5. Investigation of Child Abuse and Neglect in Out of Family Complaints.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"Caretaker," for the purpose of this regulation, means any individual or entity determined to have the responsibility of caring for a child.

"Central Registry" means the name index of individuals involved in child abuse and neglect reports maintained by the Virginia Department of Social Services.

"Child Protective Services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, and providing social casework and other services for the child, his family, and the alleged abuser.

"Complaint" means a valid report of suspected child abuse/neglect which must be investigated by the local department of social services.

"Day care center" means a facility operated for the purpose of providing care, protection, and guidance to a group of children separated from their parents during a part of the day. For the purpose of these regulations, the term shall be limited to include only state regulated day care centers and church exempt day care centers.

"Facility" is the generic term used to describe the setting in all out of family abuse/neglect and for the purposes of this regulation includes schools (public and private), private or state-operated hospitals or institutions, day care centers, state regulated day care homes, residential and group homes.

"Facility administrator" means the on-site individual responsible for the day-to-day operation of the facility.

"Family day care home," for the purpose of this regulation, means a day care home where the care is provided in the provider's home and the home or provider are state regulated (locally approved or regulated homes are not included in this definition).

"Founded" means that a review of the facts shows clear and convincing evidence that child abuse or neglect has occurred.

"Group home" means a licensed community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves up to 12 residents.

"Group residence" means a licensed community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves up to 13 to 24 residents.

"Identifying information" means name, race, sex, and date of birth of the subject.

"Investigating agency" means the local department of social services responsible for conducting investigations of child abuse/neglect complaints as per § 63.1-248.6 of the Code of Virginia.

"Physical plant" means the physical structure/premises of the facility.

"Reason to suspect" means that a review of the facts shown no clear and convincing evidence that child abuse and neglect has occurred. However, the situation gives worker reason to believe that abuse or neglect has occurred.

"Regulatory/licensing/certifying authority" means the department or state board that is responsible under the Code of Virginia for the regulation, licensure, certification or approval of a particular facility for children.

"Residential facility" means a publicly or privately owned facility, other than a private family home, where 24 hour care is provided to children separated from their legal guardians, that is subject to licensure, certification, or regulations pursuant to the provisions of the Code of Virginia and includes, but is not limited to, group homes, group residences, secure custody facilities, self-contained residential facilities, temporary care facilities, and respite care facilities.

"Unfounded" means that a review of the facts shows no reason to believe that abuse or neglect occurred.

PART II.
POLICY.

Article 1.
Out of Family Investigation Policy.

§ 2.1. General.

Complaints of child abuse/neglect involving caretakers in out of family settings are complaints in regulated or

unregulated church affiliated day care centers, regulated family day care homes, private and public schools, group homes, residential treatment centers, hospitals, institutions or other child caring facilities. These complaints shall be investigated by qualified staff employed by local departments of social services/welfare.

Staff are determined to be qualified based on the competencies identified by the department. All staff involved in investigating a complaint will be qualified. Such complaints will be jointly investigated by child protective services and regulatory authority staff as appropriate.

Local agency staff have the same responsibilities for investigating, determining the facts, reporting to the Central Registry and providing indicated services in complaints in out of family situations as they do in family situations. Many of the policies in investigating family complaints apply to investigations of complaints in out of family situations. The policy to be followed which is specific to out of family complaints is set out in §§ 2.2 through 2.16 of this regulation.

§ 2.2. Establish validity of complaint.

Prior to initiating an investigation of a report, the local child protective services worker shall establish that what has been reported constitutes a valid complaint of child abuse/neglect.

A valid complaint shall meet all of the following criteria:

1. The child or children must be under the age of 18 at the time of the complaint.

2. The alleged abuser must be a person responsible for the child's care.

3. The agency receiving the report must be an agency of jurisdiction.

4. The circumstances described must allege suspected abuse or neglect.

§ 2.3. Obtain a complaint number.

The local child protective services worker shall contact the CANIS Hotline and obtain a complaint number.

§ 2.4. Initial assessment.

If the complaint information received is such that the worker is concerned for the child's immediate safety, contact must be initiated with the facility administrator immediately to ensure the child's safety. If, in the judgment of the protective services worker, the situation is such that the child or children should be removed from the facility, the parent or parents, guardian or agency holding custody shall be notified immediately to mutually develop a plan which addresses the child's or children's immediate safety needs. This notification may be made by telephone but shall be followed up in writing. The facility shall be informed immediately of this notification of the parent, guardian or agency holding custody and receive a copy of the written notification.

§ 2.5. Involvement of regulatory agencies.

The authority of local child protective services units to investigate complaints of alleged child abuse/neglect in regulated facilities overlaps with the authority of the public agencies which have regulatory responsibilities for these same facilities. It is assumed that the CPS worker would proceed immediately to take steps to assure the child's or children's safety prior to initiating contact with the regulatory authority.

1. The CPS worker will determine who the lead licensing or certifying authority is for regulated facilities and will make the appropriate contact.

a. For facilities operated or certified by the Department of Social Services, the appropriate licensing unit supervisor shall be contacted.

b. For facilities operated or certified by the Department of Youth and Family Services (DYFS), the administrator of the youth and family services regional office shall be contacted.

c. For facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), the director of the facility shall be contacted. In those facilities which are licensed by DMHMRSAS, the director of the facility and the State Human Rights Director shall be contacted.

d. For facilities operated or licensed by the Department of Education, the Division of Compliance Coordination in the Department of Education shall be notified.

e. A number of facilities are regulated by multiple agencies. The Office of the Coordinator, Interdepartmental Regulation, is available to assist in identifying the lead licensure or certification authority.

2. The CPS worker will share the complaint information with the contact person who will then appoint a staff person to participate in the investigation to determine if there are regulatory concerns.

3. The CPS worker and the regulatory worker will discuss their preliminary investigation plan.

a. The CPS worker shall do an initial assessment of danger or safety needs of the child or children in

order to determine if the child or children are in imminent danger.

b. The CPS worker and the regulatory staff person shall review their respective needs for information and determine when these needs coincide and can be met with joint interviews or with information sharing.

c. The investigation plan must keep in focus the policy requirements to be met by each party as well as the impact the investigation will have on the facility's staff, the victim child or children, and the other children at the facility.

§ 2.6. Contact with CPS regional coordinator.

In all out of family complaints, the Department of Social Services regional CPS coordinator shall be contacted as soon as is practical after the receipt of the complaint. The coordinator will review the procedures to be used in investigating the complaint and provide any case planning assistance the local worker may need. The state's regional coordinator is responsible for monitoring the investigative process of all out of family complaints and shall be kept informed of developments which substantially change the original case plan.

§ 2.7. Initial contact with the facility administrator.

A. In regulated or unregulated facilities, the CPS worker shall initiate contact with the facility administrator at the onset of the investigation. This may be done by phone, prior to the initial on-site visit, or, when circumstances warrant, may be done during the initial on-site visit.

B. The CPS worker shall inform the facility administrator or his designee of the details of the complaint. If the administrator or designee is the alleged abuser/neglector, contact should be initiated with the individual's supervisor, which may be the board of directors, etc. This informing shall be documented in the case record.

C. Arrangements are to be made for:

1. Interviews with identified collateral staff and other collaterals;

2. Interview with the victim child or children;

3. Interview with the alleged abuser/neglector;

4. Observation of the physical plant;

5. Review of pertinent policies and procedures; and

6. Access to necessary collateral information.

D. The CPS worker and regulatory staff person shall keep the facility administrator apprised of the progress of the investigation.

§ 2.8. Contact with the victim child and parent or guardian.

The CPS worker shall interview the alleged victim child in all complaints. If this is not possible it must be documented in the record why it was not possible. The interview may take place alone or in the presence of the child's parent or guardian. If the interview does not take place in the presence of the child's parents or guardians, they must be notified immediately that a complaint has been received and that an interview has taken place. The facility administrator or other supportive staff may be present for this interview if it appears this is in the best interest of the child. The alleged abuser/neglector shall not be present for this interview.

§ 2.9. Contact with the alleged abuser/neglector.

The CPS worker shall interview the alleged abuser/neglector in all complaints. The CPS worker shall inform the alleged abuser/neglector of the complaint information including the identity of the alleged victim child or children. This informing is to be done in writing. Notification should be given during the initial contact so as to avoid any confusion regarding the purpose of the contacts. A copy of the notification should be retained for the record. The informing brochure, #032-01-974 (7/92), may be used to make this notification provided that the general nature of the complaint and the identity of the victim child or children is noted on the brochure and the date it was given is documented.

The alleged abuser/neglector has the right to involve a representative of his choice to be present during the interview. He also has the right to tape record his own interview but shall inform the interviewers of this taping.

If the alleged abuser/neglector refuses to be interviewed, this refusal must be documented in the record.

§ 2.10. Contact with collateral children.

The CPS worker shall interview the nonvictim child or children as collaterals if it is determined that they may have information which would help in determining the finding in the complaint. Such contact should be made with prior consent of the child's or children's parent or guardian. If the situation warrants contact with the child prior to such consent being obtained, the parent or guardian should be informed as soon as possible, but no later than two working days, after the interview takes place.

§ 2.11. Determine whether or not abuse/neglect occurred.

After collecting and assessing the facts, the child protective services worker shall make a disposition as to whether or not abuse/neglect has occurred. The disposition

shall be made within 45 days of the receipt of the complaint.

1. The CPS worker shall contact the Department of Social Services regional CPS coordinator to review the case prior to notifying anyone of the disposition. This case review should involve the investigating worker's supervisor and can be accomplished via phone contact. The coordinator will review the facts gathered and policy requirements for investigating complaints. This review is required in all out of family complaints, but should not interfere with the legal requirement to complete the investigation and make a determination within 45 days.

2. When it is determined that the policies or procedures of the facility or the manner in which they were followed contributed to or caused the abusive/neglectful situation, the facility itself may be designated as involved in the incident. Consultation with the regional CPS coordinator must take place prior to making this designation. The rationale for this designation is to be clearly documented in the investigation record. Notification of this designation shall be made in writing to the facility administrator. A representative for the facility will be afforded the right to appeal this designation on behalf of the facility. Such right to appeal shall be provided to the facility administrator in writing.

§ 2.12. Risk assessment.

The focus of the risk assessment in these investigations is on the needs of the child.

§ 2.13. Documentation.

All complaints investigated shall be documented.

§ 2.14. Report the findings.

A. Upon determining the findings of a complaint, the worker shall report the findings to:

1. Child Abuse and Neglect Information System (CANIS).

a. The alleged abuser/neglector's name shall be entered under the heading "Involved Caretaker" on the CANIS form. The school or facility name shall be entered as the institution name and the address of the school or facility should be listed on the form.

b. The parents' names shall be entered for each victim child under P1 on the form.

2. Complainant.

a. In founded and reason to suspect complaints, the complainant, when known, shall be informed that his complaint has been investigated and necessary action taken. This shall be done in writing and shall be documented in the record.

b. In unfounded complaints, the complainant, when known, shall be informed that his complaint was investigated and determined to be unfounded. This shall be done in writing and shall be documented in the record.

3. Persons named in the central registry.

a. In founded cases, any persons named in the report whose role was either the abuser or the victim shall be informed that their names are in the CANIS central registry, and will remain there for:

(1) Eighteen years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 1.

(2) Seven years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 2.

(3) Three years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 3.

b. In reason to suspect cases, any persons named in the report whose role was either the abuser or the victim shall be informed that their names are in the CANIS central registry, and will remain there for one year past the date of the complaint unless another complaint is received and substantiated.

c. The worker should use professional judgment in determining when to directly notify a child victim versus when to notify the child's parent or parents. In most cases, the parent or parents holding custody of the child should be the one or ones to receive the information.

d. In all cases where the disposition is founded or reason to suspect, including the facility in instances where the facility's role is that of involved, the abuser/neglector shall be informed of his right to appeal. This shall be done both verbally and in writing as soon as the disposition is reached.

The written informing shall be in the form of a letter and a copy shall be included in the case record. The letter shall include:

(1) A clear statement that he is the abuser/neglector;

(2) The type of abuse/neglect;

(3) The disposition, level and retention time;

(4) The name of the victim child or children; and

(5) A statement informing the client of his right to appeal.

The verbal informing should serve to explain to the client what the disposition means and how long information about the complaint will be maintained in the CANIS central registry. The worker must document in the case record the date the verbal informing took place. A copy of the brochure, "Child Protective Services Client Appeals and Fair Hearings" (#032-01-006 9/92) is to be given or sent to all abusers/neglectors in founded and reason to suspect complaints.

e. Individuals have a right to request to see information about themselves which is contained in the record.

B. Other notifications in unfounded complaints shall be made as follows:

1. The alleged abuser shall be informed that the complaint against him was determined to be unfounded. This shall be done in writing. The notification shall be documented in the record.

2. In all unfounded complaints, the worker shall inform the alleged abuser that he has the right to petition the court to obtain the identity of the complainant if he believes the complaint was made in bad faith or maliciously. This informing may best be accomplished by providing the alleged abuser with a copy of § 63.1-248.5:1 of the Code of Virginia and referring him to an attorney or the court if he has questions.

C. In all out of family investigations, the following persons must also receive written notification of the findings at the same time the alleged abuser/neglector is notified. Notification shall be documented in the record:

1. The parent or guardian of the victim child or children;

2. The facility administrator;

3. The regulatory agency administrator (for regulated facilities); and

4. The regulatory staff person involved in the investigations.

§ 2.15. Case management.

A. Case records shall be set up in the name of the family of the alleged abused/neglected child or children.

If ongoing services are to be provided to the abuser/neglector, a separate case record can be established in the name of that person.

B. Any follow-up regarding out of family abusers/neglectors is the responsibility of the employing facility.

§ 2.16. Monitoring of cases for compliance.

A random sample of cases will be reviewed annually by Department of Social Services staff to ensure compliance with policies and procedures.

Article 2.
Investigating Child Abuse or Neglect In Out Of Family Complaints.

§ 2.17. Training requirements.

A. The Department of Social Services, in cooperation with the Out of Family Investigations Task Force, has developed specific competencies to be addressed in a course (Out of Family Investigations). These competencies are part of several required for consideration by local agency staff who are to be deemed qualified to conduct these types of investigations.

In addition, it has been determined that each worker will be assessed with competency in the core and specialized courses from VISSTA listed below before being qualified to conduct out of family investigations.*

Principles of Human Services
Casework Process and Planning in Human Services
The Effects of Child Abuse and Neglect on Child and Adolescent Development
Separation and Loss Issues in Human Service Practice
Family Empowerment
Developing and Growing a Team
Sexual Abuse
Intake and Investigation of Child Abuse and Neglect

* VISSTA, The Virginia Institute for Social Service Training Activities, is comprised of a series of contracts between the Virginia Commonwealth University School of Social Work, four local departments of social services and the Virginia Department of Social Services.

B. Local agency human service staff, are invited to VISSTA courses based on their need for training as demonstrated on the Individual Training Needs Assessment.

C. Each local agency staff person shall also attend the department's Out of Family Investigation Procedures policy training before being considered qualified.

For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: **VR 115-04-12. [~~Rules and~~] Regulations for the Enforcement of the Virginia Gasoline and Motor [~~Fuels~~ *Fuel*] Law.**

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Effective Date: July 28, 1993.

Summary:

The regulations (i) specify minimum standards for motor fuel quality; (ii) require gasoline pump labeling; (iii) specify methods of sampling and testing; and (iv) specify means of compliance and methods of enforcment.

The regulation as adopted differs from the proposed version in the following respects:

The specifications for gasoline distillation were changed. There were two changes here: (i) the temperature at which the percentage of evaporation is measured during certain months, and (ii) the percentage of evaporation permitted during certain months.

A new Reid vapor pressure test method was introduced. New Reid vapor pressure standards were introducted in order to comply with new federal standards.

New nonattainment areas in the state are now specified. These new nonattainment areas are subject to more stringent Reid vapor pressure standards in order to comply with new federal standards.

The regulation now requires gasoline refiners, gasoline importers, gasoline pipeline operators, and gasoline terminal operators to supply fuel with a Reid vapor pressure of 9.0 psi from May 1 to May 31, thereby complying with new federal standards and enabling retail outlets to comply with the 9.0 psi standard beginning on June 1 each year.

VR 115-04-12. Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law.

§ 1. Definitions.

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

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

"Diesel fuel" means, except as provided in ~~subsection C of § 3 § 4 C~~ of these regulations, liquids used or intended for use for power purposes in automotive internal combustion compression ignition engines.

"Gasoline" means, except as provided in ~~subsection C of § 3 § 4 C~~ of these regulations, liquids used or intended for use as carburants for power purposes in automotive internal combustion spark ignition engines.

"Virginia Gasoline Law" or *"law"* means Chapter 12 (§ 59.1-149 et seq.) of Title 59.1 of the Code of Virginia.

§ 2. General provisions.

A. The provisions of these regulations, unless specified otherwise, shall apply to any owner or operator of any facility in the distribution network at which gasoline or gasoline blends are sold, supplied, or offered for sale or supply, or transported [for sale or use in Virginia] .

B. The Virginia Gasoline Law defines gasoline as follows: "Gasoline shall be construed to include naphtha, benzine, and other like liquids and fluids derived from petroleum or other sources and used, or intended to be used, for power purposes, except kerosene."

C. The term "gasoline" as defined in the Virginia Gasoline Law includes all liquids and fluids used for power purposes, except kerosene, whether intended for highway or nonhighway use.

D. Nothing in these regulations shall affect the distribution for sale, offering for sale or sale of gasoline or diesel fuel intended for nonhighway use except as provided in § 4 C of these regulations for labeling every dispensing device used in the retail of gasoline or diesel fuel.

E. Only those methods of the American Society for Testing and Materials (ASTM) Test Methods expressly referenced in these regulations are hereby incorporated by reference.

§ ~~2~~ *3* . Specifications for gasoline and diesel fuel.

A. Gasoline.

Gasoline shall meet the requirements of the following specifications when tested in compliance with the latest version of the American Society for Testing and Materials (ASTM) ~~Methods of Tests~~ *Test Methods or other test methods* specified below ~~; with the exception of the test for water and sediment.~~ *:*

~~Test~~ *Specification*	~~ASTM~~ *Test* Method
	ASTM
1. Distillation.	D86
a. Percent evaporated during months of:	
January, February, November, and December at 50°C (122°F) Minimum	10%
March, April, [*May, September,*] and October at 55°C (131°F) Minimum	10%
[~~May,~~] June, July, [*and*] August [~~; and September at 60°C (140°F) ; until the U.S. Environmental Protection Agency (EPA) approves the 9.0 psi Reid vapor pressure standard, at which time the specification shall be at~~] *70°C (158°F)* Minimum	10%
b. Percent evaporated during months of:	
January, February, November, and December at 110°C (230°F) Minimum	50%
March, April, [*May, September,*] and October at 113°C (235°F) Minimum	50%
[~~May,~~] June, July, [*and*] August [~~; and September at 116°C (240°F) ; until EPA approves a 9.0 psi Reid vapor pressure standard, at which time the specification shall be at~~] *121°C (250°F)* Minimum	50%
[~~c. Percent evaporated at 185°C (365°F) Minimum~~	~~90%~~
until EPA approves the 9.0 psi Reid vapor pressure standard, at which time the specification shall be as follows:]	
[*c.*] *Percent evaporated during the months of: January, February, March, April,* [*May, September,*] *October, November, and December at 185°C (365°F) Minimum*	*90%*
[~~May,~~] June, July, [*and*] August[~~; and September~~] *at 190°C (374°F) Minimum*	*90%*
End point, maximum 225°C (437°F)	
Residue, percent maximum	2%

[~~*Should EPA fail to approve or should it withdraw approval of the 9.0 psi Reid vapor pressure standard,* the distillation specifications provided in these regulations for a 11.5 psi Reid vapor pressure standard shall apply.~~]

2. [*a.*] Reid vapor pressure at 100°F, *pounds per square inch (psi)*

[~~*ASTM D323 for gasoline not blended with alcohol; or*~~ *TEST METHOD*] ~~Division of Consolidated Laboratories dry method~~ ASTM D4953 [*or D5191 for both oxygenated or nonoxygenated fuels.* ~~for fuels including, but not limited to, oxygenated fuels ; except as specified below. During the months of May, June, July, August, and September, if and when a 9.0 psi Reid vapor pressure standard is in effect, Appendix E of 40 CFR Part 80 shall be used for all fuels, except that ASTM D4953 may be used during the months of May, June, July, August, and September as an alternative test method to Appendix E of 40 CFR Part 80 upon approval by EPA.~~]

[*Throughout the Commonwealth of Virginia, except for the nonattainment areas specified below during the period specified below, the Reid vapor pressure standard shall be:*

June 1 to September 15	*9.0 psi.*
September 16 to 30	*13.5 psi.*
Maximum during the months of March, April, May, and October	*13.5 psi.*]
Maximum during the months of November, December, January, and February	15.0

[*For the nonattainment areas specified in § 3 A 2 b, the Reid vapor pressure standard shall be:*

Maximum during period:

June 1 to September 15	*7.8 psi.*
~~Maximum during the months of March, April, and October~~	~~13.5~~
~~Maximum during the months of May, June, July, August, and September~~	~~11.5, until a 9.0 standard takes effect, which standard shall take effect only (i) when it has been approved by EPA; and (ii) after 30 days' notice of the approval has been published in the Virginia Register of Regulations.~~

b. The nonattainment areas referred to in § 3 A 2 a are:

(1) The Northern Virginia nonattainment area which includes the counties of Arlington, Fairfax, Loudoun, Prince William, Stafford, and includes the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

(2) The Richmond nonattainment area which includes the counties of Charles City, Chesterfield, Hanover, Henrico, and includes the cities of Colonial Heights, Hopewell, and Richmond.

(3) The Hampton Roads nonattainment area which includes the counties of James City, York, and includes the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.]

The Reid vapor pressure values specified in [~~subdivision 2 of subsection A of this section~~ § 3 A 2] shall be increased one psi for gasoline-ethanol blends [containing at least 9.0% but not more than 10% ethanol by volume].

[*c. Throughout the Commonwealth of Virginia, from May 1 to May 31 of each year, gasoline refiners, gasoline importers, gasoline pipeline operators, and gasoline terminal operators shall supply fuel with a maximum Reid vapor pressure standard of 9.0 psi.*

~~Should EPA fail to approve or should it withdraw approval of the 9.0 psi Reid vapor pressure standard, the 11.5 psi Reid vapor pressure standard shall apply.~~]

3. Undissolved water and sediment, percent by volume, maximum	0.01% VDACS Method of Test
4. Existent gum, mg. per 100 ml., maximum	*ASTM* 5 D381
5. The octane number shall not be more than one octane number below the octane number filed in connection with registration.	*ASTM* D2699 and D2700
6. Gasoline labeled as "unleaded," "no lead" or "lead free" shall not contain more than 0.05 grams lead per gallon and not more than 0.005 grams of phosphorus per gallon.	*ASTM* Lead: D3237 Phosphorus: D3231

B. Diesel fuel.

Diesel fuel shall meet the requirements of the following specifications when tested in compliance with the latest version of the American Society for Testing and Materials ~~Methods of Tests~~ *Test Methods specified below* :

~~Test~~ *Specification*		ASTM Method
1. Flash point, degrees F minimum		D93
(If registered and labeled as #1 Diesel)	100°F	
(If registered and labeled as #2 Diesel)	125°F	
2. Water and sediment, percent by volume, maximum	0.05%	D1796
3. Sulfur, percent by weight maximum	0.5%	D2622 (D129 shall be the referee method)
4. Cetane number, minimum	40	D613
5. 90 % distillation point, degrees F maximum	640°F	D86
6. Corrosion–ASTM copper strip scale maximum	No. 3	D130 3 hours at 50°C

§ ~~3~~ *4* . Labeling.

A. Gasoline.

Every dispensing device used in the retail sale of gasoline shall be plainly and conspicuously labeled with the brand name or trade name of the gasoline, and if the product contains 1.0% or more of ethanol or methanol, a label identifying the kind of alcohol and the percentage of each shall be posted in letters not less than one inch in height.

B. Diesel fuel.

Every dispensing device used in the retail *sale* of diesel fuel shall be plainly and conspicuously labeled, in letters

not less than one inch in height, with the words "diesel fuel." The device shall also be labeled with the brand name or trade name of the diesel fuel. When the word "diesel" appears in letters at least one inch high as part of the brand name or trade name on the dispenser, this labeling shall be considered sufficient compliance with the requirements of this provision.

C. Power fuels for nonhighway use.

Every dispensing device or container used in the retail sale of gasoline (as defined in § 59.1-149 of Chapter 12 of Title 59.1 of the Code of Virginia) and intended for nonhighway use shall be plainly and conspicuously labeled, in letters not less than one inch in height, "aviation gasoline," "marine gasoline," "marine diesel fuel" or another term approved by the commissioner which clearly identifies the product.

§ ~~4~~ *5* . Registration of gasoline and diesel fuel.

A. Before selling or offering for sale any gasoline or diesel fuel in this Commonwealth, these products shall be registered with the Virginia Department of Agriculture and Consumer Services. The following information shall be included on forms provided by the commissioner:

1. The name and address of the registrant.

2. The brand name or trade name under which the gasoline or diesel fuel will be offered for sale.

3. The octane number of each gasoline as determined by the latest version of ASTM Research Method D2699 and ASTM Motor Method D2700, and expressed as an average of the two methods (R+M)/2.

4. A statement that the gasoline or diesel fuel will comply with the requirements of the Virginia Gasoline Law and ~~the specifications, rules, and regulations adopted under §§ 59.1-153 and 59.1-156 of the Code of Virginia~~ *these regulations* .

5. The percentage and kinds of alcohol included in the gasoline.

B. If any of the information required under subsection A ~~above~~ *of this section* ceases to be factual and no longer applicable to any product, the registrant shall, prior to the sale or distribution of that product, file a new registration which shall supersede all previous ~~registration~~ *registrations* .

§ ~~5~~ *6* . Gasoline and diesel fuel condemned.

When a sample of gasoline or diesel fuel has been drawn by an inspector and found not to conform with the requirements of the Virginia Gasoline Law ~~,~~ ~~and the specifications, rules~~ and ~~regulations adopted under §§ 59.1-153 and 59.1-156 of the Code of Virginia~~ *these regulations* , a stop sale, use or removal order shall be issued. The fill cap, pump, delivery line, or any other means of withdrawing the contents of the affected container may be sealed by an inspector. The contents shall not be removed except under the following conditions:

A. Age or staleness.

The commissioner may grant permission to the owner to blend aged or stale gasoline or diesel fuel with the fuel of sufficient quality to bring it up to standard. If a second sampling shows that the gasoline or diesel fuel meets the requirements, the commissioner shall release it for sale in Virginia.

B. Adulteration.

If the gasoline or diesel fuel does not meet the requirements of the Virginia Gasoline Law and ~~the specifications, rules and regulations~~ *these regulations* due to adulteration by substituting other materials, including gasoline or diesel fuel of a lower quality, the commissioner shall notify the registrant or his local representative and request his cooperation in determining the source of the adulteration. The said gasoline or diesel fuel may be released by the commissioner to be returned to the manufacturer, producer, or refiner, or to be disposed of in a manner approved by the commissioner. Prior to its release, the commissioner shall be given an affidavit stating that the gasoline or diesel fuel will not be distributed for sale, offered for sale or sold in Virginia for use as a fuel in internal combustion engines, and also stating the disposition of the gasoline or diesel fuel.

§ ~~6~~ *7* . Publication of information filed in connection with registration and results of tests of official samples.

From time to time, the commissioner shall publish in a bulletin of the Department of Agriculture and Consumer Services the names of registrants, the brands, names or trade names of gasoline and diesel fuel registered, the octane number as filed in connection with the registration of gasoline, the results of tests of official samples found to be in violation, and other data which may be useful to consumers of gasoline and diesel fuel.

§ 8. Notation for documents incorporated by reference.

~~Procedures used in sample preparation and analysis for enforcement of these regulations are available from~~ *Test methods published by the ASTM and incorporated by reference in these regulations are available from* :

American Society for Testing and Materials
1916 Race Street
Philadelphia, Pennsylvania 19103
Phone: (215) 299-5585

.....

[~~1~~ *The calculation for the V.D.A.C.S. Method of Test is as follows:*
Volume of water and/or sediment x 100 = Water and/or Sediment
Total volume of sample]

BOARD OF COMMERCE

Title of Regulation: **VR 190-02-1. Agency Rules of Practice for Hearing Officers (REPEALED).**

Statutory Authority: § 54.1-310 of the Code of Virginia.

Effective Date: July 31, 1993.

Summary:

The Board of Commerce hereby repeals the current rules of practice for hearing officers. First, the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) already contains requirements and qualifications for hearing officers. Second, the elimination of the duplication and inconsistency between the Act and the subject rules will enhance the efficiency and effectiveness of the agency's operation.

DEPARTMENT OF COMMERCE

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Commerce will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 190-06-1. Regulation Governing Athlete Agents (REPEALED).**

Statutory Authority: § 54.1-525 of the Code of Virginia (Repealed).

Effective Date: July 28, 1993.

Summary:

Pursuant to Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia, the Department of Commerce repeals its Regulations Governing Athlete Agents (VR 190-06-1).

Chapter 5.1 (§ 54.1-518 et seq.) of Title 54.1 of the Code of Virginia was repealed by Chapter 282 of the 1992 Acts of Assembly. The effect of the repeal was to deregulate athlete agents in Virginia and remove from the Department of Commerce all authority to promulgate, administer and enforce regulations pertinent to athlete agents.

The Department of Commerce repeals its Regulation Governing Athlete Agents to conform to changes in Virginia statutory law where no agency discretion is involved.

Repeal of this regulation will result in no impact as the department ceased its regulatory activities and notified all licensees and persons on its public participation guidelines list of the repeal of the statute in 1992 in compliance with the Act.

VIRGINIA EMPLOYMENT COMMISSION

REGISTRAR'S NOTICE: The amendments to this regulation are excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Virginia Employment Commission will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 300-01-1. Definitions and General Provisions.**

Statutory Authority: § 60.2-111 of the Code of Virginia.

Effective Date: July 28, 1993.

Summary:

The amendment to the regulation changes the way in which severance pay is treated for the purpose of unemployment taxes and benefits. The 30-day limitation on treating such payments as wages is removed, and employers are now permitted to allocate such payments to an indefinite period beyond the last day of work. However, any such allocation by an employer is subject to the requirement that payments be at a rate no less than the average weekly wage the employee has been earning during the calendar quarter prior to his separation from that employer. This change was necessitated by a 1993 amendment to § 60.2-229 A of the Code of Virginia.

VR 300-01-1. Definitions and General Provisions.

§ 1. Definitions.

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

"Act" means the Virginia Unemployment Compensation Act as set out in Title 60.2 (§ 60.2-100 et seq.) of the Code of Virginia.

"Additional claim" means a claim for unemployment compensation benefits filed within an existing benefit year by a claimant who has had an intervening period of employment since filing a prior claim.

"Agent state" means any state in which an individual files a claim for benefits from another state.

"Agency" means any officer, board, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

"Area of high unemployment" means that geographic area of Virginia including all cities and counties served by a particular full-service unemployment office where the average unemployment rate as determined by the Commission has been 10% or more during the first four of the last five completed calendar quarters.

"Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state or under any federal program in which such compensation is payable in accordance with applicable state law.

"Cash value of remuneration" means with respect to rent, housing, lodging, board, or any other payment in kind, considered as payment for services performed by a worker, in addition to or in lieu of (rather than a deduction from) money wages, the value agreed upon between the employing unit and the worker at the time of entering into the contract of hire or as mutually agreed thereafter. If there is no such agreement, the value thereof shall be an amount equal to a fair estimate of what the worker would, according to his custom and station, pay for similar goods, services, or accommodations in the same community at premises other than those provided by the employing unit.

"Combined-wage claimant" means a claimant who has covered wages under the unemployment compensation law of more than one state and who has filed a claim under the Interstate Arrangement for Combining Employment and Wages.

"Commission" means the Virginia Employment Commission as defined in § 60.2-108 of the Code of Virginia.

"Continued claim" means a request for the payment of unemployment compensation benefits which is made after the filing of an initial claim.

"Initial claim" means any new, additional, or reopened claim for unemployment compensation benefits.

"Interstate Benefit Payment Plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

"Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Commission finds that this exclusion would create undue hardship on such claimants in specified areas.

"Interested jurisdiction" means any participating jurisdiction to which an election submitted under regulation VR 300-01-2, Part V, is sent for its approval and "interested agency" means the agency of such jurisdiction.

"Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, and the U.S. Virginia Islands, or with respect to the federal government, the coverage of any federal unemployment compensation law.

"Liable state" means any state against which an individual files, through another state, a claim for benefits.

"Mass separation" means a separation (permanently or for an indefinite period or for an expected duration of seven days or more) at or about the same time and for the same reasons (i) of 20%, or more, of the total number of workers employed in an establishment, or (ii) of 50%, or more, of the total number of workers employed in any division or department of any establishment, or (iii) notwithstanding any of the foregoing, a separation at or about the same time and for the same reason of 25 or more workers employed in a single establishment.

"New claim" means a claim for unemployment compensation benefits filed in person at an unemployment insurance office or other location designated by the Commission by an individual who does not have an existing benefit year established.

"Partially unemployed individual" means an individual who during a particular week (i) had earnings, but less than his weekly benefit amounts, (ii) was employed by a regular employer, and (iii) worked, but less than his normal customary full-time hours for such regular employer because of lack of full-time work.

"Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the Interstate Arrangement for Combining Employment and Wages and whose adherence thereto has not terminated.

"Part-total unemployment" means the unemployment of any individual in any week of less than full-time work in which he earns some remuneration (but less than his weekly benefit amount) and during which he is not attached to a regular employer; or, in any week in which he has wages such as holiday or vacation pay which are less than his weekly benefit amount, but where no actual work has been performed regardless of his attachment to a regular employer.

"Paying state" means (i) the state in which a combined-wage claimant files a combined-wage claim, if the claimant qualifies for unemployment benefits in that state on the basis of combined employment and wages, and combining will increase either the weekly benefit amount or the maximum benefit amount, or (ii) if the

state in which a combined-wage claimant files a combined-wage claim is not the paying state under the criterion set forth in (i) above, or if the combined-wage claim is filed in Canada or the U.S. Virgin Islands, then the paying state shall be that state where the combined-wage claimant was last employed in covered employment among the states in which the claimant qualifies for unemployment benefits on the basis of combined employment and wages.

"Reopened claim" means the first claim for unemployment compensation benefits filed within an existing benefit year after a break in the claim series caused by any reason other than intervening employment.

"Services customarily performed by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

"Severance and dismissal pay" means , for the purpose of taxation and benefits, all payments made by an employer at or ~~within 30 days of~~ *subsequent to* ~~his~~ *an employee's* separation. Such payments may be allocated by the employer for ~~up to 30 days~~ *any period* following separation *so long as such allocation is at a weekly rate at least equal to the average weekly wage received by such employee during the last calendar quarter preceding the separation* , and will in such cases be deemed to have been paid in those weeks covered by the allocation. If no allocation is made by the employer, such payments will be deemed allocated to the last day of work.

"State" means one of the United States, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia.

"Total unemployment" means the unemployment of an individual in a week regardless of whether he is separated or attached to an employing unit's payroll, when he performs no work and has no wages payable to him.

"Transferring state" means a state in which a combined-wage claimant had covered employment and wages in the base period of a paying state, and which transfers such employment and wages to the paying state for its use in determining the benefit rights of such claimant under its law.

§ 2. Development of regulations.

A. Pursuant to § 9-6.14:7.1 of the Code of Virginia, the Commission shall solicit the input of interested parties in the formulation and the development of its rules and regulations. The following public participation guidelines shall be used for this purpose.

B. Interested parties for the purpose of this regulation shall be:

1. The Governor's Cabinet Secretaries.

2. Members of the Senate Committee on Commerce and Labor.

3. Members of the House Committee on Labor and Commerce.

4. Members of the State Advisory Board.

5. Special interest groups known to the Virginia Employment Commission.

6. Any individual or entity requesting to be an interested party.

7. Those parties who have expressed an interest in VEC regulations through oral or written comments in the past.

C. Prior to the formulation of a proposed regulation, notice of an intent to draft a regulation shall appear in a Richmond newspaper and may appear in any newspaper circulated in localities particularly affected by the proposed regulation. Other media may also be utilized where appropriate, including but not limited to, trade or professional publications. Notice of an intent to draft a regulation shall also be mailed to all interested parties and shall be posted in all VEC offices across the Commonwealth. These individuals, groups and the general public shall be invited to submit written data, views, and arguments on the formulation of the proposed regulation to the Commission at its administrative office in Richmond, Virginia.

D. Publication of the intent to draft a regulation, as well as, the proposed regulation shall also appear in the Virginia Register of Regulations.

E. The State Advisory Board and special interest groups, including but not limited to, the A.F.L.-C.I.O., Virginia Manufacturers' Association, Retail Merchants' Association, State Chamber of Commerce, the Virginia Poverty Law Center, and the State Employer Advisory Committee, shall be invited by mail to submit data, views and arguments orally to the Commission.

F. Failure of any interested party to receive notice to submit data, views, or oral or written arguments to the Commission shall not affect the implementation of any regulation otherwise formulated, developed and adopted pursuant to the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

G. The public participation guidelines of this regulation shall not apply to emergency regulations or those regulations excluded or exempted by any section of the Administrative Process Act.

H. Once the public participation guidelines have been implemented, the Commission may draft a regulation and proceed with adoption in accordance with the Administrative Process Act. During the formal procedures required by the Administrative Process Act, input will be solicited from the interested parties and the general public in writing to the Commission and at public hearings held at Richmond and, in the discretion of the Commission, at other locations.

§ 3. Review of regulations.

At least yearly, or more often as may be mandated by statute or Executive Order, a regulatory review committee consisting of one member from each division of the Commission shall meet to review these regulations and general rules. The committee shall recommend the retention, deletion, and amendment of the existing rules and regulations in light of their impact upon the general public and employers with emphasis upon the requirements of the Paperwork Reduction Project as mandated by Executive Order. The committee shall also recommend additions to the regulations and general rules under the same criteria.

DEPARTMENT OF HEALTH (STATE BOARD OF)

REGISTRAR'S NOTICE: Due to its length, the regulation entitled "Rules and Regulations for the Licensure of Hospitals in Virginia" (VR 355-33-500) filed by the Department of Health is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, a summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Health.

Title of Regulation: **VR 355-33-500. Rules and Regulations for the Licensure of Hospitals in Virginia.**

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: July 28, 1993.

Summary:

These regulations replace existing regulations governing obstetric and newborn services in licensed hospitals. They also amend the regulations that specify the physical design, construction, and equipment criteria that hospitals must meet to physically house obstetric and newborn services. These regulations respond to the need to focus upon issues affecting infant mortality rates in Virginia.

The intent of the regulations is to establish basic levels of care that all hospitals are expected to provide for all obstetric patients and newborns cared for by licensed hospitals. A more consistent basis for state licensure inspections of hospitals should result from more clearly defined standards.

The current set of adopted regulations have been revised to take into account many of the comments made by the public during the public comment period while still providing an affirmative regulatory program that is designed to protect the healthcare of mothers and infants. A number of substantial revisions have been made to the regulations that accommodate the major concerns made by the regulated entities. The substantial changes to the adopted regulations are as follows:

1. The regulations have been revised to provide for a "grandfathering" provision for existing hospitals in regard to the square footage requirements for labor rooms and labor rooms that serve as emergency delivery rooms. Existing hospitals will not be required to meet the new proposed square footage requirements for labor rooms and labor rooms that serve as delivery rooms until the time that they intend to renovate these rooms or construct new rooms. Renovations to existing rooms or new construction will be required to meet the new square footage requirements. Should a hospital physically not be able to accommodate the new room sizes because of space limitations within the hospital itself, the hospital will still have the option of providing that, by complying with the new requirements, a major hardship is created and, as such, may request a variance under § 10.6 of the hospital licensure regulations. All of the other requirements within the new regulations would have to be met within 12 months of the effective date of the regulations. It is believed that the revised regulations still recognize the need for hospitals to move towards larger room sizes to accommodate advances in medical equipment while not creating an undue financial burden on the hospital community.

2. While nurse-to-patient staffing ratios have been retained within the adopted regulations, revisions have been made to clarify that the staffing proposed is for occupied units only; that nursing personnel, to include licensed practical nurses, nursing assistants and student nurses, can be utilized in some instances rather than registered nurses as long as they are supervised by a registered nurse; and that nursing personnel assigned to the unit can be utilized in other units as long as the minimum staffing requirements for the obstetric and newborn units are followed.

While a blood bank and laboratory services must be available on a 24-hour-a-day basis, personnel may be available either on-site or on-call. Physician consultants required in the regulations may provide consultation by telephone rather than have to be available on-site.

A number of deletions were made from the

regulations that addressed specific infection control requirements for the obstetric and newborn services units since there appeared to be a consensus among the infection control practitioners that these requirements should be addressed in the overall hospital-wide policies and procedures for infection control.

The public comments were carefully reviewed and revisions were made in the final set of adopted regulations that are believed to maintain a standard level of care for the obstetric and newborn services but do not create an undue burden for licensed hospitals. The adopted regulations conform with regulations found in other states and reflect the basic obstetric and newborn service requirements for hospitals as recommended by the American College of Obstetricians and Gynecologists and the American Academy of Pediatrics.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

REGISTRAR'S NOTICE: The following regulation is exempted from the Administrative Process Act under the provisions of § 9-6.14:4.1 B 4 of the Code of Virginia, which excludes agency action relating to grants of state or federal funds or property. The regulation is being published for informational purposes only.

Title of Regulation: **VR 380-03-01. College Scholarship Assistance Program Regulations (REPEALED).**

Title of Regulaton: **VR 380-03-01:1. College Scholarship Assistance Program Regulations.**

Statutory Authority: § 23-38.47 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

Sections 23-38.45 through 23-38.52 of the Code of Virginia authorize the State Council of Higher Education to develop and promulgate regulations for operation of the College Scholarship Assistance Program (CSAP). The major provisions of the CSAP regulations are institutional participation, distribution of funds, student eligibility, award selection, administration, and responsibility of recipients.

VR 380-03-01:1. College Scholarship Assistance Program Regulations.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"Academic year" means the enrollment period which normally extends from late August to May or June.

"Accredited" means an institution approved to confer degrees pursuant to the provisions of § 23-9.5 or §§ 23-265 through 23-276 of the Code of Virginia.

"Applicant" means any student who is a domiciliary resident of Virginia and who has completed an approved application for need-based aid and filed the application by the closing date established by the participating institution at which the student will enroll.

"Cost of attendance" means the sum of tuition, fees, room, board, books and supplies, and other education related expenses, as determined by an institution for purposes of calculating a student's financial need and awarding federal campus-based student aid funds.

"Council" means the State Council of Higher Education for Virginia.

"Domiciliary resident" means a student who is determined by the council or by a participating institution to meet the definition of a domiciliary resident of Virginia eligible for in-state tuition rates as specified under § 23-7.4 of the Code of Virginia.

"Eligible course of study" means a curriculum of courses at or below the baccalaureate degree level which requires at least one academic year (30 semester hours or its equivalent) to complete. Programs that provide religious training or theological education are not eligible courses of study under the College Scholarship Assistance Program. Programs in the 39.xxxx series, as classified in the National Education Center for Educational Statistics' Classification of Instructional Programs (CIP), are not eligible programs.

"Eligible institution" means a public or private, accredited, nonprofit degree-granting institution of higher education in Virginia whose primary purpose is to provide collegiate education and not to provide religious training or theological education.

"Exceptional financial need" means a student's Expected Family Contribution (EFC) is less than one-half of the student's total Cost of Attendance, as determined by an eligible institution.

"Expected Family Contribution" (EFC) means the amount the student and the student's family is expected to contribute toward the cost of college attendance. A student's EFC will be determined by the institution using a method of need analysis approved by the council. The institution may exercise professional judgment to adjust the student's EFC, as permitted under federal law, based on factors which affect the family's ability to pay.

"Financial need" means any positive difference between a student's Cost of Attendance and the student's Expected Family Contribution (EFC), as determined by a participating institution using a method of need analysis approved by the council, and other financial aid that an institution includes in the student's total financial aid package.

"Fiscal year" means the period extending from July 1 to June 30.

"Full-time study" means enrollment for at least 12 credit hours per semester or its equivalent. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective credit courses which normally are not counted toward a certificate, diploma, or degree at the institution.

"Part-time study" means enrollment for six to 11 credit hours per semester or its equivalent. The total hours counted will not include courses taken for audit but may include required development or remedial courses and other elective credit courses which normally are not counted toward a certificate, diploma or degree at the institution.

"Participating institution" means any eligible postsecondary institution which has been approved by the council to participate in the College Scholarship Assistance Program.

"Program" means the College Scholarship Assistance Program (CSAP).

"Undergraduate student" means a student in a program leading to an associate's or bachelor's degree who has not earned a bachelor's or higher degree, and who is not classified by the institution as a "professional" or "graduate" student.

PART II.
INSTITUTIONAL PARTICIPATION.

§ 2.1. Application procedures.

To participate in the program, eligible institutions not previously approved by the council to participate must file formal application with the council no later than January 31 of the calendar year preceding the calendar year in which fall term grants would first be available to students.

Applications shall be addressed to the council's Financial Aid Coordinator and shall include:

1. Estimates of the number of students who would be eligible to receive grants under the program in the first and second years of participation;

2. A copy of the Fiscal Operations Report and Application to Participate in Federal Student Financial Aid Programs (FISAP);

3. A copy of the most recent independent audit of financial aid programs, as required under the federal Single Audit Act; and

4. Certifications from the institution's chief executive officer that the institution:

a. Meets eligibility requirements for participation, namely, that it is an accredited, nonprofit, Virginia degree-granting institution of higher education whose primary purpose is not to provide religious training or theological education;

b. Will furnish whatever data the council may request in order to verify its institutional eligibility claims to the satisfaction of the council;

c. Will promptly notify the council within 30 days following any change in governance or mission that may affect the institution's status as an eligible institution; and

d. By its governing body has authorized its adherence to the requirements of these regulations, as the same are now constituted or hereafter amended, until such time as the institution may withdraw from participation in the program.

All documents must be on file before any funds are disbursed.

PART III.
DISTRIBUTION OF FUNDS.

§ 3.1. Institutional allocations.

Participating institutions will receive from the council on or before an annually established date a notice of the amount of CSAP funds projected to be available for the next fiscal year. Final notice of available funds is dependent on provisions of federal funds.

Institutional allocations will be based on the aggregate need for grant funds as demonstrated by CSAP eligible applicants enrolled at each participating institution. The council will calculate the aggregate need using data reported by the institution in the fall preceding the fiscal year for which the allocation will be made.

The aggregate need for grant funds is the sum of the positive financial need of all CSAP eligible applicants enrolled for at least part-time study at a participating institution. For purposes of this calculation, an individual student's financial need is calculated as follows:

Need	=	Cost of Attendance	-	Expected Family Contribution	-	Total Grant Aid

Cost of Attendance includes a nine-month standardized living allowance, an allowance for books and supplies set each year by the council, and the calculated tuition and fees. The latter amount is based on a student's credit hour enrollment, as reported for the individual student by the institution, and the in-state tuition and fee schedules for part-time and full-time in-state undergraduates that annually are reported to the council. The allowance for books is prorated based on the student's credit hour enrollment. Cost of Attendance for the summer session uses the same variables but is based on a three-month standardized living allowance.

The Expected Family Contribution (EFC) amount used for purposes of determining allocations is that reported for the individual student by the institution using a council-approved need analysis method for federal need-based aid.

Total Grant Aid is the sum of all gift aid except the reported portion of grants that was derived from endowment funds and grants awarded under the CSAP. Loans and work-study awards are not included in gift aid.

The aggregate need of an individual institution, expressed as a percentage of the statewide aggregate need of all participating institutions, determines the institution's share of the program funds.

Eligible students at institutions approved to participate in the program beginning in a specific year will be assured equal access to the total available program funds based on their aggregate financial need. Equal access may result in the reduction of funds at other participating institutions if new funds are not provided for the additional students.

§ 3.2. Reallocations of unused funds.

On or before March 15 of each year, participating institutions shall report to the council the amount of any funds which will not be used by the end of the academic year or the amount of additional funds above the level of the allocation which could be used if additional funds were available.

The council's estimate of unused funds will be substituted for the institution's where the institution fails to file a fund usage report. On or before an annually established date, the council will notify institutions that request additional funds of the amount of any supplemental allocations. Supplemental allocations will be based on the financial need of the students at institutions requesting additional funds, the amount of the funds requested, and the amount of funds available for reallocation.

§ 3.3. Use of funds.

An institution shall establish and maintain financial records that accurately reflect all program transactions as they occur. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity. Program funds shall be deposited in a noninterest bearing account established and maintained exclusively for that purpose. Funds may only be disbursed to student accounts receivable or to the council. All unused funds must be returned to the council no later than the end of the fiscal year.

Funds received by the institutions under the program may be used only to pay awards to students. The funds are held in trust on behalf of the Commonwealth of Virginia by the institutions for the intended student beneficiaries and may not be used for any other purpose.

PART IV.
STUDENT ELIGIBILITY.

§ 4.1. Student eligibility.

In order to be eligible to receive an award under the program, the applicant must:

1. Be a domiciliary resident of Virginia eligible for in-state tuition rates as defined in § 23-7.4 of the Code of Virginia;

2. Not receive more than a cumulative total of five years of assistance under the program;

3. Be maintaining satisfactory academic progress as defined by the participating institution for purposes of determining eligibility for federal Title IV student aid funds;

4. Not be in default on a federal student loan, owe a refund on a federal grant, or be ineligible on any other legal grounds to receive federal student aid funds which comprise a portion of the individual awards made under the program;

5. Meet the criterion of exceptional need and demonstrate a positive financial need for grant aid, as determined by the participating institution; and

6. Be enrolled for at least part-time study in an eligible course of study at a participating institution.

The duration of CSAP eligibility is related to the length of time normally required to complete the student's certificate or degree at a particular institution. A financial aid transcript must be reviewed to determine if a transfer student has already used the maximum eligibility for CSAP. If a student is in a dual degree program at a four-year college or university that results in the simultaneous awarding of both an undergraduate and a graduate or professional degree, the student shall be considered eligible for CSAP only for the undergraduate portion of the program.

PART V.
AWARD SELECTION.

§ 5.1. Criteria for determining financial need.

An institution shall determine a student's financial need using a nationally-accepted method of need analysis approved by the council. An award under the program will be set by the institution so that the student's total financial aid, including the program award, will not exceed the student's financial need.

§ 5.2. Priorities in making awards.

Because the number of eligible applicants will normally exceed the number that can be assisted with the CSAP funds allocated to an institution, the institutional aid officer's professional recommendation will determine which candidates receive CSAP awards as well as the specific amount of each individual's award.

In determining each student's need for additional grant aid, the institutional aid officer may consider the individual student's educational need, family financial circumstances, the amount of other types of aid (e.g., loans, work-study) available to the student, and any unique circumstances affecting the student's ability to enroll and complete a course of study.

§ 5.3. Individual awards.

Individual awards are to be made for the academic year, a portion thereof, or the summer term. The maximum individual award for the academic year shall not exceed any award limit set forth in the Appropriations Act.

[*§ 5.4. Preventing overawards.*

Should additional aid or reports of income changes be received after the initial CSAP award has been included in a student's financial aid package, the student's package should be reviewed to ensure that total aid does not exceed need. Procedures followed will be identical to those required for adjusting awards under the federal campus-based financial aid programs.]

PART VI.
ADMINISTRATION.

§ 6.1. The council.

The council will provide assistance, interpretation of policy and regulations, and guidance to the institutions in their handling of administrative matters.

§ 6.2. Participating institutions.

Institutions shall:

1. Act as an agent for the council to evaluate student eligibility, select award recipients and determine individual award amounts, in accordance with the criteria set forth in these regulations;

2. Provide information which the council may require to ensure that CSAP recipients do not receive grant funds in excess of their actual financial need;

3. Certify that the recipients are enrolled for at least part-time study, are making satisfactory progress in eligible courses of study, and, to the extent that federal funds comprise a part of the awards, meet all applicable criteria prescribed by federal laws and regulations for recipients of federal funds;

4. Secure and provide to the council such information regarding student award recipients as the council deems necessary for the proper administration of the program;

5. Act, with the student's authorization, as the student's agent to receive and hold funds for use as student assistance under the program; and

6. Furnish periodic reports and other pertinent information as may be required by the council. The reports shall include but not be limited to copies of institutional financial aid audit reports and audited financial statements.

The institution's chief executive officer shall designate one individual at the institution to act as the primary representative of the institution in all matters pertaining to the administration of the program. The chief executive officer shall, in addition, indicate whether the primary institutional representative may designate a single subordinate who may act as an alternate representative for routine administrative operational matters at the campus. At multi-campus institutions, an alternate representative may be designated for each branch campus if the chief executive officer authorizes the appointment of alternate representatives. If there is a change in the primary representative, the chief executive officer shall designate another individual and notify the council within 30 days, in writing, of the change. It is the responsibility of the primary representative to advise the council in a similar fashion of changes in alternate representative(s), if any.

§ 6.3. Responsibility of recipients.

A recipient of an award under the program shall notify the institution, in writing, of any name or permanent address changes.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA AND STATE BOARD OF EDUCATION

REGISTRAR'S NOTICE: This regulation is exempted from the provisions of the Administrative Process Act (§ 9-6.14:1

et seq. of the Code of Virginia) in accordance with § 9-6.14:4.1 B 4 of the Code of Virginia, which exempts from this Act agency actions relating to grants of state or federal funds or property. The regulation is being published for informational purposes only.

Title of Regulation: **VR 380-03-07. Virginia Guaranteed Assistance Program.**

Statutory Authority: §§ 22.1-212.3, 22.1-212.4, and 23-38.53:4 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

Sections 22.1-212.3, 22.1-212.4, and 23-38.53:4 through 23-38.53:7 of the Code of Virginia authorize the State Council of Higher Education for Virginia and the State Board of Education to jointly develop and promulgate regulations for operation of the Virginia Guaranteed Assistance Program (VGAP). The major provisions of the VGAP regulations are: authority of the administering agencies, establishment of the Virginia Guantanteed Assistance Fund, school division selection and responsibilities, student eligibility, application process, individual grants, and institutional participation.

VR 380-03-07. Virginia Guaranteed Assistance Program Regulations.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"Academic year" means the enrollment period which normally extends from late August to May or June.

"Applicant" means any student who has completed the public school portion of the program and has filed an application for need-based financial aid by the closing date established by the college or university that the student plans to attend or the State Council of Higher Education for Virginia.

"Biennium" means the period from the first day of July on an even-numbered year through the 30th day of June of the next even-numbered year, inclusive.

"Board" means the State Board of Education for Virginia.

"Census date" means the time during an academic year when a count of enrolled students is made for reporting purposes. For semester terms, the census date shall be no sooner than the end of the 14th calendar day from the beginning of the term and no later than the established reporting date. For quarter terms, the census date shall be no sooner than the end of the 10th calendar day from the beginning of the term and no later than the established reporting date. For nonstandard terms, the census date shall be no sooner than the end of the class session that represents the completion of 15% of the class days and no later than the established reporting date.

"Continuous enrollment" means the student is enrolled for not less than two semesters in each successive academic year in a public institution of higher education in Virginia.

"Cost of attendance" means the sum of tuition, fees, room, board, books and supplies, and other education related expenses, as determined by an institution or the council for purposes of calculating a student's financial need using federal needs analysis methodology and awarding student aid.

"Council" means the State Council of Higher Education for Virginia.

"Domiciliary resident" means a student who is determined by the council or by a participating institution to meet the definition of a domiciliary resident of Virginia eligible for in-state tuition rates, as specified under § 23-7.4 of the Code of Virginia.

"Expected family contribution" or "EFC" means the amount the student and the student's family is expected to contribute toward the cost of college attendance, based upon federal needs analysis methodology. The institution may exercise professional judgment to adjust the student's EFC, as permitted under federal law, based on factors which affect the family's ability to pay.

"Financial need" means any positive difference between a student's cost of attendance and the student's Expected Family Contribution (EFC), as determined by the financial aid officer at the participating institution or the council using the federal needs analysis methodology, and other financial aid that the institution includes in the student's total financial aid package.

"Full-time enrollment" means enrollment for at least 12 semester hours of course work or its equivalent in any term in which Virginia Guaranteed Assistance Program grants are to be received, as determined by the participating institution at the time of disbursement in each term of the academic year. The total hours counted will not include courses taken for audit.

"Fund" means the Virginia Guaranteed Assistance Fund.

"Gift aid" means financial assistance in the form of grants, scholarships, and other sources that do not require repayment.

"Grant" means an award disbursed from the Virginia Guaranteed Assistance Fund as part of the Virginia Guaranteed Assistance Program.

"Participating institution" means a public institution of higher education in Virginia (community college, two- or four-year college, or university) which has entered into the agreement with the council specified in § 9.1 of these regulations.

"Pilot projects" means board-approved educational support projects which demonstrate successful practices that can be replicated in other public schools and which will enable student participants to complete their high school education and enroll in a participating institution of higher education.

"Program" means the Virginia Guaranteed Assistance Program (VGAP) which is comprised of two parts: the board-approved public school portion and the council-operated grant portion.

"Public school portion of the program" means any board-approved educational support program conducted in a public school designed to:

1. Decrease the dropout rate of students in grades six through 12;

2. Increase the high school graduation rate of students who have a high potential for dropping out as well as those who are financially needy students; and

3. Increase the number of such students able to participate in postsecondary education.

"Satisfactory progress" means academic progress toward the earning of a degree by meeting or exceeding the minimal number of credit hours required for full-time standing in each enrollment period.

"Time of disbursement" means the date established by the institution for distributing funds in each term, but not earlier than the first day the student incurs a tuition obligation that cannot be canceled in full should the student withdraw from the institution. An institution which credits student accounts may make a bookkeeping transaction to credit program payments to the student's account for billing purposes upon initial registration. However, it cannot deposit a grant to a student's account until the tuition obligation has been incurred.

PART II.
PURPOSE.

§ 2.1. Purpose of the Virginia Guaranteed Assistance Program.

The program was created for the purposes of:

1. Decreasing the dropout rate of students in grades six through 12;

2. Increasing the graduation rates of financially needy students; and

3. Providing financial assistance to such students for the costs of attending a public institution of higher education in Virginia.

PART III.
ADMINISTERING AGENCIES.

§ 3.1. Authority.

Section 22.1-212.3 of the Code of Virginia names the State Board of Education and the State Council of Higher Education as the administering agencies and directs the board and council to cooperatively develop regulations necessary to implement and administer the program. The board has primary responsibility for the development of the public school portion of the program, and the council is responsible for the allocation of funds and the administration of the grant portion of the program.

The board and the council shall cooperatively monitor and evaluate the program's effectiveness using information provided by participating institutions about students' collegiate progress.

PART IV.
VIRGINIA GUARANTEED ASSISTANCE FUND.

§ 4.1. Establishment.

A special nonreverting fund, known as the Virginia Guaranteed Assistance Fund, shall be established on the books of the Comptroller in the Department of the Treasury. Any money remaining in such fund at the end of the biennium, including interest, shall not revert to the general fund but shall remain in the fund.

The Department of the Treasury shall administer and manage the fund, subject to the authority of the council to provide for the fund's disbursement. Private contributions from businesses, foundations, and individuals may supplement state appropriations to the fund.

PART V.
SCHOOL DIVISION SELECTION AND RESPONSIBILITIES.

§ 5.1. Selection of school divisions for participation in the program.

To participate in the program, local school divisions will submit to the Department of Education proposals which may include other sources of funding. The proposals, subject to board approval, will offer educational, pupil personnel, and instructional support for students eligible for the program. The Department of Education shall select

sites from eligible proposals.

§ 5.2. Criteria for proposals.

A school division's proposal or documentation must demonstrate how it plans to achieve the purposes of the public school portion of the program as defined in § 1.1. The proposal or documentation must also address the following:

1. A focus on early intervention, dropout prevention, and college preparation as recommended in the reports on Workforce 2000 and the Guaranteed Assistance Program;

2. Evidence of cooperation among local schools, colleges, universities, and community groups;

3. Evidence of coordination of funding and programs such as Project Discovery, Dropout Prevention, and Project Yes; and

4. Evidence of private sector cooperation and support.

§ 5.3. Pilot projects.

Before the establishment of the program in all school divisions, the board may elect to support three or more pilot projects in the public schools. The projects will be selected using criteria listed in § 5.2.

§ 5.4. Existing programs.

Before the establishment of the program in all school divisions, the board may approve existing programs in the public schools. School divisions will be required to submit documentation that the existing programs meet the criteria of the Virginia Guaranteed Assistance Program. The existing programs will be selected using the criteria listed in § 5.2.

§ 5.5. Establishment of the program in all school divisions.

The board will review and assess information from the pilot projects and other board-approved existing programs in order to develop criteria for the establishment of the program in all school divisions. After the criteria are developed, they will be incorporated into future regulations.

§ 5.6. School responsibilities.

The board shall require all public school divisions participating in the program to provide annual counseling to parents and students. Counseling must include information regarding the benefits of the successful completion of high school, the potential availability of college tuition assistance (including the Virginia Guaranteed Assistance Program), and factors which relate to the successful completion of college. In addition, parents and students must be provided with current information about the grant portion of the program from materials jointly developed by the council and the board.

The board shall require public school divisions to maintain records of participation in the program necessary to certify the student applicant's eligibility for a grant from the fund. Upon request by the student, schools must provide certification of participation to participating institutions or the council. Annually, public school divisions may be required to provide records of participation in the program to the board.

PART VI.
STUDENT ELIGIBILITY.

§ 6.1. Student eligibility for the public school portion of the program.

Any full-time public school student enrolled in grades six through 12 in Virginia (i) whose academic performance would indicate a high potential for dropping out or (ii) whose economic circumstances impose a barrier to the pursuit of postsecondary education or training is eligible for the program.

§ 6.2. Requirements of participation in the grant portion of the program.

A student must achieve certain goals, while in the public school portion of the program, to be considered for the program's financial assistance to attend a participating institution. A student must:

1. Have a cumulative secondary school grade point average of at least 2.5 on a scale of 4.0 or its equivalent;

2. Successfully complete and graduate from high school; and*

3. Enroll in or plan to enroll in a participating institution.

** Math, science, and foreign language course requirements vary at participating institutions. Students should be encouraged to complete additional math, science, and foreign language courses to enhance the likelihood of admission to college.*

PART VII.
APPLICATION PROCESS.

§ 7.1. Application procedures for grants.

A student who has participated in the public school portion of the program may complete and mail an application for need-based financial aid to the participating institution's or council's application processing organization on or before the established application deadline.

§ 7.2. Grant criteria.

Once a completed application for need-based financial aid has been filed with a participating institution, a student applicant, to be considered for a grant from the fund, must:

1. Have fulfilled all requirements of participation in the program stated in Part VI;

2. Be a domiciliary resident of Virginia as determined by the council in accordance with the provisions of § 23-7.4 of the Code of Virginia; and

3. Demonstrate financial need as determined by the use of a needs analysis methodology approved by the council.

PART VIII.
INDIVIDUAL GRANTS.

§ 8.1. Amount.

The amount of the individual grant will depend on the number of program participants who qualify for the grant and the availability of funding. The council shall issue instructions to the institutions each year about calculating the grant amount. The instructions shall: prohibit supplanting discretionary aid grants with grants from the fund, specify that only gift aid is used to calculate grant amount, and give priority to students with the greatest financial need.

§ 8.2. Use of funds.

After the census date in each term of the academic year, the participating institution will verify which recipients are enrolled as full-time undergraduate students. Grants for any term in which recipients do not enroll for full-time study shall not be disbursed. Grants for these students, if already received by the institution in its capacity as the student's fiscal agent, shall be reported to the council as unused funds. Unused funds shall be refunded at the close of the academic year or at the request of the council, whichever occurs earlier.

Grants shall be used only for payment for the costs of attendance for the academic year for which the award is made. Grants are transferable among participating public institutions. Recipients who attend classes full time at another institution as part of an exchange plan with a participating institution may receive grants if all the credits earned at the other institution are credited towards the baccalaureate degree at the participating institution.

§ 8.3. Preventing overawards.

Should additional aid or reports of income changes be received after the initial grant has been included in a student's aid package, the student's package shall be reviewed by the institution to ensure that total aid does not exceed cost of attendance. Procedures followed will be identical to those required for adjusting federal campus-based financial aid. The institution shall be responsible for the recovery of any amount overawarded.

§ 8.4. Terms and conditions.

In order to receive grants, recipients must maintain full-time enrollment on a continuous basis. Normally, students who fail to do so will forfeit their eligibility to be considered for grant renewal at the close of the academic year. Exceptions will be made by the institution in consultation with the council for students who demonstrate that a hardship condition existed which required a temporary reduction in their course load and that the condition will not exist by the opening of the next academic year. Such hardships include conditions attributable to death of a member of the student's immediate family, a disabling injury or illness of the student, or other special circumstances deemed acceptable by the institution and the council.

Discontinuing full-time enrollment during the year (e.g., dropping to part-time enrollment or leaving other than by approved exception) may also result in a full or partial cancellation of the grant for the current year, in accordance with the refund policy of the institution. The amount of the canceled grant shall be returned to the council.

§ 8.5. Duration and renewability.

All grants shall be awarded for one year and may be renewed annually for no more than three subsequent years of full-time study. Renewal decisions shall be made by the participating institution following council regulations and guidelines, subject to available funding. In order for the grant to be renewed, the student must:

1. Maintain at least a 2.5 cumulative grade point average on a scale of 4.0 or its equivalent;

2. Make satisfactory progress;

3. Maintain continuous enrollment for not less than two semesters in each successive academic year, unless granted an exception for cause by the institution as prescribed in § 8.4;

4. Demonstrate continued financial need; and

5. Certify the lack of a conviction for any criminal offense, except a misdemeanor, during each academic year in which the student is enrolled at an eligible public institution of higher education.

PART IX.
INSTITUTIONAL PARTICIPATION.

§ 9.1. Eligibility requirement.

To be eligible to accept funds on behalf of students assisted under the program, the institution's chief executive officer must enter into an agreement with the council. The agreement shall remain in effect until such time as the institution or council elects to terminate it.

§ 9.2. Conditions of participation.

The agreement, without limitation, shall provide that the institution will:

1. Assist the council in the evaluation of student eligibility and the determination of individual grant amounts, in accordance with the criteria set forth in these regulations;

2. Certify that the recipients are enrolled for full-time study prior to each disbursement of grants;

3. Act, with the student's authorization, as an agent to receive and hold funds for use under the program; and

4. Secure certifications to determine eligibility for grant renewals.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

NOTICE: The Virginia Housing Development Authority is exempted from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

Title of Regulation: **VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

The amendments (i) delete processing procedures and streamline the regulations to include programmatic guidelines only; (ii) clarify the "citizenship" provision to require that an applicant must be a U.S. citizen or a lawful permanent resident alien; (iii) clarify that the provision that a locked-in interest rate cannot be lowered at the time of a second reservation (a) only applies if the second reservation is made within 12 months of the original reservation lock-in agreement, and (b) applies to all loans, including VA loans and further clarify that the interest rate may be increased at the time of the second reservation; (iv) clarify that in calculating the maximum percentage of monthly income to be applied to payment of PITI on the authority's mortgage loan, the authority will include all debt payments with more than six months' duration and monthly payments lasting less than six months if making such payments will adversely affect the applicant's ability to make initial mortgage loan payments (this change will bring VHDA requirements in line with FHA, VA and FmHA regulations. Currently, only monthly installment loans with a duration exceeding six months are included); (v) provide that an applicant's net worth does not include the value of life insurance policies and retirement plans; (vi) clarify that an applicant's credit history and outstanding collections will be considered in underwriting an authority loan; (vii) allow existing mobile homes to be financed by VHDA loans insured by FHA (presently only new mobile homes may be financed); and (viii) make minor clarifications and typographical corrections.

VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.

PART I.
GENERAL.

§ 1.1. General.

The following rules and regulations will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the authority to persons and families of low and moderate income for the acquisition (and, where applicable, rehabilitation), ownership and occupancy of single family housing units.

In order to be considered eligible for a mortgage loan hereunder, a "person" or "family" (as defined in the authority's rules and regulations) must have a "gross family income" (as determined in accordance with the authority's rules and regulations) which does not exceed the applicable income limitation set forth in Part II hereof. Furthermore, the sales price of any single family unit to be financed hereunder must not exceed the applicable sales price limit set forth in Part II hereof. The term "sales price," with respect to a mortgage loan for the combined acquisition and rehabilitation of a single family dwelling unit, shall include the cost of acquisition, plus the cost of rehabilitation and debt service for such period of rehabilitation, not to exceed three months, as the executive director shall determine that such dwelling unit will not be available for occupancy. In addition, each mortgage loan must satisfy all requirements of federal law applicable to loans financed with the proceeds of tax-exempt bonds as set forth in Part II hereof.

Mortgage loans may be made or financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any mortgage loan hereunder to waive or modify any

provisions of these rules and regulations where deemed appropriate by him for good cause, to the extent not inconsistent with the Act.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority or the mortgagor under the agreements and documents executed in connection with the mortgage loan.

The rules and regulations set forth herein are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the originating and administration of mortgage loans under the authority's single family housing program. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time.

§ 1.2. Origination and servicing of mortgage loans.

A. Approval/definitions.

The originating of mortgage loans and the processing of applications for the making or financing thereof in accordance herewith shall, except as noted in subsection G of this § 1.2, be performed through commercial banks, savings and loan associations, private mortgage bankers, redevelopment an housing authorities, and agencies of local government approved as originating agents ("originating agents") of the authority. The servicing of mortgage loans shall, except as noted in subsection H of this § 1.2, be performed through commercial banks, savings and loan associations and private mortgage bankers approved as servicing agents ("servicing agents") of the authority.

To be initially approved as an originating agent or as a servicing agent, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;

2. Have a net worth equal to or in excess of $250,000 or such other amount as the executive director shall from time to time deem appropriate, except that this qualification requirement shall not apply to redevelopment and housing authorities and agencies of local government;

3. Have a staff with demonstrated ability and experience in mortgage loan origination and processing (in the case of an originating agent applicant) or servicing (in the case of a servicing agent applicant); and

4. Such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each originating agent approved by the authority shall enter into an originating agreement ("originating agreement"), with the authority containing such terms and conditions as the executive director shall require with respect to the origination and processing of mortgage loans hereunder. Each servicing agent approved by the authority shall enter into a servicing agreement with the authority containing such terms and conditions as the executive director shall require with respect to the servicing of mortgage loans.

An applicant may be approved as both an originating agent and a servicing agent ("originating and servicing agent"). Each originating and servicing agent shall enter into an originating and servicing agreement ("originating and servicing agreement") with the authority containing such terms and conditions as the executive director shall require with respect to the originating and servicing of mortgage loans hereunder.

For the purposes of these rules and regulations, the term "originating agent" shall hereinafter be deemed to include the term "originating and servicing agent," unless otherwise noted or the context indicates otherwise. Similarly, the term "originating agreement" shall hereinafter be deemed to include the term "originating and servicing agreement," unless otherwise noted or the context indicates otherwise. The term "servicing agent" shall continue to mean an agent authorized only to service mortgage loans. The term "servicing agreement" shall continue to mean only the agreement between the authority and a servicing agent.

Originating agents and servicing agents shall maintain adequate books and records with respect to mortgage loans which they originate and process or service, as applicable, shall permit the authority to examine such books and records, and shall submit to the authority such reports (including annual financial statements) and information as the authority may require. The fees payable to the originating agents and servicing agents for originating and processing or for servicing mortgage loans hereunder shall be established from time to time by the executive director and shall be set forth in the originating agreements and servicing agreements applicable to such originating agents and servicing agents.

B. Allocation of funds.

The executive director shall allocate funds for the making or financing of mortgage loans hereunder in such manner, to such persons and entities, in such amounts, for such period, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. Without limiting the foregoing, the executive director may allocate funds (i) to mortgage loan applicants on a first-come, first-serve or other basis,

(ii) to originating agents and state and local government agencies and instrumentalities for the origination of mortgage loans to qualified applicants and/or (iii) to builders for the permanent financing of residences constructed or rehabilitated or to be constructed or or rehabilitated by them and to be sold to qualified applicants. In determining how to so allocate the funds, the executive director may consider such factors as he deems relevant, including any of the following:

1. The need for the expeditious commitment and disbursement of such funds for mortgage loans;

2. The need and demand for the financing of mortgage loans with such funds in the various geographical areas of the Commonwealth;

3. The cost and difficulty of administration of the allocation of funds;

4. The capability, history and experience of any originating agents, state and local governmental agencies and instrumentalities, builders, or other persons and entities (other than mortgage loan applicants) who are to receive an allocation; and

5. Housing conditions in the Commonwealth.

In the event that the executive director shall determine to make allocations of funds to builders as described above, the following requirements must be satisfied by each such builder:

1. The builder must have a valid contractor's license in the Commonwealth;

2. The builder must have at least three years' experience of a scope and nature similar to the proposed construction or rehabilitation; and

3. The builder must submit to the authority plans and specifications for the proposed construction or rehabilitation which are acceptable to the authority.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for allocation of funds hereunder. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which funds of the authority are to be allocated and such other matters as he shall deem appropriate relating thereto. The authority may also consider and approve applications for allocations of funds submitted from time to time to the authority without any solicitation therefor on the part of the authority.

C. Originating guide and servicing guide.

These rules and regulations constitute *a portion of* the originating guide of the authority. *The processing guide and* all exhibits and other documents referenced herein are not included in, and shall not be deemed to be a part of, these rules and regulations. The executive director is authorized to prepare and from time to time revise a *processing guide and a* servicing guide which shall set forth the accounting and other procedures to be followed by all originating agents and servicing agents responsible for the *origination, closing and* servicing of mortgage loans under the applicable originating agreements and servicing agreements. Copies of the *processing guide and the* servicing guide shall be available upon request. The executive director shall be responsible for the implementation and interpretation of the provisions of the originating guide *(including the processing guide)* and the servicing guide.

D. Making and purchase of new mortgage loans.

The authority may from time to time (i) make mortgage loans directly to mortgagors with the assistance and services of its originating agents and (ii) agree to purchase individual mortgage loans from its originating agents or servicing agents upon the consummation of the closing thereof. The review and processing of applications for such mortgage loans, the issuance of mortgage loan commitments therefor, the closing and servicing (and, if applicable, the purchase) of such mortgage loans, and the terms and conditions relating to such mortgage loans shall be governed by and shall comply with the provisions of the applicable originating agreement or servicing agreement, the originating guide, the servicing guide, the Act and these rules and regulations.

If the applicant and the application for a mortgage loan meet the requirements of the Act and these rules and regulations, the executive director may issue on behalf of the authority a mortgage loan commitment to the applicant for the financing of the single family dwelling unit, subject to the approval of ratification thereof by the board. Such mortgage loan commitment shall be issued only upon the determination of the authority that such a mortgage loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and such determination shall be set forth in the mortgage loan commitment. The original principal amount and term of such mortgage loan, the amortization period, the terms and conditions relating to the prepayment thereof, and such other terms, conditions and requirements as the executive director deems necessary or appropriate shall be set forth or incorporated in the mortgage loan commitment issued on behalf of the authority with respect to such mortgage loan.

E. Purchase of existing mortgage loans.

The authority may purchase from time to time existing mortgage loans with funds held or received in connection with bonds issued by the authority prior to January 1, 1981, or with other funds legally available therefor. With respect to any such purchase, the executive director may request and solicit bids or proposals from the authority's originating agents and servicing agents for the sale and purchase of such mortgage loans, in such manner, within such time period and subject to such terms and conditions as he shall deem appropriate under the circumstances. The sales prices of the single family housing units financed by such mortgage loans, the gross family incomes of the mortgagors thereof, and the original principal amounts of such mortgage loans shall not exceed such limits as the executive director shall establish, subject to approval or ratification by resolution of the board. The executive director may take such action as he deems necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to originating agents and servicing agents, advertising in newspapers or other publications and any other method of public announcement which he may select as appropriate under the circumstances. After review and evaluation by the executive director of the bids or proposals, he shall select those bids or proposals that offer the highest yield to the authority on the mortgage loans (subject to any limitations imposed by law on the authority) and that best conform to the terms and conditions established by him with respect to the bids or proposals. Upon selection of such bids or proposals, the executive director shall issue commitments to the selected originating agents and servicing agents to purchase the mortgage loans, subject to such terms and conditions as he shall deem necessary or appropriate and subject to the approval or ratification by the board. Upon satisfaction of the terms of the commitments, the executive director shall execute such agreements and documents and take such other action as may be necessary or appropriate in order to consummate the purchase and sale of the mortgage loans. The mortgage loans so purchased shall be serviced in accordance with the applicable originating agreement or servicing agreement and the Servicing Guide. Such mortgage loans and the purchase thereof shall in all respects comply with the Act and the authority's rules and regulations.

F. Delegated underwriting.

The executive director may, in his discretion, delegate to one or more originating agents the responsibility for issuing commitments for mortgage loans and disbursing the proceeds hereof without prior review and approval by the authority. The issuance of such commitments shall be subject to ratification thereof by the board of the authority. If the executive director determines to make any such delegation, he shall establish criteria under which originating agents may qualify for such delegation. If such delegation has been made, the originating agents shall submit all required documentation to the authority after closing of each mortgage loan. If the executive director determines that a mortgage loan does not comply with the originating guide, the applicable originating agreement, the Act or these rules and regulations, he may require the originating agents to purchase such mortgage loan, subject to such terms and conditions as he may prescribe.

G. Field originators.

The authority may utilize financial institutions, mortgage brokers and other private firms and individuals and governmental entities ("field originators") approved by the authority for the purpose of receiving applications for mortgage loans. To be approved as a field originator, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;

2. Have made any necessary filings or registrations and have received any and all necessary approvals or licenses in order to receive applications for mortgage loans in the Commonwealth of Virginia;

3. Have the demonstrated ability and experience in the receipt and processing of mortgage loan applications; and

4. Have such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each field originator approved by the authority shall enter into such agreement as the executive director shall require with respect to the receipt of applications for mortgage loans. Field originators shall perform such of the duties and responsibilities of originating agents under these rules and regulations as the authority may require in such agreement.

Field originators shall maintain adequate books and records with respect to mortgage loans for which they accept applications, shall permit the authority to examine such books and records, and shall submit to the authority such reports and information as the authority may require. The fees to the field originators for accepting applications shall be payable in such amount and at such time as the executive director shall determine.

In the case of mortgage loans for which applications are received by field originators, the authority may process and originate the mortgage loans; accordingly, unless otherwise expressly provided, the provisions of these rules and regulations requiring the performance of any action by originating agents shall not be applicable to the origination and processing by the authority of such mortgage loans, and any or all of such actions may be performed by the authority on its own behalf.

H. Servicing by the authority.

The authority may service mortgage loans for which the applications were received by field originators or any mortgage loan which, in the determination of the authority, originating agents and servicing agents will not service on terms and conditions acceptable to the authority or for which the originating agent or servicing agent has agreed to terminate the servicing thereof.

PART II.
~~PROCESSING GUIDELINES~~ *PROGRAM REQUIREMENTS* .

§ 2.1. Eligible persons and families.

A. Person.

A one-person household is eligible.

B. Family.

A single family loan can be made to more than one person only if all such persons to whom the loan is made are related by blood, marriage or adoption and are living together in the dwelling as a single nonprofit housekeeping unit.

C. Citizenship.

Each applicant for an authority mortgage loan must either be a United States citizen or ~~have a valid and current alien registration card (U.S. Department of Immigration Form I-551 or U.S. Department of Immigration Form I-151)~~ *be a lawful permanent (not conditional) resident alien as determined by the U.S. Department of Immigration and Naturalization Service* .

§ 2.2. Compliance with certain requirements of the Internal Revenue Code of 1986, as amended (hereinafter "the tax code").

The tax code imposes certain requirements and restrictions on the eligibility of mortgagors and residences for financing with the proceeds of tax-exempt bonds. In order to comply with these federal requirements and restrictions, the authority has established certain procedures which must be performed by the originating agent in order to determine such eligibility. The eligibility requirements for the borrower and the dwelling are described below as well as the procedures to be performed. The originating agent will certify to the performance of these procedures and evaluation of a borrower's eligibility by completing and signing the " Originating Agent's Checklist for Certain Requirements of the Tax Code" (Exhibit A(1)) prior to the authority's approval of each loan. No loan will be approved by the authority unless all of the federal eligibility requirements are met as well as the usual requirements of the authority set forth in other parts of this originating guide.

§ 2.2.1. Eligible borrowers.

A. General.

In order to be considered an eligible borrower for an authority mortgage loan, an applicant must, among other things, meet all of the following federal criteria:

The applicant:

1. May not have had a present ownership interest in his principal residence within the three years preceding the date of execution of the mortgage loan documents. (See § 2.2.1 B Three-year requirement);

2. Must agree to occupy and use the residential property to be purchased as his permanent, principal residence within 60 days (90 days in the case of a rehabilitation loan as defined in § 2.17) after the date of the closing of the mortgage loan. (See § 2.2.1 C Principal residence requirement);

3. Must not use the proceeds of the mortgage loan to acquire or replace an existing mortgage or debt, except in the case of certain types of temporary financing. (See § 2.2.1 D New mortgage requirement);

4. Must have contracted to purchase an eligible dwelling. (See § 2.2.2 Eligible dwellings);

5. Must execute an affidavit of borrower (Exhibit E) at the time of loan application;

6. Must not receive income in an amount in excess of the applicable federal income limit imposed by the tax code (See § 2.5 Income requirements);

7. Must agree not to sell, lease or otherwise transfer an interest in the residence or permit the assumption of his mortgage loan unless certain requirements are met. (See § 2.10 Loan assumptions); and

8. Must be over the age of 18 years or have been declared emancipated by order or decree of a court having jurisdiction.

B. Three-year requirement.

An eligible borrower does not include any borrower who, at any time during the three years preceding the date of execution of the mortgage loan documents, had a "present ownership interest" (as hereinafter defined) in his principal residence. Each borrower must certify on the affidavit of borrower that at no time during the three years preceding the execution of the mortgage loan documents has he had a present ownership interest in his principal residence. This requirement does not apply to residences located in "targeted areas" (see § 2.3 Targeted areas); however, even if the residence is located in a "targeted area," the tax returns for the most recent taxable year (or the letter described in 3 below) must be obtained for the purpose of determining compliance with other requirements.

1. Definition of present ownership interest. "Present ownership interest" includes:

a. A fee simple interest,

b. A joint tenancy, a tenancy in common, or a tenancy by the entirety,

c. The interest of a tenant shareholder in a cooperative,

d. A life estate,

e. A land contract, under which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time, and

f. An interest held in trust for the eligible borrower (whether or not created by the eligible borrower) that would constitute a present ownership interest if held directly by the eligible borrower.

Interests which do not constitute a present ownership interest include:

a. A remainder interest,

b. An ordinary lease with or without an option to purchase,

c. A mere expectancy to inherit an interest in a principal residence,

d. The interest that a purchaser of a residence acquires on the execution of an accepted offer to purchase real estate, and

e. An interest in other than a principal residence during the previous three years.

2. Persons covered. This requirement applies to any person who will execute the mortgage document or note and will have a present ownership interest (as defined above) in the eligible dwelling.

3. Prior tax returns. To verify that the eligible borrower meets the three-year requirement, the originating agent must obtain copies of signed federal income tax returns filed by the eligible borrower for the three tax years immediately preceding execution of the mortgage documents (or certified copies of the returns) or a copy of a letter from the Internal Revenue Service stating that its Form 1040A or 1040EZ was filed by the eligible borrower for any of the three most recent tax years for which copies of such returns are not obtained. If the eligible borrower was not required by law to file a federal income tax return for any of these three years and did not so file, and so states on the borrower affidavit, the requirement to obtain a copy of the federal income tax return or letter from the Internal Revenue Service for such year or years is waived.

The originating agent shall examine the tax returns particularly for any evidence that the eligible borrower may have claimed deductions for property taxes or for interest on indebtedness with respect to real property constituting his principal residence.

4. Review by originating agent. The originating agent must, with due diligence, verify the representations in the affidavit of borrower (Exhibit E) regarding the applicant's prior residency by reviewing any information including the credit report and the tax returns furnished by the eligible borrower for consistency, and certify to the authority that on the basis of its review, it is of the opinion that each borrower has not had present ownership interest in a principal residence at any time during the three-year period prior to the anticipated date of the loan closing.

C. Principal residence requirement.

1. General. An eligible borrower must intend at the time of closing to occupy the eligible dwelling as a principal residence within 60 days (90 days in the case of a purchase and rehabilitation loan) after the closing of the mortgage loan. Unless the residence can reasonably be expected to become the principal residence of the eligible borrower within 60 days (90 days in the case of a purchase and rehabilitation loan) of the mortgage loan closing date, the residence will not be considered an eligible dwelling and may not be financed with a mortgage loan from the authority. An eligible borrower must covenant to intend to occupy the eligible dwelling as a principal residence within 60 days (90 days in the case of a purchase and rehabilitation loan) after the closing of the mortgage loan on the affidavit of borrower (to be updated by the verification and update of information form) and as part of the attachment to the deed of trust.

2. Definition of principal residence. A principal residence does not include any residence which can reasonably be expected to be used: (i) primarily in a trade or business, (ii) as an investment property, or (iii) as a recreational or second home. A residence may not be used in a manner which would permit any portion of the costs of the eligible dwelling to be deducted as a trade or business expense for federal income tax purposes or under circumstances where any portion of the total living area is to be used primarily in a trade or business.

3. Land not to be used to produce income. The land financed by the mortgage loan may not provide, other than incidentally, a source of income to the eligible borrower. The eligible borrower must indicate on the affidavit of borrower that, among other things:

a. No portion of the land financed by the mortgage loan provides a source of income (other than incidental income);

b. He does not intend to farm any portion (other than as a garden for personal use) of the land financed by the mortgage loan; and

c. He does not intend to subdivide the property.

4. Lot size. Only such land as is reasonably necessary to maintain the basic liveability of the residence may be financed by a mortgage loan. The financed land must not exceed the customary or usual lot in the area. Generally, the financed land will not be permitted to exceed two acres, even in rural areas. However, exceptions may be made to permit lots larger than two acres, but in no event in excess of five acres: (i) if the land is owned free and clear and is not being financed by the loan, (ii) if difficulty is encountered locating a well or septic field, the lot may include the additional acreage needed, ~~and~~ *or* (iii) local city and county zoning ordinances which require more acreage will be taken into consideration.

5. Review by originating agent. The affidavit of borrower (Exhibit E) must be reviewed by the originating agent for consistency with the eligible borrower's federal income tax returns and the credit report in order to support an opinion that the eligible borrower is not engaged in any employment activity or trade or business which has been conducted in his principal residence. Also, the originating agent shall review the appraiser report (Exhibit H) of an authority approved appraiser and the required photographs to determine based on the location and the structural design and other characteristics of the dwelling that the residence is suitable for use as a permanent residence and not for use primarily in a trade or business or for recreational purposes. Based on such review, the originating agent shall certify to the authority its findings and certain opinions in the checklist for certain requirements of the tax code (Exhibit A(1)) at the time the loan application is submitted to the authority for approval.

6. Post-closing procedures. The originating agent shall establish procedures to (i) review correspondence, checks and other documents received from the borrower during the 120-day period following the loan closing for the purpose of ascertaining that the address of the residence and the address of the borrower are the same and (ii) notify the authority if such addresses are not the same. Subject to the authority's approval, the originating agent may establish different procedures to verify compliance with this requirement.

D. New mortgage requirement.

Mortgage loans may be made only to persons who did not have a mortgage (whether or not paid off) on the eligible dwelling at any time prior to the execution of the mortgage. Mortgage loan proceeds may not be used to acquire or replace an existing mortgage or debt for which the eligible borrower is liable or which was incurred on behalf of the eligible borrower, except in the case of construction period loans, bridge loans or similar temporary financing which has a term of 24 months or less.

1. Definition of mortgage. For purposes of applying the new mortgage requirement, a mortgage includes deeds of trust, conditional sales contracts (i.e. generally a sales contract pursuant to which regular installments are paid and are applied to the sales price), pledges, agreements to hold title in escrow, a lease with an option to purchase which is treated as an installment sale for federal income tax purposes and any other form of owner-financing. Conditional land sale contracts shall be considered as existing loans or mortgages for purposes of this requirement.

2. Temporary financing. In the case of a mortgage loan (having a term of 24 months or less) made to refinance a loan for the construction of an eligible dwelling, the authority shall not make such mortgage loan until it has determined that such construction has been satisfactorily completed.

3. Review by originating agent. Prior to closing the mortgage loan, the originating agent must examine the affidavit of borrower (Exhibit E), the affidavit of seller (Exhibit F), and related submissions, including (i) the eligible borrower's federal income tax returns for the preceding three years, and (ii) credit report, in order to determine whether the eligible borrower will meet the new mortgage requirements. Upon such review, the originating agent shall certify to the authority that the agent is of the opinion that the proceeds of the mortgage loan will not be used to repay or refinance an existing mortgage debt of the borrower and that the borrower did not have a mortgage loan on the eligible dwelling prior to the date hereof, except for permissible temporary financing described above.

E. Multiple loans.

Any eligible borrower may not have more than one outstanding authority mortgage loan.

§ 2.2.2. Eligible dwellings.

A. In general.

In order to qualify as an eligible dwelling for which an authority loan may be made, the residence must:

1. Be located in the Commonwealth;

2. Be a one-family detached residence, a townhouse or

one unit of an authority approved condominium; and

3. Satisfy the acquisition cost requirements set forth below.

B. Acquisition cost requirements.

1. General rule. The acquisition cost of an eligible dwelling may not exceed certain limits established by the U.S. Department of the Treasury in effect at the time of the application. Note: In all cases for new loans such federal limits equal or exceed the authority's sales price limits shown in § 2.3. Therefore, for new loans the residence is an eligible dwelling if the acquisition cost is not greater than the authority's sales price limit. In the event that the acquisition cost exceeds the authority's sales price limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling.

2. Acquisition cost requirements for assumptions. To determine if the acquisition cost is at or below the federal limits for assumptions, the originating agent or, if applicable, the servicing agent must in all cases contact the authority (see § 2.10 below).

3. Definition of acquisition cost. Acquisition cost means the cost of acquiring the eligible dwelling from the seller as a completed residence.

a. Acquisition cost includes:

(1) All amounts paid, either in cash or in kind, by the eligible borrower (or a related party or for the benefit of the eligible borrower) to the seller (or a related party or for the benefit of the seller) as consideration for the eligible dwelling. Such amounts include amounts paid for items constituting fixtures under state law, but not for items of personal property not constituting fixtures under state law. (See Exhibit R for examples of fixtures and items of personal property.)

(2) The reasonable costs of completing or rehabilitating the residence (whether or not the cost of completing construction or rehabilitation is to be financed with the mortgage loan) if the eligible dwelling is incomplete or is to be rehabilitated. As an example of reasonable completion cost, costs of completing the eligible dwelling so as to permit occupancy under local law would be included in the acquisition cost. A residence which includes unfinished areas (i.e. an area designed or intended to be completed or refurbished and used as living space, such as the lower level of a tri-level residence or the upstairs of a Cape Cod) shall be deemed incomplete, and the costs of finishing such areas must be included in the acquisition cost. (See Acquisition Cost Worksheet, Exhibit G, Item 4 and Appraiser Report, Exhibit H).

(3) The cost of land on which the eligible dwelling is located and which has been owned by the eligible borrower for a period no longer than two years prior to the construction of the structure comprising the eligible dwelling.

b. Acquisition cost does not include:

(1) Usual and reasonable settlement or financing costs. Such excluded settlement costs include title and transfer costs, title insurance, survey fees and other similar costs. Such excluded financing costs include credit reference fees, legal fees, appraisal expenses, points which are paid by the eligible borrower, or other costs of financing the residence. Such amounts must not exceed the usual and reasonable costs which otherwise would be paid. Where the buyer pays more than a pro rata share of property taxes, for example, the excess is to be treated as part of the acquisition cost.

(2) The imputed value of services performed by the eligible borrower or members of his family (brothers and sisters, spouse, ancestors and lineal descendants) in constructing or completing the residence.

4. Acquisition cost worksheet (Exhibit G) and Appraiser Report (Exhibit H). The originating agent is required to obtain from each eligible borrower a completed acquisition cost worksheet which shall specify in detail the basis for the purchase price of the eligible dwelling, calculated in accordance with this subsection B. The originating agent shall assist the eligible borrower in the correct completion of the worksheet. The originating agent must also obtain from the appraiser a completed appraiser's report which may also be relied upon in completing the acquisition cost worksheet. The acquisition cost worksheet of the eligible borrower shall constitute part of the affidavit of borrower required to be submitted with the loan submission. The affidavit of seller shall also certify as to the acquisition cost of the eligible dwelling on the worksheet.

5. Review by originating agent. The originating agent shall for each new loan determine whether the acquisition cost of the eligible dwelling exceeds the authority's applicable sales price limit shown in § 2.4. If the acquisition cost exceeds such limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling for a new loan. (For an assumption, the originating agent or, if applicable, the servicing agent must contact the authority for this determination in all cases - see § 2.10 below). Also, as part of its review, the originating agent must review the acquisition cost worksheet submitted by each mortgage loan applicant, and the appraiser report, and must certify to the authority that it is of the opinion that the acquisition cost of the eligible dwelling has been calculated in accordance

with this subsection B. In addition, the originating agent must compare the information contained in the acquisition cost worksheet with the information contained in the affidavit of seller and other sources and documents such as the contract of sale for consistency of representation as to acquisition cost.

6. Independent appraisal. The authority reserves the right to obtain an independent appraisal in order to establish fair market value and to determine whether a dwelling is eligible for the mortgage loan requested.

§ 2.2.3. Targeted areas.

A. In general.

In accordance with the tax code, the authority will make a portion of the proceeds of an issue of its bonds available for financing eligible dwellings located in targeted areas for at least one year following the issuance of a series of bonds. The authority will exercise due diligence in making mortgage loans in targeted areas by advising originating agents and certain localities of the availability of such funds in targeted areas and by advising potential eligible borrowers of the availability of such funds through advertising and/or news releases. The amount, if any, allocated to an originating agent exclusively for targeted areas will be specified in a forward commitment agreement between the originating agent and the authority.

B. Eligibility.

Mortgage loans for eligible dwellings located in targeted areas must comply in all respects with the requirements in this § 2.2 and elsewhere in this guide for all mortgage loans, except for the three-year requirement described in § 2.2.1 B. Notwithstanding this exception, the applicant must still submit certain federal income tax records. However, they will be used to verify income and to verify that previously owned residences have not been used in a trade or business (and not to verify nonhomeownership), and only those records for the most recent year preceding execution of the mortgage documents (rather than the three most recent years) are required. See that section for the specific type of records to be submitted.

1. Definition of targeted areas.

a. A targeted area is an area which is a qualified census tract, as described in b below, or an area of chronic economic distress, as described in c below.

b. A qualified census tract is a census tract in the Commonwealth in which 70% or more of the families have an income of 80% or less of the state-wide median family income based on the most recent "safe harbor" statistics published by the U.S. Treasury.

c. An area of chronic economic distress is an area designated as such by the Commonwealth and approved by the Secretaries of Housing and Urban Development and the Treasury informed by the authority as to the location of areas so designated.

§ 2.3. Sales price limits.

A. The authority's maximum allowable sales price for loans which are closed on or after December 1, 1991, shall be as follows:

Area	New Construction	Existing and Substantial Rehab.
1. Washington DC-MD-VA MSA[1]		
''inner areas''	$131,790	$131,790
2. ''outer areas''	$124,875	$124,875
3. Norfolk-Va. Beach-Newport News MSA[2]	$ 81,500	$ 81,500
4. Richmond-Petersburg MSA[3]	$ 79,500	$ 79,500
5. Charlottesville MSA[4]	$ 95,450	$ 79,530
6. Clarke County	$ 90,250	$ 79,530
7. Culpeper County	$ 84,050	$ 79,530
8. Fauquier County	$101,670	$ 79,530
9. Frederick County and Winchester City	$ 92,150	$ 79,530
10. Isle of Wight County	$ 81,500	$ 79,530
11. King George County	$ 89,300	$ 79,530
12. Madison County	$ 76,000	$ 76,000
13. Orange County	$ 77,900	$ 77,900
14. Spotsylvania County and Fredericksburg City	$102,700	$ 79,530
15. Warren County	$ 83,600	$ 79,530
16. Balance of State[5]	$ 75,500	$ 75,500

[1] Washington DC-Maryland-Virginia MSA. Virginia Portion: "Inner Areas" - Alexandria City, Arlington County, Fairfax City, Fairfax County, Falls Church City; "Outer Areas" - Loudoun County, Manassas City, Manassas Park City, Prince William County, Stafford County.

[2] Norfolk-Virginia Beach-Newport News MSA. Chesapeake City, Gloucester County, Hampton City, James City County, Newport News City, Norfolk City, Poquoson City, Portsmouth City, Suffolk City, Virginia Beach City, Williamsburg City, York County.

[3] Richmond-Petersburg MSA. Charles City County, Chesterfield County, Colonial Heights City, Dinwiddie County, Goochland County, Hanover County, Henrico County, Hopewell City, New Kent County, Petersburg City, Powhatan County, Prince George County, Richmond City.

[4] Charlottesvillle MSA. Albemarle County, Charlottesville City, Fluvanna County, Greene County.

[5] Balance of State. All areas not listed above.

The executive director may from time to time waive the foregoing maximum allowable sales prices with respect to such mortgage loans as he may designate if he determines that such waiver will enable the authority to assist the state in achieving its economic and housing goals and policies, provided that, in the event of any such waiver, the sales price of the residences to be financed by any

mortgage loans so designated shall not exceed the applicable limits imposed by the U.S. Department of the Treasury pursuant to the federal tax code or such lesser limits as the executive director may establish. Any such waiver shall not apply upon the assumption of such mortgage loans.

B. Effect of solar grant.

The applicable maximum allowable sales price for new construction shall be increased by the amount of any grant to be received by a mortgagor under the authority's Solar Home Grant Program in connection with the acquisition of a residence.

§ 2.4. Net worth.

To be eligible for authority financing, an applicant cannot have a net worth exceeding $20,000 plus an additional $1,000 of net worth for every $5,000 of income over $20,000. (The value of *life insurance policies, retirement plans,* furniture and household goods shall not be included in determining net worth.) In addition, the portion of the applicant's liquid assets which are used to make the down payment and to pay closing costs, up to a maximum of 25% of the sale price, will not be included in the net worth calculation.

Any income producing assets needed as a source of income in order to meet the minimum income requirements for an authority loan will not be included in the applicant's net worth for the purpose of determining whether this net worth limitation has been violated.

§ 2.5. Income requirements.

A. Maximum gross income.

As provided in § 2.2.1 A 6 the gross family income of an applicant for an authority mortgage loan may not exceed the applicable income limitation imposed by the U.S. Department of the Treasury. Because the income limits of the authority imposed by this subsection A apply to all loans to which such federal limits apply and are in all cases below such federal limits, the requirements of § 2.2.1 A 6 are automatically met if an applicant's gross family income does not exceed the applicable limits set forth in this subsection.

For the purposes hereof, the term "gross family income" means the combined annualized gross income of all persons residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings. For the purpose of this definition, annualized gross income means gross monthly income multiplied by 12. "Gross monthly income" is, in turn, the sum of monthly gross pay plus any additional dividends, interest, royalties, pensions, Veterans Administration compensation, net rental income plus other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments).

For reservations made on or after March 1, 1989, the maximum gross family incomes for eligible borrowers shall be determined or set forth as follows:

(1) MAXIMUM GROSS FAMILY INCOME

Applicable only to loans for which reservations are taken by the authority on or after March 1, 1989, except loans to be guaranteed by the Farmers Home Administration ("FmHA").

The maximum gross family income for each borrower shall be a percentage (based on family size) of the applicable median family income (as defined in Section 143(f)(4) of the Internal Revenue Code of 1986, as amended (the "Median Family Income"), with respect to the residence of such borrower, which percentages shall be as follows:

Family Size	Percentage of applicable Median Family Income (regardless of whether residence is new construction, existing or substantially rehabilitated)
1 person	70%
2 persons	85%
3 or more persons	100%

The authority shall from time to time inform its originating agents and servicing agents by written notification thereto of the foregoing maximum gross family income limits expressed in dollar amounts for each area of the state, as established by the executive director, and each family size. Any adjustments to such income limits shall be effective as of such date as the executive director shall determine, and authority is reserved to the executive director to implement any such adjustments on such date or dates as he shall deem necessary or appropriate to best accomplish the purposes of the program.

The executive director may from time to time waive the foregoing income limits with respect to such mortgage loans as he may designate if he determines that such waiver will enable the authority to assist the state in achieving its economic and housing goals and policies, provided that, in the event of any such waiver, the income of the borrowers to receive any mortgage loans so designated shall not exceed the applicable limits imposed by the U.S. Department of the Treasury pursuant to the federal tax code or such lesser limits as the executive director may establish. Any such waiver shall not apply upon the assumption of such mortgage loans.

(2) FmHA MAXIMUM ~~GROSS~~ FAMILY INCOME

Applicable only to loans to be guaranteed by FmHA.

The maximum ~~gross~~ family income for each borrower shall be the lesser of the ~~amount~~ *maximum gross family income* a determined in accordance with § 2.5 A (1) or FmHA income limits in effect at the time of the application.

B. Minimum income (not applicable to applicants for loans to be insured or guaranteed by the Federal Housing Administration, the Veterans Administration or FmHA (hereinafter referred to as "FHA, VA or FmHA loans").

An applicant satisfies the authority's minimum income requirement for financing if the monthly principal and interest, tax, insurance ("PITI") and other additional monthly fees such as condominium assessments (60% of the monthly condominium assessment shall be added to the PITI figure), townhouse assessments, etc. do not exceed 32% of monthly gross income and if the monthly PITI plus outstanding monthly ~~installment~~ ~~loans~~ *debt payments* with more than six months duration *(and payments on debts lasting less than six months, if making such payments will adversely affect the applicant's ability to make mortgage loan payments during the months following loan closing)* do not exceed 40% of monthly gross income (see Exhibit B). However, with respect to those mortgage loans on which private mortgage insurance is required, the private mortgage insurance company may impose more stringent requirements.

§ 2.6. Calculation of maximum loan amount.

Single family detached residence and townhouse (fee simple ownership) Maximum of 95% (or, in the case of an FHA, VA or FmHA loan, such other percentage as may be permitted by FHA, VA or FmHA) of the lesser of the sales price or appraised value, except as may otherwise be approved by the authority.

Condominiums - Maximum of 95% (or, in the case of an FHA, VA or FmHA loan, such other percentage as may be permitted by FHA, VA or FmHA) of the lesser of the sales price or appraised value, except as may be otherwise approved by the authority.

For the purpose of the above calculations, the value of personal property to be conveyed with the residence shall be deducted from the sales price. (See Exhibit R for examples of personal property.) The value of personal property included in the appraisal shall not be deducted from the appraised value. (See Appraiser Report, Exhibit H)

In the case of an FHA, VA or FmHA loan, the FHA, VA or FmHA insurance fees or guarantee fees charged in connection with such loan (and, if an FHA loan, the FHA permitted closing costs as well) may be included in the calculation of the maximum loan amount in accordance with applicable FHA, VA or FmHA requirements; provided, however, that in no event shall this revised maximum loan amount which includes such fees and closing costs be permitted to exceed the authority's maximum allowable sales price limits set forth herein.

§ 2.7. Mortgage insurance requirements.

Unless the loan is an FHA, VA or FmHA loan, the borrower is required to purchase at time of loan closing full private mortgage insurance (25% to 100% coverage, as the authority shall determine) on each loan the amount of which exceeds 80% of the lesser of sales price or appraised value of the property to be financed. Such insurance shall be issued by a company acceptable to the authority. The originating agent is required to escrow for annual payment of mortgage insurance. If the authority requires FHA, VA or FmHA insurance or guarantee, the loan will either, at the election of the authority, (a) be closed in the authority's name in accordance with the procedures and requirements herein or (b) be closed in the originating agent's name and purchased by the authority once the FHA Certificate of Insurance, VA Guaranty or FmHA Guarantee has been obtained. In the event that the authority purchases an FHA or, VA or FmHA loan, the originating agent must enter into a purchase and sale agreement on such form as shall be provided by the authority. For assumptions of conventional loans (i.e., loans other than FHA, VA or FmHA loans), full private mortgage insurance as described above is required unless waived by the authority.

§ 2.8. Underwriting.

A. Conventional loans.

The following requirements must be met in order to satisfy the authority's underwriting requirements. However, additional or more stringent requirements may be imposed by private mortgage insurance companies with respect to those loans on which private mortgage insurance is required.

1. Employment and income.

a. Length of employment. The applicant must be employed a minimum of six months with present employer. An exception to the six-month requirement can be granted by the authority if it can be determined that the type of work is similar to previous employment and previous employment was of a stable nature.

b. Self-employed applicants. Note: Under the tax code, the residence may not be expected to be used in trade or business. (See § 2.2.1 C Principal residence requirement.) Any self-employed applicant must have a minimum of two years of self-employment with the same company and in the same line of work. In addition, the following information is required at the time of application:

(1) Federal income tax returns for the two most recent tax years.

(2) Balance sheets and profit and loss statements prepared by an independent public accountant.

In determining the income for a self-employed applicant, income will be averaged for the two-year period.

c. Income derived from sources other than primary employment.

(1) Alimony and child support. A copy of the legal document and sufficient proof must be submitted to the authority verifying that alimony and child support are court ordered and are being received. Child support payments for children 15 years or older are not accepted as income in qualifying an applicant for a loan.

(2) Social security and other retirement benefits. Social Security Form No. SSA 2458 must be submitted to verify that applicant is receiving social security benefits. Retirement benefits must be verified by receipt or retirement schedules. VA disability benefits must be verified by the VA. Educational benefits and social security benefits for dependents 15 years or older are not accepted as income in qualifying an applicant for a loan.

(3) Part-time employment. Part-time employment must be continuous for a minimum of six months. Employment with different employers is acceptable so long as it has been uninterrupted for a minimum of six months. Part-time employment as used in this section means employment in addition to full-time employment.

Part-time employment as the primary employment will also be required to be continuous for six months.

(4) Overtime, commission and bonus. Overtime earnings must be guaranteed by the employer or verified for a minimum of two years. Bonus and commissions must be reasonably predictable and stable and the applicant's employer must submit evidence that they have been paid on a regular basis and can be expected to be paid in the future.

2. Credit.

a. Credit experience. The authority requires that an applicant's previous credit experience be satisfactory. Poor credit references without an acceptable explanation will cause a loan to be rejected. Satisfactory credit references *and history* are considered to be ~~one of the most~~ important requirements in order to obtain an authority loan.

b. Bankruptcies. An applicant will not be considered for a loan if the applicant has been adjudged bankrupt within the past two years ~~and has a poor credit history~~ . If longer than two years, the applicant must submit a written explanation giving details surrounding the bankruptcy ~~and poor credit history~~ . The authority has complete discretion to decline a loan when a bankruptcy ~~and poor credit~~ is involved.

c. Judgments *and collections* . An applicant is required to submit a written explanation for all judgments *and collections* . *In most cases,* judgments *and collections* must be paid before an applicant will be considered for an authority loan.

3. Appraisals. The authority reserves the right to obtain an independent appraisal in order to establish the fair market value of the property and to determine whether the dwelling is eligible for the mortgage loan requested.

B. FHA loans only.

1. In general. The authority will normally accept FHA underwriting requirements and property standards for FHA loans. However, most of the authority's basic eligibility requirements including those described in §§ 2.1 through 2.5 hereof remain in effect due to treasury restrictions or authority policy.

2. Mortgage insurance premium. Applicant's mortgage insurance premium fee may be included in the FHA acquisition cost and may be financed provided that the final loan amount does not exceed the authority's maximum allowable sales price. In addition, in the case of a condominium, such fee may not be paid in full in advance but instead is payable in annual installments.

3. Closing fees. The FHA allowable closing fees may be included in the FHA acquisition cost and may be financed provided the final loan amount does not exceed the authority's maximum allowable sales price.

4. Appraisals. FHA appraisals are acceptable. VA certificates of reasonable value (CRV's) are acceptable if acceptable to FHA.

C. VA loans only.

1. In general. The authority will normally accept VA underwriting requirements and property guidelines for VA loans. However, most of the authority's basic eligibility requirements (including those described in §§ 2.1 through 2.5 hereof) remain in effect due to treasury restrictions or authority policy.

2. VA funding fee. 1.0% funding fee can be included in loan amount provided final loan amount does not exceed the authority's maximum allowable sales price.

3. Appraisals. VA certificates of reasonable value (CRV's) are acceptable.

D. FmHA loans only.

1. In general. The authority will normally accept FmHA underwriting requirements and property standards for FmHA loans. However, most of the authority's basic eligibility requirements including those described in §§ 2.1 through 2.5 hereof remain in effect due to treasury restrictions or authority policy.

2. Guarantee fee. 1.0% FmHA guarantee fee can be included in loan amount provided final loan amount does not exceed the authority's maximum allowable sales price.

E. FHA and VA buydown program.

With respect to FHA and VA loans, the authority permits the deposit of a sum of money (the "buydown funds") by a party (the "provider") with an escrow agent, a portion of which funds are to be paid to the authority each month in order to reduce the amount of the borrower's monthly payment during a certain period of time. Such arrangement is governed by an escrow agreement for buydown mortgage loans (see Exhibit V) executed at closing (see § [~~2.15~~ *2.14*] for additional information). The escrow agent will be required to sign a certification (Exhibit X) in order to satisfy certain FHA requirements. For the purposes of underwriting buydown mortgage loans, the reduced monthly payment amount may be taken into account based on FHA guidelines then in effect (see also subsection B or C above, as applicable).

F. Interest rate buydown program.

Unlike the program described in subsection E above which permits a direct buydown of the borrower's monthly payment, the authority also from time to time permits the buydown of the interest rate on a conventional, FHA or VA mortgage loan for a specified period of time.

§ 2.9. Funds necessary to close.

A. Cash (Not applicable to FHA, VA or FmHA loans).

Funds necessary to pay the downpayment and closing costs must be deposited at the time of loan application. The authority does not permit the applicant to borrow funds for this purpose, except where (i) the loan amount is less than or equal to 80% of the lesser of the sales price or the appraised value, or (ii) the loan amount exceeds 80% of the lesser of the sales price or the appraised value and the applicant borrows a portion of the funds *under a loan program approved by the authority or* from their employer , with the approval of the private mortgage insurer , and the applicant pays in cash from their own funds an amount equal to at least 3.0% of the lesser of the sales price or the appraised value. If the funds are being held in an escrow account by the real estate broker, builder or closing attorney, the source of the funds must be verified. A verification of deposit from the parties other than financial institutions authorized to handle deposited funds is not acceptable.

B. Gift letters.

A gift letter is required when an applicant proposes to obtain funds as a gift from a third party. The gift letter must confirm that there is no obligation on the part of the borrower to repay the funds at any time. The party making the gift must submit proof that the funds are available. This proof should be in the form of a verification of deposit.

C. Housing expenses.

Proposed monthly housing expenses compared to current monthly housing expenses will be reviewed carefully to determine if there is a substantial increase. If there is a substantial increase, the applicant must demonstrate his ability to pay the additional expenses.

§ 2.10. Loan assumptions.

A. Requirements for assumptions.

VHDA currently permits assumptions of all of its single family mortgage loans provided that certain requirements are met. For all loans closed prior to January 1, 1991, except FHA loans which were closed during calendar year 1990, the maximum gross family income for those assuming a loan shall be 100% of the applicable Median Family Income. For such FHA loans closed during 1990, if assumed by a household of three or more persons, the maximum gross family income shall be 115% of the applicable Median Family Income (140% for a residence in a targeted area) and if assumed by a household of less than three persons, the maximum gross family income shall be 100% of the applicable Median Family Income (120% for a residence in a targeted area). For all loans closed after January 1, 1991, the maximum gross family income for those assuming loans shall be as set forth in § 2.5 A of these regulations. The requirements for each of the two different categories of mortgage loans listed below (and the subcategories within each) are as follows:

1. Assumptions of conventional loans.

a. For assumptions of conventional loans financed by the proceeds of bonds issued on or after December 17, 1981, the requirements of the following sections hereof must be met:

(1) Maximum gross family income requirement in this § 2.10 A

(2) § 2.2.1 C (Principal residence requirement)

(3) § 2.8 (Authority underwriting requirements)

(4) § 2.2.1 B (Three-year requirement)

(5) § 2.2.2 B (Acquisition cost requirements)

(6) § 2.7 (Mortgage insurance requirements).

b. For assumptions of conventional loans financed by the proceeds of bonds issued prior to December 17, 1981, the requirements of the following sections hereof must be met:

(1) Maximum gross family income requirement in this § 2.10 A

(2) § 2.2.1 C (Principal residence requirements)

(3) § 2.8 (Authority underwriting requirements)

(4) § 2.7 (Mortgage insurance requirements).

2. Assumptions of FHA, VA or FmHA loans.

a. For assumptions of FHA, VA or FmHA loans financed by the proceeds of bonds issued on or after December 17, 1981, the following conditions must be met:

(1) Maximum gross family income requirement in this § 2.10 A

§ 2.2.1 C (Principal residence requirement)

(3) § 2.2.1 B (Three-year requirement)

(4) § 2.2.2 B (Acquisition cost requirements).

In addition, all applicable FHA, VA or FmHA underwriting requirements, if any, must be met.

b. For assumptions of FHA, VA or FmHA loans financed by the proceeds of bonds issued prior to December 17, 1981, only the applicable FHA, VA or FmHA underwriting requirements, if any, must be met.

~~B. Authorization to process assumptions/requirement that the authority to contacted.~~

~~Although the requirements listed in subsection A above are generally those that only originating agents are responsible for determining compliance with, in the case of assumptions, servicing agents are also authorized to make such determinations. More generally, for the purposes of this § 2.10, servicing agents may process assumption requests provided that they do so in accordance with all the requirements hereof, including those otherwise the exclusive reponsibility of originating agents. Accordingly, references are made within this section to "originating agents or servicing agents" in order to reflect this additional role of servicing agents.~~

~~The originating agent or servicing agent must in each case of a request for assumption of a mortgage loan contact the authority in order to determine which category of loans described in subsection A above applies to the loan and whether or not the requirements of the applicable category are satisfied. (For example, in cases of assumptions, the originating agent or servicing agent may not rely - as it may for new loans - on the fact that the acquisition cost of the dwelling is less than the authority's sales price limits to satisfy the acquisition cost requirement. It is therefore essential that the authority be contacted in each case.)~~

~~C. Application package for assumptions.~~

~~Once the originating agent or servicing agent has contacted the authority and it has been determined which of the categories described in subsection A above applies to the loan, the originating agent or servicing agent must submit to the authority the information and documents listed below for the applicable category:~~

~~1. Assumption package for conventional loans:~~

~~a. Conventional loans financed by the proceeds of bonds issued on or after December 17, 1981:~~

~~(1) Affidavit of borrower (Exhibit E).~~

~~(2) Affidavit of seller (Exhibit F).~~

~~(3) Acquisition cost worksheet (Exhibit G).~~

~~(4) Appraiser's report (Exhibit H).~~

~~(5) Three year's tax returns.~~

~~(6) Originating agent's checklist (Exhibit A(1)).~~

~~(7) 4506 form (Exhibit Q).~~

~~(8) Originating agent's loan submission cover letter (Exhibit 0(1).~~

~~(9) Uniform Residential Loan Application - must include the Authority's Addendum (Exhibit D(1)).~~

~~(10) Verification of employment (VOE's) (and other income related information).~~

~~(11) Verification of deposit (VOD's).~~

~~(12) Credit report.~~

~~(13) Sales contract.~~

~~(14) Truth-in-Lending (Exhibit K) and estimate of charges.~~

~~(15) Equal Credit Opportunity Act (ECOA)/Recapture Tax/RESPA notice (Exhibit I).~~

~~(16) Authority underwriting qualification sheet (Exhibit B(1)).~~

~~(17) All other requirements of state and federal law must be met.~~

~~b. Conventional loans financed by the proceeds of bonds issued prior to December 17, 1981:~~

~~(1) Uniform Residential Loan Application - must include the Authority's Addendum (Exhibit D(1)).~~

~~(2) Verification of employment (VOE's) (and other income related information).~~

~~(3) Verification of deposit (VOD's).~~

~~(4) Credit report.~~

~~(5) Sales contract.~~

~~(6) Truth-in-Lending (Exhibit K) and estimate of charges.~~

~~(7) Equal Credit Opportunity Act (ECOA)/Recapture Tax/RESPA notice (Exhibit I).~~

~~(8) Authority underwriting qualification sheet (Exhibit B(1)).~~

~~(9) All other requirements of state and federal law must be met.~~

~~2. Assumption package for FHA, VA or FmHA loans.~~

~~a. FHA, VA or FmHA loans financed by the proceeds of bonds issued on or after December 17, 1981:~~

~~(1) Affidavit of borrower (Exhibit E).~~

~~(2) Affidavit of seller (Exhibit F).~~

~~(3) Acquisition cost worksheet (Exhibit G).~~

~~(4) Appraiser's Report (Exhibit H).~~

~~(5) Three years' tax returns.~~

~~(6) Originating agent's checklist (Exhibit A(1)).~~

~~(7) 4506 form (Exhibit Q).~~

~~(8) Originating agent's loan submission cover letter (Exhibit Q(2) or (3)).~~

~~(9) Uniform Residential Loan Application - must include the Authority's Addendum (Exhibit D(1)).~~

~~(10) Sales contract.~~

~~(11) Copy of the executed FHA mortgage credit analysis worksheet if the original borrowers are to be released from liability.~~

~~(12) Equal Credit Opportunity Act (ECOA)/Recapture Tax/RESPA notice (Exhibit I).~~

~~(13) Truth-in-Lending (Exhibit K) and estimate of charges if original borrowers are to be released from liability.~~

~~(14) A copy of the FHA Notice to Homeowner, if the original borrowers will not be released from liability.~~

~~(15) In addition, all applicable requirements, if any, of FHA, VA or FmHA and those under state and federal law must be met.~~

~~b. FHA, VA or FmHA loans financed by the proceeds of bonds issued prior to December 17, 1981: The applicable requirements, if any, of FHA, VA or FmHA and those under state and federal law must be met.~~

~~D.~~ *B.* Review by the authority/additional requirements.

Upon receipt from an originating agent or servicing agent of an application package for an assumption, the authority will determine whether or not the applicable requirements referenced above for assumption of the loan have been met and will advise the originating agent or servicing agent of such determination in writing. The authority will further advise the originating agent or servicing agent of all other requirements necessary to complete the assumption process. Such requirements may include but are not limited to the submission of satisfactory evidence of hazard insurance coverage on the property, approval of the deed of assumption, satisfactory evidence of mortgage insurance or mortgage guaranty including, if applicable, pool insurance, submission of an escrow transfer letter and execution of a Recapture Requirement Notice (VHDA Doc. R-1).

§ 2.11. Leasing, loan term, and owner occupancy.

A. Leasing.

The owner may not lease the property without first contacting the authority.

B. Loan term.

Loan terms may not exceed 30 years.

C. Owner occupancy.

No loan will be made unless the residence is to be occupied by the owner as the owner's principal residence.

§ 2.12. Reservations/fees.

A. Making a reservation.

The authority currently reserves funds for each

mortgage loan on a first come, first serve basis. Reservations are made by specific originating agents or field originators with respect to specific applicants and properties. No substitutions are permitted. Similarly, locked-in interest rates ~~(see subdivision 5 below)~~ are also nontransferable. ~~In order to make a reservation of funds for a loan, the originating agent or field originator shall:~~ *Funds will not be reserved longer than 60 days unless the originating agent requests and receives an additional one-time extension prior to the 60-day deadline. Locked-in interest rates on all loans, including those on which there may be a VA Guaranty, cannot be reduced under any circumstances.*

~~1. First make a determination based on the information then made available to it by the applicant or otherwise that neither the applicant nor the property appears to violate any of the authority's eligibility requirements for a new loan.~~

~~2. Collect a nonrefundable reservation fee in such amount as the authority may require from time to time.~~

~~3. Determine what type of mortgage insurance or guarantee will be required; specifically, whether the loan will be a conventional loan, an FHA loan, a VA loan or an FmHA loan.~~

~~4. Complete a reservation sheet (Exhibit C(1)).~~

~~5. Call the authority (after completing the four preceding requirements) between 9 a.m. and 5 p.m. Monday through Friday for the assignment of a reservation number for the loan, the interest rate which shall be locked in for the reserved funds and an expiration date for the reservation, all of which will be assigned after the originating agent or field originator gives to the authority the following information:~~

~~a. Name of primary applicant~~

~~b. Social security number of applicant~~

~~c. Estimated loan amount~~

~~d. Originating agent's or field originator's servicer number~~

~~e. Gross family income of applicant and family, if any~~

~~f. Location of property (city or county)~~

~~g. Verification of receipt of the reservation fee~~

~~h. Type of mortgage insurance to be used (if conventional, the authority will assign the loan a suffix "C"; if FHA, the suffix will be "F"; if VA, it will be "V"; and if FmHA, it will be "FM").~~

~~6. Complete the reservation card by filling in the reservation number, interest rate, expiration date and by executing it (only an authorized representative of the originating agent or field originator may sign the reservation card) and, in addition, complete a lock-in disclosure (Exhibit C(2)) and have the applicant execute it prior to submitting it with the application package.~~

~~7. Submit the complete application package to the authority (see § 2.13) along with evidence of receipt of the reservation fee within 60 days after the authority assigns the reservation number to the loan (i.e., takes the reservation), provided that in the case of an application received by a field originator, the field originator will submit to the authority the reservation fee and such portion of the application package as the authority may require. Funds will not be reserved longer than 60 days unless the originating agent requests and receives an additional one-time extension prior to the 60-day deadline.~~

B. More than one reservation.

An applicant , *including an applicant for a loan to be guaranteed by VA,* may request a second reservation if the first has expired ~~; but in no case may the interest rate be reduced without the authority's prior approval. In addition, a second reservation fee must be collected for a second reservation~~ . *If the second reservation is made within 12 months of the date of the original reservation, the interest rate will be the greater of (i) the locked-in rate or (ii) the current rate offered by the authority at the time of the second reservation.*

C. The reservation fee.

The originating agent or field originator shall collect and remit to the authority a nonrefundable reservation fee in such amount and according to such procedures as the authority may require from time to time. Under no circumstances is this fee refundable. ~~Reservation fees paid to field originators shall be submitted to and retained by the authority. One hundered dollars of each reservation fee paid to any originating agent will, if the loan closes, be retained by the originating agent as part of its 1.0% origination fee. If (i) the application is not submitted prior to the expiration of the reservation, or (ii) the authority determines at any time that the loan will not close, any reservation fee paid to an originating agent must be submitted to the authority within 30 days after such expiration or such determination by the authority, as applicable. If, in such cases, the fee is not received by the authority within such 30-day period, the originating agent shall be charged a penalty fee of $50 in addition to the reservation fee (see subsection D for other fees).~~ *A second reservation fee must be collected for a second reservation.* No substitutions of applicants or properties are permitted.

D. Other fees.

1. ~~Commitment~~ *Origination* fee. *In connection with the origination and closing of the loan,* the originating agent ~~must~~ *shall* collect ~~at the time of the issuance of a commitment by the authority~~ an amount equal to 1.0% of the loan amount ~~; less $100 of the reservation fee already collected~~ (please note that for FHA loans the loan amount for the purpose of this computation is the base loan amount only). ~~If the loan closes, the originating agent retains such 1.0% commitment fee as its original fee and forwards the balance of the reservation fee to the authority.~~ If the loan does not close ~~; the commitment fee, plus the balance of the reservation fee, must be submitted to the authority when the failure to close is due to the fault of the applicant. On the other hand,~~ if *and* the failure to close is not due to the fault of the applicant, then the ~~collected commitment~~ *origination* fee ~~less the entire reservation fee may at the option of the authority be refunded to the applicant. (The total reservation fee, as required in subsection C above is always submitted to the authority when a loan fails to close.)~~ *shall be waived.*

2. Discount point. The originating agent ~~must~~ *shall* collect *from the seller* at the time of closing an amount equal to 1.0% of the loan amount ~~from the seller . This fee is to be remitted to the authority by the originating agent.~~

~~§ 2.13. Preparation of application package for new loans.~~

~~A. Conventional loans.~~

~~The application package submitted to the authority for approval of a conventional loan must contain the following original documents:~~

~~1. Reservation sheet. (Exhibit C(1)) and lock-in disclosure. (Exhibit C(2))~~

~~2. Uniform Residential Loan Application - the application must include the authority's Addendum. (Exhibit D(1))~~

~~3. Preliminary Underwriting Form. (Exhibit B(1))~~

~~4. Credit report issued by local credit bureau and miscellaneous information as applicable explanation of bankruptcies, etc., (and any additional documentation).~~

~~5. Verification of employment (and any additional documentation).~~

~~6. Verification of other income.~~

~~7. Verification of deposits (and any additional documentation).~~

~~8. Gift letters (and verification).~~

~~9. Sales contract - contract must be signed by seller and all parties entering into the contract and state which parties are paying points and closing costs.~~

~~10. Appraisal (FHLMC No. 70) should be the Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") form and should be completed by an appraiser who has been approved by FHLMC or a private mortgage insurer acceptable to the authority or who has a certification from a trade organization approved by the authority (photos and required supporting documentation).~~

~~11. Loan submission cover letter. (Exhibit O(1))~~

~~12. Appraiser's report. (Exhibit H)~~

~~13. Acquisition cost worksheet. (Exhibit G)~~

~~14. Affidavit of seller. (Exhibit F)~~

~~15. Affidavit of borrower. (Exhibit E)~~

~~16. Federal income tax returns - copy of borrower's federal income tax returns to the extent required by Item 6 in the affidavit of borrower and § 2.2.1 B 3 hereof.~~

~~(NOTE: If a letter from the Internal Revenue Service is to be delivered pursuant to paragraphs § 2.2.1 B 3 hereof, such letter must be enclosed instead).~~

~~17. Originating agent's checklist for certain requirements of the tax code. (Exhibit A(1))~~

~~18. Signed request for copy of tax returns. (Exhibit Q)~~

~~19. U.S. Department of Housing and Urban Development ("HUD") information booklet acknowledgement by applicant of receipt of HUD information booklet and estimate of the charges the borrower is likely to incur as required by the Real Estate Settlement Procedures Act of 1974, as amended the Real Estate Settlement Procedures Act Amendments of 1975 (RESPA), as amended, and Regulations Z (Truth-In-Lending), as amended. Acknowledgement can be made part of the application or can be a separate statement. Applicant must receive HUD information book the day application is made.~~

~~20. Equal Credit Opportunity Act ("ECOA")/Recapture Tax/RESPA notice, with borrower's acknowledgement of receipt. (Exhibit I)~~

~~21. Truth-in-Lending Disclosure. (Exhibit K)~~

~~22. RESPA Disclosure Statement (Exhibit AA).~~

~~23. Quality Control Disclosure and Authorization (Exhibit Y).~~

B. FHA loans.

The application package submitted to the authority for approval of an FHA loan must contain the following items (please note that items 14 through 18, 20 and 21 are authority forms and must be submitted as originals, not copies):

1. Reservation sheet (Exhibit C(1)) and lock-in disclosure (Exhibit C(2)).

2. Uniform Residential Loan Application - must include the authority's Addendum (Exhibit D(1)) and can be handwritten if legible.

3. Copy the HUD application (FHA form 92900).

4. Copy of the Mortgage Credit Analysis Worksheet (HUD form 92900-ws).

5. Copy of the credit report.

6. Copy of verification of employment and current pay stubs.

7. Copy of verification of other income.

8. Copy of verification of deposits.

9. Copy of gift letters (and verification).

10. Copy of sales contract.

11. Assignment letter - this must reference the case number, name of applicant.

12. Copy of appraisal - this must be on a form acceptable to FHA and must contain all supporting documentation necessary for valuation.

13. FHA Notice to Buyers. (Document F-9)

14. Loan submission cover letter. (Exhibit O(2))

15. Appraiser's report. (Exhibit H)

17. Affidavit of seller. (Exhibit F)

18. Affidavit of borrower. (Exhibit E)

19. Federal income tax returns - copy of borrower's federal income tax returns to the extent required by Item 6 in the affidavit of borrower and § 2.2.1 B 3 hereof.

(NOTE: If a letter from the Internal Revenue Service is to be delivered pursuant to paragraphs § 2.2.1 B 3 hereof, such letter must be enclosed instead).

20. Originating agent's checklist for certain requirements of the tax code. (Exhibit A(1))

21. Signed request for copy of tax returns (Exhibit Q)

22. U.S. Department of Housing and Urban Development ("HUD") information booklet - acknowledgement by applicant of receipt of HUD information booklet and estimate of the charges the borrower is likely to incur as required by the Real Estate Settlement Procedures Act of 1974, as amended, the Real Estate Settlement Procedures Act Amendments of 1975 (RESPA), as amended, and Regulation Z (Truth-In-Lending), as amended. Acknowledgement can be made part of the application or can be a separate statement. Applicant must receive HUD information book the day application is made.

23. Equal Credit Opportunity Act ("ECOA")/Recapture Tax/RESPA notice, with borrower's acknowledgement of receipt. (Exhibit I)

24. Truth-in-Lending Disclosure. (Exhibit K)

25. RESPA Disclosure Statement. (Exhibit AA)

26. Quality Control Disclosure and Authorization. (Exhibit Y)

C. VA loans.

The application package submitted to the authority for approval of a VA loan must contain the following items (please note that items 14 through 17, 20 and 21 are authority forms and must be submitted as originals, not copies):

1. Reservation sheet (Exhibit C(1) and lock-in disclosure (Exhibit C(2)).

2. Uniform Residential Loan Application - must include the authority's Addendum (Exhibit D(1)) and can be handwritten if legible.

3. Copy the VA application (VA form 26-1802A).

4. Copy of the Loan Analysis Worksheet (VA form 6393).

5. Copy of VA certificate of eligibility.

6. Copy of VA benefits and related indebtedness letter.

7. Copy of the credit report.

8. Copy of verification of employment (if active duty, include current LES form).

9. Copy of verification of other income.

10. Copy of verification of deposits.

11. Copy of gift letters (and verification).

12. Copy of sales contract.

13. Copy of appraisal - this must be on a form acceptable to VA and must contain all supporting documentation necessary for valuation.

14. Loan submission cover letter. (Exhibit O(3))

15. Appraiser's report. (Exhibit H)

16. Acquisition cost worksheet. (Exhibit G)

17. Affidavit of seller. (Exhibit F)

18. Affidavit of borrower. (Exhibit E)

19. Federal income tax returns - copy of borrower's federal income tax returns to the extent required by Item 6 in the affidavit of borrower and § 2.2.1 B 3 hereof.

(NOTE: If a letter from the Internal Revenue Service is to be delivered pursuant to paragraphs § 2.2.1 B 3 hereof, such letter must be enclosed instead).

20. Originating agent's checklist for certain requirements of the tax code. (Exhibit A(1))

21. Signed request for copy of tax returns (Exhibit Q)

22. U.S. Department of Housing and Urban Development ("HUD") information booklet - acknowledgement by applicant of receipt of HUD information booklet and estimate of the charges the borrower is likely to incur as required by the Real Estate Settlement Procedures Act of 1974, as amended, the Real Estate Settlement Procedures Act Amendments of 1975 (RESPA), as amended, and Regulation Z (Truth-In-Lending), as amended. Acknowledgement can be made part of the application or can be a separate statement. Applicant must receive HUD information book the day application is made.

23. Equal Credit Opportunity Act ("ECOA")/Recapture Tax/RESPA notice, with borrower's acknowledgement of receipt. (Exhibit I)

24. Truth-in-Lending Disclosure. (Exhibit K)

25. RESPA Disclosure Statement. (Exhibit AA)

26. Quality Control Disclosure and Authorization. (Exhibit Y)

D. FmHA loans.

The application package submitted to the authority for approval of an FmHA loan must contain the original credit package and one photocopy thereof, as well as the following items (please note that items 13 through 17, 19 and 20 are authority forms and must be sumitted as originals, not copies):

1. Reservation sheet (Exhibit C(1)) and lock-in disclosure (Exhibit C(2)).

2. Uniform Residential Loan Application - must include the authority's Addendum (Exhibit D(1)) and can be handwritten if legible.

3. Copy of the HUD application (FHA form 92900).

4. Preliminary Underwriting Form. (Exhibit B(2))

5. Copy of the credit report.

6. Copy of verification of employment and current pay stubs.

7. Copy of verification of other income.

8. Copy of verification of deposits.

9. Copy of gift letters (and verification).

10. Copy of sales contract.

11. Copy of appraisal - this must be on a form acceptable to FmHA and must contain all supporting documentation necessary for valuation.

12. Privacy Act Statement (Form FmHA 410-9).

13. Loan submission cover letter. (Exhibit O(2))

14. Appraiser's report. (Exhibit H)

15. Acquisition cost worksheet. (Exhibit G)

16. Affidavit of seller. (Exhibit F)

17. Affidavit of borrower. (Exhibit E)

18. Federal income tax returns - copy of borrower's federal income tax returns to the extent required by Item 6 in the affidavit of borrower and § 2.2.1 B 3 hereof. (NOTE: If a letter from the Internal Revenue Service is to be delivered pursuant to § 2.2.1 B 3 hereof, such letter must be enclosed instead).

19. Originating agent's checklist for certain requirements of the tax code. (Exhibit A(1))

20. Signed request for copy of tax returns. (Exhibit Q)

21. U.S. Department of Housing and Urban Development ("HUD") information booklet - acknowledgement by applicant of receipt of HUD information booklet and estimate of the charges the borrower is likely to incur as required by the Real Estate Settlement Procedures Act of 1974, as amended,

~~the Real Estate Settlement Procedures Act Amendments of 1975 (RESPA), as amended, and Regulation Z (Truth-in-Lending), as amended. Acknowledgement can be made part of the application or can be a separate statement. Applicant must receive HUD information book the day application is made.~~

~~22. Equal Credit Opportunity Act ("ECOA")/Recapture Tax/RESPA notice, with borrower's acknowledgement of receipt. (Exhibit I)~~

~~23. Truth-in-Lending Disclosure. (Exhibit K)~~

~~24. RESPA Disclosure Statement. (Exhibit AA)~~

~~25. Quality Control Disclosure and Authorization. (Exhibit Y)~~

~~26. Other items which FmHA requires. The authority will advise the originating agent of such additional requirements, if any.~~

~~E. Delivery of package to the authority.~~

~~After the application package has been completed, it should be forwarded to:~~

~~Single Family Division~~
~~Originations Department~~
~~Virginia Housing Development Authority~~
~~601 South Belvidere Street~~
~~Post Office Box 5206~~
~~Richmond, VA. 23220-8206~~

§ [~~2.14~~ *2.13*]. Commitment. (Exhibit J)

A. In general.

Upon approval of the applicant, the authority will send a mortgage loan commitment to the borrower in care of the originating agent. (For FmHA loans, upon approval of the applicant, the authority will submit the credit package to FmHA and upon receipt of the FmHA conditional commitment, will send the mortgage loan commitment.) Also enclosed in the commitment package will be other documents necessary for closing. The originating agent shall ask the borrower to indicate his acceptance of the mortgage loan commitment by signing and returning it to the originating agent ; ~~along with the 1.0% commitment fee,~~ within 15 days after the date of the commitment. ~~If the borrower does so indicate his acceptance of the commitment, the originating agent shall retain the fee in accordance with § 2.1.2 D 1 above. If the borrower fails to so indicate his acceptance of the commitment, either by failing to return an executed original thereof or by failing to submit the fee, or both, the originating agent shall, within 20 days after the date of the commitment, notify the authority in writing of such failure. If the originating agent does not do so, the authority shall deem that commitment to have been duly accepted, and the originating agent shall be liable to the authority for the uncollected commitment fee based on the loan's failure to close as described in § 2.1.2 D 1 above.~~

A commitment must be issued in writing by an authorized officer of the authority and signed by the applicant before a loan may be closed. The term of a commitment may be extended in certain cases upon written request by the applicant and approved by the authority. ~~Generally, no more than one commitment will be issued to an applicant in any calendar year. However, if an applicant who received a commitment fails to close the mortgage loan transaction through no fault of his own, that borrower may be considered for one additional commitment upon proper reapplication to the authority within the one year period from the cancellation or expiration of the original commitment; provided, however, that the interest rate offered in the additional commitment, if issued,~~ *If an additional commitment is issued to an applicant, the interest rate* may be higher than the rate offered in the original commitment. Such new rate and the availability of funds therefor shall in all cases be determined by the authority in its discretion.

B. Loan rejection.

If the application fails to meet any of the standards, criteria and requirements herein, a loan rejection letter will be issued by the authority (see Exhibit L). In order to have the application reconsidered, the applicant must resubmit the application within 30 days after loan rejection. If the application is so resubmitted, the credit documentation cannot be more than 90 days old and the appraisal not more than six months old.

§ [~~2.15~~ *2.14*]. ~~Loan settlement~~ *Buy-down points* .

~~A. Loan closing.~~

~~1. In general. Upon the borrower's acceptance of the mortgage loan commitment, the originating agent will send the authority's letter and closing instructions (see Exhibits M and N) and the closing papers to the closing attorney. The originating agent should thoroughly familiarize himself with the closing instructions and should fill in all blanks such as per diem interest, appraisal fee, credit report charges to be collected at closing, and any special requirements of the commitment before the closing instructions are forwarded to the closing attorney. the authority will provide the originating agent with the documents which the closing attorney is required to complete.~~

~~Once the attorney completes the preclosing package, it should be mailed to:~~

~~Single Family Division~~
~~Pre-Closing Section~~
~~Virginia Housing Development Authority~~
~~601 South Belvidere Street~~
~~Post Office Box 4593~~

Richmond, VA 23220-8503

After the authority reviews the closing attorney's preliminary work and has been advised by the originating agent in the case of an FHA, VA or FmHA loan that all applicable FHA, VA or FmHA requirements have been met, it will approve closing and, a loan proceeds check will be sent to the closing attorney or firm named in the title insurance commitment or binder as approved under the issuing company's insured closing service, along with additional closing instructions. The closing attorney may disburse loan proceeds only after he has conducted the loan closing and recorded all necessary documents, including the deed of trust securing repayment of the loan to the authority, and in all other respects is in a position to disburse proceeds in accordance with the authority's letter authorizing the closing, the commitment and the instructions previously issued by the originating agent. It is the originating agent's responsibility to see that all documents and checks are received immediately after loan closings and that they are completed in accordance with the authority's requirements, Regulation Z and ECOA.

2. Special note regarding checks for buy-down points (this applies to both the monthly payment buydown program described in § 2.8 D above and the interest rate buydown program described in § 2.8 E). A certified or cashier's check made payable to the authority is to be provided at loan closing for buy-down points, if any. Under the tax code, the original proceeds of a bond issue may not exceed the amount necessary for the "governmental purpose" thereof by more than 5.0%. If buy-down points are paid out of mortgage loan proceeds (which are financed by bonds), then this federal regulation is violated because bond proceeds have in effect been used to pay debt service rather than for the proper "governmental purpose" of making mortgage loans. Therefore, it is required that buy-down fees be paid from the seller's own funds and not be deducted from loan proceeds. Because of this requirement, buy-down funds may not appear as a deduction from the seller's proceeds on the HUD-1 Settlement Statement.

B. Post-closing requirements.

All post-closing documents, including the post-closing cover letter (Exhibit P), should be forwarded as follows to:

Single Family Division
Post-Closing Section
Virginia Housing Development Authority
601 South Belvidere Street
Post Office Box 5427
Richmond, VA 23220-8427

Within 10 days after the closing of the loan, the originating agent must forward to the authority the fees, interest and any other money due the authority, a repayment of the authority's outstanding construction loan, if any, private mortgage insurance affidavit and all closing documents except the original recorded deed of trust and title insurance policy and hazard insurance policy. For FmHA loans, the authority will apply to FmHA for its certificate of guarantee.

Within 90 days after loan closing, the originating agent shall forward to the authority the original recorded deed of trust, "final mortgage title insurance policy and FHA certification of insurance, VA guaranty or FmHA guarantee. Within 55 days after loan closing the originating agent shall forward to the servicing agent the original hazard insurance policy and forward a photocopy thereof to the authority.

During the 120-day period following the loan closing the originating agent shall review correspondence, checks and other documents received from the borrower for the purpose of ascertaining that the address of the property and the address of the borrower are the same, and also to ascertain any change of address during such period and shall notify the authority if such addresses are not the same or if there is any such change of address. Subject to the authority's approval, the originating agency may establish different procedures to verify compliance with the principal residence requirement in § 2.2 1 C. In the event that the originating agent receives information at any time that any item noted on the originating agent's checklist for certain requirements of the tax code may not be correct or proper, the originating agent shall immediately notify the authority. All time limits set forth in this subsection B may be modified by the authority by letter or memorandum mailed by the authority to the originating agents. In addition, the authority may waive such time limits on a case-by-case basis, by letter to the appropriate originating agent.

§ [2.16 *2.15*]. Property guidelines.

A. In general.

For each application the authority must make the determination that the property will constitute adequate security for the loan. That determination shall in turn be based solely upon a real estate appraisal's determination of the value and condition of the property.

In addition, manufactured housing (mobile homes) , *both new construction and certain existing,* may be financed only if it *the loan* is new construction and insured 100% by FHA (see subsection C). Existing manufactured housing is not eligible for authority financing.

B. Conventional loans.

1. Existing housing and new construction. The following requirements apply to both new construction and existing housing to be financed by a conventional loan: (i) all property must be located on a state

maintained road (easements or rights-of-way to state maintained roads are not acceptable as access to properties); (ii) any easements which will adversely affect the marketability of the property, such as high-tension power lines, drainage or other utility easements will be considered on a case-by-case basis to determine whether such easements will be acceptable to the authority; (iii) property with available water and sewer hookups must utilize them; and (iv) property without available water and sewer hookups may have their own well and septic system; provided that joint ownership of a well and septic system will be considered on a case-by-case basis to determine whether such ownership is acceptable to the authority.

2. Additional requirements for new construction. New construction financed by a conventional loan must also meet Uniform Statewide Building Code and local code.

C. FHA, VA or FmHA loans.

1. Existing housing and new construction. Both new construction and existing housing financed by an FHA, VA or FmHA loan must meet all applicable requirements imposed by FHA, VA or FmHA.

2. Additional requirements for new construction. If such homes being financed by FHA loans are new manufactured housing they must meet federal manufactured home construction and safety standards, satisfy all FHA insurance requirements, be on a permanent foundation to be enclosed by a perimeter masonry curtain wall conforming to standards of the Uniform Statewide Building Code, be permanently affixed to the site owned by the borrowers and be insured 100% by FHA under its section 203B program. In addition, the property must be classified and taxed as real estate and no personal property may be financed.

§ [~~2.17~~ *2.16*]. Substantially rehabilitated.

For the purpose of qualifying as substantially rehabilitated housing under the authority's maximum sales price limitations, the housing unit must meet the following definitions:

1. Substantially rehabilitated means improved to a condition which meets the authority's underwriting/property standard requirements from a condition requiring more than routine or minor repairs or improvements to meet such requirements. The term includes repairs or improvements varying in degree from gutting and extensive reconstruction to cosmetic improvements which are coupled with the cure of a substantial accumulation of deferred maintenance, but does not mean cosmetic improvements alone.

2. For these purposes a substantially rehabilitated housing unit means a dwelling unit which has been substantially rehabilitated and which is being offered for sale and occupancy for the first time since such rehabilitation. The value of the rehabilitation must equal at least 25% of the total value of the rehabilitated housing unit.

3. The authority's staff will inspect each house submitted as substantially rehabilitated to ensure compliance with our underwriting-property standards. An appraisal is to be submitted after the authority's inspection and is to list the improvements and estimate their value.

4. The authority will only approve rehabilitation loans to eligible borrowers who will be the first resident of the residence after the completion of the rehabilitation. As a result of the tax code, the proceeds of the mortgage loan cannot be used to refinance an existing mortgage, as explained in § 2.2 1 D (New mortgage requirement). The authority will approve loans to cover the purchase of a residence, including the rehabilitation:

a. Where the eligible borrower is acquiring a residence from a builder or other seller who has performed a substantial rehabilitation of the residence; and

b. Where the eligible borrower is acquiring an unrehabilitated residence from the seller and the eligible borrower contracts with others to perform a substantial rehabilitation or performs the rehabilitation work himself prior to occupancy.

§ [~~2.18~~ *2.17*]. Condominium requirements.

A. Conventional loans.

The originating agent must provide evidence that the condominium is approved by any two of the following: FNMA, FHLMC or VA. The originating agent must submit evidence at the time the borrower's application is submitted to the authority for approval.

B. FHA, VA or FmHA loans.

The authority will accept a loan to finance a condominium if the condominium is approved by FHA, in the case of an FHA loan, by VA, in the case of a VA loan or by FmHA, in the case of an FmHA loan.

NOTE: Documents and forms referred to herein as Exhibits have not been adopted by the authority as a part of the rules and regulations for single family mortgage loans to persons and families of low and moderate income but are attached thereto for reference and informational purposes. Accordingly, such documents and forms have not been included in the foregoing rules and regulations for single family mortgage loans to persons and families of low and moderate income. Copies of such documents and forms are available upon request at the offices of the

authority.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

REGISTRAR'S NOTICE: Section 3.6 of the Nursing Home Payment System concerning dispute resolution for state-operated nursing facilites was promulgated by the Director of the Department of Medical Assistance Services to become effective July 1, 1992. Although the text was filed by the Department, § 3.6 was inadvertently omitted from The Virginia Register proposed and final publications. The text of § 3.6, with proposed amendments, is included in this publication of the regulation.

Title of Regulation: **State Plan for Medical Assistance Relating to Interim Settlement/Prospective Rate Time Frames, Audited Financial Statements, and Appeal Notice Requirements.**
VR 460-03-4.1940:1. Nursing Home Payment System Patient Intensity Rating System.

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

Effective Date: August 1, 1993.

Summary:

This plan amendment promulgates permanent regulations to supersede emergency regulations which change from 90 to 180 days the time frame within which cost reports filed pursuant to the Nursing Home Payment System are interim settled and a prospective rate set. In addition, the amendments require nursing facilities to file audited financial statements and related information as part of their annual cost report, and change the appeal time frames from calendar days to business days, and from receipt of a notice or decision to date of a notice or decision.

Interim Settlement/Prospective Rate Time Frames: Before the adoption of emergency regulations effective August 3, 1992, DMAS regulations and policy required that providers' cost reports be interim settled and a prospective rate set within 90 days after an acceptable cost report was received. The following explains why emergency regulations were adopted.

Providers, prompted in part by changes in the Internal Revenue Code, were increasingly changing their fiscal year periods to a calendar year cost reporting period. In the summer of 1992, 40% of all providers, and, due to recent changes by major chains, 51% of all nursing facilities were reporting using a calendar year period. As a result, approximately 42% of the total cost reports had to be interim settled and have prospective rates set during the second calendar quarter of each year, with an additional 29% during the fourth calendar quarter. Conversely, only 11% were required during the third calendar quarter, and 18% during the first calendar quarter.

Despite increasing the Cost Settlement staff in recent years, DMAS was unable to meet regulatory and policy timelines in the face of the increasingly lopsided filing periods. After review, DMAS concluded that adding more staff to meet a seasonal workload would not be a cost effective use of resources. However, the Auditor of Public Accounts had issued an audit point on timeliness and providers and their attorneys had expressed concerns about the failure to meet regulatory mandates.

Medicare regulations at 42 CFR 405.1803 and 405.1835(c) define a reasonable period of time for issuing notices of amount of program reimbursement as within 12 months of receiving an acceptable cost report. DMAS did not believe it needed to go that far, instead its review indicated that extending the time frames an additional 90 days would be a reasonable solution. This extension of time was expected to permit DMAS to even out the workload by moving some of it from the peak workload periods during the second and fourth calendar quarters to the lower workload periods in the third and first calendar quarters. The amendment was also expected to increase provider confidence in the rate-setting process and enhance staff morale.

Audited Financial Statements: The cost reports filed annually by nursing facilities are currently required to be accompanied by financial statements. In addition, a home office report must be filed, if applicable.

DMAS has long believed that financial statements which are audited provide a stronger assurance that a provider's accounting procedures and records are properly capturing and reporting financial transactions. In addition, DMAS could rely on data developed by the independent auditors, thereby reducing DMAS' audit procedures. However, in the past, concern has been expressed that audited financial statements would generally not be available until after the cost report is submitted, and that it would not be cost effective for small facilities or those with low Medicaid utilization to obtain audits of their financial statements.

Providers are now required to file audited financial statements with the Virginia Health Services Cost Review Council. Accordingly, it would impose no burden on providers to require that they supply the same information to DMAS, and would enhance DMAS' performance of its mission.

In addition, information such as schedules of restricted cash funds and of investments are not currently provided on the cost report, but are necessary for DMAS to perform a complete review of

the filings. Providers normally prepare this information as part of their fiscal year end process, so it should not be burdensome.

Appeal Notice Requirements: Since 1986, DMAS has used certified mail to nursing facilities to advise them of deadlines or actions DMAS will take if a response is not received by a specific date, for example, due dates for noting appeals, or rate reductions for failure to file cost reports on time. As a result of an employee suggestion and a review of the program's experience, certified mail will no longer be used for nursing facilities (except for final decisions signed by the DMAS Director).

Without the receipt of mail being certified, it is difficult to determine when such correspondence was received. Therefore, all time frames (which are currently found in Part III, Appeals, of the Nursing Home Payment System) will run from the date of correspondence or action. To compensate for the earlier start of the timeclock, time will be measured by business days instead of calendar days.

The Administrative Process Act was amended, in §§ 9-6.14:11 and 9-6.14:12, to specify timeframes, in situations of informal and formal appeals, by which agencies must notify the appellant of its decisions. This regulation has been modified in § 3.3 to incorporate these new timeframes to avoid conflict with the APA requirements which become effective July 1, 1993.

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

PART I.
INTRODUCTION.

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

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

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

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

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

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

PART II.
RATE DETERMINATION PROCEDURES.

Article 1.
Plant Cost Component.

§ 2.1. Plant cost.

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

B. To calculate the reimbursement rate, plant cost shall be converted to a per diem amount by dividing it by the

greater of actual patient days or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

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

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

§ 2.2. New nursing facilities and bed additions.

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

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

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

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

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

§ 2.3. Major capital expenditures.

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

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

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

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

§ 2.4. Financing.

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

1. Refinancing incentive. Effective July 1, 1991, for mortgages refinanced on or after that date, the DMAS will pay a refinancing incentive to encourage nursing facilities to refinance fixed-rate, fixed-term mortgage debt when such arrangements would benefit both the Commonwealth and the providers. The refinancing

incentive payments will be made for the 10-year period following an allowable refinancing action, or through the end of the refinancing period should the loan be less than 10 years, subject to a savings being realized by application of the refinancing calculation for each of these years. The refinancing incentive payment shall be computed on the net savings from such refinancing applicable to each provider cost reporting period. Interest expense and amortization of loan costs on mortgage debt applicable to the cost report period for mortgage debt which is refinanced shall be compared to the interest expense and amortization of loan costs on the new mortgage debt for the cost reporting period.

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

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

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

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

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

B. Interest rate upper limit.

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

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

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

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

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

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

3. Variable interest rate upper limit.

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

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

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

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

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

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

a. Examination Fees

b. Guarantee Fees

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

d. Underwriters Discounts

e. Loan Points

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

a. Legal Fees

b. Cost Certification Fees

c. Title and Recording Costs

d. Printing and Engraving Costs

e. Rating Agency Fees

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

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

§ 2.5. Purchases of nursing facilities (NF).

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

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

1. The allowable cost of a bona fide sale of a facility (whether or not the parties to the sale were, are, or will be providers of Medicaid services) shall be the lowest of the sales price, the replacement cost value determined by independent appraisal, or the limitations of Part XVI - Revaluation of Assets. Revaluation of assets shall be permitted only when a bona fide sale of assets occurs.

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

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

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

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

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

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

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

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

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

E. Depreciation recapture.

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

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

F. Reimbursable depreciation.

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

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

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

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

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

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

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

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

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

6. After the transferor has made arrangements satisfactory to the director to repay the amount due or if there is no amount due, the director shall issue

a letter of verification to the transferor in recordable form stating that the transferor has complied with the provisions of this section and setting forth the term of any alternative repayment agreement. The failure of the transferor to reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing service to DMAS in a timely manner renders the transfer of the nursing facility ineffective as to the Commonwealth.

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

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

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

Article 2.
Operating Cost Component.

§ 2.6. Operating cost.

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

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

§ 2.7. Nursing facility reimbursement formula.

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

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

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

3. Each NF's Service Intensity Index (SII) shall be calculated for each semiannual period of a NF's fiscal year based upon data reported by that NF and entered into DMAS' Long Term Care Information System (LTCIS). Data will be reported on the multidimensional assessment form prescribed by DMAS (now DMAS-95) at the time of admission and then twice a year for every Medicaid recipient in a NF. The NF's SII, derived from the assessment data, will be normalized by dividing it by the average for all NF's in the state.

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

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

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

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

ceiling will be calculated semiannually.

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

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

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

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

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

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

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

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

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

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

C. The PIRS method shall still require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rates or prospective operating ceilings.

D. Nonoperating costs.

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

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

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

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

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

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

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

G. Quality of care requirement.

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

H. Sale of facility.

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

I. Public notice.

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

§ 2.8. Phase-in period.

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

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

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

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

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

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

§ 2.8. Nursing facility rate change.

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

Article 3.
Allowable Cost Identification.

§ 2.9. Allowable costs.

Costs which are included in rate determination procedures and final settlement shall be only those allowable, reasonable costs which are acceptable under the Medicare principles of reimbursement, except as specifically modified in the Plan and as may be subject to individual or ceiling cost limitations and which are classified in accordance with the DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification).

A. Certification.

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

B. Operating costs.

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

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

3. Indirect patient care operating costs include all other operating costs, not identified as direct patient care operating costs and NATCEPs costs in VR 460-03-4.1941, which are allowable under the Medicare

principles of reimbursement, except as specifically modified herein and as may be subject to individual cost or ceiling limitations.

C. Allowances/goodwill.

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

§ 2.10. Purchases/related organizations.

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

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

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

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

D. Exception to the related organization principle.

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

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

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

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

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

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

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

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

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

construed to mean capital costs associated with such purchases, leases, or construction.

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

§ 2.11. Administrator/owner compensation.

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

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

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

D. Owner/administrator employment documentation.

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

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

3. Compensation for such services shall be adjusted where such compensation exceeds that paid in such arms-length ~~transaction~~ *transactions* or where there is a duplication of duties normally rendered by an administrator. No reimbursement shall be allowed for compensation where owner services cannot be documented and audited.

§ 2.12. Depreciation.

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

§ 2.13. Rent/Leases.

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

§ 2.14. Provider payments.

A. Limitations.

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

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

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

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

C. *For cost reports filed on or after August 1, 1992,* an interim settlement shall be made by DMAS within ~~90~~ *180* days after receipt and review of the cost report. *The 180-day time frame shall similarly apply to cost reports filed but not interim settled as of August 1, 1992.* The word "review," for purposes of interim settlement, shall include verification that all financial and other data specifically requested by DMAS is submitted with the cost

report. Review shall also mean examination of the cost report and other required submission for obvious errors, inconsistency, inclusion of past disallowed costs, unresolved prior year cost adjustments and a complete signed cost report that conforms to the current DMAS requirements herein.

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

1. Cost report filed by a terminated provider;

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

3. Lack of a valid provider agreement and decertification;

4. Moneys owed to DMAS;

5. Errors or inconsistencies in the cost report; or

6. Incomplete/nonacceptable cost report.

§ 2.15. Legal fees/accounting.

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

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

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

§ 2.16. Documentation.

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

§ 2.17. Fraud and abuse.

Previously disallowed costs which are under appeal and affect more than one cost reporting period shall be disclosed in subsequent cost reports if the provider wishes to reserve appeal rights for such subsequent cost reports. The reimbursement effect of such appealed costs shall be computed by the provider and submitted to DMAS with the cost report. Where such disclosure is not made to DMAS, the inclusion of previously disallowed costs may be referred to the Medicaid Fraud Control Unit of the Office of the Attorney General.

Article 4.
New Nursing Facilities.

§ 2.18. Interim rate.

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

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

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

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

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

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

§ 2.19. Final rate.

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

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

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

Article 5.
Cost Reports.

§ 2.20. Cost report submission.

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

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

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

3. *a.* The provider's *audited* financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), ~~and~~ a statement of cash flows, [*the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards,*] *footnotes to the financial statements, and the management report* . Multi-facility providers ~~not having individual facility financial statements shall submit the "G" series schedules from the cost report plus a statement of changes in cash flow and corporate consolidated financial statements;~~ *shall be governed by § 2.20 A 6;*

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

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

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

5. Depreciation schedule ~~or summary~~ ;

6. ~~Home office cost report, if applicable; and~~ *NFs which are part of a chain organization must also file:*

a. Home office cost report;

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

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

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

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

7. Such other analytical information or supporting ~~documents requested~~ *documentation that may be required* by DMAS ~~when the cost reporting forms are sent to the provider~~ .

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

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

§ 2.21. Reporting form.

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

§ 2.22. Accounting method.

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

§ 2.23. Cost report extensions.

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

B. Extraordinary circumstances do not include:

1. Absence or changes of chief finance officer,

controller or bookkeeper;

2. Financial statements not completed;

3. Office or building renovations;

4. Home office cost report not completed;

5. Change of stock ownership;

6. Change of intermediary;

7. Conversion to computer; or

8. Use of reimbursement specialist.

§ 2.24. Fiscal year changes.

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

Article 6.
Prospective Rates.

§ 2.25. Time frames.

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

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

Article 7.
Retrospective rates.

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

§ 2.27. (reserved)

Article 8.
Record Retention.

§ 2.28. Time frames.

A. All of the NF's accounting and related records, including the general ledger, books of original entry, and statistical data must be maintained for a minimum of five years, or until all affected cost reports are final settled.

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

§ 2.29. Types of records to be maintained.

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

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

2. Itemized depreciation schedules;

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

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

§ 2.30. Record availability.

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

Article 9.
Audits.

§ 2.31. Audit overview.

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

§ 2.32. Scope of audit.

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

§ 2.33. Field audit requirements.

Field audits shall be required as follows:

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

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

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

4. As determined by DMAS desk audit.

§ 2.34. Provider notification.

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

§ 2.35. Field audit exit conference.

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

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

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

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

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

§ 2.36. Audit delay.

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

§ 2.37. Field audit time frames.

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

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

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

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

PART III.
APPEALS.

§ 3.1. Dispute resolution for nonstate operated nursing facilities.

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

B. Nonappealable issues.

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

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

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

4. The use of the moving average of the Skilled

Nursing Facility market basket of routine service costs, as developed by Data Resources, Incorporated, adjusted for Virginia, as the prospective escalator.

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

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

7. The development of Service Intensity Indexes based on:

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

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

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

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

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

§ 3.2. Conditions for appeal.

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

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

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

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

§ 3.3. Appeal procedure.

A. There shall be two levels of administrative appeal.

B. Informal appeals shall be decided by the Director of the Division of Cost Settlement and Audit after an informal fact finding conference is held. The decision of the Director of Cost Settlement and Audit shall be sent in writing to the provider within [~~30~~ *90*] *business* days following conclusion of the informal fact finding conference.

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

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

E. The director shall notify the provider of his final decision within [~~45~~ *30*] *business* days of ~~receipt~~ *the date* of the appointed hearing officer's written recommendation, or after the parties have filed exceptions to the recommendations, whichever is later.

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

§ 3.4. Formal hearing procedures.

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

§ 3.5. Appeals time frames.

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

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

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

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

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

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

§ 3.6. Dispute resolution for state-operated NFs.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

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

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

B. Right to request reconsideration.

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

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

C. Informal review.

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

D. Division director action.

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

E. DMAS director review.

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

F. Secretarial review.

If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 *business* days after ~~receipt~~ *the date* of the decision of the DMAS Director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other cabinet secretary as appropriate. Any determination by such secretary or secretaries shall be final.

PART IV.
INDIVIDUAL EXPENSE LIMITATION.

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

PART V.
COST REPORT PREPARATION INSTRUCTIONS.

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

PART VI.
STOCK TRANSACTIONS.

§ 6.1. Stock acquisition.

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

§ 6.2. Merger of unrelated parties.

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

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

§ 6.3. Merger of related parties.

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

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

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

§ 7.2. NATCEPs costs.

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

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

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

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

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

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

PART VIII.
(Reserved)

PART IX.
USE OF MMR-240.

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

PART X.
COMMINGLED INVESTMENT INCOME.

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

PART XI.
PROVIDER NOTIFICATION.

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

PART XII.
START-UP COSTS AND ORGANIZATIONAL COSTS.

§ 12.1. Start-up costs.

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

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

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

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

§ 12.2. Applicability.

A. Start-up cost time frames.

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

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

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

separately for the portion or portions of the provider's facility prepared during different time periods.

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

B. Depreciation time frames.

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

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

§ 12.3. Organizational costs.

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

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

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

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

PART XIII.
DMAS AUTHORIZATION.

§ 13.1 Access to records.

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

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

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

PART XIV.
HOME OFFICE COSTS.

§ 14.1. General.

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

§ 14.2. Purchases.

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

§ 14.3. Allocation of home office costs.

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

§ 14.4. Nonrelated management services.

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

§ 14.5. Allowable and nonallowable home office costs.

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

§ 14.6. Equity capital.

Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return

on equity capital to proprietary providers for periods or portions thereof on or after July 1, 1987.

PART XV.
REFUND OF OVERPAYMENTS.

§ 15.1. Lump sum payment.

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

§ 15.2. Offset.

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

§ 15.3. Payment schedule.

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

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

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

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

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

§ 15.4. Extension request documentation.

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

§ 15.5. Interest charge on extended repayment.

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

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

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

PART XVI.
REVALUATION OF ASSETS.

§ 16.1. Change of ownership.

A. Under the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, reimbursement for capital upon the change of ownership of a NF is restricted to the lesser of:

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

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

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

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

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

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

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

1. The amounts computed in subsection B above;

2. Appraised replacement cost value; or

3. Purchase price.

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

NOTICE: The forms used in administering the Nursing Home Payment System Patient Intensity Rating System Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 910 Capitol Square, 2nd Floor, Room 262, Richmond, Virginia.

Cost Reporting Forms for Nursing Facility (Single Level of Care), Effective June 30, 1992

Cost Reporting Forms for Nursing Facility, Nursing Facility with Multiple Level of Care or Hospital-Based Nursing Facilities, Effective June 30, 1992

Cost Reporting Forms for Nursing Facility with other Long-Term Care Services, Effective June 30, 1992

DEPARTMENT OF TAXATION

Title of Regulation: **VR 630-3-414. Corporation Income Tax: Sales Factor.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Effective Date: July 28, 1993.

Summary:

This regulation sets forth the proper method for including receipts from installment sales in the sales factor. The basis portion is included in the sales factor in the year of sale. The net gain portion and interest income are included in the sales factor in the year recognized for federal income tax purposes. The regulation also clarifies when such receipts should be included in the numerator of the sales factor.

VR 630-3-414. Corporation Income Tax: Sales Factor.

§ 1. In general.

The sales factor is a fraction, the numerator of which is the total sales in Virginia during the taxable year, and the denominator of which is the total sales of the corporation everywhere during the taxable year.

§ 2. Sales.

"Sales" is defined in § 58.1-302 of the Code of Virginia and means all gross receipts of the corporation except dividends allocated under § 58.1-407 of the Code of Virginia. In the case of the sale or disposition of intangible property (including, but not limited to patents, copyrights, bonds, stocks and other securities) gross receipts shall be disregarded and only the net gain from the transaction shall be included. Sales shall be included in the sales factor if the gross receipts or net gain are included in Virginia taxable income and are connected with the conduct of taxpayer's trade or business within the United States. See ~~Va. Reg.~~ § *VR* 630-3-408.

1. Net gain is computed on a per transaction basis. A sale or disposition of intangible property is included in the sales factor only to the extent that it results in a net gain.

2. A disposition of intangible property resulting in a loss is ignored in computing the sales factor. A loss is not used to offset gains from the sale or other disposition of intangible property, and a loss is not used to reduce other gross receipts.

3. The net gain from the transaction must be recognized, i.e., includable in federal taxable income,

in order to be included in the Virginia sales factor.

4. "Sale or other disposition" includes the sale, exchange, redemption, maturity or other disposition of intangible property.

§ 3. Example.

In 1990, Corporation C, a calendar year taxpayer, redeems bonds with an adjusted basis of $46 million for $50 million, recognizing a net gain of $4 million. C also sells stock with an adjusted basis of $98 million for $95 million, recognizing a net loss of $3 million. Only the $4 million dollar net gain is reflected in C's sales factor; the $3 million loss from the sale of stock is ignored and is not used to offset the $4 million net gain in computing C's sales factor. Likewise, the loss is not used to reduce C's other gross receipts in 1990.

§ 4. Installment sales.

A. Receipts from an installment sale of real or tangible personal property shall be included in the sales factor based on the following:

1. The basis portion of the sales proceeds shall be included in the sales factor in the year of sale. The basis portion of the sales proceeds shall be included in the numerator of the sales factor if: (i) the tangible personal property sold was received in Virginia [~~by the purchaser~~] , or (ii) the real property sold was located in Virginia.

2. The net gain portion of the sales proceeds shall be included in the sales factor to the extent and in the year recognized for federal income tax purposes. The net gain portion of the sales proceeds shall be included in the numerator of the sales factor if a greater proportion of the [recordkeeping, collection and other] income producing activity in the year of receipt is performed in Virginia.

3. The interest income shall be included in the sales factor in the year it is recognized for federal income tax purposes. The interest is included in the numerator of the sales factor if a greater proportion of the recordkeeping, collection and other income producing activity in the year of receipt is performed in Virginia.

B. Receipts from an installment sale of intangible property shall be included in the sales factor based on the following:

1. The net gain portion of the sales proceeds shall be included in the sales factor to the extent and in the year recognized for federal income tax purposes. The net gain portion of the sales proceeds shall be included in the numerator of the sales factor if a greater proportion of the [recordkeeping, collection and other] income producing activity in the year of receipt is performed in Virginia.

2. The interest income shall be included in the sales factor in the year it is recognized for federal income tax purposes and in the same manner as interest income from an installment sale of real or tangible personal property.

3. The basis portion of the sales proceeds shall not be included in the sales factor in the year of sale.

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Title of Regulation: **VR 630-3-419. Corporation Income Tax: Construction Corporation; Apportionment.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Effective Date: July 28, 1993.

Summary:

This regulation clarifies that the "completed contract method" mentioned in § 58.1-419 of the Code of Virginia does not include any of the "percentage of completion" methods available under federal law. In addition, the regulation clarifies which apportionment formula should be used when a construction corporation reports income under two or more accounting methods.

Other nonsubstantive changes are made to conform to the style of The Virginia Register.

VR 630-3-419. Corporation Income Tax: Construction Corporation; Apportionment.

~~A.~~ *§ 1.* In general.

~~1.~~ *A.* If a construction corporation used the completed contract method of accounting for its federal income tax return it is required by ~~Va. Code~~ § 58.1-440 *of the Code of Virginia* to use the same method for computing Virginia taxable income.

~~2.~~ *B.* If a construction corporation is required to allocate and apportion income by ~~Va. Code~~ § 58.1-405 *of the Code of Virginia* , it shall apportion income (other than dividend income allocable under ~~Va. Code~~ § 58.1-407 *of the Code of Virginia*) within and without this ~~state~~ *Commonwealth* in the ratio that the business within this ~~state~~ *Commonwealth* is to the total business of the corporation.

~~3.~~ *C.* If a corporation does not use the completed contract method, it shall use the three factor apportionment formula in ~~Va. Code~~ § 58.1-408 et seq. *of the Code of Virginia.*

D. If a portion of a construction corporation's income is reported under the completed contract method and a portion is reported under a percentage of completion

method or some other accounting method, the applicable apportionment formula is determined by the method used to report a majority (more than 50%) of the total business (measured by gross revenue) conducted by the taxpayer for the taxable year. If no one method is used to report a majority of the taxpayer's total business, the three factor apportionment formula in § 58.1-408 et seq. of the Code of Virginia shall be used.

E. An example follows:

A construction corporation's total business is $500,000 for the taxable year ended December 31, 1991: $275,000 is reported on the completed contract basis, $150,000 is reported under a percentage of completion method, and the remainder is reported on a cash basis. Because a majority of the total business was reported using the completed contract method of accounting, the taxpayer is required to apportion income using the single factor of business within Virginia over total business of the corporation.

~~B.~~ *§ 2.* Definitions.

~~1.~~ *A.* The total business of a corporation using the completed contract method of accounting is its gross receipts from completed contracts and all other gross receipts except income allocable under ~~Va.~~ ~~Code~~ § 58.1-407 *of the Code of Virginia* .

~~2.~~ *B.* Business within this ~~state~~ *Commonwealth* is the gross receipts of such corporations from completed contracts on jobs within Virginia and all other gross receipts attributable to income from sources within Virginia.

C. The "completed contract method" does not include any of the percentage of completion methods available under federal law.

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Title of Regulation: **VR 630-10-74. Retail Sales and Use Tax: Nonprofit Organizations.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Effective Date: July 28, 1993.

Summary:

This final regulation clarifies the sales and use tax treatment of sales and purchase transactions made by nonprofit organizations. The list of exemptions shown in § 58.1-608 of the Code of Virginia (recodified as 58.1-609.1 through 58.1-609.13 of the Code of Virginia effective July 1, 1993) is removed from the regulation due to constant (generally annual) changes in the statute. This final regulation includes information on criteria for the exemption, the strict construction of the exemptions, exempt transactions, purchases for resale, intercompany sales and transfers, and occasional sale transactions.

VR 630-10-74. Retail Sales and Use Tax: Nonprofit Organizations.

~~A. Purchases. All tangible personal property purchased for use or consumption by religious, charitable, civic and other nonprofit organizations is taxable except:~~

~~1. Tangible personal property for use or consumption by a college or other institution of learning conducted not for profit. (See § 630-10-96.)~~

~~2. Tangible personal property for use or consumption by, or purchased for donation to, a non-commercial educational telecommunications entity conducted not for profit.~~

~~3. Tangible personal property for use or consumption by a hospital, a licensed nursing home or a home for adults (as defined in Virginia Code Section 63.1-172A) provided it is conducted not for profit.~~

~~4. Tangible personal property for use or consumption by a volunteer fire department or volunteer rescue squad conducted not for profit, and construction materials to be incorporated into realty when sold to and used by the organization, rather than a contractor, in construction, maintenance or repair of any property of such organization.~~

~~5. Tangible personal property for use or consumption by hospital cooperatives or hospital corporations conducted not for profit that are organized and operated for the sole purpose of providing services exclusively to hospitals conducted not for profit.~~

~~6. Historical documents, maps, rare books, and manuscripts acquired by a State historical society conducted not for profit provided such society maintains a research library open to the public without charge for research and educational purposes. (Only historical societies devoted to the study of the history of this state as a whole are entitled to exemption. The exemption is not applicable to local, regional, or national historical societies).~~

~~7. Tangible personal property for use or consumption at a national or international camping assembly within this state sponsored by a nonsectarian youth organization, provided all the following conditions are met: (a) the sponsoring organization is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code; (b) the camping assembly is for at least (7) continuous days; (c) the assembly has an attendance of more than 20,000; and (d) the tangible personal property is purchased by the sponsoring organization.~~

~~8. Books and other reading materials for use by a~~

~~nonprofit group organized solely to distribute such books and reading materials to school age children.~~

~~9. Tangible personal property sold or leased for use in nonprofit nutrition programs for the elderly qualifying under 42 U.S.C. Section 3030(c) through 3030(g), as amended, as administered by the Department for the Aging of the Commonwealth of Virginia, and the food and food products sold under such programs to elderly persons.~~

~~10. Tangible personal property bought, sold or used by the Virginia Federation of Humane Societies or any chartered, nonprofit organization incorporated under the laws of this Commonwealth and organized for the purpose of preventing cruelty to animals and promoting humane care of animals, when such property is used for the operation of such organizations or the construction or maintenance of animal shelters.~~

~~11. Tangible personal property purchased for use or consumption by a nonprofit museum of fine arts which is located on property owned by a city in Virginia and which receives more than half of its operating budget from appropriations by the city.~~

~~12. Tangible personal property purchased for use or consumption by an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code and organized exclusively for the purpose of providing education, training and services to retarded citizens of this Commonwealth, provided that such property is used exclusively for the purpose set forth herein and further provided that such organization receives more than half of its total funding from federal, state or local governments.~~

~~13. Tangible personal property purchased for use by a nonprofit, nonstock corporation which receives no financial aid from the Commonwealth or the federal government and is organized exclusively for the purpose of operating, at no charge to the pupils, a combination boarding and day school for the severely physically handicapped children and young adults of the Commonwealth.~~

~~14. Tangible nonmedical personal property purchased by a nonprofit organization organized exclusively for the purpose of providing housing and ancillary assistance for children suffering from leukemia or oncological diseases, for other ill children, and for the families of such children during periods of medical treatment of such children at any hospital in the Commonwealth.~~

~~15. Tangible personal property purchased by a voluntary health organization exempt from taxation under § 501 (c)(3) of the Internal Revenue Code and organized exclusively for the purpose of providing direct therapeutic and rehabilitative services, such as speech therapy, physical therapy, and camping and recreational activities, to the children and adults of the Commonwealth regardless of the nature of their diseases or socioeconomic position.~~

~~B.Sales. If an organization conducted not for profit regularly engages in selling tangible personal property, it is required to register as a dealer and collect and pay the tax on retail sales except that: (1) tangible personal property sold by a noncommercial, educational telecommunications entity conducted not for profit; and (2) charges for gift wrapping services performed by a nonprofit organization are not subject to tax.~~

~~If an organization is not regularly engaged in selling tangible personal property, and buys its merchandise from a dealer who is registered to collect the sales or use tax, the organization pays the tax to its supplier for payment to the state. If the supplier is not registered to collect the sales or use tax, the organization must report and pay the tax on a Consumer's Use Tax Return, Form ST-7.~~

~~Purchases of certain tangible personal property by churches conducted not for profit are covered in § 630-10-22.1; sales of medicines, drugs and certain other items of tangible personal property by hospitals are covered in § 630-10-47; sales of school textbooks by schools conducted not for profit and by certain dealers are covered in § 630-10-96. Section revised 7/60; 1/79; 8/82; 11/83; 8/84.~~

§ 1. Generally.

A. Criteria for exemption.

The Tax Commissioner has no authority to grant an exemption from the retail sales and use tax to a nonprofit organization. Only the General Assembly can enact legislation which will grant exemption from the tax.

The General Assembly has not enacted a general exemption from the retail sales and use tax for nonprofit organizations. The only nonprofit organizations exempt from the tax are those specifically set forth in §§ [*~~58.1-608 and~~*] *58.1-608.1* [*and 58.1-609.1 through 58.1-609.13*] *of the Code of Virginia. These organizations are typically exempt from federal and state income taxes and serve educational, medical, civic, religious, charitable or cultural purposes. However, the vast majority of nonprofit organizations which are exempt from federal and state income taxes are not exempt from the Virginia retail sales and use tax because they do not qualify for a sales and use tax exemption set out in the Code of Virginia.*

If a nonprofit organization is not exempt by [*Virginia*] *statute from* [*~~purchasing~~ tax on the purchase of*] *tangible personal property or taxable services, it must pay tax on those purchases used or consumed in its operations. If a supplier of the nonprofit organization is not registered to collect the tax or if the supplier is a*

registered dealer who fails to collect the tax, the nonprofit organization must report and pay the use tax on a Consumer's Use Tax Return, Form ST-7.

If a nonprofit organization regularly engages in selling tangible personal property, it is required to register as a dealer and collect and remit ★[to the department] the tax [~~to the department~~] on retail sales unless it is specifically exempt by statute from collecting the tax.

B. Strict construction of the exemption.

As indicated in VR 630-10-35.2, when determining which organizations qualify for exemption from the tax, the department is bound by court decisions to strictly construe laws granting the tax exemption. This means that a nonprofit organization must meet all of the requirements specified in the law in order to qualify for an exemption. For example, [~~§ 58.1-608 A 4 e~~ subdivision 15 of § 58.1-609.4] of the Code of Virginia exempts:

> *From July 1, 1991, through June 30, 1996, tangible personal property purchased for use [~~and~~ or] consumption by a nonprofit organization exempt from taxation under § [~~501 c 3~~ 501(c)(3)] of the Internal Revenue Code and organized exclusively to combat illiteracy by tutoring and training adults and by increasing community awareness of the illiteracy problem within the metropolitan Richmond area.*

Under strict construction of the statute, to meet the criteria established for this exemption, an organization must (i) purchase tangible personal property during the period July 1, 1991, [~~and~~ to] June 30, 1996, (ii) have a § 501 c 3 designation from the Internal Revenue Service, (iii) be organized for the sole purpose of combating illiteracy in adults, and (iv) conduct operations in the metropolitan Richmond area. Organizations that provide [~~illiteracy~~] programs [to combat illiteracy] as part of a larger operation do not qualify for this exemption. In addition, similar organizations created solely to combat illiteracy, but operating outside the metropolitan Richmond area, would not qualify for this exemption. Lastly, when an exemption "sunsets," it typically applies to a specific period and expires after a certain date. Purchases before or after that period are taxable. Therefore, in the example above, purchases made before July 1, 1991, or after June 30, 1996, would be taxable.

§ 2. Exempt transactions.

The exemptions that have been granted by the General Assembly typically apply only to the use or consumption of tangible personal property by an organization. When an exemption is limited solely to the use or consumption of tangible personal property, the organization generally will be subject to the tax on purchases of meals and lodging, which are considered taxable services. [~~In addition, when an organization regularly makes taxable sales, it must register as a dealer and collect the tax on these sales.~~] In limited situations, the General Assembly has granted broader exemptions to certain organizations so as to exempt taxable services, such as meals and lodging, and sales of tangible personal property.

When a nonprofit organization is exempt [~~for~~ from paying the tax on] the purchase of tangible personal property or services, it should furnish to its supplier a properly completed exemption certificate, either Form ST-13 or ST-13A. If such [~~a~~] nonprofit organization is not making taxable sales as a registered dealer or is not required to register for consumer use tax, it will usually not have a Virginia Retail Sales and Use Tax registration number. In this instance, there is no requirement to place a registration number on the exemption certificate when making purchases. Instead, " [~~Non~~ Not] Applicable" should be placed on the Certificate of Exemption where the registration number is required.

If the nonprofit organization does not have an exemption certificate but has received a [~~letter ruling~~ ruling letter] from the department stating that it is exempt by statute, then this letter may be furnished to suppliers instead of the exemption certificate in order to verify that the purchase is exempt from the tax.

A. Meals and lodging.

According to VR 630-10-97.1, meals and lodging are considered [~~to be~~] taxable services [~~and not~~ rather than] tangible personal property. In order to make an exempt purchase of meals and lodging, an organization's exemption must contain specific language which exempts the purchase of services. An example of this language is found in [~~§ 58.1-608 A 4 d~~ subdivision 4 of § 58.1-609.4] of the Code of Virginia, which exempts:

> *TANGIBLE PERSONAL PROPERTY AND SERVICES purchased by an educational institution doing business in the Commonwealth which (i) admits regularly enrolled high school and college students, and (ii) provides a face-to-face educational experience in American government, a program which leads towards the successful completion of United States history, civics, and problems in democracy courses in high school, or which is acceptable for full credit towards an undergraduate or graduate level college degree, provided such institution is conducted not for profit.*

[Therefore, nonprofit organizations are subject to the sales tax on meals and lodging unless their respective statutes specifically exempt services.]

B. Sales

If an organization is regularly engaged in selling tangible personal property, it is not required to collect the tax if the organization's exemption contains specific language [~~to exempt~~ exempting] these sales. An example of this language is found in [~~§ 58.1-608 A 8 n~~ subdivision 14 of § 58.1-609.8] of the Code of Virginia, which

exempts:

... TANGIBLE PERSONAL PROPERTY purchased for use or consumption, or TO BE SOLD AT RETAIL, by any nonsectarian youth organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code which is organized for the purposes of the character development and citizenship training of its members using the methods now in common use by Girl Scout [~~*and*~~ *or*] *Boy Scout organizations in Virginia.*

§ 3. Purchases for resale.

A purchase of tangible personal property for sale or resale is not subject to the tax. Therefore, a nonprofit organization that is regularly engaged in selling tangible personal property and required to register as a dealer may purchase this tangible personal property exempt from the tax using a resale exemption certificate, Form ST-10.

§ 4. Intercompany sales and transfers.

There is no exemption for sales or transfers between separately organized chapters of an organization, including sales to or from a chapter of an organization and its parent organization unless the sale or transfer involves interstate commerce or other transaction which is specifically exempt by statute.

§ 5. Occasional sale.

Notwithstanding any other provision of this regulation, a nonprofit organization that is not regularly engaged in selling tangible personal property [~~*may*~~ *is*] *not* [~~*be*~~] *required to register as a dealer and collect the tax on its sales provided it makes sales on three or fewer separate occasions within the calendar year. However, sales made at fairs, flea markets, festivals and carnivals are not considered occasional sales.* [~~*For more information on the occasional sale exemption, see VR 630-10-75.*~~]

§ 6. Change of organization or operations.

If a nonprofit organization changes its organizational structure or the nature of its operation in a way that voids its exemption from retail sales and use tax, it is required to register to collect and remit sales [*tax on retail sales*] *and* [*pay*] *use tax* [*on purchases of tangible personal property or services previously exempted*] , [~~*if*~~ *where*] *applicable, in accordance with § 58.1-612 of the Code of Virginia.*

§ 7. Misuse of exemption certificates.

Any misuse of exemption certificates will be subject to the penalties prescribed in § 58.1-623.1 of the Code of Virginia, which include a penalty of up to $1,000 or suspension of the use of the exemption for a period of at least one year. In all cases, the person misusing an exemption certificate will be liable for the unpaid tax and interest thereon.

* * * * * * * *

Title of Regulation: **VR 630-10-80. Retail Sales and Use Tax: Penalties and Interest.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Effective Date: July 28, 1993.

Summary:

This regulation addresses recent law changes regarding penalty and interest application to assessments of delinquent tax payments. It further explains current operating policies and procedures concerning the application of penalty and interest to audit assessments.

The object of amending the regulation is to directly apply the statutory authority granted under Title 58.1 of the Code of Virginia in light of Virginia's 1990 Tax Amnesty Program.

Specifically, the revision of the regulation (i) reflects law changes regarding penalties; (ii) explains the application of criminal penalties; (iii) explains the application of penalty to first and subsequent audits, including the levels of compliance necessary to avoid penalty; and (iv) explains the application of penalty for the misuse of exemption certificates.

The law changes took effect on July 1, 1991, and July 1, 1992.

VR 630-10-80. Retail Sales and Use Tax: Penalties and Interest.

~~A. Penalties, generally.~~ *§ 1. Generally.*

A. Civil penalties.

A dealer who fails to file a return and pay the full amount of tax by the required due date is subject to a penalty of ~~5%~~ *6.0%* of the amount of the tax due and unpaid for each month or fraction thereof, until paid, not to exceed ~~25%~~ *30%* . In no case will the penalty be less than $10, even if no tax is due for the period.

However, in the case of filing a false or fraudulent return with intent to defraud the ~~State~~ *Commonwealth* or of willful failure to file a return with intent to defraud the ~~State~~ *Commonwealth* , a penalty of 50% of the amount of tax actually due will be assessed. Under reporting gross sales, gross proceeds or cost price by 50% or more is prima facie evidence of intent to defraud the ~~State~~ *Commonwealth* .

At the discretion of the ~~State~~ Tax Commissioner, the penalty may be abated or waived provided the taxpayer

can demonstrate good cause for the failure to file ~~and/~~ or pay on time. Requests for waiver or abatement of penalty must be made in writing to the Department of Taxation and must include all pertinent facts to support the request.

B. Criminal penalties.

1. Misdemeanors.

a. Collection of tax. Any dealer who neglects, fails, or refuses to pay or collect the tax, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

b. Records. Every dealer required to pay or collect the sales and use tax shall keep a record of all sales, leases and purchases of tangible personal property. Records and supporting documents shall be retained for a period of three years from the required date for filing a return to which such records and documents pertain. Any dealer failing to keep such records shall be guilty of a Class 1 misdemeanor.

The Tax Commissioner is authorized to examine the books, records and other documents of all transportation companies, agencies, firms or persons that conduct business by truck, rail, water, airplane or otherwise to identify the dealers who ship tangible personal property into or out of Virginia which may be subject to the tax. Any transportation company, agency, firm or person who refuses to permit such examination shall be guilty of a Class 1 misdemeanor.

c. Returns. Any dealer failing or refusing to file a return or failing or refusing to file a supplemental return or other data in response to a summons or other inquiry by the Tax Commissioner or who makes a false or fraudulent return with intent to evade the tax, or who gives or knowingly receives a false or fraudulent exemption certificate shall be guilty of a Class 1 misdemeanor.

d. Certificates of registration. Any dealer and each officer of any corporation who conducts business in the Commonwealth without obtaining a certificate of registration, or who conducts business in the Commonwealth after a certificate of registration has been suspended or revoked, shall be guilty of a Class 2 misdemeanor.

2. Felonies. Any dealer engaged in business in the Commonwealth who, through two or more acts or omissions within a period of 90 days, collects, or is deemed to have collected or withheld, any state sales or use or withholding tax totaling $1,000 or more and willfully fails to truthfully account for and remit to the department such tax shall be guilty of a Class 6 felony. For example, assume that a dealer collects $5,000 in sales tax and withholds Virginia income tax of $500 from his employees for the same period and willfully fails to remit such taxes, instead converting the funds to his own use. The failure to remit the sales and withholding taxes are separate acts for purposes of this section and could result in the dealer being charged with a Class 6 felony.

~~B. Interest, generally~~

C. Interest.

Interest at the rate established in ~~Section~~ *§* 6621 of the Internal Revenue Code ~~of 1954~~ , as amended, *plus 2.0%* accrues on the tax until paid or until an assessment is issued. At the time the assessment is issued, a bill will be sent to the taxpayer for the tax, penalty and interest which must be paid within 30 days from the date of the bill. If the bill is not paid in full within the 30-day period, interest at the prescribed rate will accrue on the full amount of the ~~initial~~ assessment from the date of *initial* assessment until payment is made. Interest *is mandatory and* cannot be waived. *(See Article 1 (§ 58.1-1 et seq.) of Title 58.1 of the Code of Virginia* [*for the rate of interest*] *.)*

~~C.~~ *§ 2.* Audits.

~~1.~~ *A.* Penalty.

The application of penalty to audit deficiencies is mandatory ~~; but its application may be waived at the discretion of the State Tax Commissioner based upon the extent of a dealer's compliance with requirements for collection and payment of sales tax and requirements for payment of use tax or good cause. For example, a dealer who demonstrates acceptable compliance with sales and use tax requirements, but who fails to comply with certain provisions of the law for good cause may have penalty waived with respect to all or a portion of the audit deficiency. Generally, absent indications of fraud, penalty will be waived on the first audit of all taxpayers. On a second or subsequent audit, a dealer is expected to demonstrate a higher degree of sales and use tax compliance. Penalty will not be waived on second or subsequent audits for other than exceptional mitigating circumstances.~~ *and its application is* [*generally*] *based on the percentage of compliance determined by computing the dealer's compliance ratio. The compliance ratio for the sales or use tax may be computed by using the following ratio:*

$$\frac{\text{Measure Reported}}{\text{Measure Reported + Measure Found}} = \text{Compliance Ratio}$$

"Measure reported" means dollar amounts of [~~*sales or use measure*~~ *gross sales or the cost price of purchases*] *reported on returns for the audit period. "Measure found" means dollar amounts of additional* [~~*sales or use measure*~~ *sales deficiency or dollar amounts of additional use deficiency*] *disclosed by the audit. Separate ratios for sales and use taxes will be necessary if the audit contains*

deficiencies in both areas. Tax paid to vendors will not be included in the computation of the compliance ratio.

1. First generation audits. Generally penalty cannot be waived if any of the following conditions exist:

a. The taxpayer has been previously notified in writing to collect tax on sales or to pay tax on purchases, but has failed to follow instructions [: ; *or*]

b. The taxpayer has collected the sales tax, but failed to remit it to the Department of Taxation [: ; *or*]

c. [~~*Indications of fraud in which the*~~ *The*] *taxpayer has willfully evaded reporting and remitting the tax to the Department of Taxation* [*and indications of fraud exist*] .

The audit of a business which has experienced a change in responsible partners or officers or the addition of new locations [,] *and where the business is conducted in the same manner and for the same purposes as during a prior audit* [,] *will not be considered a first audit for purposes of this subsection.*

Similarly, audits performed for periods subsequent to the institution of reorganization plans, where during such reorganizations, the continuity of the business was not affected and the business entity maintained operations for the purpose of producing the same product(s) or rendering the same service(s), will not qualify for first generation audit status. In addition, audits performed for periods subsequent to business mergers, absorptions and like ventures, where the intent is to diversify or expand, will not qualify for first generation audit status. However, penalty generally will not be applied to audit deficiencies occurring in new areas not covered in prior audit(s) as set forth in subdivision 6 of this subsection.

2. Second generation audits. Penalty will generally be applied unless the taxpayer's compliance ratios meet or exceed 85% for sales tax and 60% for use tax.

3. All subsequent generation audits. Penalty will generally be applied unless the taxpayer's compliance ratios meet or exceed 85% for sales tax and 85% for use tax.

4. Taxable sales. Penalty, based on the compliance ratio, will generally be applied to the net understatement of the sales tax. "Net understatement" means sales tax deficiency determined by the audit less allowable credits [, *such as the sales price of tangible personal property returned by the purchaser, repossessed, or charged off as bad debts during the period of the audit*] .

5. Taxable purchases. Penalty, based on the compliance ratio, will generally be applied to the net underpayment of the use tax on recurring purchases of tangible personal property used regularly in the business. "Net underpayment" means use tax deficiency determined by the audit [~~*less allowable credits*~~] .

a. Withdrawals from inventory. Withdrawals [*of tangible personal property*] *are subject to the use tax on* [*a*] *cost basis (or fabricated cost basis in the case of a fabricator/manufacturer) and should be added to taxable recurring purchases for purposes of computing the compliance ratio.*

b. Fixed assets. The tax applies to purchases of fixed assets used in the business and such purchases should be added to taxable recurring purchases and taxable withdrawals from inventory for purposes of computing the compliance ratio.

6. Exceptions. Penalty generally will not be applied to audit deficiencies occurring in new areas not covered by prior audit(s), provided the application of the tax is not clearly established under existing law, regulations or other published documents of which the taxpayer reasonably should have had knowledge, or areas where the taxpayer has relied on prior correspondence with the department that has not been superseded by a law change, a change in regulations, or other published documents of which the taxpayer reasonably should have had knowledge. Deficiencies in these areas will not be included in compliance ratio computations. Notwithstanding the above, items of like class or similar nature may be subject to penalty even though the specific item was not addressed in the previous audit(s) if the general class of items was held taxable in previous audit(s). The application of penalty to audit deficiencies will not be waived on second and subsequent audits for other than exceptional mitigating circumstances.

B. Interest.

The application of interest to all audit deficiencies is mandatory and accrues as set forth in ~~Subsection (B)~~ *§ 1 C* .

§ 3. Exemption certificates.

The Tax Commissioner may impose penalties or suspend the use of an exemption certificate for one year for any person or entity found to have misused an exemption certificate. In lieu of suspension, the Tax Commissioner may assess a penalty of up to $1,000 for the misuse of an exemption certificate by that person or entity or by any other person or entity who, with the consent or knowledge of the exemption holder, has misused the certificate. Any person who uses an exemption certificate after suspension is guilty of a Class 1 misdemeanor.

Examples:

1. An officer of a corporation engaged in the manufacturing of products for sale or resale purchases furnishings for his home using a manufacturing exemption certificate, Form ST-11. Such purchases would be deemed as a misuse of the exemption certificate.

2. A representative of a nonprofit organization, exempt under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia, purchases groceries for his own use using a nonprofit exemption certificate, Form ST-13. Such purchases would also be deemed as a misuse of the exemption certificate.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: **VR 115-01-01. Guidelines for Public Participation.**

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia and Chapter 898 of the 1993 Acts of Assembly.

Effective Dates: June 11, 1993, through June 10, 1994.

Preamble:

Legislation recently enacted by the General Assembly requires agencies of state government to include as a part of their public participation guidelines:

"a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers such panels or consultation appropriate and intends to make use of such panels or consultation."

The legislation further obliges agencies in their public participation guidelines to:

"set out any methods for the identification and notification of interested parties, and any specific means of seeking input from interested persons or groups which the agency intends to use in addition to the Notice of Intended Regulatory Action."

According to House Document No. 51, Report of the Joint Legislative Audit and Review Commission to the Governor and the General Assembly of Virginia, Review of Virginia's Administrative Process Act (Richmond, 1993) (hereinafter "Review"), the public participation guidelines of the Department of Agriculture and Consumer Services do not contain provisions for use of advisory committees (See Review, p. 117). Beginning on July 1, 1993, the new legislation will require public participation guidelines to contain such a provision. Because the public participation guidelines must be in order before other regulations can be made, it is important that public participation guidelines be in place and ready for use before July 1, 1993, guidelines that will satisfy the new requirements of the Administrative Process Act.

Because the provisions of the Guidelines for Public Participation are a declaration of the means by which the public is involved in agency regulation making, the agency has, on a limited basis, amended language of the Guidelines for Public Participation, so as to reflect current agency practices and to accommodate soon-to-take-effect requirements of the Administrative Process Act. The provisions in the Guidelines for Public Participation dealing with the notice of intended regulatory action, for example, have been largely deleted, as the Administrative Process Act will soon specify the requirements relating to the notice of intended regulatory action. An outdated reference to the use of radio tapes has been deleted, as has a provision that makes a statement as to the scope of the Guidelines for Public Participation that could be read to be inconsistent with the Administrative Process Act. The agency has deleted a provision that implies that public hearings will be held after the close of the 60-day public-comment period, and another that requires public hearings on regulations to be held in a certain, specified room in a certain building (a measure that limits effective public participation to the room's dimensions and location, and that could shut down public participation (and hence regulation making) in the event of mishap to the room). These amended Guidelines for Public Participation should improve public participation, in a manner consonant with the requirements of a newly-amended Administrative Process Act.

This regulation supersedes (but only for the period that it is in effect) a regulation by the same title adopted by the Board of Agriculture and Consumer Services on September 25, 1984.

VR 115-01-01. Guidelines for Public Participation.

§ 1. Definitions.

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

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

"Agency" means any of the following: (i) entities under the jurisdiction of the Department that have the authority to make regulations, including the Board of Agriculture and Consumer Services, the Commissioner, all divisions of the Department (including the Division of Marketing and the State Veterinarian), office, boards (excluding the Pesticide Control Board, but only to the extent that any regulation of the Pesticide Control Board is developed exclusively under VR 115-04-21. Public Participation Guidelines, Pesticide Control Board), and commissions under the jurisdiction of the Department; and (ii) the Virginia Agricultural Development Authority.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Public hearing" means an informational proceeding conducted pursuant to § 9-6.14:7.1 of the Code of Virginia (1950), as amended.

§ ~~1.~~ *2.* Purpose.

When developing any proposed new or revised regulation, or when considering the repeal of an existing regulation, the ~~Department of Agriculture and Consumer Services~~ *agency* will solicit input and comments from interested citizens, organizations, associations and industry , *and will afford them the opportunity to submit data, views, and arguments, either orally or in writing, to the agency or its specially designated subordinate.* These ~~guidelines~~ *Guidelines for Public Participation* outline the manner in which the ~~department~~ *agency* will encourage participation of citizens in the formation and development of such regulatory proposals under the Virginia Administrative Process Act.

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

These ~~guidelines~~ *Guidelines for Public Participation* shall apply to all regulations administered by the ~~department~~ *agency* which are subject to the Administrative Process Act. ~~They shall apply to the Board of Agriculture and Consumer Services, the Commissioner of the Department of Agriculture and Consumer Services, and all divisions, offices, boards and commissions under the jurisdiction of the Virginia Department of Agriculture and Consumer Services with the authority to issue regulations including the Division of Markets, the Certified Seed Board, the State Veterinarian, and the Virginia Agricultural Development Authority.~~ The ~~guidelines~~ *Guidelines for Public Participation* are to be used by the ~~department~~ *agency* to identify and notify interested parties of ~~its~~ *the agency's* intent to ~~enact~~ *adopt* regulations and to provide an opportunity for public participation.

§ ~~2.~~ *3.* Initiation of regulation.

Rulemaking may be initiated at any time by ~~the Board of Agriculture and Consumer Services~~ *any agency governed by these Guidelines for Public Participation* . A petition for a new regulation or for amendment, addition, or repeal of any existing regulation may be filed with the ~~Board of Agriculture and Consumer Services~~ *agency* at any time by any ~~agency~~ *department of government* , group, or individual. The ~~board~~ *agency* will consider any regulatory change at its discretion.

§ ~~3.~~ *4.* Identification of interested parties *and advisors* .

~~Prior to the development of any regulation, the department shall identify persons or groups whom it believes would be interested in or affected by the proposal.~~

~~A. Because of the nature of the department's mission, there are certain regulatory functions in which all citizens may have an interest. In these instances, the public at large will be regarded as the interested party.~~

~~B. At other times, when a proposed regulation will be more limited in its effect, the department will identify individuals, groups, professional or trade associations, organizations, or specific industry segments which have an interest in the matter being considered.~~

~~The above will be accomplished largely by identification of those who have expressed interest in specific regulatory matters. In addition, the department~~ *A. The agency in identifying parties interested in proposed regulation making and the Commissioner in identifying potential advisors* will use the following:

1. A directory of agricultural organizations ~~published~~ *printed* by the ~~Virginia~~ Department ~~of Agriculture and Consumer~~ Services ;

2. Available individual industry mailing ~~list~~ *lists* ;

3. Trade organizations and associations;

4. A listing of persons who request to be placed on ~~the~~ *a* mailing list *maintained by the agency* ;

5. A listing of persons who previously participated in public proceedings concerning related subjects or issues; and

6. A listing prepared by the department's operating divisions of persons who would have a potential interest in participating in the formation of regulations within the divisions' specific areas of responsibility.

B. All mailing lists will be revised every other year to insure that they are up-to-date.

§ ~~4. Notification of interested parties.~~

~~A. Notice of Intent.~~

~~At least 30 days prior to the development of any regulation, the department shall prepare a Notice of Intent to Develop Regulation (notice). The notice will contain a brief and concise statement in plain terms as to the purpose of the regulation and shall invite all persons to provide written comments and will specify a deadline for receipt of responses. Such notices shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register. The department may also use other mailing lists as it deems appropriate to notify persons of its intent.~~

~~B. Regulation proposal.~~

~~After consideration of public comments, the department shall prepare the proposed draft regulations. All drafts of the regulation will be labeled with the word "draft" and~~

~~dated.~~

§ 5. Public participation.

A. The ~~Board of Agriculture and Consumer Services~~ *agency* will hold public hearings on all proposed regulations ~~except those listed under § 6, "Exclusions"~~ *subject to Article 2 of the Administrative Process Act* . A copy of the ~~draft~~ *proposed regulation* will be furnished to all persons who responded to the ~~notice of intent~~ *notice of intended regulatory action* . Also, ~~when appropriate,~~ the ~~department~~ *agency* will send a copy of the ~~"draft" proposal~~ *proposed regulation* to ~~other interested~~ parties *that the agency identifies as being interested in the proposed regulation* .

~~A. The Registrar will publish the hearing notice in the Virginia Register and in appropriate newspapers identified by the department 60 days prior to the public hearing.~~

B. ~~In matters considered to be of interest to the general public, the department~~ *The agency* will also prepare a news release and distribute it to all daily and weekly newspapers, radio and television stations, and news wire services serving Virginia. The news release will include information about the subject matter and purpose of *the proposed* regulation ~~under consideration~~ and about provisions for public comment, including the ~~time, date, and place~~ *times, dates, and places* of the ~~scheduled~~ public ~~hearing~~ *hearings* . ~~The department will also use its radio program tapes, which are broadcast by approximately 35 stations in Virginia, to further inform the public on the proposal and to seek participation~~ . Copies of ~~all drafts of~~ all proposed regulations will be available for public inspection at the ~~department's~~ regional offices *of the Department* .

C. During the 60-day public participation period, the regulation will also be reviewed by the following:

1. The public ;

2. The Governor ;

3. The General Assembly ; *and*

4. The Secretary of Economic Development .

~~5. The Attorney General~~

D. ~~Public hearings will be held in Richmond in the department's board room.~~ The ~~board may~~ *agency will* hold ~~meetings~~ *a public hearing in Richmond, and may hold public hearings* in other locations if the ~~proposal~~ *proposed regulation* is of special interest to that geographic area. If determined desirable, the ~~board~~ *agency* may hold public ~~meetings~~ *hearings* on a given ~~proposal~~ *proposed regulation* in several locations.

E. To the extent possible, *public* hearings will be conducted at a time believed to be generally convenient for persons and organizations most directly affected by the ~~issue under consideration~~ *proposed regulation* . The ~~department~~ *agency* will take into consideration the calendar for major organization and trade association meetings published by the Division of Legislative Services.

F. The public will be offered the opportunity to make oral ~~or~~ *and* written comments. Persons addressing the proposed regulation at ~~the~~ *any* public hearing will be encouraged to provide *to the agency* ~~a~~ written ~~copy~~ *copies* of their ~~statement~~ *statements* .

G. At the ~~board's~~ *agency's* discretion, ~~it~~ *the agency* may hold the record open to provide an additional time period for receiving written comments.

~~§ 6. Exclusions.~~

~~A. Nonsubstantive.~~

~~If a nonsubstantive regulation is being promulgated, the department may deviate from the public participation guidelines. However, it will strive to obtain written comments.~~

~~B. Emergency.~~

~~It may be necessary to enact emergency regulations within a time frame which does not allow the normal 60-day period for public comments. The Administrative Process Act recognizes this possibility and permits enactment of such emergency regulations with the approval of the Governor. In those instances, an emergency regulation will become effective when filed with the Registrar of Regulations (unless a later effective date is given). The emergency regulation will be published in the next edition of the Virginia Register.~~

§ ~~7.~~ *6.* Final action on proposed regulations.

After ~~proposed action on a regulation has been approved, the action~~ *a regulation has been adopted pursuant to the thirty-day final-adoption process, the agency* will ~~be included in~~ *issue* a general department news release ~~and printed in the Virginia Register~~ *about the regulation* .

§ ~~8.~~ 7. Copies of regulations.

The department will print copies of adopted regulations. Copies of adopted regulations may be obtained by writing the Secretary, State Board of Agriculture and Consumer Services. P.O. Box 1163, Richmond, Virginia 23209.

§ 8. General policy for the use of advisors.

A. This section sets out the general policy of the agency in the use of advisors. This general policy addresses the circumstances in which the agency considers advisors appropriate and the circumstances under which the agency intends to make use of advisors.

B. Any agency governed by these Guidelines for Public Participation will include in any notice of intended regulatory action filed with the Registrar of Regulation at or after the time these Guidelines for Public Participation take effect: (i) any provision required by statute relating to the notice of intended regulatory action; and (ii) a statement inviting comment on whether there should be an advisor. The agency considers an advisor appropriate and intends to make use of an advisor when:

1. The agency receives in writing from at least twenty-five persons during the pendency of the notice of intended regulatory action declarations of interest in having an advisor appointed with respect to the regulation under development; and

2. The subject matter of the notice of intended regulatory action has not previously been the subject of regulation making by the agency.

C. Despite the provision of § 8 (B), the Commissioner may in the Commissioner's sole discretion or at the agency's direction, appoint an advisor.

D. The agency hereby delegates to the Commissioner the authority to appoint advisors. The decision shall rest exclusively with the Commissioner as to whether the advisor, if any, shall be: (i) a standing advisory panel; (ii) an ad-hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; or (v) any combination of subdivisions (i) through (iv) of this subsection.

E. The amending provisions contained in this emergency regulation shall apply only to regulatory actions for which a notice of intended regulatory action is filed (irrespective of the date of adoption of the notice of intended regulatory action) with the Registrar of Regulations at or after the time these Guidelines for Public Participation take effect.

§ 9. Petitions.

The agency will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of these Guidelines for Public Participation.

Adopted by the Board of Agriculture and Consumer Services on May 20, 1993.

This is a full, true, and correctly-dated regulation.

/s/ Roy E. Seward, Secretary
Board of Agriculture and Consumer Services

/s/ Clinton V. Turner, Commissioner
Department of Agriculture and Consumer Services

/s/ Cathleen A. Magennis
Secretary of Economic Development

/s/ Lawrence Douglas Wilder
Governor

/s/ Joan W. Smith
Registrar of Regulations
Date: June 11, 1993

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **State Plan for Medical Assistance Relating to Preadmission Screening and Annual Resident Review; Education Component of Nursing Facility Care; Nursing Facility Residents' Appeal Rights.**
VR 460-01-46. Utilization Control.
VR 460-01-76. Appeals Process.
VR 460-01-79.19. Preadmission Screening and Annual Resident Review in Nursing Facilities.
VR 460-02-4.3900. Definition of Specialized Services.
VR 460-02-4.3910. Categorical Determinations.
VR 460-04-4.3910. Regulations for Preadmission Screening and Annual Resident Review.
VR 460-03-3.1301. Facility and Patient Criteria for Nursing Home Care.
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality Care.

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

Effective Dates: June 1, 1993, through May 31, 1994.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Preadmission Screening and Annual Resident Review (PASARR); Education Component of NF Care; NF Residents' Appeal Rights. This policy revises existing regulations to incorporate recently published federal requirements for preadmission screening and annual resident review and clarifies nursing facility requirements with regard to specialized care services.

2. RECOMMENDATION: The Department's emergency adoption action regarding Preadmission Screening and Annual Resident Review and Education Component of NF Care. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski, Director
Date: March 31, 1993

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: April 28, 1993

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: May 30, 1993

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 1, 1993

DISCUSSION

6. BACKGROUND: The sections of the State Plan for Medical Assistance affected by this emergency regulation are preprinted pages 46, 76, 79s, 79t, Attachments 3.1-C, 4.39, and 4.39-A and state-only regulations VR 460-04-4.3910.

PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW

The Omnibus Budget Reconciliation Act (OBRA) of 1987, Part 2, Subtitle C of Title IV, added § 1919 to the Social Security Act. Specifically, § 1919 (b)(3)(F) prohibited a nursing facility from admitting or retaining an individual who has a condition of mental illness or mental retardation unless that individual has been determined by the State Mental Health or Mental Retardation Authority (MH/MRA) to require the level of services provided by a nursing facility. The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) is the designated MH/MRA in the Commonwealth.

On February 16, 1989, the Governor signed emergency regulations entitled "Criteria for Preadmission Screening and Nursing Home Placement of Mentally Ill and Mentally Retarded Individuals." In these regulations, federal provisions regarding preadmission screening and annual resident review (PASARR) are outlined. In brief, placement determinations are categorized into two levels. A Level I assessment must be completed on all applicants to a nursing facility. If the Level I assessment indicates the presence of a condition of mental illness or mental retardation, as defined by HCFA, the applicant must be referred for a Level II evaluation prior to admission to the nursing facility. Residents with conditions of mental illness or mental retardation are to be reviewed at least annually.

On November 30, 1992, the Health Care Financing Administration (HCFA) published final regulations concerning PASARR. Until publication of these final regulations, HCFA had not supplied specific criteria but only interpretive correspondence. To comply with HCFA's final regulations, revised emergency regulations contained herein are submitted to supersede the previously approved state regulations.

The final regulations published by HCFA are similar to the original requirements. However, there are several significant changes. First, the definition of mental illness has been revised. Because the new definition stresses severity of the mental illness, the change should result in a decrease in the number of individuals referred for a Level II evaluation for mental illness.

Second, HCFA is allowing States to determine personnel qualifications for specific parts of the Level II evaluation process. For example, a board-certified or board-eligible psychiatrist is no longer mandated to complete the psychiatric examination. States may individually specify the qualifications of certain assessors. Third, States are allowed discretion in defining specialized services to be offered and in establishing categorical determinations.

In developing these emergency regulations, DMAS followed HCFA's requirements and only included discretionary items where such were permitted (e.g., in determining categorical determinations and descriptions of specialized services). In addition, language was added to address DMAS' monitoring activities as the State Medicaid agency is ultimately responsible to ensure that PASARR activities are appropriately performed.

In order to develop program requirements that are the most efficient and least burdensome to providers, recipients, and contractors, DMAS consulted staff of DMHMRSAS in the regulatory development process. DMAS also requested an informal review by HCFA staff of proposed State Plan pages prior to developing the regulations.

DMAS, in collaboration with DMHMRSAS, routinely monitors the PASARR process to ensure that appropriate reviews are conducted. At least annually, DMAS will confer with DMHMRSAS to determine the efficiency of the program. Because this regulation is driven by a federal mandate, it will remain in effect until such time that federal requirements are changed.

Third, residents of nursing facilities who wish to appeal a nursing facility notice of intent to transfer or discharge will file their appeal with the DMAS' Division of Client Appeal and not with the Dept. of Health. DMAS will hear appeals filed by any nursing facility resident regardless of the source of payment, Medicaid, Medicare, or private pay.

EDUCATION COMPONENT OF NURSING FACILITY SPECIALIZED CARE SERVICES

When DMAS first promulgated its regulations for specialized care services in nursing facilities, requirements for the provision of an education component were included. Initially, the regulation required that 'the nursing facility ...provide for (emphasis added) the educational and habilitative needs of the child'. At the time of promulgation, it was DMAS' intent that the nursing facility coordinate (emphasis added) such services with the state or local educational authority. The correct interpretation of this intent has recently come under question, so this language is being clarified.

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

The PASAAR action is mandated by 42 Code of Federal Regulations § 483.100-138. These regulations were initially established statutorily through OBRA '87. However, this action is not exempt from Article 2 of the APA because of areas in which HCFA permits State discretion in the development of PASARR process requirements.

8. FISCAL/BUDGETARY IMPACT:

PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW

DMAS is designated as the single state agency to administer the State Plan for Medical Assistance. Appropriation has been made to DMAS for the purposes of funding costs associated with the administration and provisions of services for PASARR.

This regulation affects the approximately 250 Medicaid-certified nursing facilities and 19,400 Medicaid recipients who are nursing facility residents in the Commonwealth. In 1992, there were approximately 14,000 applicants to nursing facilities.

In FY 92, approximately 700 applicants were referred for a Level II evaluation and determination of placement by the State MH/MRA. In 1992, 2,242 annual resident reviews were completed as required for nursing facility residents with conditions of mental illness or mental retardation.

DMHMRSAS receives an appropriation for the performance of the Annual Resident Reviews and the administrative expenses associated with the OBRA project. In FY93, it is estimated that $1,381,955 ($345,489 GF and $1,036,466 NGF) will be spent for annual resident review for nursing facility placement and $183,551 ($45,888 GF and $137,663 NGF) for review of Level II screenings by Community Services Boards.

EDUCATION COMPONENT OF NURSING FACILITY SPECIALIZED CARE SERVICES

There are no costs associated with the clarifying language for the education component of nursing facility specialized care services.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective upon its filing with the Registrar of Regulations. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA.

10. APPROVAL SOUGHT for VR 460-01-46, 460-01-76, 460-01-79.19, 460-01-79.20, 460-02-4.3900, 460-02-4.3910, 460-04-4.3910, and VR 460-03-3.1301.

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

VR 460-01-46. Utilization Control.

Citation: 42 CFR 431.630; 42 CFR 456.2; 50 FR 15312

§ 4.14. Utilization Control.

A Statewide program of surveillance and utilization control has been implemented that safeguards against unnecessary or inappropriate use of Medicaid services available under this plan and against excess payments, and that assesses the quality of services. The requirements of 42 CFR Part 456 are met:

☒ Directly. ~~Attachment 4.14 A contains the criteria for pre-admission screening and nursing home placement of MI/MR persons.~~

Citation: 1902(a)(30)(C) and 1902(d) of the Act, P.L. 99-509 (§ 9431)

☐ By undertaking medical and utilization review requirements (including quality review requirements described in § 1902(a)(30)(C) of the Act relating to services furnished by HMOs under contracts) through a contract with a Utilization and Quality Control Peer Review Organization (PRO) designated under 42 CFR Part 462. The contract with the PRO–

(1) Meets the requirements of § 434.6(a);

(2) Includes a monitoring and evaluation plan to ensure satisfactory performance;

(3) Identifies the services and providers subject to PRO review;

(4) Ensures that PRO review activities are not inconsistent with the PRO review of Medicare services; and

(5) Includes a description of the extent to which PRO determinations are considered conclusive for payment purposes.

☐ Quality review requirements described in § 1902(a)(30)(C) of the Act relating to services

furnished by HMO's under contract are undertaken through contract with the PRO designated under 42 CFR Part 462.

Citation: 1902(a)(30)(C) and 1902 (d) of the Act, P.L. 99-509, (§ 9431)

☐ By undertaking quality review of services furnished by HMOs under each contract with an HMO through a private accreditation body.

VR 460-01-76. Appeals Process.

Citation 42 CFR 431.152; AT-79-18; 52 FR 22444; Secs. 1902(a)(28)(D)(i) and 1919(e)(7) of the Act; P.L. 100-203 (Sec. 4211(c)).

§ 4.28. Appeals Process.

(a) The Medicaid agency has established appeals procedures for NFs as specified in 42 CFR 431.153 and 431.154.

(b) The State provides an appeals system that meets the requirements of 42 CFR 431 Subpart E, 42 CFR 483.12, and 42 CFR 483 Subpart E for residents who wish to appeal a notice of intent to transfer or discharge from a NF and for individuals adversely affected by the preadmission and annual resident review requirements of 42 CFR 483 Subpart C.

VR 460-01-79.19. Preadmission Screening and Annual Resident Review in Nursing Facilities.

Citation: Secs. 1902(a)(28)(D)(i) and 1919(e)(7) of the Act; P.L. 100-203 (Sec. 4211(c)); P.L. 101-508 (Sec. 4801(b)).

§ 4.39. Preadmission Screening and Annual Resident Review in Nursing Facilities.

(a) The Medicaid agency has in effect a written agreement with the State mental health and mental retardation the Act; authorities that meet the requirements of 42 (CFR) 431.621(c).

(b) The State operates a preadmission screening and annual resident review program that meets the requirements of 42 CFR 483.100-138.

(c) The State does not claim as "medical assistance under the State Plan" the cost of services to individuals who should receive preadmission screening or annual resident review until such individuals are screened or reviewed.

(d) With the exception of NF services furnished to certain NF residents defined in 42 CFR 483.118(c)(1), the State does not claim as "medical assistance under the State plan" the cost of NF services to individuals who are found not to require NF services.

☒ (e) ATTACHMENT 4.39 specifies the State's definition of specialized services.

☒ (f) Except for residents identified in 42 CFR 483.118(c)(1), the State mental health authority makes categorical determinations that individuals with certain mental conditions or levels of severity of mental illness would normally require specialized services of such an intensity that a specialized services program could not be delivered by the State in most, if not all, NFs and that a more appropriate placement should be utilized.

(g) The State describes an categorical determinations it applies in ATTACHMENT 4.39-A.

VR 460-02-4.3900. Definition of Specialized Services.

The Department of Medical Assistance Services (DMAS) shall define specialized services for the purposes of preadmission screening and annual resident review as follows. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall ensure the provision of services when they are provided by a non-Medicaid-enrolled provider or when the services are not covered by Medicaid.

a. Partial hospitalization

b. Transportation to Medicaid-covered services or specialized services necessary to treat conditions of mental illness or mental retardation

c. Day health and rehabilitation

d. Psychosocial rehabilitation

e. Crisis intervention

f. Customized durable medical equipment, for residents without a patient pay, that would allow the resident to participate in specialized services

g. Behavior management interventions requiring ongoing consultation and monitoring by a licensed psychiatrist or psychologist

h. One-to-one supervision necessary for behavior management

i. Vision and hearing needs related to mental illness or mental retardation for persons over age 21

j. Dental needs resulting from mental illness or mental retardation sequela for persons over age 21

k. Habilitation

l. Supported employment for persons with mental illness or mental retardation

m. Case management services

n. Individual psychotherapy

o. Day treatment

p. Individual and group counseling

q. Inpatient psychiatric care

VR 460-02-4.3910. Categorical Determinations.

1. A Level II evaluation shall be required for any applicant to a Medicaid-certified nursing facility who is determined, as a result of the Level I identification screening, to have a condition of mental illness or mental retardation as defined in 42 CFR 483.102.

2. If, however, the individual also meets one of the following categorical determinations, a Level II evaluation is not required to be completed for that individual. These determinations may only be applied following the Level I review and only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator readily to determine that the individual fits into the established category.

3. The categorical determinations are:

a. a terminal illness in which a physician has documented that life expectancy is less than six months; and

b. a severe physical illness such as coma, functioning at brain stem level, or other conditions which result in a level of impairment so severe that the individual could not be expected to benefit from active treatment. When this category is used, documentation must be available which fully describes the severity of the condition.

VR 460-04-4.3910. Regulations for Preadmission Screening and Annual Resident Review.

§ 1. Definitions.

"Community Services Board (CSB)" means the local governmental agency responsible for local mental health, mental retardation, and substance abuse services. Boards function as service providers, client advocates, and community educators.

"Dementia" means, for the purposes described herein, having a primary diagnosis of dementia, as described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined herein.

"Diagnostic and Statistical Manual of Mental Disorders, 3rd edition" means the 1987 publication of the American Psychiatric Association classifying diagnoses of abnormal behavior.

"Interfacility transfer" means when an individual is transferred from one nursing facility to another nursing facility, with or without an intervening hospital stay. Interfacility transfers are subject to annual resident review rather than preadmission screening. In cases of transfer of a resident with MI or MR from a NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent PASARR and resident assessment reports shall accompany the transferring resident.

"Level I Identification" means the process performed to identify nursing facility applicants with a condition of mental illness or mental retardation.

"Level II Evaluation" means the evaluation process for nursing facility applicants who are identified as having a condition of mental illness or mental retardation as defined herein. The purpose of the Level II evaluation is to recommend placement of and services to nursing facility applicants with statutorily defined mental illness or mental retardation.

"Mental Illness (MI)" means a serious mental illness meeting all of the following requirements:

1. The individual has a major mental disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987 that is a schizophrenic, mood, paranoid, panic, or other severe anxiety disorder; somatoform disorder, personality disorder, other psychotic disorder, or another mental disorder that may lead to a chronic disability. The disorder is not a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined here;

2. The disorder results in functional limitations in major life activities within the past 3 to 6 months that would be appropriate for the individual's developmental stage. An individual typically has at least one of the following characteristics on a continuing or intermittent basis:

a. Interpersonal functioning. The individual has serious difficulty interacting appropriately and communicating effectively with other persons, has a possible history of altercations, evictions, firing, fear of strangers, avoidance of interpersonal relationships, and social isolation;

b. Concentration, persistence, and pace. The individual has serious difficulty in sustaining focused attention for a long enough period to permit the completion of tasks commonly found in work settings or in work-like structures activities occurring in school or home settings, manifests difficulties in

concentration, inability to complete simple tasks within an established time period, makes frequent errors, or requires assistance in the completion of these tasks; and

c. Adaptation to change. The individual has serious difficulty in adapting to typical changes in circumstances associated with work, school, family, or social interaction, manifests agitation, exacerbated signs and symptoms associated with the illness, or withdrawal from the situation, or requires intervention by the mental health or judicial system.

3. The treatment history indicates that the individual has experienced at least one of the following: 1) psychiatric treatment more intensive than outpatient care more than once in the past 2 years (e.g., partial hospitalization or inpatient hospitalization) or 2) within the last 2 years, due to the mental disorder, experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.

"Mental Retardation (MR)" means the presence of a level of retardation (mild, moderate, severe, or profound) described in the American Association on Mental Retardation's Manual on Classification in Mental Retardation (1983) or has a related condition. A person with related conditions means the individual has a severe chronic disability that meets all of the following conditions:

1. It is attributable to cerebral palsy or epilepsy or any other condition, other than mental illness, found to be closely related to mental retardation because this condition may result in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons;

2. It is manifested before the person reaches age 22;

3. It is likely to continue indefinitely; and

4. It results in substantial functional limitations in three or more of the following areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living.

"MI/MR Supplement" means the assessment form developed to meet the requirements of OBRA '87. Its purpose is to identify individuals with mental illness and mental retardation before their admission to a nursing facility.

"New Admission" means an individual who is admitted to any nursing facility for the first time or does not qualify as a readmission. New admissions are subject to preadmission screening.

"Non-Medicaid-eligible Individuals" means persons who are not Medicaid eligible or are not expected to be Medicaid eligible within 180 days of admission to a nursing facility.

"Nursing Home Preadmission Screening Committee (NHPASC)" means a committee established for the purpose of determining whether a Medicaid-eligible individual meets nursing facility criteria.

"Qualified Mental Health Professional (QMHP)" means a clinician in the health profession who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis. In the Commonwealth, authorized professionals and minimal qualifications for a QMHP are as follows:

- *physician: a doctor of medicine or osteopathy licensed in Virginia;*
- *psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia;*
- *psychologist: an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience;*
- *social worker: an individual with a master's or bachelor's degree from a school of social work accredited or approved by the Council on Social Work Education with at least one year of clinical experience;*
- *registered nurse: a registered nurse licensed in the State of Virginia with at least one year of clinical experience; and*
- *mental health worker: an individual with professional education, training, and/or a degree in human services or related field from an accredited college deemed equivalent to those described above and at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness.*

"Readmission" means an individual who was readmitted to a facility from a hospital to which he or she was transferred for the purpose of receiving care. Readmissions are subject to annual resident review rather than preadmission screening.

"State Mental Health or Mental Retardation Authority (MH/MRA)" means the designated representative of the Department of Mental Health, Mental Retardation and Substance Abuse Services who shall make determinations regarding placement of and services to nursing facility applicants who have conditions of mental illness or mental

retardation.

§ 2. Persons Subject to Nursing Home Preadmission Screening and Identification of Conditions of Mental Illness and Mental Retardation (Level I).

A. As a condition of a nursing facility's Medicaid participation, all persons applying for admission shall be screened to determine whether they have a condition of mental illness (MI) or mental retardation (MR), and if so, whether they require the level of services provided by a nursing facility (NF). Nursing facilities shall ensure that applicants for admission have been screened and those who are identified as being MI or MR are not admitted until determinations have been made by the State Mental Health or Mental Retardation Authority (MH/MHA) with respect to their placement. NHPASCs complete the Level I process for individuals who are Medicaid eligible or expect to become Medicaid eligible within 180 days. Nursing facilities must ensure that the appropriate screenings are conducted for non-Medicaid eligible applicants.

B. No individual, regardless of pay status, may be admitted to a nursing facility unless the Level I screening has been completed, and, if it is determined that the individual has a condition of MI or MR as defined herein, then he or she shall not be admitted until the Level II determination has been made.

C. The Level I identification function shall provide at least, in the case of first time identifications, for the issuance of written notice to the individual or resident and his or her legal representative if the individual is suspected of having MI or MR and is being referred to the MH/MRA for Level II screening. The NHPASC shall send this notice to Medicaid-eligible individuals who are referred for a Level II screening. The admitting NF shall send the notice to non-Medicaid individuals.

D. All Level I and Level II determinations shall be recorded in the individual's medical record.

E. When a preadmission screening has not been performed timely, but is performed at a later date, federal financial participation (FFP) is available only for services furnished after the screening has been performed.

F. The state in which the individual is a resident (or will be at the time he or she becomes eligible for Medicaid) must pay for the PASARR and make the required determinations. In the case of non-Medicaid eligible applicants, the receiving NF is responsible to ensure that the appropriate screenings have been completed prior to the individual's admission.

§ 3. Level II Determination.

A. For each resident of a NF who has a condition of MI or MR, the MH/MRA, as appropriate, must determine whether the individual requires the level of services provided by a NF, an inpatient psychiatric hospital for individuals under age 21, an institution for mental disease (IMD) providing medical assistance to individuals age 65 and older, an intermediate care facility for the mentally retarded (ICF/MR), or specialized services for either MI or MR.

B. When a Level II evaluation is required, a determination shall be made within an annual average of seven to nine working days of the referral for screening. The MH/MRA shall convey determinations verbally to NFs and the individual and confirm them in writing.

C. The MH/MRA shall notify in writing the following entities of a Level II determination:

1. the evaluated individual and his or her legal representative;

2. the admitting or retaining NF;

3. the individual or resident's attending physician; and

4. the discharging hospital.

D. Each notice described above shall include the following:

1. whether a NF level of services is needed;

2. whether specialized services are needed;

3. the placement options available to the individual; and

4. the rights of the individual to appeal the determination.

§ 4. Categorical Determinations.

A. For each individual for whom the Level I screening has resulted in the determination that the individual meets nursing facility level of care and has a condition of MI or MR as defined herein, a Level II evaluation does not have to be completed if one of the following categorical determinations are met:

1. the individual has a terminal illness in which a physician has documented that life expectancy is less than six months; or

2. the individual has a severe illness such as coma, functioning at brain stem level, or other conditions which result in a level of impairment so severe that the individual could not be expected to benefit from active treatment. When this category is used, documentation shall be available which fully describes the severity of the condition.

B. These categorical determinations shall only be applied following the Level I review and only if existing data on the individual appear to be current and accurate and are

sufficient to allow the evaluator readily to determine that the individual fits the category.

§ 5. Annual Resident Review.

A. A review and determination must be conducted for each resident of a NF who has MI or MR not less often than annually. "Annually" is defined as occurring within every fourth quarter after the previous preadmission screening or annual resident review.

B. When an annual resident review has not been performed timely, but is performed at a later date, federal financial participation (FFP) is available only for services furnished after the review has been performed.

§ 6. Determinations and Placement of Individuals with MI or MR.

A. If the MH/MRA determines that a resident or applicant for admission to a NF requires a NF level of services, the NF may admit or retain the individual. If the MH/MRA determines that a resident or applicant for admission requires both a NF level of services and specialized services for MI or MR, the NF may admit or retain the individual and the State must provide or arrange for the provision of the specialized services needed by the individual while he or she resides in the NF.

B. If the MH/MRA determines that an applicant for admission to a NF does not require NF services, the applicant cannot be admitted. NF services are not a covered Medicaid service for that individual, and further screening is not required.

C. If the MH/MRA determines that a resident requires neither the level of services by a NF nor specialized services for MI or MR, regardless of the length of stay in the facility, the State must 1) arrange for the safe and orderly discharge of the resident from the facility; and 2) prepare and orient the resident for discharge.

D. For any resident who has continuously resided in a NF for at least 30 months before the date of the determination, and who requires only specialized services, the State must, in consultation with the resident's family or legal representative and caregivers 1) offer the resident the choice of remaining in the facility or of receiving services in an alternative appropriate setting; 2) inform the resident of the institutional and noninstitutional alternatives available; 3) clarify the effect on eligibility for Medicaid services if the resident chooses to leave the facility, including its effect on readmission to the facility or eligibility for community-based services; and 4) regardless of the resident's choice to remain in the NF or to be discharged to a community setting, provide for, or arrange for the provision of specialized services for the MI or MR.

E. For any resident who has not continuously resided in a NF for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and caregivers 1) arrange for the safe and orderly discharge of the resident from the facility; 2) prepare and orient the resident for discharge; and 3) provide for, or arrange for the provision of, specialized services for the MI or MR.

F. For the purposes of establishing length of stay in a NF, the 30 months of continuous residence in a NF or longer is calculated back from the date of the first annual resident review determination which finds that the individual is not in need of NF level of services. The 30 months of continuous residence in a NF may include temporary absences for hospitalization and therapeutic leave and may consist of consecutive residences in more than one NF.

G. Placement of an individual with MI or MR in a NF may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and his or her needs for treatment do not exceed the level of services which can be delivered in the NF to which the individual is admitted either through NF services alone or, where necessary, through NF services supplemented by specialized services provided by or arranged for by the State.

§ 7. PASARR Evaluation Criteria.

A. The State's PASARR program must identify all individuals who are suspected of having MI or MR as defined herein. The identification function and determination that NF criteria is met is termed Level I. Level II is the function of evaluating and determining whether NF placement is appropriate to meet the individual's MH/MR needs and whether specialized services are needed.

B. Evaluations performed under PASARR and PASARR notices must be adapted to the cultural background, language, ethnic origin, and means of communication used by the individual being evaluated. PASARR evaluations must involve the individual being evaluated, the individual's legal representative, if one has been designated under State law, and the individual's family if available and the individual or the legal representative agrees to family participation. When parts of a PASARR evaluation are performed by more than one evaluator, there must be interdisciplinary coordination among the evaluators.

C. All information that is necessary for determining whether it is appropriate for the individual with MI or MR to be placed in a NF or in another appropriate setting should be gathered throughout all applicable portions of the PASARR evaluation. The determinations relating to the need for NF level of care and specialized services are interrelated and must be based upon a comprehensive analysis of all data concerning the individual.

D. Evaluators may use relevant evaluative data, obtained prior to initiation of preadmission screening or annual resident review, if the data are considered valid and accurate and reflect the current functional status of the individual. However, in the case of individualized evaluations, the PASARR program may need to gather additional information to supplement and verify the currency and accuracy of existing data and to assess proper placement and treatment.

E. For individualized PASARR determinations, findings must be issued in the form of a written evaluative report which 1) identifies the name and professional title of person(s) who performed the evaluation(s) and the date on which each portion of the evaluation was administered; 2) provides a summary of the medical and social history, including the positive traits or developmental strengths and weaknesses or developmental needs of the evaluated individual; 3) if NF services are recommended, identifies the specific services which are required to meet the evaluated individual's needs; 4) if specialized services are not recommended, identifies any specific MR or MH services which are of a lesser intensity than specialized services that are required to meet the evaluated individual's needs; 5) if specialized services are recommended, identifies the specific MR or MH services required to meet the evaluated individual's needs; and 6) includes the basis for the report's conclusions.

F. For categorical PASARR determinations, findings must be issued in the form of an abbreviated written evaluative report which 1) identifies the name and professional title of the person applying the categorical determination and the data on which the application was made; 2) explains the categorical determination(s) that has (have) been made; 3) identifies, to the extent possible, based on the available data, NF services, including any mental health or specialized psychiatric rehabilitative services, that may be needed; and 4) includes the bases for the report's conclusions.

G. For both categorical and individualized determinations, findings of the evaluation must correspond to the person's current functional status, mental health, and mental retardation status as documented in medical and social history records. Findings of the evaluation must be interpreted and explained to the individual and, where applicable, to a legal representative designed under State law by the assessment team or the MH/MRA. The evaluation report must be sent to the individual and his or her legal representative, appropriate State authority in sufficient time to meet the required time frames, admitting or retaining NF, individual's attending physician, and the discharging hospital if the individual is seeking NF admission from a hospital. The evaluation may be terminated at any time during the evaluation that the individual being evaluated does not have MI or MR or has a primary diagnosis of dementia or a non-primary diagnosis of dementia without a primary diagnosis that is a serious mental illness, and does not have a diagnosis of MR or a related condition.

§ 8. Specialized Services.

A. For mental illness, specialized services means the services specified by the state which, combined with services provided by the NF, results in the continuous and aggressive implementation of an individualized plan of care that:

1. is developed and supervised by an interdisciplinary team which includes a physician, qualified mental health professionals, and as appropriate, other professionals;

2. prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of serious mental illness which necessitates supervision by trained mental health personnel;

3. is directed toward diagnosing and reducing the resident's behavioral symptoms that may necessitate institutionalization, improving his or her level of independent functioning, and achieving a functioning level that permits reduction in the intensity of mental health services to below the level of specialized services at the earliest possible time; and

4. prescribes inpatient psychiatric services for any individual determined to be a danger to self or others. For nursing facility residents who are determined to be a danger to self or others due to mental illness, the nursing facility must coordinate admission to an inpatient psychiatric hospital.

B. For mental retardation, specialized services means the services specified by the state which, combined with services provided by the NF or other service providers, results in treatment which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services that is directed toward the following;

1. The acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and

2. the prevention or deceleration of regression or loss of current optimal functional status.

C. The State must provide or arrange for the provision of specialized services to all NF residents with MI or MR whose needs are such that continuous supervision, treatment, and training by qualified MH/MR personnel is necessary as identified by their Level I and II assessments. The NF must provide MH or MR services which are of a lesser intensity than specialized services to all residents who need such services.

1. Services that shall be the responsibility of the nursing facility to provide to residents shall include, but are not limited to:

a. Physical therapy

b. Speech-language pathology services

c. Occupational therapy

d. Restorative nursing

e. Behavior management interventions that do not require ongoing consultation and monitoring by a licensed psychiatrist or psychologist

f. Basic grooming and hygiene needs

g. Nutritional needs, including supplements and assistance with eating

h. Adjustment needs resulting from admission to a nursing facility and ongoing psychosocial emotional support

i. Non-customized durable medical equipment and supplies

2. Specialized services for the purposes of PASARR shall include the following. The State Mental Health or Mental Retardation Authority shall ensure the provision of specialized services when they are provided by a non-Medicaid-enrolled provider or when the services are not covered by Medicaid.

a. Partial hospitalization

b. Transportation to Medicaid-covered services or specialized services necessary to treat conditions of mental illness or mental retardation

c. Day health and rehabilitation

d. Psychosocial rehabilitation

e. Crisis intervention

f. Customized durable medical equipment, for residents without a patient pay, that would allow the resident to participate in specialized services

g. Behavior management interventions requiring ongoing consultation and monitoring by a licensed psychiatrist or psychologist

h. One-to-one supervision necessary for behavior management

i. Vision and hearing needs related to mental illness or mental retardation for persons over age 21

j. Dental needs resulting from mental illness or mental retardation sequela for persons over age 21

k. Habilitation

l. Supported employment for persons with mental illness or mental retardation

m. Case management services

n. Individual psychotherapy

o. Day treatment

p. Individual and group counseling

q. Inpatient psychiatric care

§ 9. Placement Options.

A. The placement options and required state actions resulting from PASARR are as follows:

1. Can be admitted to a NF. Any applicant for admission to a NF who has MI or MR and who requires the level of services provided by a NF, regardless of whether specialized services are also needed, may be admitted to a NF, if the placement is appropriate. If specialized services are also needed, the State is responsible for providing or arranging for the provision of the specialized services.

2. Cannot be admitted to a NF. Any applicant for admission to a NF who has MI or MR and who does not require the level of services provided by a NF, regardless of whether specialized services are also needed, is inappropriate for NF placement and must be not be admitted.

3. Can be considered appropriate for continued placement in a NF. Any NF resident with MI or MR who requires the level of services provided by a NF, regardless of the length of his or her stay or the need for specialized services, can continue to reside in the NF, if the placement is appropriate.

4. May choose to remain in the NF even though the placement would otherwise be inappropriate. Any NF resident with MI or MR who does not require the level of services provided by the NF but does require specialized services and who has continuously resided in a NF for at least 30 consecutive months before the date of determination may choose to continue to reside in the facility or to receive covered services in an alternative appropriate institutional or noninstitutional setting. Wherever the resident chooses to reside, the State must meet his or her specialized services needs. The determination notice must provide information concerning how, when, and by whom the various placement options available to the resident will be fully explained to the resident.

5. Cannot be considered appropriate for continued placement in a NF and must be discharged (short-term residents). Any NF resident with MI or MR who does not require the level of services

provided by a NF but does require specialized services and who has resided in a NF for less than 30 consecutive months be discharged to an appropriate setting where the State must provide specialized services. The determination notice must provide information on how, when, and by whom the resident will be advised of discharge arrangements and of his/her appeal rights under both PASARR and discharge provisions.

6. Cannot be considered appropriate for continued placement in a NF and must be discharged (short or long-term residents). Any NF resident with MI or MR who does not require the level of services provided by a NF and does not require specialized services regardless of his or her length of stay, must be discharged. The determination notice must provide information on how, when and by whom the resident will be advised of discharge arrangements and of his or her appeal rights under both PASARR and discharge provisions.

7. Specialized services needed in a NF. If a determination is made to admit or allow to remain in a NF any individual who requires specialized services, the determination must be supported by assurances that the specialized services that are needed can and will be provided or arranged for in a timely manner by the State which the individual resides in the NF.

B. The State PASARR system shall maintain records of evaluations and determinations, regardless of whether they are performed categorically or individually, in order to support its determinations and actions and to protect the appeal rights of individuals subjected to PASARR. The State PASARR system shall establish and maintain a tracking system for all individuals with MI or MR in NFs to ensure that appeals and future reviews are performed.

§ 10. Evaluating the Need for NF Services and NF Level of Care (PASARR/NF).

A. For each applicant for admission to a NF and each NF resident who has MI or MR, the evaluator must assess whether (1) the applicant's or resident's total needs are such that his or her needs can be met in an appropriate community setting; (2) the individual's total needs are such that they can be met only on an inpatient basis, which may include the option of placement in a home and community-based services waiver program, but for which the inpatient care would be required; (3) if inpatient care is appropriate and desired, the NF is an appropriate institutional setting for meeting those needs; or (4) if the inpatient care is appropriate and desired but the NF is not the appropriate setting for meeting the individual's needs, another setting such as an ICF/MR (including small, community-based facilities), an IMD providing services to individuals ages 65 or older, or a psychiatric hospital is an appropriate institutional setting for meeting those needs.

B. In determining appropriate placement, the evaluator must prioritize the physical and mental needs of the individual being evaluated, taking into account the severity of each condition.

C. At a minimum the data relied on to make a determination must include: (1) Evaluation of physical status (for example, diagnoses, date of onset, medical history, and prognosis); (2) Evaluation of mental status (for example, diagnoses, date of onset, medical history, likelihood that the individual may be a danger to himself/herself or others); and (3) Functional assessment (activities of daily living).

D. Based on the data compiled, the MH/MRA must determine whether an NF level of services is needed.

§ 11. Evaluating Whether an Individual with MI Requires Specialized Services (PASARR/MI).

A. The purpose of this section is to identify the minimum data needs and process requirements for the State MHA, which is responsible for determining whether or not the applicant or resident with MI needs a specialized services program for mental illness.

B. Minimum data collected must include:

1. a comprehensive history and physical examination of the person. If the history and physical examination are not performed by a physician, then a physician must review and concur with the conclusions. The following areas must be included (if not previously addressed): complete medical history; review of all body systems; specific evaluation of the person's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and in case of abnormal findings which are the basis for a NF placement, additional evaluations conducted by appropriate specialists.

2. A comprehensive drug history including current or immediate past use of medications that could mask symptoms or mimic mental illness.

3. A psychological evaluation of the person, including current living arrangements and medical and support systems.

4. A comprehensive psychiatric evaluation including a complete psychiatric history, evaluation of intellectual functioning, memory functioning, and orientation, description of current attitudes and overt behaviors, affect, suicidal or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations.

5. A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities while living in the

community. The assessment must determine whether this level of support can be provided to the individual in an alternative community setting or whether the level of support needed is such that NF placement is required. The functional assessment must address the following areas: Self-monitoring of health status, self-administering and scheduling of medical treatment, including medication compliance, or both, self-monitoring of nutritional status, handling money, dressing appropriately, and grooming.

C. The State may designate the mental health professionals who are qualified to perform the evaluations required including the comprehensive drug history; psychosocial evaluation; comprehensive psychiatric evaluation; functional assessment; and to make the determination required.

D. Based on the data compiled, a qualified mental health professional, as designated by the State, must validate the diagnosis of mental illness and determine whether a program of psychiatric specialized services is needed.

§ 12. Evaluating Whether an Individual with MR Requires Specialized Services (PASARR/MR).

A. The purpose of this section is to identify the minimum data needs and process requirements for the State MRA to determine whether or not the applicant or resident with mental retardation needs a continuous specialized services program. Minimum data collected must include the individual's comprehensive history and physical examination results to identify the following information or, in the absence of data, must include information that permits a reviewer specifically to assess:

1. The individual's medical problems;

2. The level of impact these problems have on the individual's independent functioning;

3. All current medications used by the individual and the current response of the individual to any prescribed medications in the following drug groups: hypnotics, antipsychotics (neuroleptics), mood stabilizers and antidepressants, antianxiety-sedative agents, and anti-Parkinsonian agents.

4. Self-monitoring of health status;

5. Self-administering and scheduling of medical treatments;

6. Self-monitoring of nutritional status;

7. Self-help development such as toileting, dressing, grooming, and eating;

8. Sensorimotor development, such as ambulation, positioning, transfer skills, gross motor dexterity, visual motor perception, fine motor dexterity, eye-hand coordination, and extent to which prosthetic, orthotic, corrective or mechanical supportive devices can improve the individual's functional capacity;

9. Speech and language (communication) development, such as expressive language (verbal and nonverbal), receptive language (verbal and nonverbal), extent to which non-oral communication systems can improve the individual's function capacity, auditory functioning, and extent to which amplification devices (e.g. hearing aid) or a program of amplification can improve the individual's functional capacity;

10. Social development, such as interpersonal skills, recreation-leisure skills, and relationships with others;

11. Academic/educational development, including functional learning skills;

12. Independent living development such as meal preparation, budgeting and personal finances, survival skills, mobility skills (orientation to the neighborhood, town, city), laundry, housekeeping, shopping, bed making, care of clothing, and orientation skills (for individuals with visual impairments);

13. Vocational development, including present vocational skills;

14. Affective development such as interests, and skills involved with expressing emotions, making judgments, and making independent decisions; and

15. The presence of identifiable maladaptive or inappropriate behaviors of the individual based on systematic observation (including, but not limited to, the frequency and intensity of identified maladaptive or inappropriate behaviors).

B. The State must ensure that a licensed psychologist identifies the intellectual functioning measurement of individuals with MR or a related condition. Based on the data compiled, the MRA, using appropriate personnel as designated by the State, must validate that the individual has MR or is a person with a related condition and must determine whether specialized services for MR are needed. In making this determination, the MHA must make a qualitative judgment on the extent to which the person's status reflects, singly and collectively, the characteristics commonly associated with the need for specialized services, including-

1. Inability to take care of most personal care needs; understand simple commands; communicate basic needs and wants; be employed at a productive wage level without systematic long term supervision or support; learn new skills without aggressive and consistent training; apply skills learned in a training situation to other environments or settings without aggressive and consistent training; demonstrate

behavior appropriate to the time, situation or place without direct supervision; and make decisions requiring informed consent without extreme difficulty;

2. Demonstration of severe maladaptive behavior(s) that place the person or others in jeopardy to health and safety; and

3. Presence of other skill deficits or specialized training needs that necessitate the availability of trained MR personnel, 24 hours per day, to teach the person functional skills.

§ 13. Appeals.

A. Following notification to the NF of the Level II assessment determination by the state MH/MRA, the NF must inform the individual of the decision indicating the reasons for acceptance or denial. Any individual, regardless of method of payment, who wishes to appeal the decision of the Level II evaluation may do so by sending written notification to the Department of Medical Assistance Services, Division of Client Appeals.

B. Decisions made by the annual resident review teams shall also be appealable to DMAS. The reviewed individual shall send written notification to DMAS, Division of Client Appeals.

C. All appeal requests must be made within 30 days of the individual's notification of the review decision.

VR 460-03-3.1301. Facility and Patient Criteria for Nursing Home Care.

d. The nursing home facility must ~~provide~~ *coordinate with appropriate state and local agencies* for the educational and habilitative needs of the child. These services must be age appropriate and appropriate to the cognitive level of the child. Services must also be individualized to meet the specific needs of the child and must be provided in an organized and proactive manner. Services may include but are not limited to school, active treatment for mental retardation, habilitative therapies, social skills and leisure activities. The services must be provided for a total of 2 hours per day, minimum.

2. In addition, the child must meet one of the following requirements:

a. Must require two out of three of the following rehabilitati services; Physical Therapy, Occupational Therapy, Speech-pathology services; therapy must be provided at a minimum of 6 therapy sessions (minimum of 15 minutes per session) per day, 5 days per week; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis.

- or -

b. Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac) kinetic therapy, etc.

- or -

c. Children that require at least one of the following special services:

(1) ongoing administration of intravenous medications of nutrition (i.e., TPN, antibiotic therapy, narcotic administration, etc.)

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

b. Providers must be able to provide the following specialized services to Medicaid specialized care recipients:

(1) Physician visits at least once weekly

(2) Skilled nursing services by a registered nurse available 24 hours a day

(3) Coordinated multidisciplinary team approach to meet the needs of the resident

(4) ~~For residents under age 21, provision for the educational and habilitative needs of the child~~ *Infection control*

(5) For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of six sessions each day, fifteen minutes per session, five days per week

(6) For residents over age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of four sessions per day, thirty minutes per session, five days a week

(7) Ancillary services related to a plan of care

(8) Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day)

(9) Psychology services by a board-certified psychologist related to a plan of care

(10) Necessary durable medical equipment and supplies as required by the plan of care

(11) Nutritional elements as required

(12) A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents

(13) Nonemergency transportation

(14) Discharge planning

(15) Family or caregiver training

~~(16) Infection control.~~

c. Providers must coordinate with appropriate state and local agencies for educational and habilitative needs for Medicaid specialized care recipients who are under the age of 21.

D. Facilities for the Mentally Retarded (FMR) and Institutions for Mental Disease (IMD)

1. With respect to each Medicaid-eligible resident in an FMR or IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet his current health needs and promote his maximum physical well being; the necessity and desirability of his continued placement in the facility; and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with Federal law that is based on the resident's medical and social needs and requirements.

2. With respect to each intermediate care FMR or IMD, periodic on-site inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, the necessity and desirability of continued placement in the facility, and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Full reports shall be made to the State agency by the review team of the findings of each inspection, together with any recommendations.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: **VR 615-53-01.1. Emergency Regulations for Child Day Care Services.**

Statutory Authority: §§ 63.1-25 and 63.1-55 of the Code of Virginia.

Effective Dates: June 8, 1993, through June 7, 1994.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled "Child Day Care Services" pursuant to actions on May 19, 1993 by the State Board of Social Services.

2. PURPOSE OF REQUEST: In May 1992 the Child Day Care Services emergency regulation Title 615-53-01 went into effect. Child day care policy was revised to the necessity to distinguish between mandated and entitlement programs. Interpretations of federal law made it clear that only the AFDC/Working and Transitional child day care programs were entitlements (sum sufficient). Funding limitations made it necessary to add additional cost containment language to policy. There was also a need to refer in policy to the new Voluntary Small Family Child Care Home Registration program which went into effect July 1, 1992.

The department planned to issue final regulations once the final federal regulations for the Child Care and Development Block Grant and the At-Risk Child Care programs were received. These final regulations were received in August 1992. The most significant change in the final regulations was the additional authority provided a state to deny payment for care that does not meet the requirements designed to protect the health and safety of children that are applicable to other federal or State child care programs. This new option applied to all child day care services funded by Title IV-A of the Social Security Act.

An explanation of these final regulations was given to the State Board of Social Services in October 1992. The Board agreed to consider changes in the child day care policy after the General Assembly acted on proposed licensing and regulatory changes.

The 1993 session of the General Assembly of Virginia passed Senate Bill No. 777 and House Bill No. 2380, to increase the number of providers in the State who must be regulated, while leaving the vast majority of family day homes exempt from licensure.

The changes encompassed in this regulation will assure that children receive basic health and safety protection, while recognizing the Department of Social Services principle of customer competency and the goal of self-sufficiency. This will be accomplished by

having the local agency, the parent and the provider work together to obtain necessary criminal record and child protective service clearances and to complete the required health and safety checklist.

Other changes in the regulation include clarification that religiously exempt centers will be considered to be regulated effective October 1, 1993 due to new requirements passed by the General Assembly; the requirement that unregulated providers be at least 18 years of age; and policy allowing unregulated providers to be paid directly by local departments.

3. PERSONS AFFECTED BY THIS REGULATION: This regulation affects all persons who are eligible for child day care assistance from the Department of Social Services, including AFDC recipients, income eligible families, and persons active with the state's Food Stamp Employment and Training Program. The regulation states the procedures to be followed to determine the eligibility for child day care services and provides guidance as to how this child day care assistance will be provided.

This regulation affects all 124 local departments of social services by establishing the procedures they will use to provide needed child day care services to eligible families in compliance with federal regulations.

This regulation affects providers of child day care services in the Commonwealth relating to the degree of regulation required and the methods used by local agencies to make payments for child day care.

4. AUTHORITY TO ACT: The Code of Virginia, Sections 63.1-25 and 63.1-55, give authority to the State Department of Social Services to promulgate regulations on how child day care services funded through the department will be provided in the Commonwealth.

5. FISCAL IMPACT: This regulation will facilitate the delivery of child day care services within the available resources. The new requirement that unregulated providers have criminal records and child protective services clearances will require the prospective provider to pay the fees for such checks, at a cost of ten dollars and five dollars, respectively, for each individual. Some local agencies may have funding to help defray this expense.

6. FUTURE DEPARTMENT ACTION: The department, upon publication of this emergency regulation, will issue a Notice of Intended Regulatory Action to issue a proposed regulation.

/s/ Larry D. Jackson
Commissioner

Preamble:

Child day care policy must be changed on an emergency basis to replace the current regulation which expires in May 1993, and to comply with the final federal regulations for Child Care and Development Block Grant and At-Risk Child Care programs. These final federal regulations permit the department to help assure the health and safety of children in child care funded through programs administered by the Department of Social Services.

PART I.
DEFINITIONS.

§ 1.1 Definitions

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

"Aid to Families with Dependent Children (AFDC)" means a program established by Title IV-A of the Social Security Act and authorized in Virginia by Chapter 6 (§ 63.1-86 et seq.) of Title 63.1 of the Code of Virginia. This program provides benefits to needy children who are deprived of parental support or care.

"Aid to Families with Dependent Children-Unemployed Parent (AFDC-UP)" means the program authorized in Section 407 of the Social Security Act which provides aid to dependent children who are deprived of parental support or care by reason of the unemployment of the parent who is the principal wage earner.

"Agency" means a local department of social services/welfare.

"At-Risk Child Care" means the Federal allocation to states from Title IV-A that provides for subsidized child care to eligible low-income working parents.

"Child Day Care and Development Block Grant" means the Federal block grant for day care that was authorized under the Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508. The purpose of this block grant is to increase the availability, affordability, and quality of child care.

"Child day care services" means those activities that assist eligible families in the arrangement and/or purchase of day care for children.

"Day care center" means a facility operated for the purpose of providing care, protection, and guidance to a group of children separated from their parents during a part of the day.

"Child protective services" means a specialized continuum of casework services to abused, neglected or exploited children and families. The focus of the services is identification, assessment and service provision in an

effort to prevent the maltreatment of children.

"Department" means the Virginia Department of Social Services.

"Deprivation" means, for purposes of eligibility for Transitional child care, that the child is deprived of parental support or care by reason of the death, continued absence from the home, physical or mental incapacity or unemployment of a parent.

"Education leading to employment" means the pursuit of basic remedial instruction to achieve a basic literacy level, instruction in English as a second language, preparation for G.E.D. or Adult Education, the completion of high school, associate degree or certificate, work at the college level or bachelor degree from a college or university if the course of instruction is limited to a curriculum directly related to the fulfillment of an individual's educational goal to obtain useful employment in a recognized profession or occupation.

"Employment Services Program (ESP)" means a program operated by the Department of Social Services which helps AFDC, AFDC-UP and GR recipients in securing employment or the training or education needed to secure employment as required by Chapter 6.2 (§ 63.1-133.12:1) of Title 63.1 of the Code of Virginia. This term may be used interchangeably with JOBS.

"Family day care provider" means a person who is responsible for the supervision and care of children in the provider's home.

"Federal Title IV-A Funding" means funding provided to states from the federal government through the Social Security Act to fund the AFDC program, child day care for AFDC recipients, the transitional child day care program, and the At-Risk Child Care program.

"Fee System" means the program that provides child day care subsidy to low-income parents from the At-Risk Child Care funding and from the Child Care and Development Block Grant funding.

"FSET" means Virginia's Food Stamp Employment and Training Program, a program to provide non-AFDC able-bodied recipients of Food Stamps with employment and training.

"Full-time employment" means regularly scheduled activities that engage a participant in employment for 30 or more hours per week.

"Good cause" means a valid reason why an unemployed parent in a two parent household cannot provide the needed child day care. The rationale for the agency's decision must be documented in the case record.

"Income eligible" means that eligibility is based on income and determined by measuring the family income and size against the state median income chart.

"In-home day care provider" means a person who is responsible for the supervision and care of children in the child's own home.

"IV-A earned income disregard" means the method by which the cost of child day care is handled in determining eligibility for and the amount of the benefit for working applicants and recipients of AFDC.

"JOBS" means the Job Opportunities and Basic Skills Training Program for AFDC, General Relief, and AFDC-UP recipients effective October 1, 1990. This term may be used interchangeably with ESP, the Employment Services Program.

"Job Search" means an activity whereby participants are required to make a certain number of employer contacts a week for a specific length of time.

"Market rate" means the 75th percentile of the range of costs in a community for a particular type of child day care.

"On-the-Job Training" is employment-related training provided by the employer.

"Parent" means primary adult caretaker or guardian of a child.

"Parental access" means that parents may visit the day care setting at any time their child is in care.

"Part-time employment" means any regularly scheduled activity that engages a participant in employment for a minimum of eight hours but less than 30 hours per week.

"Postsecondary education" means any course of instruction beyond that of high school offered by an institution of higher education or a vocational school as determined by the Secretary of Education to meet the Higher Education Act of 1965.

"Purchase of Service Order" means a form sent to a vendor to authorize the delivery of services to a client.

"Regulation" means a process by which a child day care provider becomes federally approved, state licensed, city approved, county approved, local agency approved, or has met the requirements of Small Family Child Care Home Voluntary Registration. Providers who meet these requirements shall be referred to as regulated providers. Effective October 1, 1993 religiously exempt centers will be considered regulated.

"Relative Provider" means a child day care provider related to the parent or child by blood or marriage.

"Resource and referral services" means provision of support, education and assistance for parents in choosing

child care. These services are sponsored by a variety of agencies, and often include assessment of the need for child care in a community; collection and maintenance of information about child care needs and issues; efforts to improve the quality of child care in the community through the provision of training and support for providers; and efforts to increase the supply of child care in the community through recruitment and technical assistance to potential providers.

"Satisfactory progress" means that the participant in any educational or training activity is meeting, on a periodically measured basis of less than one year such as a term or quarter, a consistent standard of progress based on written policy developed by the educational institution or training agency and approved by the IV-A agency.

"Service plan" means the written, mutually agreed upon course of action determined by the parent and service worker.

"Special needs child day care" means care provided to children with diagnosed physical, mental or emotional problems such as learning disabilities, behavior disorders, and/or inability to adjust with the family and peers; children with developmental disabilities, atypical development, or deficit in social functioning.

"State median income" (SMI) means the level of income by family size which represents the mid point of income levels in Virginia.

"TRADE", also called Project TRADE, is a work supplementation program in ESP to develop and subsidize jobs for AFDC recipients as an alternative to aid.

"Training leading to employment" means the development of specific work attitudes, behaviors, or skills leading to job readiness as well as the development of specific technical or vocational skills that lead to employment in a recognized occupation and results in other than a baccalaureate or advanced degree.

"Transitional child day care services" means the day care services (up to 12 months) for which certain former recipients of AFDC are eligible.

"Unregulated provider" means any child day care provider who is not federally approved, state licensed, city approved, county approved, local agency approved, or registered under the Voluntary Small Family Child Care Home Registration program, and is not required to be regulated. Effective October 1, 1993 religiously exempt centers will be considered regulated.

"USDA Child and Adult Care Food Program" means the United States Department of Agriculture program to reimburse child care providers for nutritious meals and snacks served to children in care while parents work.

"Vendor" means a provider who can sell services.

"Voluntary Small Family Child Care Home Registration" means the procedures by which a small family day home becomes state registered on a voluntary basis using approved standards. Providers registered with this program are considered to be regulated.

"Work Experience" is unpaid job training with clearly defined duties at a well-supervised worksite.

The following definitions become effective July 1, 1993 and replace the definitions for a day care center and family day care provider.

"Child day center" means a child day program offered to (1) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care, or (2) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.

PART II.
POLICY.

Article 1.
Child Day Care Programs

§ 2.1 Legal Base

The legal base for the Child Day Care program is found in:

Public Law 100-485, The Family Support Act of 1988

Public Law 101-508, Sections 5081 and 5082 of the Omnibus Budget Reconciliation Act of 1990

Public Law 100-435, The Hunger Prevention Act of 1988

Code of Virginia, Sections 63.1-25 and 63.1-55

§ 2.2 Children To Be Served

Child day care services shall be provided for eligible families with children who need day care and who are under age 13, or children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision. Day care shall

not be purchased for children who are eligible to attend kindergarten or for older children during that portion of a day when appropriate public education is available unless there are reasons the children must be out of school.

§ 2.3 Entitlement and Mandated Services

Children shall be served under entitlement or mandated programs. An entitlement program means the customer is entitled to the day care service regardless of funding constraints (the program is sum sufficient). A mandated program means that the agency must offer the program to the extent that funding is available.

§ 2.4 Child Day Care Programs

A. Recipients of Aid to Families with Dependent Children (AFDC)

If there is a need for day care and all eligibility requirements are met, recipients of AFDC are eligible for child day care services if both the child receiving day care and the parent/caretaker are on the AFDC grant, or if the child would have been in the public assistance unit were it not for the receipt of SSI or foster care payments.

1. AFDC/Working

Children in an AFDC public assistance unit are entitled to necessary child day care services to enable an AFDC eligible family member to work.

2. AFDC Education/Training

To the extent of funding, children in an AFDC public assistance unit are eligible for necessary child day care services to enable an AFDC eligible family member to participate in education/training.

B. Income Eligible Recipients

Child day care subsidy for income eligible parents shall be made available on a sliding fee scale basis.

1. Transitional Child Day Care Services

Parents are entitled for up to 12 consecutive months of child day care if they have received AFDC, are found to be income eligible, and meet the following criteria:

a. The family ceased being eligible for AFDC as determined by the local eligibility worker, as a result of increased hours or income from employment.

b. The family must have received AFDC at least three of the six months immediately preceding the first month of ineligibility for AFDC benefits.

c. The family requests transitional child day care benefits.

2. Fee System Child Day Care Services

a. Fee System/At-Risk:

To the extent of funding, the Fee System/At-Risk Program shall be used to provide child care subsidies to income eligible clients who are employed.

b. Fee System/Block Grant:

To the extent of funding, the Child Care and Development Block Grant shall be used to provide child care subsidies to income eligible clients who are employed, in education/training programs, or receiving child protective services.

c. Food Stamp Recipients

To the extent of funding, child day care shall be made available for children of recipients of Food Stamps who are participating in Virginia's Food Stamp Employment and Training Program, at a cost of up to the federally allowed maximum of $160 per month per dependent.

§ 2.5 Good Cause/Two-parent Households

In two-parent households where one parent is unemployed, there shall be good cause why that parent cannot provide the needed child care before payment for child day care will be made.

§ 2.6 Education and Training

A. Satisfactory Progress

All child day care approved for education/training activities shall be limited to curriculum related to the fulfillment of an individual's education/training goal. Participants shall show that they are making satisfactory progress in order to continue receiving child day care services. Payment for child day care for the attainment of post baccalaureate education is not allowed, except with local only funding.

B. AFDC Education/Training and ESP/JOBS Coordination

Child day care for education/training for AFDC recipients shall be provided to the extent of available funding. The agency shall describe, in its ESP and Child Day Care plans, how coordination and communication between the ESP and the child day care workers will be assured.

Article 2.
Regulation

§ 2.7 Regulation of Providers

All child care provided must meet applicable standards of state and local law and be operating legally in the Commonwealth.

Providers of services funded from the AFDC, the Transitional, the Fee System/At-Risk and the FSET child day care programs may be regulated or unregulated. Providers funded through the Fee System/Block Grant program must be regulated, except grandparents, aunts, uncles and religiously exempt centers. Effective October 1, 1993 religiously exempt centers will be considered regulated.

The service worker shall obtain and maintain the following basic information for all unregulated providers used: full name, address, rates charged the general public for the type of child day care service provided, Social Security number, birthdate, and the fact that they are unregulated. Unregulated providers used must be at least 18 years of age.

The following provisions shall become effective on October 1, 1993:

When parents choose an unregulated provider (unless the provider is a grandparent, aunt or uncle), the local department, the parent, and the provider shall work together to assist the provider in meeting basic health and safety standards for children. The local department shall provide the parent with necessary information and assist the provider to secure the criminal record and child protective service clearances. The parent shall also be given a health and safety checklist by the agency. The parent shall give the checklist to the provider and participate in its completion. It will be the responsibility of the provider to return the checklist to the local department.

Article 3.
Determination of Services to be Provided

§ 2.8 Case Management Process

A. Assessment

The family need for child day care shall be assessed at the time of application. Parents shall be informed of the full range of services offered by the agency. If the family identifies other needs, an assessment of those needs shall be completed. A case shall be opened on all families that are to receive child day care services, and appropriate case management procedures found in department manuals shall be followed.

Parents shall be required to sign a service application, with the exception of parents who are participating in ESP/JOBS or FSET. The ESP/JOBS Employability Plan or ESP/JOBS Activity and Service Plan may serve as the application for child day care.

B. Determination of Eligibility and Funding Source

1. The agency shall determine whether the family is eligible result in day care services, and determine the appropriate funding source.

2. Once eligibility is determined, parents will be informed as to whether their full costs of child day care will be paid or whether they will be required to pay a fee, and, if so, the amount of that fee. It is the parent's responsibility to pay all fees owed directly to the provider.

3. Parents shall be informed of their responsibility to report within 10 days to the local agency changes in choice of providers, family size and income, or any other changes that could affect their eligibility for services. They shall also be informed that, if they have involvement with the Division of Child Support Enforcement, they shall be expected to cooperate with that Division.

For programs where parent fees are required, failure to pay fees or make adequate arrangements for paying back fees owed will result in ineligibility for services.

While local departments shall give full consideration to factors which both support maximum parental choice and promote efficient and effective service delivery, efforts shall include measures to prevent fraud and abuse, such as verification that care provided is actually received by the child for whom services are funded.

C. Service Plan

A written service plan shall be completed for every child day care case. If parents are active with the Employment Service Program, the ESP/JOBS Employability Plan of the ESP/JOBS Activity and Service Plan may serve as the service plan.

D. Resource and Referral

The parent shall receive child day care resource and referral services to assist in the process of selecting a provider who will meet the needs of the child(ren).

E. Selection and Monitoring of Provider

1. Agencies shall not establish policies that limit parental choice of providers. Parents may choose either child day centers, family day homes or in-home care. Unless there are extenuating circumstances, agencies shall purchase only the amount of child care required to support the approved activity.

2. In the selection of a provider, the service worker shall encourage the parent to consider the individual developmental needs of the child, the number of hours of care needed, ability of the provider to meet the needs of the family, proximity of the provider to the

child's residence or school, proximity of the provider to parent's residence or employment site, travel time of the parent/child to the provider's location, and cost of care. Given all other factors being equal, use of the most economical care will be encouraged.

3. The service worker shall encourage the parent to choose regulated care, if available. Unless regulated care is unavailable, parents choosing unregulated care shall be required to acknowledge in writing that regulated care was offered and declined.

4. Appropriate education and information shall be provided by the agency to parents to assist them in gaining needed information about child care services, availability of providers, and how to choose and monitor quality child day care.

5. Providers used shall afford parents unlimited access to their children.

6. Local agencies shall allow the utilization of a relative as a child day care provider, as long as the individual is not a part of the public assistance unit or legally responsible for the child(ren) needing care.

F. Service Delivery

1. Reassessment

The service worker shall inform the parents and providers that he/she is available on an on-going basis to assist with problem solving. A direct contact shall be made at least quarterly with a member of the case household. The service worker shall evaluate, at least quarterly, whether the child day care services authorized are meeting the needs of the child and parent. In some cases, other services will be needed by the family and will be provided directly or arranged for by the service worker.

2. Termination/After Care Services

Agency termination of child day care services shall be planned jointly with the parent and provider, and arrangements made for other services if needed by the family.

Adequate documentation supporting the reasons for termination shall be filed in the case record. If the locality proposes to deny, discontinue, terminate or reduce child day care benefits, a written Notice of Action (#032-02-103/2) or letter must be sent to the parent at least 10 days in advance of the date the action is to become effective. If the parent disputes this decision, they are entitled to a fair hearing.

3. Required Documentation

Agencies shall assure that case records are maintained accurately in accordance with case management policy in department manuals.

G. Waiting List

In any of the non-entitlement child day care programs, it may become necessary to place a family on a local agency waiting list. Therefore, local agencies shall have a waiting list policy for these day care funding sources. The local agency shall add the parent's name to a waiting list upon request. Service by date of request is an acceptable means of administering a waiting list. Any other proposed policy for a waiting list, such as by degree of need or at-risk status, shall be sent to the regional office of the department for approval prior to submission to the local board of social services. A waiting list policy must assure that decisions are made uniformly and fairly.

Article 4.
Payment for Care

§ 2.9 Types of Payment

For regulated or unregulated care that meets the health and safety requirements found in Section 2.7 effective October 1, 1993 the parent may choose whether the agency will make payment for child day care services by means of direct payment to the provider or by reimbursement to the parent.

For the reimbursement method, the parent will make all payments directly to the provider. Parents will receive reimbursement when they submit proper documentation and receipts to the agency.

Local agencies may use a modification of the department's Purchase of Service Order form to make direct payment to providers. Such a modified form would have to receive prior department approval and meet all requirements found in department manuals to ensure that it contains all necessary elements to authorize the delivery of service to the family. AFDC recipients who are working may choose to take the IV-A earned income disregard for child day care expenses, whether the provider selected is regulated or unregulated.

§ 2.10 Determining Payment Amount

A. Market Rates of Pay

The department will establish local market rates for child day care for all localities in the state by type of care. Agencies shall pay the rates and fees providers charge the general public or a negotiated rate. The payment shall not exceed the local market rate for a particular type of care. For special needs children, 100% of the cost of care may be paid, even if this exceeds the established market rate. Agencies shall not establish their own maximum monthly rates of pay.

Parents who choose to place a child in a facility whose rate is above the local market rate shall pay the

additional amount themselves, unless the agency elects to pay the additional amount out of local only funds. When agencies use local only funds to subsidize the cost of care above the local market rate, this policy shall be approved by the local board of social services and recorded in the minutes, including the maximum allowable subsidy. Subsidy decisions shall not be made on an individual case basis.

B. Unit Price

The unit price of service shall be based on a week or less. Rates paid will be based on provider enrollment and attendance practices and department payment policies.

With the exception of an annual or one-time-only registration fee the total cost of care, including special programs, activities fees and transportation, shall not exceed the local market rate and shall be identified and entered on the Purchase Order as one day care cost. When an annual or one-time-only registration fee is not included in the rate charged by the provider, it shall be paid by the agency separately.

Transportation services shall be paid using day care funds only when the transportation services are provided by the day care provider.

C. Optional Payments

Child day care may be purchased if child care arrangements would otherwise be lost for up to two weeks prior to the start of employment or training and for up to one month during a break in employment or training if a subsequent activity is scheduled to begin within that period. Child day care may also be purchased if the parent is ill or incapacitated, or if the child(ren) is absent from care for up to four weeks for justifiable reasons as set forth in the Service Plan.

D. Beginning Date of Service Payment

1. The beginning date of service payment authorization shall be:

a. The date the application/request for service is received in the agency if the client/family is determined eligible within 45 days.

b. If determination is made more than 45 days after the application/request is received, services may begin only on the date eligibility is determined.

c. The beginning date shall be no earlier than the effective date of the approval of the provider when using regulated care.

2. For transitional services, payment shall be made retroactive to the date of eligibility (the month following the loss of AFDC) if the parent has requested the service and has proper receipts for day care paid, and proof of employment.

E. Sliding Fee Scale

Child Day Care services shall be available to income eligible and transitional recipients on a sliding fee scale basis. Within available funds localities shall serve eligible families who earn 50% or less of the state median income (SMI). Localities can opt to serve families who earn up to 70% of the state median income with federal and state funds, and above 70% with local funds.

All parents with income receiving sliding fee scale subsidy must contribute towards the cost of their child day care.

The following sliding fee scale shall be used statewide for determining fees owed by parents under the Fee System Program or the Transitional Child Care Program, unless a locality seeks to use an alternative scale for the Fee System. If an alternative scale is desired, the locality must obtain prior Department approval and local Board approval to use the alternative scale. Alternative scales shall not be approved for the Transitional Child Day Care program.

The agency shall adjust the parent's fee if the income of the parent moves the fee payment to a higher or lower level on the SMI scale.

Agencies have the option of assisting parents with the payment of the day care fee as determined by the sliding fee scale using local only funds. Local policy for the subsidy of parent fees shall be approved by the local board of social services and recorded in the minutes. Local policy governing subsidy for parent fees shall be applied uniformly.

Article 5.
Local Agency Service Delivery Responsibilities.

§ 2.11 Local Child Day Care Plan

Agencies will complete and have in place an annual local child day care plan. This plan is a management tool to enhance the delivery of child day care services and may be modified throughout the year.

A. Community Coordination

Local departments shall coordinate child day care services with existing child day care resource and referral agencies, early childhood education programs, schools, private for-profit and non-profit child day care providers, and other groups in the community involved in child day care. This will be done in order to ensure understanding of the department's program, to enhance parental choice, to increase the availability and quality of child day care services, and to maximize coordination of child day care services in the community.

B. Administrative Support Agreements

Local agencies may contract with other local governmental or non-profit agencies for the management of certain child day care services. However, federal regulations prohibit local social service agencies from contracting with other agencies for the administration of child day care services for families funded out of IV-A funds (AFDC, ESP/JOBS, and transitional services), except for the IV-A At-Risk Program. Administration is defined as activities such as processing applications, determining/redetermining eligibility, providing hearings, and imposing sanctions.

The department must give prior approval to any such contract, review the contract annually, and monitor the local agency's administration of said contract. The local agency shall assure that the contractor meets all department policy and reporting requirements and provides the services specified in the contract. The agency will follow local procurement procedures.

§ 2.12 Local Recruitment, Approval, Training of Providers

It is the responsibility of the agency to work with other organizations in the community in efforts to encourage the development of regulated day care resources to meet unmet need. This can be done by encouraging the expansion of family day homes, center care, in-home care, and other forms of regulated care such as for school-age children. Family day home providers will be encouraged to become licensed, local agency approved, or voluntarily registered (Voluntary Small Family Child Care Home Registration).

If a family day home is not required to be licensed, the agency may approve the home using the Standards and Regulations for Agency Approved Providers, or encourage the family day care provider to become voluntarily registered.

It is also the responsibility of the agency to work cooperatively with other community resources in making adequate training opportunities available to all child day care providers.

Article 6.
Complaints in the Day Care Setting

§ 2.13 Child Abuse and Neglect

All complaints regarding possible child abuse or neglect occurring in a child day care setting must be referred to the child protective services unit at the local agency serving the area where the day care service is located. Information regarding the complaint shall be shared with the worker responsible for licensure or approval.

§ 2.14 Other Complaints

All other complaints shall be referred to the unit which approved the resource.

/s/ Larry D. Jackson
Virginia Department of Social Services
Date: May 24, 1993

/s/ Lawrence Douglas Wilder
Governor
Date: June 3, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 8, 1993

AT RICHMOND, JUNE 8, 1993

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC930038

Ex Parte: In RE: Promulgation of rules pursuant to the Securities Act and Retail Franchising Act

ORDER PRESCRIBING NOTICE

As the result of changes in other laws and regulations, certain rules of the State Corporation Commission appear to require amendment. The Commission's Retail Franchising Act Rule S.VRFA 9 (Required Fees) should be amended to conform to changes in § 13.1-561 D of the Code of Virginia. Securities Act Rule 503 (Uniform Limited Offering Exemption) should be amended to conform to changes in the regulations of the United States Securities and Exchange Commission ("SEC").

The changes to Va. Code § 13.1-561 D increased the statutorily required fees associated with filing an application for registration of a franchise, an application for renewal of registration and an amendment to a registration application (1992 Va. Acts, ch. 158). We propose to amend Retail Franchising Act Rule S.VRFA 9 as follows: In paragraph A, "$500" would be substituted for "$250"; in paragraph B, "$250" would be substituted for "$150"; and, in paragraph C, "$100" would be substituted for "$50."

The changes to the SEC's Regulation A which are pertinent to Securities Act Rule 503 merely redesignated a SEC Rule number as well as several of its subsections and deleted a subsection (SEC Release No. 33-6949, Aug. 13, 1992). We propose to amend Securities Act Rule 503 as follows: In paragraph A.2, "Rule 230.262 (a), (b) or (c)" would be substituted for "Rule 230.252 (c), (d), (e) or (f)."

These amendments are proposed to make our regulations consistent with governing law; accordingly,

IT IS ORDERED:

(1) That the Commission's Division of Securities and Retail Franchising shall cause this order to be published in the Virginia Register as notice of proposed changes to State Corporation Commission regulations;

(2) That any interested person may file written comments or a request for hearing on the proposed changes on or before July 15, 1993, by sending an original and five (5) copies of the comments or request for hearing to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216, making reference to Case No. SEC930038; and

(3) That this matter is continued generally until further order of the Commission.

AN ATTESTED COPY hereof shall be sent to the Commission's Division of Securities and Retail Franchising.

DIRECTOR'S ORDER NUMBER SIXTEEN (93)

VIRGINIA'S THIRTY-FOURTH INSTANT GAME LOTTERY; "BLACK JACK," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's thirty-fourth instant game lottery, "Black Jack." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: May 18, 1993

DIRECTOR'S ORDER NUMBER SEVENTEEN (93)

"BLACK JACK"; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Black Jack" promotional game and drawing rules for the Instant Game 34 kickoff events which will be conducted at various lottery retailer locations throughout the Commonwealth on Thursday, May 20, 1993. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Office of the Director, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until May 31, 1993, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson
Director
Date: May 19, 1993

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: **VR 115-04-28. Regulations Governing the Oxygenation of Gasoline.**

Governor's Comment:

I do not have objections to the regulations at this time; however, I will reserve my opinion until such time as the public hearings are held and public comments have been received.

/s/ Lawrence Douglas Wilder
Governor
Date: May 30, 1993

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision MM).**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: June 4, 1993

BOARD OF PSYCHOLOGY

Title of Regulation: **VR 565-01-2. Regulations Governing the Practice of Psychology.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: June 3, 1993

Symbol Key †
† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

NOTICE

Notices of Intended Regulatory Action are published as a separate section at the beginning of each issue of the Virginia Register.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Administrative Procedure for Processing Violations for Civil Penalty Assessment and Actions on Certificates, Licenses, and Registrations

Decision-Maker	Activity	Time Frame
Enforcement Supervisor	Review reports and sample analyses pertaining to investigations, inspections, observations, and monitorings insure that the information for each case is complete, clearly written and the findings well-documented; determine if a possible violation of Pesticide Control Act or supporting regulations occurred.	Within 5 work days of receipt of complete information
Enforcement Supervisor	If no violation, inform affected parties of results as appropriate; notify investigator, post in non-violative record.	Within 2 work days following review
	IF POSSIBLE VIOLATION OCCURRED, forward to Compliance Manager; record in tracking docket.	Within 1 work day following review
Compliance Manager	Review each case forwarded by the Enforcement Supervisor to determine whether or not violation(s) of the Pesticide Control Act or supporting regulations are documented in the report of findings and supported by the samples submitted by the Investigator; prepare a Record of Case Review for each case.	Within 10 work days of receipt
	If violative conditions do not warrant a civil penalty, prepare a Basis of Case Decision and send a Notice of Warning or cautionary letter to respondent; copy to Investigator; post in tracking docket.	Within 3 work days of completion of case review
	If violation warrants a CIVIL PENALTY, prepare a Basis of Case Decision, a penalty assessment explanation, and a Notice of Violation.	Within 3 work days of completion of case review
	IF CIVIL PENALTY IS $2,500 OR LESS, mail to respondent along with payment statement and notification that the assessment can be appealed in a fact-finding conference authorized by § 9-6.14:11 of the Code of Virginia (the Code); post in tracking docket.	Within 3 work days of completion of case review
	IF CIVIL PENALTY IS GREATER THAN $2,500, forward to Program Manager for review and approval.	Within 2 work days
Program Manager	IF CIVIL PENALTY GREATER THAN $2,500 IS APPROVED, return to Compliance Manager for mailing to respondent and posting in tracking docket.	Within 2 days of c tion of c review
	IF CIVIL PENALTY GREATER THAN $2,500 IS NOT APPROVED, return to Compliance Manager for reassessment of penalty or issuance of Notice of Warning.	Within 2 days of c tion of c review
Compliance Manager	Mail approved civil penalty assessment with payment statement to respondent; include notification that the assessment can be appealed in a fact-finding conference authorized by § 9-6.14:11 of the Code; post in tracking docket.	Within 2 days of r of approv
	If penalty is NOT APPROVED, reassess or send Notice of Warning as recommended; resubmit any penalty reassessment for approval as before.	Within 5 days of r
Commissioner	Receive written request for FACT-FINDING CONFERENCE; appoint a Conference Officer as required; request Compliance Manager to schedule the conference with the respondent and Conference Officer.	Within 5 days of r of reques
Compliance Manager	If a FACT-FINDING CONFERENCE is requested by respondent in writing to the Commissioner within 15 days after receipt of the Notice of Violation, schedule conference with appointed Conference Officer; notify respondent and Investigator of location, date and time; post in tracking docket.	Within days aft Commissio appoints Conferenc Officer
Conference Officer appointed by Commissioner	Hole FACT-FINDING CONFERENCE as requested to consider all relevant information on case; Officer may affirm, raise, lower, or abate a penalty, or may NEGOTIATE A SETTLEMENT based on new information; however, the Board must concur with any civil penalty adjustment greater than 25% of the original penalty, and any adjustment greater than $500; inform the respondent of his right to appeal decision of this conference in an ADJUDICATIVE CONFERENCE, authorized by § 9-6.14:11 of the Code, when only a civil penalty is involved, or in a FORMAL HEARING, authorized by § 9-6.14:12 of the Code, when denial, suspension, revocation, or modification of a license, certificate, or registration is involved alone	Within 45 of appoin as Confer Officer

	or in conjunction with a civil penalty; REQUEST FOR AN ADJUDICATIVE CONFERENCE OR FORMAL HEARING MUST BE MADE IN WRITING TO THE COMMISSIONER.	
	Conference Officer shall affirm, raise, lower, or abate penalty, or negotiate a settlement; notify the respondent of decision in writing; indicate if Board concurrence is required; notify Investigator of decision; post in tracking docket.	Within 5 work days of conference date
	Conference Officer shall transmit to the Board any civil penalty adjustment greater than 25% of the original penalty, and any adjustment greater than $500; the Board shall review the decision and approve or deny the penalty adjustment.	At the next Board meeting
Commissioner	Upon written request for an ADJUDICATIVE CONFERENCE, appoint a Conference Officer; request Compliance Manager to schedule the conference with the respondent and Conference Officer.	Within 5 work days of receipt of request
Compliance Manager	If an ADJUDICATIVE CONFERENCE is requested by respondent within 15 days after receiving decision of Fact-Finding Conference Officer, schedule conference with appointed Conference Officer; arrange location of ADJUDICATIVE CONFERENCE; notify Investigator; post in tracking docket.	Within 5 work day after Commissioner appoints Conference Officer
Conference Officer appointed by Commissioner	Hold ADJUDICATIVE CONFERENCE as requested to hear relevant information concerning the case. Officer shall consider all facts concerning a civil penalty, then transmit findings and recommendation to the Board.	Within 45 days of appointment by Commissioner Within 10 work days of conference date
	Inform respondent that the Board will hear final oral arguments (15 minutes maximum unless a longer period, not to exceed 30 minutes, is requested in writing), only upon written request to the Board within 15 days after date of ADJUDICATIVE CONFERENCE.	Within 10 work days of conference date
Commissioner	Upon written request for a FORMAL HEARING, request Compliance Manager to schedule hearing.	Within 5 work days of receipt of request
Compliance Manager	If FORMAL HEARING is requested by the respondent within 15 days after receiving decision of Fact-Finding Conference Officer, arrange for a Court-appointed attorney to act as Hearing Officer; schedule location; notify Investigator; post in tracking docket.	Within 5 work days after notification by Commissioner
Court-Appointed Attorney	Hold FORMAL HEARING as requested to hear relevant information about case.	Within 60 days of receipt of request for hearing
	Hearing Officer shall consider the facts concerning the denial, suspension, revocation, or modification of a license, certificate, or registration, along with any associated civil penalty, and the facts of related violations presented as part of the same case; transmit findings and recommendations to the Board.	Within 15 work days of the hearing date
	Inform the respondent that the Board will hear final oral arguments (15 minutes maximum unless a longer period, not to exceed 30 minutes, is requested in writing), only upon written request to the Board within 15 days after date of the FORMAL HEARING.	Within 15 work days of hearing
Pesticide Control Board	Consider recommendations from ADJUDICATIVE CONFERENCE or FORMAL HEARING; Board may hear final arguments from VDACS and respondent before rendering decision; RESPONDENT MUST PETITION THE BOARD TO PRESENT ORAL ARGUMENTS (15 minutes maximum unless a longer period, not to exceed 30 minutes, is requested in writing).	At the next Board meeting after receipt of findings and recommendations
	Board shall render decision concerning a civil penalty and the status of a license, certificate, or registration; inform respondent that decision can be appealed to circuit court for judicial review; send copy of transcript and decision to the Office of Pesticide Management.	Within 10 work days of considering case

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice to the Public

A. Pursuant to the Virginia Alcoholic Beverage Control Board's "Public Participation Guidelines for Adoption or Amendment of Regulations" (VR 125-01-1, § 5.1 of the Regulations of the Virginia Alcoholic Beverage Control Board), the board will conduct a public hearing on Wednesday, October 27, 1993, at 10 a.m., in the Board Hearing Room, First Floor, ABC Board Main Offices, 2901 Hermitage Road, Richmond, Virginia, to receive comments and suggestions concerning the adoption, amendment or repeal of board regulations. Any group or individual may file with the board a written petition for the adoption, amendment or repeal of any regulation. Any such petition shall contain the following information, if available.

1. Name of petitioner.
2. Petitioner's mailing address and telephone number.
3. General description of proposal, with recommendations for adoption, amendment or repeal of specific regulation(s).
4. Why is change needed? What problem is it meant to address?
5. What is the anticipated effect of not making the change?
6. Estimated costs or savings to regulated entities, the public, or others incurred by this change as compared to current regulations.
7. Who is affected by recommended change. How affected?
8. Draft language; and
9. Supporting documents.

The board may also consider any other request for regulatory change at its discretion. All petitions for requests for regulatory changes should be submitted to the board no later than Wednesday, June 30, 1993.

B. Petitions for regulatory change should be sent to Robert N. Swinson, Administrator to the Board, P.O. Box 27491, Richmond, Virginia 23261, or may be faxed to (804) 367-1802 if the original paperwork is also mailed.

C. Applicable laws or regulations (authority to adopt regulations): §§ 4-7(1), 4-11, 4-36, 4-69.2, 4-72.1, 4-98.14, 4-103(b) and 9-6.14:1 et seq., of the Code of Virginia; VR 125-01-1, § 5.1, Board Regulations.

D. Entities affected: (1) all licensees (manufacturers, wholesalers, importers, retailers) and (2) the general public.

E. For further information contact Robert N. Swinson, Administrator, at the above address or by telephone at (804) 367-0616.

DEPARTMENT OF HEALTH

Maternal and Child Health Block Grant Application Fiscal Year 1994

The Virginia Department of Health will transmit to the federal Secretary of Health and Human Services by July 16, 1993, the Maternal and Child Health Services Block Grant Application for the period October 1, 1993, through September 30, 1994, in order to be entitled to receive payments for the purpose of providing maternal and child health services on a statewide basis. These services include:

1. Preventive and primary care services for pregnant women, mothers and infants up to age 1.

2. Preventive and primary care services for children and adolescents.

3. Family-centered, community-based, coordinated care and the development of community-based systems of services for children with special health care needs.

The Maternal and Child Health Services Block Grant Application makes assurance to the Secretary of Health and Human Services that the Virginia Department of Health will adhere to all the requirements of Section 505, Title V-Maternal and Child Health Services Block Grant of the Social Security Act, as amended. To facilitate public comment, this notice is to announce a period from May 31 through June 29, 1993, for review and public comment on the Block Grant Application. Copies of the document will be available as of May 31, 1993, in the office of the director of each county and city health department. Individual copies of the document may be obtained by contacting Ms. Susan Brown Davis at the following address; written comments must be addressed to Ms. Davis and received by June 29, 1993, at the following address:

Virginia Department of Health
Division of Maternal and Child Health
1500 East Main Street, Room 137
Richmond, Virginia 23219
(804) 786-7367
FAX (804) 371-6032

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† Contract for the Compilation, Storage, Analysis and Evaluation of Patient Level Data

Chapter 638 of the Virginia Acts of Assembly, 1993 Session, requires that the Executive Director of the Virginia Health Services Cost Review Council negotiate and enter into contracts or agreements with a nonprofit, tax-exempt health data organization for the compilation, storage, analysis, and evaluation of patient level data provided by inpatient hospitals in Virginia (see § 9-166.4 of the Code of Virginia, 1993). Chapter 638 also provides that the Executive Director of the Virginia Health Services Cost Review Council may enter into such agreements or

contracts without competitive sealed bidding or competitive negotiation if he makes a determination, in advance, after reasonable notice to the public, in writing, that competitive sealed bidding or competitive negotiations for such services is not fiscally advantageous to the public (see § 11-45 (J) of the Code of Virginia, 1993).

The Executive Director of the Virginia Health Services Cost Review Council has determined that he will enter into a contract with Virginia Health Information, Inc., a nonprofit, tax-exempt health data organization, that will compile, store, analyze, and evaluate patient level data provided by inpatient hospitals. The Executive Director has concluded that competitive sealed bidding or competitive negotiations is not fiscally advantageous to the public. His reasons for reaching that determination are as follows:

1. The incorporation of Virginia Health Information is the result of efforts made by individuals from consumer, hospital physician, insurance and business organizations, as well as state officials, who attended a retreat organized by Howard M. Cullum, Secretary of Health and Human Resources, in October, 1992, at which time they discussed the possible establishment of a patient level data base system in Virginia.

2. The legislation contained in Chapter 638 is the result of efforts undertaken by individuals from organizations who attended the retreat who subsequently worked with the Joint Commission on Health Care and other legislators to draft and enact this legislation.

3. The Board of Directors of Virginia Health Information is comprised of representatives of state government, as well as consumer, hospital, physician, insurance, and business organizations, as required by § 9-166.4 of the Code of Virginia (1993).

4. The articles of incorporation of Virginia Health Information require the nomination of its board members by organizations and associations representing those categories of persons specified for representation on the board of directors.

5. The Executive Director is not aware of any other not-for-profit entity organized to compile, store, analyze, and evaluate patient level data which is governed by individuals from similar organizations that could offer these services in a more fiscally advantageous manner.

Based on the above findings, the Executive Director of the Virginia Health Services Cost Review Council will enter into a contract with Virginia Health Information for the compilation, storage, analysis and evaluation of patient level data for the period between July 1, 1993, and June 30, 1994.

DEPARTMENT OF SOCIAL SERVICES

† Notice of Demonstration Project

The Virginia Department of Social Services, as the single state agency, is inviting comments on the Diggs Economic Empowerment Demonstration (DEED) project. DEED is being submitted to the U.S. Department of Health and Human Services, the U.S. Department of Agriculture, and the Health Care Financing Administration for approval. DEED will allow Norfolk's Departments of Redevelopment and Housing and Social Services to concentrate economic and supportive services in the Diggs Town community. Additionally, project participants will receive economic incentives and supportive services that are extended beyond the realm of traditional services.

Some objectives of the DEED project are:

1. To develop a bona fide self-sufficiency program for the residents of Diggs Town;

2. To place Diggs Town residents in upwardly mobile positions that suit newly developed skills and interests;

3. To halt the disintegration of the community by making Diggs Town part of the Campostella neighborhood of Norfolk rather than a "project" in Campostella;

4. To eliminate restrictive forces and barriers that impede both the socio-economic growth and independence of Diggs Town residents through comprehensive counseling; and

5. To identify rules, policies and requirements of HUD and/or HHS that are disincentives for residents seeking self-sufficiency and work to obtain waivers or elimination of these disincentives.

For additional information on the DEED project, contact Mary Vail Ware at (804) 692-1730. Written comments may be submitted by July 28, 1993, to:

Mary Vail Ware
Virginia Department of Social Services
Division of Benefit Programs, 7th Floor
Theater Row Building
730 East Broad Street
Richmond, VA 23219-1849

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

DEPARTMENT OF HEALTH

Title of Regulation: VR 355-18-014. Waterworks Operation Fee.

Publication: 9:18 VA.R. 3131-3134 May 31, 1993.

Correction to Final Regulation:

Page 3134, the form used to bill for amounts $400 or less that are due in a lump sum was inadvertently omitted from the Virginia Register publication. The form is shown below:

THIS IS A BILL/INVOICE FOR PAYMENT OF THE

WATERWORKS OPERATION FEE

BILL #

PLEASE REMIT TO: Virginia Department of Health, Division of Water Supply Engineering, 1500 E. Main Street, Room 109, Richmond, Virginia 23219

PAYABLE TO VDH - Waterworks Technical Assistance Fund

DUE DATE: On or before and is for the period July 1, through June 30, and is due only one time a year.

This bill must be signed by the Owner or Chief Administrative Officer of the Waterworks and it or a copy returned with any continuation sheets and payment. Call Tom Gray at (804) 786-5566 with any questions.

You must detach this payment form/data verification notice and send it and any continuation sheet(s) back with your payment in the enclosed envelope. Make any corrections in the shaded areas provided below. (State agencies paying by IAT must send copy of IAT and this bill to the above address. For IATs - Waterworks Technical Assistance Fund - funding code is 136 601 02 48 02702 103 A.) Our Federal Identification Number is 546001775. Put Bill # on your check/IAT.

PWSID	TYPE	PWS Name	Customer Account(s)	Multiplied by	=	Amount

Total of Continuation Sheet(s):

BILL # TOTAL BILL

The information on this bill is true, accurate and correct to the best of my knowledge, and I will clarify or supplement information pertaining to this bill upon request.

Chief Administrative Officer or Owner: Phone Number: _____

Title: _____ Signature: _____

Date: _____ Name: _____

Owner Federal Identification Number / VA Drivers License Number /Social Security Number: ____ - ____ - ____

* * * * * * * *

Title of Regulation: VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

Publication: 9:18 VA.R. 3144-3168 May 31, 1993.

Correction to Effective Date:

Page 3144, column 1, Effective Date:

The effective date should be June 30, 1993, instead of July 1, 1993.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Title of Regulation: VR 380-03-03:1. Virginia Scholars Program Regulations.

Publication: 9:17 VA.R. 2911-2914 May 17, 1993.

Correction to Final Regulation:

Page 2912, § 3.3, paragraph 3, line 2 after "received by the" strike "division superintendents" and insert "council"

DEPARTMENT OF TAXATION

Title of Regulation: VR 630-10-106. Transitional Provisions.

Publication: 9:18 VA.R. 3230-3233 May 31, 1993.

Correction to Final Regulation:

Page 3231, § 2 B, Example, column 2, line 2 after "April" insert "1"

Page 3232, § 3 B, Example, subdivision 1, line 3 after "March" insert "30"

CALENDAR OF EVENTS

Symbols Key
† Indicates entries since last publication of the Virginia Register
♿ Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

DEPARTMENT FOR THE AGING

August 17, 1993 - 1 p.m. – Public Hearing
Department for the Aging, 700 East Franklin Street, 10th Floor, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Aging intends to amend regulations entitled: **VR 110-01-02. Grants to the Area Agencies on Aging.** The purpose of the proposed amendments are to delete requirements for the operation of local ombudsman entities and make revisions to comply with the 1992 amendments to the Older Americans Act.

Statutory Authority: § 2.1-373 of the Code of Virginia.

Written comments may be submitted until August 14, 1993.

Contact: J. James Cotter, Division Director, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271 or toll-free 1-800-552-4464.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

June 30, 1993 - 1 p.m. – Open Meeting
Washington Building, 1100 Bank Street, Room 204, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

At this regular meeting, the board plans to discuss legislation, regulations and fiscal matters and will receive reports from the staff of the Department of Agriculture and Consumers Services. The board may consider other matters relating to its responsibilities. At the conclusion of other business, the board will review public comments 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, Secretary to the Board, identified in this notice at least 10 days before the meeting date, so that suitable arrangements can be made for any appropriate accommodation.

Contact: Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD ☎

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June 30, 1993 - 1 p.m. – Public Hearing
Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Board Room, Room 204, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to adopt regulations entitled: **VR 115-04-28. Regulations Governing the Oxygenation of Gasoline.** The purpose of the proposed regulation is to ensure that motor fuels dispensed in this Commonwealth comply with any oxygenation requirements specified by the federal Clean Air Act pertaining to motor fuels. The 1990 amendments to the federal Clean Air Act require states with carbon monoxide nonattainment areas with design values[1] of 9.5 parts per million (ppm) or more to implement an oxygenated gasoline program in all such designated nonattainment areas. Title II of the 1990 amendments to the federal Clean Air Act requires that states institute an oxygenated gasoline program by establishing "control areas" in any Metropolitan Statistical Area (MSA) which contains one or more carbon monoxide nonattainment areas. Pursuant to such provisions, the Department of Air Pollution

Control has designated as the control area the Virginia counties within the Washington, D.C. Metropolitan Statistical Area (MSA) consisting of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the Virginia cities within the Washington, D.C. MSA consisting of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

The oxygen content requirement applies during the portion of the year in which the control area is prone to high ambient concentrations of carbon monoxide. The Environmental Protection Agency has established this control period (which the Board of Agriculture and Consumer Services anticipates will recur annually) to be, in the case of Virginia, a specified four months out of twelve. In Virginia this control period will begin on November 1 of one year and continue through the last day of February of the following year.

The proposed regulation (i) specifies carbon monoxide nonattainment areas; (ii) specifies the control area; (iii) specifies the control period; (iv) specifies a minimum oxygenate content in gasoline during the control period; (v) requires all persons regulated to keep records of classes of oxygenates and oxygenate content; (vi) requires gasoline pump labelling; (vii) specifies methods of sampling, testing, and oxygen content calculations; and (viii) specifies means of compliance and methods of enforcement.

[1] Design value means the calculation which is used to derive the number of carbon monoxide parts per million in the air in order to determine whether an area shall be designated a carbon monoxide nonattainment area.

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Contact: J. Alan Rogers, Program Manager, Office of Weights and Measures, Department of Agriculture and Consumer Services, 1100 Bank St., Room 402, Richmond, VA 23219, telephone (804) 786-2476.

Winegrowers Advisory Board

July 6, 1993 - 10 a.m. – Open Meeting
State Capitol, 910 Capitol Square, House Room 1, Richmond, Virginia.

A meeting to hear committee and project monitor reports and review old and new business. Any person who needs any accommodation in order to participate at the Virginia Winegrower's Advisory Board meeting should contact Wendy Rizzo, identified in this notice at least 14 days before the meeting date, so that suitable arrangements can be made for any appropriate accommodation.

Contact: Wendy Rizzo, Secretary, 1100 Bank Street, Room 1010, Richmond, VA 23219, telephone (804) 371-7685.

Virginia Cattle Industry Board

† **July 8, 1993 - 10 a.m.** – Open Meeting
Virginia Cattlemen's Association Office, Daleville, Virginia.

A meeting to review current projects and financial status. Any person who needs any accommodation in order to participate at the meeting should contact the executive director at least 5 days before the meeting so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Reginald B. Reynolds, Executive Director, P.O. Box 176, Daleville, VA 24083, telephone (703) 992-1992.

STATE AIR POLLUTION CONTROL BOARD

July 13, 1993 - 7 p.m. – Public Hearing
Osborn High School Lecture Room, 9005 Tudor Lane, Manassas, Virginia.

July 14, 1993 - 7 p.m. – Public Hearing
College of William and Mary, Millington Auditorium, Williamsburg, Virginia.

July 15, 1993 - 7 p.m. – Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, S.W., Whitman Auditorium, Roanoke, Virginia.

July 30, 1993 - Written comments may be submitted until close of business on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Rev. HH – §§ 120-05-0601 through 120-05-0618, Standards of Performance for Regulated Medical Waste Incinerators).** The regulation amendments concern provisions covering standards of performance for regulated medical waste incinerators. The proposal will require owners of regulated medical waste incinerators to limit emissions of dioxins/furans, particulate matter, carbon monoxide, and hydrogen chloride to a specified level necessary to protect public health and welfare. This will be accomplished through the establishment of emissions limits and process parameters based on control technology; ambient limits to address health impacts; and monitoring, testing, and recordkeeping to assure compliance with the limits. Comparison with federal requirements: No federal requirements affect the proposal; therefore, the proposal is more stringent than federal requirements. The regulation is being

promulgated in the absence of a federal requirement because the 1992 General Assembly of Virginia passed legislation to impose a moratorium on the issuance of permits for commercial regulated medical waste incinerators (MWIs) until September 1, 1993, and to require the promulgation of regulations by September 1, 1993. The legislation was proposed in response to health concerns from commercial MWI emissions. This legislation was again submitted to the General Assembly in the 1993 session, and a new version extending the original moratorium for the issuance of permits for commercial infectious waste incinerators (i.e., MWIs) from September 1, 1993, to December 1, 1993, was passed. However, the deadline for promulgation of regulations remains September 1, 1993. Additional issues for public comment: (i) The proposed regulation provides different levels of controls and different requirements for different sizes of units. This is done because the economic burden of greater controls and requirements on smaller sources outweighs the net return of emissions reductions and environmental benefit. Generally, smaller sources do not pollute as much as larger sources; further, a large source is better capable of affording pollution control equipment. The Board seeks input on this practice–is a tiered approach to emission controls based on source size appropriate, or should the standards be uniform, for all source sizes? (ii) The proposed regulation proposes two ways in which dioxins and furans are to be controlled: a stack limit (a certain emissions level measured at the stack) and an ambient limit. The ambient limit provides an expanded view of what happens to the emissions after they have left the stack and dispersed over the local area. In the past, for most facilities emitting toxics, the ambient level has been measured at the place where the public is most likely to come in immediate contact with the emissions: at or beyond the facility's fenceline. Some facilities, however, provide access to the general public, such as health care facilities. Other facilities may have property located relatively close to public facilities or housing. The Board seeks comment on whether the ambient dioxin/furan level should be measured at or beyond the fenceline, within the facility property, or some place else. (iii) The Board seeks specific comments on implementing the regulation relative to the overall cost of the delivery of medical services to the general public. Location of proposal: The proposal, an analysis conducted by the Department (including: a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Department's Air Division Programs Office (Eighth Floor, Ninth Street Office Building, 200-202 North Ninth Street, Richmond, Virginia) and at any of the Department's air 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.

Regional offices: (i) Southwestern Virginia Air Regional Office, 121 Russell Road, Abingdon, Virginia 24210, Ph: (703) 676-5482; (ii) Valley of Virginia Air Regional Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia 24019, Ph: (703) 561-7000; (iii) Central Virginia Air Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia 24502, Ph: (804) 582-5120; (iv) Northeastern Virginia Air Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia 22401, Ph: (703) 899-4600; (v) State Capital Air Regional Office, Arboretum V, Suite 250, 9210 Arboretum Parkway, Richmond, Virginia 23236, Ph: (804) 323-2409; (vi) Hampton Roads Air Regional Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia 23320-2168, Ph: (804) 424-6707; and (vii) Northern Virginia Air Regional Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Sringfield, Virginia 22150, Ph: (703) 644-0311.

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

Written comments may be submitted until the close of business on July 30, 1993, to Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240. The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Contact: Karen Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

ALCOHOLIC BEVERAGE CONTROL BOARD

July 8, 1993 - 9:30 a.m. – Open Meeting
July 23, 1993 - 9:30 a.m. – Open Meeting
August 2, 1993 - 9:30 a.m. – Open Meeting
August 16, 1993 - 9:30 a.m. – Open Meeting
2901 Hermitage Road, Richmond, Virginia. ♿

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

June 29, 1993 - 9 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to review and adopt proposed regulations.

Contact: Willie Fobbs, III, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

ASAP POLICY BOARD - VALLEY

† **July 12, 1993 - 8:30 a.m.** – Open Meeting
Augusta County School Board Office, Fishersville, Virginia. ♿

A regular meeting of the local policy board which conducts business pertaining to (i) court referrals; (ii) financial report; (iii) director's report; and (iv) statistical reports.

Contact: Rhoda G. York, Executive Director, Holiday Court, Suite B, Staunton, VA 24401, telephone (703) 886-5616 or (703) 943-4405.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

July 2, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to amend regulations entitled: **VR 155-01-2:1. Regulations of the Board of Audiology and Speech-Language Pathology.** The purpose of the proposed amendments is to delete expired requirements and incorporate legislation effective July 1, 1992.

Statutory Authority: §§ 54.1-2400 and 54.1-2602 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-7390.

VIRGINIA CANCER REGISTRY ADVISORY COMMITTEE

June 30, 1993 - 1 p.m. – Open Meeting
Virginia Department of Health, Main Street Station, 1500 East Main Street, Richmond, Virginia.

The advisory committee meets annually to assess the status of the Virginia Cancer Registry. It advises the staff on broad areas of policies and goals such as data collection and reporting of data. The committee also advises on the more technical aspect of registry operations which need a consensus of opinion. The committee also serves as a liaison to member hospitals in the Commonwealth of Virginia.

Contact: Margaret G. Thompson, Director, Virginia Department of Health, Virginia Cancer Registry, Main Street Station, 1500 E. Main St., Richmond, VA 23219, telephone (804) 786-4937.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Central Area Review Committee

June 30, 1993 - 10 a.m. – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Central Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Northern Area Review Committee

July 1, 1993 - 10 a.m. – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Northern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

† **July 8, 1993 - 9:30 a.m.** – Open Meeting
Koger Executive Center, West End, 1604 Santa Rosa Road, Wythe Building, Conference Rooms A and B, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss issues, concerns and programs that impact child care centers, camps, school-age programs, and preschool/nursery schools. The public comment period will be 10 a.m. Please call ahead of time for possible changes in meeting time.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, Theater Row Bldg., 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Liaison Committee

July 22, 1993 - 9:30 a.m. – Open Meeting
6900 Atmore Drive, Board of Corrections Board Room, Richmond, Virginia. &

The committee will continue to address and discuss criminal justice issues.

Contact: Vivian T. Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

June 28, 1993 - 9 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A regulatory review and working committee concerning cosmetology instructors.

Contact: Karen O'Neal, Assistant Director, Board for Cosmetology, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

† **August 28, 1993** – Written comments may be submitted until this date.

† **October 6, 1993 - 9 a.m.** – Public Hearing
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to amend regulations entitled: **VR 240-01-5. Rules Relating to Compulsory Minimum Training Standards for Dispatchers.** The regulation mandates entry-level training requirements for dispatchers.

STATEMENT

Basis: Section 9-170(1) and (8) of the Code of Virginia.

Purpose: The purpose of this regulation is to mandate compulsory minimum training standards for dispatchers, in doing so, to ensure that dispatchers attending compulsory minimum training are instructed in a manner devoted to a quality of training that best serves to protect the health, safety and welfare of the public at large.

Substance: These regulations are needed to continue to provide guidelines and training standards to those individuals responsible for dispatching law-enforcement officers and training dispatchers through certified training academies. Without these regulations, the competency of dispatchers and the knowledge, skills and abilities mandated by compulsory minimum training standards for dispatchers may be more challengeable in the courts. The beneficiary of such amendments is the general public to whom services are provided by dispatchers receiving the training.

Issues: The proposed rules seek to amend the dispatcher classroom and on-the-job training required for dispatchers of law-enforcement personnel to allow greater flexibility for the certified training academies and their membership to meet the training demands for their dispatchers. Additionally, the rules provide that each dispatcher attending dispatcher classroom training successfully complete each performance based training and testing objective designated for such training, and expand the dispatcher training extension provisions available to the agency administrators.

Estimated impact:

1. Number and types of regulated entities affected: Approximately 161 criminal justice agencies employing dispatchers and 19 certified training academies that train dispatchers of law-enforcement officers.

2. Projected cost to regulated entities for implementation and compliance: Projected costs to regulated entities should be minimal. The amended rules add emergency medical dispatcher and NCIC training to the field training requirement, if such duties are required of the dispatcher; require dispatcher classroom training to be conducted by certified training academies; provide that dispatcher classroom training subjects not satisfactorily completed be retaken in a subsequent dispatcher training program and within the time specified; and specify amended criteria for requesting extensions of the time to comply with training. Costs are not a direct cost, but may be classified more as an in-kind cost.

3. Projected cost to agency for implementation and enforcement: Costs incurred by the Department of Criminal Justice Services for implementation are primarily for printing, mailing and complying with the provisions of the Administrative Process Act, applicable Executive Orders and the department's Public Participation Guidelines. Implementation cost to the agency is not expected to exceed $3,000.

Compliance and monitoring activities are currently being conducted with existing regulations. Compliance

and monitoring activities associated with the amended rules will be handled in the same manner as is now in place for the existing regulation. Compliance and monitoring cost will not be adversely affected.

4. Source of funds: Funds for the administration of this program are provided from the general fund appropriation currently provided to this program.

Statutory Authority: § 9-170 (1) and (8) of the Code of Virginia.

Contact: L. T. Eckenrode, Division Director, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

DEPARTMENT OF EDUCATION (BOARD OF)

July 17, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **VR 270-01-0009. Regulations Governing Literary Loan Applications in Virginia.** The purpose of the proposed amendments is to (i) include language required by the 1989 and 1990 sessions of the General Assembly relating to the ceiling on indebtedness to the fund and consolidation incentives; (ii) include changes by the 1991 session to § 22.1-140 of the Code of Virginia; and (iii) increase the maximum loan amount available for constructing a new single school from $2.5 million to $5 million.

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

Contact: Kathryn S. Kitchen, Division Chief, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2025.

† **July 29, 1993 - 8:30 a.m.** – Open Meeting

James Monroe Building, 101 North 14th Street, Richmond, Virginia. ⊠ (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Dr. Ernest W. Martin, Assistant Superintendent, State Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2073 or toll-free 1-800-292-3820.

BOARDS OF EDUCATION; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; SOCIAL SERVICES; AND YOUTH AND FAMILY SERVICES

July 16, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and Youth and Family Services intend to amend regulations entitled: **VR 270-01-0003, VR 470-02-01, VR 615-29-02, VR 690-40-004. Standards for Interdepartmental Regulation of Residential Facilities for Children.** This regulation is designed to assure adequate care, treatment, and education are provided by residential facilities for children. The proposed revisions amend and clarify requirements governing intake and service planning.

Statutory Authority: §§ 16.1-311, 22.1-321, 22.1-323.2, 37.1-10, 37.1-182, 37.1-189.1, 63.1-25, 63.1-196.4, 66-10 and 66-24.

Written comments may be submitted through July 16, 1993, to Rhonda M. Harrell, Office of Interdepartmental Regulation, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: John J. Allen, Jr., Coordinator, Office of Interdepartmental Regulation, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1960.

STATE EDUCATION ASSISTANCE AUTHORITY

† **August 5, 1993 - 10 a.m.** – Public Hearing
411 East Franklin Street, 2nd Floor, Boardroom, Richmond, Virginia.

† **August 27, 1993** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Education Assistance Authority intends to amend regulations entitled: **VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs under Title IV, Part B of the Higher Education Act of 1965 as Amended.** The purpose of the proposed amendments is to incorporate changes to federal statute and regulations, to reduce lender due diligence requirements and to respond to changes in federal interest payments for claims.

STATEMENT

Purpose: Virginia Student Assistance Authorities is comprised of the State Education Assistance Authority and the Virginia Education Loan Authority. The regulations are promulgated by the State Education Assistance Authority in

its function as a student loan guarantor. The guaranteed student loan programs are governed by the Higher Education Act, as amended. Lenders and schools participating in the SEAA's programs also must comply with the requirements set forth in federal regulations, in 34 CFR 668 and 682. The SEAA's regulations supplement federal regulations and statute.

The proposed regulations are intended to reflect changes in federal statute and regulations that have occurred since the agency's current regulations were published in final form on July 13, 1992. Amendments to the Higher Education Act were enacted on July 23, 1992. The U.S. Department of Education published revisions to 34 CFR 682 on December 18, 1992. The changes are described below:

Section 1.1, Definitions: References to specific loan programs in this section now reflect that reauthorization added the word "federal" to the titles of the Title IV, Part B loan programs. The definition of "abbreviated due diligence" reflects that the "Cure Bulletin," a federal dear colleague letter, has been incorporated in 34 CFR 682. The definition of "deferment" reflects a recent federal interpretation that deferring a student loan does not delay its conversion to repayment status. The definition of "forbearance" was expanded to mirror federal statute. The definition of "guarantee" incorporates provisions in reauthorization that permit the payment of PLUS loan death claims based on the student's death. The definition of "satisfactory repayment arrangement" was necessary to describe conditions under which the agency will renew loan eligibility for defaulted borrowers consistent with federal statutory changes. The definition of "Stafford" incorporates a new unsubsidized loan established by reauthorization.

Section 2.1, Borrower Eligibility: The agency's requirements have been updated to reflect new federal statute defining the minimum academic year as 30 weeks and deleting grade level progression as a condition permitting additional loan guarantees. The section also reflects federal reauthorization by deleting repayment in full as the only means of establishing renewed loan eligibility for defaulted borrowers and by permitting renewed eligibility with six consecutive monthly payments in an amount agreed upon by the guarantor.

Section 3.1, Lender responsibilities: The SEAA's lender due diligence requirements have been largely deleted in response to new federal regulations. The federal regulations define endorser due diligence standards, skiptracing standards and required due diligence for quarterly-billed loans that previously had not been defined. The new federal standards permit lenders more flexibility than did the SEAA's while adequately protecting the agency's interest in the loans. Therefore, the agency has elected to rely on federal regulations alone in these areas. The agency has maintained its authority to require lenders to request preclaims assistance and supplemental preclaims assistance on a specific schedule.

Disbursement requirements reflect changes in federal statute and regulations which require Federal PLUS checks to be made copayable to the borrower and the school and be mailed to the school. The agency's late disbursement requirements were updated to respond to changes in federal regulations which make it necessary for schools to certify applications earlier in certain cases.

Section 4.2, Capitalization of Interest: Changes in federal guidance, statute and regulations have superseded the SEAA's requirements for capitalizing interest. Therefore, the agency's requirements were deleted. These changes are intended to make it easier for lenders to capitalize interest in situations where it is to the borrower's benefit to do so in order to avoid default.

Section 4.4, Forbearance: Reauthorization and new federal regulations expand the use of administrative forbearances which do not require the borrower's agreement. The regulations have been updated to specify that these types of forbearances do not count against the agency's total forbearance limit. Also, the agency's total limit has been increased from 24 to 36 months. The agency's limitation on renewing forbearances with outstanding interest charges has been deleted in response to federal changes in interest capitalization requirements.

Part V, Claims: The documentation requirements for all types of claims now include a longstanding agency requirement that lenders include a collection history. They also reflect that lenders need to include paper copies of repayment agreements only if they are signed by the borrowers. Otherwise, lenders need only document in their collection history that a repayment agreement was sent to the borrower and show the terms of the repayment agreement.

Section 5.4, Bankruptcy claims: Changes in reauthorization have made obsolete most of the agency's requirements for filing bankruptcy claims. Most of the agency's requirements for handling these claims have been deleted in favor of relying on federal guidance alone. However, in order to protect the agency's ability to contest discharge in a timely manner, the agency has retained the requirement that lenders notify the SEAA within five business days if notified that the borrower has filed a hardship petition after filing a bankruptcy claim with the guarantor. This notification requirement also has been expanded to include situations in which the lender is initially told by the court not to file proof of claim but advised by the court at a later date to file a proof of claim.

Section 5.5, Payment of interest on claims: Federal regulations published on December 18, 1992, specify that, although guarantors are permitted up to 90 days to review and deny or pay a claim, the U.S. Department of Education does not reinsure interest after the 60th day of guarantor review. Therefore, claim interest payment totals have been reduced by 30 days and the regulations state that the agency will pay no more interest than is reinsured by the U.S. Department of Education. In addition, interest payment for death claims reflects the agency's authority to pay death claims for PLUS loans in which the student has died. Interest payment for bankruptcy claims states that the limitation does not apply to delinquent interest at the time the borrower filed bankruptcy. Instead, lenders are advised to capitalize this interest at the time of filing a claim.

Estimated impact: The SEAA serves Virginia students, approximately 125 Virginia schools and approximately 150 lenders. In addition, out-of-state students attending Virginia schools may use our guarantee as may Virginia students attending out-of-state schools. However, the vast majority of the SEAA's loan volume represents Virginia students attending Virginia schools.

Prior to publishing proposed regulations, the SEAA notified schools and lenders of SEAA's intent to alter its regulations through a notice in the agency newsletter. A Notice of Intended Regulatory Action was also published in the Virginia Register on March 8, 1993. The newsletter is mailed to all Virginia schools and lenders, to members of the General Assembly, the Virginia Congressional Delegation, to loan servicers and secondary markets and to other interested parties. The agency has not received any comments from these parties to date. However, the authority has been keeping records of comments regarding its regulations since their last publication and has attempted to address these concerns in the proposal, primarily by reducing the agency's regulatory requirements and permitting regulated parties as high a degree of flexibility as possible.

Costs to borrowers: These regulations should impose no costs upon borrowers. The regulations will permit defaulted borrowers greater flexibility in regaining student loan eligibility. The regulations also permit borrowers greater flexibility in the use of forbearance to prevent default.

Costs to schools: The regulations may impose additional costs upon schools, particularly in holding and processing PLUS loan checks. However, the changes in this area are required by federal statute and may offset financial losses to schools by eliminating cases in which parents received PLUS loans but did not apply the proceeds to school charges. In addition, the new regulations may impose additional costs upon schools by disallowing late certification of loans in cases in which the borrower has left school and, in the case of loans through the Lender of Last Resort, after the loan period has ended. However, the changes were necessary due to changes in federal regulations which prohibit disbursement of loans that are certified after the borrower leaves school or the loan period has ended.

Costs to lenders: The reduction of lender due diligence requirements in skiptracing and in endorser due diligence should represent a savings to lenders by reducing lender operating costs and reducing the lender's risk of losing the loan guarantee. However, the regulations reduce interest earnings on claims by paying lenders no more interest than is reinsured by the federal government. This change responds to changes in federal regulations which reduce interest for guarantor's claim review from a maximum of 90 days to a maximum of 60 days. For the average claim of $2,800, the 30 days interest represents a cost of $18.41. The SEAA expects to pay approximately 20,715 claims in state Fiscal Year 1993. Based on this figure, the total cost of changes in interest payments would be approximately $381,350 per year.

Need: The proposed regulations are primarily a reflection of federal changes to the student loan program which supersede the SEAA's authority. The areas in which the SEAA has exercised its regulatory authority are as follows:

Section 3.1, Lender responsibilities: Guarantors are permitted to institute due diligence requirements that exceed federal standards. The SEAA has elected not to exercise this authority because federal requirements adequately protect the agency's interests. The agency's disbursement requirements exceed those of the federal government by requiring PLUS checks to indicate the student's name and Social Security number. This is necessary to assist schools in applying PLUS disbursements to student accounts.

Section 4.4, Forbearance: Federal statute and regulations do not limit the total amount of forbearance that may be provided to borrowers except in the case of internship and residency forbearance. The SEAA has elected to expand its agency limit from 24 months to 36 months. The agency has also expanded certain categories of forbearance that do not count against this limit. Given the wide variety of deferment options available to borrowers and the availability of 3-years hardship forbearance, the agency's total forbearance limitation is necessary to limit capitalized interest costs to federal taxpayers and to the agency's financial reserves.

Section 5.5, Payment of interest on claims: Changes to the regulations limiting the claim interest to no more than is reinsured by the U.S. Department of Education were necessary to avoid draining the agency's financial reserves and to ensure the agency's ability to continue paying claims in a timely manner.

Statutory Authority: § 23-38.33:1 C 7 of the Code of

Virginia.

Written comments may be submitted through August 27, 1993, to Marvin Ragland, Virginia Student Assistance Authorities, 411 East Franklin Street, Richmond, Virginia, 23219.

Contact: Sherry Scott, Policy Analyst, 411 E. Franklin St., Richmond, VA 23219, telephone (804) 775-4000 or toll-free 1-800-792-5626.

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER COUNTY

† **July 28, 1993 - 6:30 p.m.** – Open Meeting
County Administration Building Conference Room, Gloucester, Virginia. ♿ (Interpreter for the deaf provided upon request)

The summer quarterly meeting will include (i) distribution of recently amended hazardous materials plan; (ii) the annual exercise; and (iii) a briefing from the Public Awareness Committee on a proposed community education program.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042.

LOCAL EMERGENCY PLANNING COMMITTEE - HENRICO

† **July 27, 1993 - 7 p.m.** – Open Meeting
Henrico County Public Safety Building, Division of Fire, Parham and Hungary Spring Roads, 3rd Floor, Richmond, Virginia. ♿

A meeting to satisfy requirements of the Superfund Amendment and Reauthorization Act of 1986.

Contact: W. Timothy Liles, Assistant Emergency Services Coordinator, Division of Fire, P.O. Box 27032, Richmond, VA 23273, telephone (804) 672-4906.

VIRGINIA MUSEUM OF FINE ARTS

Executive Committee

† **June 29, 1993 - 8 a.m.** – Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ♿

A meeting for year-end business wrap-up.

Contact: Emily C. Robertson, Secretary, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

June 29, 1993 - 2:30 p.m. – Open Meeting
Roanoke Civic Center, 710 Williamson Road, N.E., Roanoke, Virginia.

A board meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9111.

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July 2, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to amend regulations entitled: **VR 320-01-04. Regulations of the Resident Trainee Program for Funeral Service.** The proposed amendments add a definition of direct supervision, reformat the fee section, place a maximum time limit on trainee programs, and establish reporting and supervision requirements for the registered trainee.

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

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

BOARD OF GAME AND INLAND FISHERIES

† **July 15, 1993 - 9 a.m.** – Open Meeting
4010 West Broad Street, Richmond, Virginia.

Committees of the Board of Game and Inland Fisheries will meet, beginning with the Finance Committee, followed by the Wildlife and Boat Committee, Planning Committee, Law and Education Committee, and Liaison Committee. Each committee will discuss topics appropriate to its authority. In addition to discussing the webless migratory game bird seasons proposals, other general and administrative matters, as necessary, will be presented for consideration and possible board action at their meeting on July 16, 1993.

† **July 16, 1993 - 9 a.m.** – Open Meeting
4010 West Broad Street, Richmond, Virginia.

The board will set the 1993-94 Virginia webless migratory game bird seasons (dove, woodcock, rail and snipe), based on the framework permitted by the U.S. Fish and Wildlife Service. Other general and administrative matters will be discussed as necessary, and the appropriate actions will be taken.

Contact: Belle Harding, Secretary to Bud Bristow, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

HAZARDOUS MATERIALS TRAINING COMMITTEE

† **July 20, 1993 - 10 a.m.** – Open Meeting
Department of Emergency Services, Training Center, 308 Turner Road, Richmond, Virginia.

A meeting to discuss curriculum course development, and review existing hazardous materials courses.

Contact: George B. Gotschalk, Jr., Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001.

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH (STATE BOARD OF)

† **July 20, 1993 - 7 p.m.** – Public Hearing
Virginia Highlands Community College, Room 605, Abingdon, Virginia.

† **July 21, 1993 - 7 p.m.** – Public Hearing
Virginia Western Community College, Auditorium, Roanoke, Virginia.

† **July 22, 1993 - 7 p.m.** – Public Hearing
Spotsylvania County Board of Supervisors Meeting Room, Spotsylvania, Virginia.

† **July 23, 1993 - 7 p.m.** – Public Hearing
James City County Board of Supervisors Meeting Room, Kingsmill Office Complex, Williamsburg, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to **repeal** regulations entitled: **VR 355-17-02. Sewerage Regulations** and **adopt** regulations entitled **VR 355-17-100. Sewage Collection and Treatment Regulations.** The proposed regulations govern the design, construction and operation of both sewage collection systems and sewage treatment works, including the use of sewage sludge, and will replace existing regulations.

STATEMENT

Substance, issues, basis, purpose and estimated impact: The Sewage Collection and Treatment (SCAT) Regulations were developed in response to HB 1449 (1991), which revised § 62.1-44.19 of the Code of Virginia relating to construction and operation of sewage collection systems and treatment works. The new regulations will replace the existing Sewerage Regulations (VR 355-17-02) jointly adopted by the State Water Control Board and the State Board of Health in 1977. The new regulations update and revise the technical design standards contained in the previous regulations and provide for issuance of construction and operation permits by the State Health Commissioner. These new regulatory procedures will facilitate a more expeditious evaluation and approval of plans and specifications for the construction of new or expanded sewerage systems and treatment works now serving approximately 70% of the state's population. The proposed SCAT Regulations will outline current standards of practice and the technical design standards and operational requirements to ensure that all construction of new or upgraded processes will provide the capacity and/or performance reliability necessary to comply with permit requirements. Permit noncompliance can result in costly enforcement actions and the improper and unregulated disposal of sewage and sewage sludge, and would result in pollution of surface and groundwater, contamination of soil and exposure of the public to infectious agents. The proposed SCAT regulations administered through the current engineering staff of the Virginia Department of Health (VDH) will ensure that public health is not endangered and that environmental resources are properly managed.

The proposed SCAT Regulations will require evaluation and approval of proposals, reports, plans and specifications submitted as applications in support of permits to construct and operate sewage collection and treatment facilities. However, the Virginia Department of Health (VDH) program will ensure that technical assistance is provided to owners and their consultants to develop the most cost effective technology that can be reasonably operated to provide reliable performance in compliance with permit requirements. The Virginia Department of Health Environmental engineering staff will negotiate an acceptable design in accordance with the SCAT Regulations. During this process, small communities will receive the benefits of the statewide technical expertise provided by the Virginia Department of Health staff. In addition, equipment manufacturers and state sales representatives will be provided with a uniformly regulated process on which to base competitive bids for construction contracts.

Prior to the Project Streamline Initiative, HB 1449 (1991), § 62.1-44.19 of the State Water Control Law required that the State Health Department conduct a technical review of proposals for sewage collection, treatment and sludge management and file a report with the State Water Control Board staff. This letter report would contain the State Health Department's recommendations for approval or disapproval of the proposal, as authorized under § 32.1-164 of the Code of Virginia. Upon adoption of the SCAT Regulations, owners of sewerage facilities or associated permit applicants will be directed to obtain

construction and operational permits from the Virginia Department of Health prior to final issuance of either a Virginia Pollutant Discharge Elimination System (VPDES) permit or a Virginia Pollution Abatement (VPA) permit by the Virginia Department of Environmental Quality (DEQ). The formal letter report procedure will be replaced by a simple notification that construction or operational permits have been issued by the Virginia Department of Health. This streamlined procedure will reduce the existing time periods required to notify owners and applicants to proceed with construction. The owners will receive a notification letter containing a new standard permit form authorizing construction or operation. The existing 1977 Sewerage Regulations will be repealed by the State Board of Health and the State Water Control Board upon adoption of the SCAT Regulations.

The SCAT Regulations provide for a regulations advisory committee consisting of appropriate representatives of the concerned professional community, owners and operators of sewerage facilities, public interests and academic experts as appointed by the State Health Commissioner. The advisory committee will meet semiannually or more frequently as necessary to consider and evaluate recommendations for the implementation of, or revision to, the SCAT Regulations and related policies concerning sewage collection, treatment and sludge management.

The proposed SCAT Regulations were developed through the project streamline initiative study of permitting requirements. During the study, the role of the Virginia Department of Health in the regulation of sewerage systems was evaluated. The project streamline study concluded that an efficient and impartial regulatory oversight of the construction and operation of sewerage systems was necessary and could be provided by the Virginia Department of Health through the engineering staff of the Office of Water Programs. In 1990 it was proposed that technical standards, as updated in the proposed 1986 revisions to the 1977 Sewerage Regulations (developed through public participation and hearing procedures), should be incorporated into a new set of regulations to be adopted by the State Board of Health.

The proposed SCAT Regulations will clarify the complex procedures currently utilized to permit sewage collection and treatment systems without imposing any additional demands on the owners and operators of these systems. The proposed SCAT Regulations will be implemented by the current Environmental Engineering staff of the Office of Water Programs as established through the project streamline initiative. Thus, there will be no fiscal impact to the regulated community and no budgetary impact on the Virginia Department of Health as the basic regulatory requirements remain unchanged from the existing oversight programs.

Statutory Authority: §§ 32.1-164 and 62.1-44.19 of the Code of Virginia.

Written comments may be submitted until August 31, 1993.

Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, Virginia Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755.

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† **August 24, 1993 - 9 a.m.** – Public Hearing
1500 East Main Street, Room 214, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **VR 355-40-400. Regulations Governing the Virginia Medical Scholarship Program.** The regulation sets forth eligibility criteria, award process, terms, conditions, and circumstances under which Virginia Medical Scholarships will be awarded.

STATEMENT

Summary, purpose, need: These regulations incorporate amendments to the Virginia Medical Scholarship Program that were enacted by the 1992 Virginia General Assembly and that became effective July 1, 1992.

The amendments identify the cities and counties of Southwest Virginia. Residents of Southwest Virginia who attend James H. Quillen College of Medicine at East Tennessee State University are eligible to receive three scholarships of those funded by the 1992 General Assembly. These regulations amend regulations governing the Virginia Medical Scholarship Program which were adopted and became effective July 3, 1991.

Promulgation of these regulations is of particular importance to carrying out the legislative intent of the amendments to provide an incentive to medical students from Southwest Virginia attending the James H. Quillen College of Medicine at East Tennessee State University to become committed to the practice of medicine in a medically underserved area of Southwest Virginia.

Estimated impact: The cost to the department of implementing the regulations will be minimal and can be contained within current appropriations. Funds to support an increased number of scholarships and expansion of the Medical Scholarship Program to the Quillen School of East Tennessee State University have been appropriated by the General Assembly.

These proposed revisions add no additional requirements to recipients of the scholarships. The expansion of opportunity for award to students of ETSU in addition to the state's three medical schools increase the potential for recipients who will then commit to service in Virginia's medically underserved communities.

Statutory Authority: § 32.1-122.6 B of the Code of Virginia.

Written comments may be submitted through August 27, 1993.

Contact: E. George Stone, Director, Virginia Medical Scholarship Program, Virginia Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-6970.

Commissioner's Waterworks Advisory Committee

† **July 15, 1993 - 10 a.m.** – Open Meeting
The Francis Land House, 3131 Virginia Beach Boulevard, Virginia Beach, Virginia.

A general business meeting.

Contact: Thomas B. Gray, P.E., Special Project Manager, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-5566.

BOARD OF HEALTH PROFESSIONS

July 8, 1993 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to consider drafts of proposed regulations pursuant to implementation of the Practitioner Self-Referral Act of 1993.

Contact: Richard D. Morrison, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† **July 27, 1993 - 9:30 a.m.** – Open Meeting
Blue Cross Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

July 6, 1993 - 9 a.m. – Open Meeting
August 3, 1993 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ♿ (Interpreter for deaf provided upon request)

A Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

VIRGINIA INTERAGENCY COORDINATING COUNCIL EARLY INTERVENTION

† **July 14, 1993 - 9 a.m.** – Open Meeting
Henrico Area Mental Health and Retardation Services, 10299 Woodman Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

The council, according to P.L. 102-119, as amended in 1991, Part H, early intervention program for infants and toddlers with disabilities and their families, is meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency, to implement a statewide interagency early intervention program.

Contact: Michael Fehl, Director, Mentally Retarded Children/Youth Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

STATE COUNCIL ON LOCAL DEBT

† **July 21, 1993 - 11 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A regular meeting, subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-4928.

LONGWOOD COLLEGE

Board of Visitors

July 26, 1993 - 9:30 a.m. – Open Meeting
Longwood College, East Ruffner Building, Farmville, Virginia. ♿

A meeting to conduct routine business.

Contact: William F. Dorrill, President, President's Office, Longwood College, 201 High Street, Farmville, VA 23909-1899, telephone (804) 395-2001.

STATE LOTTERY BOARD

† **July 26, 1993 - 10 a.m.** – Open Meeting
† **August 23, 1993 - 10 a.m.** – Open Meeting
2201 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular monthly meeting. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106 or (804) 367-3000/TDD ☎

ADVISORY COMMITTEE ON MAPPING, SURVEYING AND LAND INFORMATION SYSTEMS

† **July 1, 1993 - 10 a.m.** – Open Meeting
1100 Bank Street, Suite 901, Richmond, Virginia. 🖻

A regularly scheduled meeting.

Contact: Chuck Tyger, Computer Systems Chief Engineer, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 786-8169 or (804) 225-3624/TDD ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

July 16, 1993 – Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates–Inpatient Hospital Services: Hospital Reporting Requirements.** The purpose of the proposed amendments is to require providers to submit additional financial, statistical and structural information for submission of completed cost reports, and to enable DMAS to make its annual findings and assurances. The regulations will impose a penalty for the failure to submit cost reports and the supplemental information within the required time frames.

The current regulation requires that the provider submit the completed cost report forms, the provider's trial balance, and its financial statements including the balance sheet, income statement, statement of retained earnings, and a statement of changes in financial position together with footnotes to the financial statement. The regulation also requires the submission of a home office cost report, where applicable, and the submission of schedules reconciling the financial statements and trial balance to the costs claimed in the cost report. The existing regulation provides that cost reports will not be considered complete by DMAS until all of the required information is received. Also, there is no penalty provision for the late submission of cost reports.

The proposed regulation requires the submission of two classes of information: (i) information that must be received within 90 days after the close of the provider's fiscal year (this information must be received before the filing of the cost report will be deemed complete); and (ii) financial, statistical and structural information that must be received by DMAS within 120 days after the close of the provider's fiscal year.

Section VI(C) of the proposed regulation imposes a penalty for the failure to submit the required information in a timely manner. This provision is being added as the result of a recent audit recommendation from the Health Care Financing Administration (HCFA). Receipt of the information submitted pursuant to this regulatory change is necessary in order for DMAS to complete its analysis of hospital costs necessary for preparation of its structured, federally-mandated findings and assurances.

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

Written comments may be submitted until 5 p.m. on July 16, 1993, to N. Stanley Fields, Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

BOARD OF MEDICINE

Legislative Committee

July 16, 1993 - 10 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. 🖻

A meeting to review §§ 54.1-2936, 54.1-2937, and 54.1-2961 of the Code of Virginia and develop regulations to establish requirements to be eligible for a limited license or temporary license to practice or train in specific programs in Virginia.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD)

NOTE: CHANGE IN MEETING DATE
June 30, 1993 - 10 a.m. – Open Meeting
Chesterfield Community Services Board, Chesterfield,

Virginia.

A regular monthly meeting. Agenda to be published on June 23. Agenda may be obtained by calling Jane Helfrich.

Tuesday: Informal session 8 p.m.

Wednesday: Committee meetings 9 a.m.
Regular session 10 a.m.

See agenda for location.

July 28, 1993 - 10 a.m. – Open Meeting
Roslyn Conference Center, 8727 River Road, Richmond, Virginia.

A regular monthly meeting. Agenda to be published on July 21. Agenda may be obtained by calling Jane Helfrich.

Tuesday: Informal session 8 p.m.

Wednesday: Committee meetings 9 a.m.
Regular session 10 a.m.

See agenda for location.

Contact: Jane V. Helfrich, Board Administrator, State Mental Health, Mental Retardation and Substance Abuse Services Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

State Human Rights Committee

† **July 23, 1993 - 9 a.m.** – Open Meeting
Omni Hotel, 235 West Main Street, Charlottesville, Virginia.

A meeting to discuss agenda items submitted by human rights organizations, LHRC and DMHMRSAS facilities.

Contact: Elsie D. Little, Director, SHR Office, 109 Governor Street, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988 or fax (804) 371-0092.

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

† **July 1, 1993 - 7 p.m.** – Open Meeting
† **August 5, 1993 - 7 p.m.** – Open Meeting
502 South Main Street #4, Culpeper, Virginia.

From 7 p.m. until 7:30 p.m. the Board of Directors will hold a business meeting to discuss DOC contract, budget, and other related business. Then the CCRB will meet to review cases before for eligibility to participate with the program. It will review the previous month's operation (budget and program related business).

Contact: Lisa Ann Peacock, Program Director, 502 S. Main St. #4, Culpeper, VA 22701, telephone (703) 825-4562.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

† **August 7, 1993 - 8:30 a.m.** – Open Meeting
Jefferson Hotel, Richmond, Virginia.

A meeting to (i) conduct election of president; (ii) make committee appointments; and (iii) receive committee reports. An opportunity for public comment will be provided immediately after the Superintendent's comments (about 9 a.m.).

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206 or fax (703) 464-7660.

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

† **July 14, 1993 - 1 p.m.** – Open Meeting
2300 West Broad Street, Richmond, Virginia.

A regular business meeting open to the public.

Contact: Karen Ruby, Manager, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-0481.

BOARD OF NURSING

† **June 28, 1993 - 1 p.m.** – Open Meeting
Virginia Employment Commission, 165 Deer Run Road, Conference Room, Danville, Virginia.

A formal hearing with licensee.

† **June 29, 1993 - 1:30 p.m.** – Open Meeting
† **June 29, 1993 - 3 p.m.** – Open Meeting

Formal hearings for licensees. Public comment will not be received.

† **July 19, 1993 - 8:30 a.m.** – Open Meeting
† **July 22, 1993 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, 5th Floor, Richmond, Virginia.
(Interpreter for the deaf provided upon request)

A panel will conduct formal hearings. Public comment will not be received.

† **July 20, 1993 - 9 a.m.** – Open Meeting
† **July 21, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, 5th Floor, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A regular meeting to consider matters relating to nursing education programs, discipline of licensees, licensure by examination and endorsement and other matters under the jurisdiction of the board. Public comment will be received during an open forum session beginning at 11 a.m. on Tuesday, July 20, 1993.

Contact: Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF OPTOMETRY

† **July 7, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, Southern States Building, 6606 West Broad Street, 5th Floor, Room 3, Richmond, Virginia. ♿

A general board meeting to conduct regulatory review concerning fees and amending § 3.1.4(4) to define what constitutes a complete contact lens prescription. Public comment will not be accepted at this time.

Contact: Carol Stamey, Administrative Assistant, 6606 W. Broad St., Southern States Bldg., 4th Floor, Room 4, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

BOARD OF PHARMACY

July 2, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **VR 530-01-1. Regulations of the Virginia Board of Pharmacy.** The purpose of the proposed amendments is to respond to comments made during the biennial regulatory review; to clarify and simplify regulations; and to respond to current needs and technology in the practice.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Contact: Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

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July 2, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **VR 530-01-2. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.** The purpose of the proposed amendments is to respond to comments made during the biennial regulatory review, to clarify and simplify regulations, and to respond to current needs and technology in the practice.

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

Contact: Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

† **July 14, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

Informal conferences.

Contact: Cathy M. Reiniers, Assistant Executive Director, Board of Pharmacy, 6606 W. Broad St., Suite 400, Richmond, VA 23230, telephone (804) 662-9911.

† **July 21, 1993 - 10 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

A regulatory review committee meeting to draft responses to comments received on proposed regulations during public comment period for board review and adoption at the August 11, 1993, board meeting.

† **August 11, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A board meeting. The board will consider adopting final regulations and develop responses to comments received during the public comment period.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., Suite 400, Richmond, VA 23230, telephone (804) 662-9911.

BOARD OF PSYCHOLOGY

July 20, 1993 - 11 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to conduct general board business and consider amending regulations related to examination, application and renewal fees.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, 6606 W. Broad St.,

Richmond, VA 23230, telephone (804) 662-9912.

† **August 12, 1993 - 9:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The board will conduct a formal fact finding in accordance with § 9-6.14:12 of the Code of Virginia to determine the eligibility of an applicant for licensing as a clinical psychologist. No public comment will be received.

† **August 12, 1993 - 9:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room #1, Richmond, Virginia. ♿

A formal credentials hearing to review application for licensure of Cheryl R. Hussey, Ed.D.

Contact: Evelyn B. Brown, Executive Director, or Jane Ballard, Administrative Assistant, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9913.

REAL ESTATE APPRAISER BOARD

June 29, 1993 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Karen O'Neal, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† **July 14, 1993 - 10 a.m.** – Open Meeting
Ramada Inn, Allegheny Room, 1130 Motel Drive, Woodstock, Virginia. ♿

A meeting to hear all administrative appeals of denials of onsite sewage disposal system permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, 1500 E. Main St., Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† **July 12, 1993 - 10 a.m.** – Public Hearing
Department of Social Services, 730 East Broad Street, 7th Floor Conference Room, Richmond, Virginia.

† **August 27, 1993** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **VR 615-08-1. Virginia Energy Assistance Program.** The amendments propose several changes to the fuel and cooling assistance components of the Energy Assistance Program. In fuel assistance, households applying for assistance will be allowed to establish or maintain one $5,000 savings account for education expenses or the purchase of a primary residence without penalty in the calculation of benefit amounts. Households receiving utility subsidies that must pay some heating expenses out-of-pocket will not have their benefit reduced. Additionally, income exempt in Food Stamps, ADC or Medicaid will be considered exempt in the determination of eligibility for fuel assistance. The cooling assistance component would be eliminated in FY 93-94.

STATEMENT

Basis: Section 63.1-25 of the Code of Virginia provides the statutory basis for the promulgation of regulations relative to the Energy Assistance Program.

Purpose: The proposed amendment to the resource level for the fuel assistance component will ensure compliance with House Bill 1502 amending § 63.1-110 of the Code of Virginia relating to amounts of assistance. The Energy Assistance Program is included in the program's subject to this rule.

The proposed amendment to benefit amount calculations will ensure compliance with the Housing and Community Development Act of 1992 (Public Law 102-550) which prohibits reducing or eliminating LIHEAP benefits to certain residents of federally assisted housing.

The proposed amendment to exempt income that is considered exempt in other public assistance programs will streamline the determination of eligibility and promote consistency among program lines.

The proposal to eliminate the cooling assistance component is based on a clarification received from the Office of Community Services, Administration for Children and Families, Department of Health and Human Services that Virginia may be in noncompliance with the laws regulating LIHEAP by offering cooling assistance as a local agency option. Verbal clarification received on June 3, 1993, from Health and Human Services may result in a request to rescind this proposal.

Substance: The amendments to the fuel assistance component:

1. Allow applicants/recipients of fuel assistance to establish or maintain one $5,000 savings account for

education expenses or the purchase of a primary residence.

2. Allow households that receive utility subsidies, but pay some heating expenses out-of-pocket, to receive the maximum benefit amount they are eligible to receive.

3. Exempt any income, both earned and unearned in the determination of eligibility, that is considered exempt in Food Stamps, ADC or Medicaid.

The amendments to the cooling assistance component eliminate cooling assistance beginning with FY 93-94.

Estimated impact: The proposed amendments will affect all households statewide applying for fuel assistance or cooling assistance. There are no projected costs to the public or vendors.

Eligible fuel assistance households who previously received a reduced benefit amount due to the receipt of a utility subsidy will now receive increased benefits.

Individuals who may have been eligible for cooling assistance will have to find other resources to meet their needs if the proposal is adopted.

No cost impact is expected for local departments of social services.

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

Written comments may be submitted through August 27, 1993, to Charlene H. Chapman, Department of Social Services, 730 E. Broad St., Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

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July 17, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled: **VR 615-25-01. Minimum Standards for Licensed Family Day Care Homes.** The existing regulation, Minimum Standards for Licensed Family Day Care Homes, is proposed for repeal while concurrently promulgating Minimum Standards for Licensed Family Day Homes.

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

Written comments may be submitted until July 17, 1993, to Alfreda Redd, Department of Social Services, Division of Licensing Programs, 730 East Broad Street, 7th Floor, Richmond, Virginia 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, Office of Governmental Affairs, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1820.

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July 17, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-25-01:1. Minimum Standards for Licensed Family Day Homes.** The proposed regulation shows major changes in the licensing standards caused by amendments to the Code of Virginia related to a family day home and are necessary to update licensing requirements.

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

Written comments may be submitted until July 17, 1993, to Alfreda Redd, Department of Social Services, Division of Licensing Programs, 730 East Broad Street, 7th Floor, Richmond, Virginia 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, Office of Governmental Affairs, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1820.

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† **July 30, 1993 - 9 a.m.** – Public Hearing
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

† **August 28, 1993** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-45-5. Investigation of Child Abuse and Neglect In Out of Family Complaints.** The regulation establishes policy to be used for investigating child abuse and neglect which occurs in certain situations outside the child's family.

STATEMENT

Basis: These regulations are issued under the authority granted by §§ 63.1-25 and 63.1-248.6 of the Code of Virginia.

Purpose: These regulations relate to the policy to be used when local department of social services' employees investigate child abuse and neglect in out of family complaints.

The intent of these regulations is to establish the policy to be used in investigations of child abuse and neglect in out of family complaints.

Substance: These regulations establish the policy to be used by local departments of social services employees when they are investigating child abuse and neglect in out of family complaints.

Issues: The investigation policy currently in place in departmental regulations was written to address complaints of abuse and neglect involving a child and his family. The need to develop a policy which recognizes differences found in investigating family complaints and complaints involving caretakers in out of family situations was recognized and addressed in the regulations.

Estimated impact: All local departments of social services in the Commonwealth are impacted by this regulation in that they will be responsible for implementing this policy in their investigations. Additionally, all persons who are subjects in child abuse and neglect in out of family complaints will be impacted as they will be investigated using this policy.

Statutory Authority: §§ 63.1-25 and 63.1-248.6 of the Code of Virginia.

Written comments may be submitted until August 28, 1993, to Rita Katzman, Program Manager, 730 East Broad Street, Richmond, Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

TREASURY BOARD

July 15, 1993 - 9 a.m. – Public Hearing
Department of the Treasury, 101 North 14th Street, Richmond, Virginia.

August 13, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Treasury Board intends to amend regulations entitled **VR 640-02. Virginia Security for Public Deposits Act Regulations.** The purpose of the proposed amendments is to provide adequate protection for public funds on deposit in financial institutions by strengthening the ability of the Treasury Board to monitor collateral by identifying criteria for the selection of third-party escrow agents by financial institutions.

Statutory Authority: § 2.1-364 of the Code of Virginia.

Written comments may be submitted through August 13, 1993.

Contact: Robert S. Young, Director of Financial Policy, Department of the Treasury, P.O. Box 1879, Richmond, VA 23215-1879, telephone (804) 225-3131.

VIRGINIA RACING COMMISSION

† **July 6, 1993 - 9:30 a.m.** – Open Meeting
Richmond Plaza Building, 110 South 7th Street, 4th Floor Auditorium, Richmond, Virginia.

A discussion of proposed procedure for the evaluation of applications, proposed regulations pertaining to satellite facilities, and revision of public participation guidelines.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VIRGINIA RESOURCES AUTHORITY

† **July 13, 1993 - 9:30 a.m.** – Open Meeting
† **August 10, 1993 - 9:30 a.m.** – Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to (i) approve minutes of its prior meeting; (ii) review the authority's operations for the prior months; and (iii) consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Mutual Bldg., 909 E. Main St., Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or fax (804) 644-3109.

DEPARTMENT FOR THE VISUALLY HANDICAPPED (BOARD FOR)

July 28, 1993 - 2 p.m. – Open Meeting
397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board to receive reports from the department staff and other information that may be presented to the board.

Contact: Joseph A. Bowman, Assistant Commissioner, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

Advisory Committee on Services

July 31, 1993 - 11 a.m. – Open Meeting
397 Azalea Avenue, Richmond, Virginia. (Interpreter for

the deaf provided upon request)

The committee meets quarterly to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary Sr., 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

July 7, 1993 - 10 a.m. – Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the Formulary add and delete drugs and drug products to the Formulary that became effective on February 17, 1993, and the most recent supplement to that Formulary. Copies of the proposed revisions to the Formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on July 7, 1993, will be made a part of the hearing record.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WASTE MANAGEMENT BOARD

July 13, 1993 - 7 p.m. – Public Hearing
Osborne High School, 9005 Tudor Lane, Lecture Room, Manassas, Virginia.

July 14, 1993 - 7 p.m. – Public Hearing
College of William and Mary, Landrum Drive, Millington Auditorium, Williamsburg, Virginia.

July 15, 1993 - 7 p.m. – Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, S.W., Whitman Auditorium, Roanoke, Virginia.

July 30, 1993 – Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **672-40-01. Regulated Medical Waste Management Regulations.** The proposed amendments add flexibility in optional treatment methods and make several technical adjustments to the current regulations.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Contact: Robert G. Wickline, Director of Research, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667.

VIRGINIA WAR MEMORIAL FOUNDATION

† **June 30, 1993 - Noon** – Open Meeting
621 South Belvidere Street, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

An annual meeting of the foundation.

Contact: Peggy R. Robertson, Assistant Director for Administration, 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/TDD ☎

STATE WATER CONTROL BOARD

June 30, 1993 - 2 p.m. – Public Hearing
McCourt Building, 4850 Davis Ford Road, One County Complex, Prince William County Board Room, Prince William, Virginia.

July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to repeal regulations entitled: **VR 680-14-01. Permit Regulation.** The purpose of the proposed action is to repeal the Permit Regulation while concurrently considering the adoption of a new VPDES Permit Regulation and VPA Permit Regulation.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The repeal of this regulation is not subject to federal requirements. Any federal requirements associated

with the permit programs regulated under this regulation will be met by the adoption of the VPDES Permit Regulation (VR 680-14-01:1). Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

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

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

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June 30, 1993 - 2 p.m. – Public Hearing
McCourt Building, 4850 Davis Ford Road, One County Complex, Prince William County Board Room, Prince William, Virginia.

July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-01:1. VPDES Permit Program Regulation.** The purpose of the proposed regulation is to consider adoption of a new regulation to govern point source discharges of pollutants to surface water. These discharges are currently regulated under VR 680-14-01 which will be repealed.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The proposed regulation contains language prohibiting discharges without a permit and requiring that anyone who does discharge without a permit must notify the SWCB immediately. This proposed regulation also would prohibit the permitting of any discharge when discharge to publicly owned treatment works is reasonably available, unless the owner of the treatment works refuses in writing to accept the wastewater. This is being proposed in order to reduce a proliferation of point source discharges in areas served by central sewers.

Under the section dealing with confidentiality of information, the SWCB has added a reference to the Virginia Toxics Substance Information Act (TSIA) which states that any information obtained through the filings under the TSIA will be subject to the confidentiality requirements of that Act. The alternative of allowing such information to become public information would potentially violate the provisions of the TSIA.

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

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

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

Another provision requires that the owner hire an operator for the treatment plant who is licensed as required by the regulations of the Board for Wastewater Works and Waterworks Operators. This will help to ensure that the plant is operated properly by someone with the appropriate amount of experience and training.

The proposed regulation stipulates that when the SWCB decides to deny a permit application, the owner

must be notified of the steps to take to obtain approval of the application. This language is from the State Water Control Law and helps to assure that the owner has due process of his request for a permit.

The requirement that the applicant pay the cost of the public notice of a draft permit is included as an addition to the federal language.

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

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

The proposed regulation includes language from the existing permit regulation dealing with state enforcement capabilities, delegation of authority to the Department of Mines, Minerals and Energy for permits issued to industrial activity associated with coal mines, the actions and duties of SWCB members and the director, and the processing of applications after the effective date of the regulation. These sections are from the existing Permit Regulation, do not have counterparts in federal NPDES regulations and are considered necessary for the VPDES permit regulation. Deleting them may cause some problems with the SWCB's ability to implement the permit program in Virginia. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

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

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

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June 30, 1993 - 2 p.m. – Public Hearing
McCourt Building, 4850 Davis Ford Road, One County Complex, Prince William County Board Room, Prince William, Virginia.

July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to repeal regulations entitled: **VR 680-14-03. Toxics Management Regulation.** The purpose of the proposed action is to consider repealing the Toxics Management Regulation in order to eliminate any confusion which may result from the concurrent adoption of the new VPDES Permit Regulation.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The repeal of this regulation is not subject to federal requirements. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

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

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

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June 30, 1993 - 10:30 a.m. – Public Hearing
One County Complex, 4850 Davis Ford Road, McCourt Building, Prince William County Board of Supervisors Room, Prince William, Virginia.

July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-16. General Permit for Storm Water Discharges Associates with Heavy Manufacturing Facilities.** The purpose of the proposed regulation is

to adopt a general permit for storm water discharges associated with heavy manufacturing facilities.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Mrs. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The federal general permit for storm water discharges associated with industrial activity was used as a guide for developing this proposed regulation. The federal general permit requires the submittal of an application 2 days prior to the commencement of the industrial activity. This proposed regulation requires the Registration Statement to be submitted at least 30 days prior to the commencement of industrial activity. This was necessary to allow the SWCB staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge 2 days after the application has been submitted. The SWCB believes it is necessary to review all Registration Statements for acceptance and to issue the general permit in order to assure consistency and compliance with the storm water regulations. The proposed regulation requires that a site map be developed that identifies the location of certain activities including fueling operations and treatment, storage and disposal of wastes. The federal general permit requires the identification of these activities where they are exposed to precipitation. The SWCB believes the identification of the location of these areas is necessary to determine the extent of industrial activity occurring at the site regardless of their potential for exposure to precipitation. The SWCB believes the remaining provisions of the proposal to be consistent with and no more stringent than applicable federal requirements. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

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

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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June 30, 1993 - 10:30 a.m. – Public Hearing
One County Complex, 4850 Davis Ford Road, McCourt Building, Prince William County Board of Supervisors Room, Prince William, Virginia.

July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-17. General Permit for Storm Water Discharges From Light Manufacturing Facilities.** The purpose of the proposed regulation is to adopt a general permit for storm water discharges from light manufacturing facilities.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Mrs. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The federal general permit for storm water discharges associated with industrial activity was used as a guide for developing this proposed regulation. The federal general permit requires the submittal of an application 2 days prior to the commencement of the industrial activity. This proposed regulation requires the Registration Statement to be submitted at least 30 days prior to the commencement of industrial activity. This was necessary to allow the SWCB staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge 2 days after the application has been submitted. The SWCB believes it is necessary to

review all Registration Statements for acceptance and to issue the general permit in order to assure consistency and compliance with the storm water regulations. The SWCB believes the remaining provisions of the proposal to be consistent with and no more stringent than applicable federal requirements. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

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

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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June 30, 1993 - 10:30 a.m. – Public Hearing
One County Complex, 4850 Davis Ford Road, McCourt Building, Prince William County Board of Supervisors Room, Prince William, Virginia.

July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-18. General Permit for Storm Water Discharges From Transportation Facilities; Landfills, Land Application Sites and Open Dumps; Materials Recycling Facilities; and Steam Electric Power Generating Facilities.** The purpose of the proposed regulation is to adopt a general permit for storm water discharges from certain covered activities.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Mrs. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The federal general permit for storm water discharges associated with industrial activity was used as a guide for developing this proposed regulation. The federal general permit requires the submittal of an application 2 days prior to the commencement of the industrial activity. This proposed regulation requires the Registration Statement to be submitted at least 30 days prior to the commencement of industrial activity. This was necessary to allow the SWCB staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge 2 days after the application has been submitted. The SWCB believes it is necessary to review all Registration Statements for acceptance and to issue the general permit in order to assure consistency and compliance with the storm water regulations. The SWCB believes the remaining provisions of the proposal to be consistent with and no more stringent than applicable federal requirements. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

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

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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June 30, 1993 - 10:30 a.m. – Public Hearing
One County Complex, 4850 Davis Ford Road, McCourt Building, Prince William County Board of Supervisors Room, Princ William, Virginia.

July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-19. General Permit for Storm Water Discharges from Construction Sites.** The purpose of the proposed regulation is to adopt a general permit for storm water discharges from construction sites.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The

question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Mrs. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The federal general permit for storm water discharges from construction sites was used as a guide for developing this proposed regulation. The federal general permit requires the submittal of an application 2 days prior to the commencement of the construction. This proposed regulation requires the Registration Statement to be submitted at least 14 days prior to the commencement of construction. This was necessary to allow the SWCB staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge 2 days after the application has been submitted. The SWCB believes it is necessary to review all Registration Statements for acceptance and to issue the general permit in order to assure consistency and compliance with the storm water regulations. The SWCB believes the remaining provisions of the proposal to be consistent with and no more stringent than applicable federal requirements. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

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

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-20. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Nonmetallic Mineral Mining.** The purpose of the proposed regulation is to adopt a general permit for industrial discharges from nonmetallic mineral mining facilities.

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The proposed general permit for nonmetallic mineral mining operations contains effluent limits not included in applicable federal technology based limits. However, the general permit effluent limits are no more stringent than individual VPDES permits issued for this category of discharge. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

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

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 11143 Richmond, VA 23230, telephone (804) 527-5059.

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June 30, 1993 - 2 p.m. – Public Hearing
McCourt Building, 4850 Davis Ford Road, One County Complex, Prince William County Board Room, Prince William, Virginia.

July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-21. Virginia Pollution Abatement (VPA) Permit Program Regulation.** The purpose of the proposed action is to consider adopting a new regulation to

govern sources of pollutants that are not point source discharges to surface waters. These sources are currently regulated through the Permit Regulation (VR 680-14-01).

An informal question and answer period has been scheduled before each hearing. At that time staff will answer questions from the public on the proposal. The question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: There are no federal requirements applicable to the VPA permit program. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

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

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 11143 Richmond, VA 23230, telephone (804) 527-5059.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

July 21, 1993 - 8:30 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business and other matters which may require board action.

Contact: Geralde W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VIRGINIA WORKER'S COMPENSATION COMMISSION

July 15, 1993 - 10 a.m. – Public Hearing
1000 DMV Drive, Courtroom, Richmond, Virginia.

August 13, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Worker's Compensation Commission intends to promulgate regulations entitled: **VR 405-01-06. Procedures for Processing Worker's Compensation Claims.** The commission proposes to change its present rules concerning prehearing, hearing and review procedures in accordance with recommendations made by the 1993 General Assembly. The Virginia Worker's Compensation Commission pursuant to § 65.2-201 A of the Code of Virginia, proposes to change its present Rules of Practice and Procedure in accordance with recommendations made by the 1993 General Assembly. Present rules concerning prehearing, hearing and review procedures have been reviewed and proposed new rules are offered for comment by the public, members of the bar and all other interested parties. Copies of the proposed new rules may be obtained from the Office of the Clerk, Worker's Compensation Commission, 1000 DMV Drive, Richmond, Virginia 23220, without cost. A public hearing will be conducted in the commission courtroom beginning at 10 a.m. on July 15, 1993, at which time interested parties will be heard regarding proposed rule changes. Those who wish to have their comments made part of the record must file written comments with the Clerk of the Commission no less than five business days prior to the public hearing. Oral comments to the commission will be heard and shall be limited to eight minutes per person unless extended comments are approved by the commission before the hearing date.

Statutory Authority: § 65.2-201 A of the Code of Virginia.

Contact: Lawrence D. Tarr, Chief Deputy Commissioner, 1000 DMV Dr., Richmond, VA 23220, telephone (804) 367-8664.

LEGISLATIVE

JOINT SUBCOMMITTEE STUDYING THE NEED FOR ACADEMIC PREPARATION, FINANCIAL AID AND INCENTIVE PROGRAMS

† **July 7, 1993 - 10 a.m.** – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The subcommittee will meet to hear public input for the affordability, accessibility and diversity in higher education.

Contact: Persons wishing to speak should contact Dawn B. Smith, Committee Operations, P.O. Box 406, Richmond, VA 23203, telephone (804) 786-7681; additional information may be obtained from Brenda Edwards, Research Associate, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

COAL AND ENERGY COMMISSION

June 28, 1993 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

An open meeting.

Contact: Tom Gilman, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-5742, or Arlen Bolstad, Staff Attorney, Division of Legislative Services, 910 Capitol St., 2nd Floor, Richmond, VA 23208, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING CRIME AND VIOLENCE PREVENTION THROUGH COMMUNITY ECONOMIC STIMULATION AND DEVELOPMENT

† **July 8, 1993 - 1:30 p.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The subcommittee will meet for the purpose of an organizational meeting. HJR 593.

Contact: Oscar R. Brinson, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE NEEDS OF FOREIGN-BORN INDIVIDUALS IN THE COMMONWEALTH

June 28, 1993 - 1 p.m. – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The subcommittee will meet for the purpose of an organizational meeting. HJR 660.

Contact: Gayle Vergara, Research Associate, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

JOINT COMMISSION TO STUDY MANAGEMENT OF THE COMMONWEALTH'S WORKFORCE AND ITS COMPENSATION, PERSONNEL, AND MANAGEMENT POLICIES, AND TO RECOMMEND IMPROVEMENTS TO VIRGINIA'S SYSTEM

† **July 7, 1993 - 10 a.m.** – Open Meeting
† **August 4, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia.

An open meeting. SJR 279, 1993.

Contact: John McE. Garrett, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-5742, or Nancy Roberts, Division Manager, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE ON STORMWATER MANAGEMENT

† **July 7, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor Conference Room, Richmond, Virginia.

An open meeting. (SJR 341)

Contact: Bryan Gordon, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, or Shannon Varner, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

STATE WATER COMMISSION

† **July 22, 1993 - 10 a.m.** – Open Meeting
State Capitol Building, House Room 4, Richmond, Virginia.

The commission will meet for the purpose of formulating the state water policy.

Contact: Marty Farber, Research Associate, or Frank Munyan, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

June 28
Coal and Energy Commission
Cosmetology, Board for
Foreign-Born Individuals in the Commonwealth, Joint Subcommittee Studying the Needs of
† Nursing, Board of

June 29
Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
Funeral Directors and Embalmers, Board of
† Museum of Fine Arts, Virginia
- Executive Committee of the Board of Trustees
† Nursing, Board of
Real Estate Appraiser Board

June 30

Agriculture and Consumer Services, Board of
Cancer Registry Advisory Committee, Virginia
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
Mental Health, Mental Retardation and Substance Abuse Services, State Board
† War Memorial Foundation, Virginia

July 1
Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Mapping, Surveying and Land Information Systems, Advisory Committee on
† Middle Virginia Board of Directors and the Middle Virginia Community Corrections Resources Board

July 6
Agriculture and Consumer Services, Department of
- Winegrowers Advisory Board
Hopewell Industrial Safety Council
† Virginia Racing Commission

July 7
† Management of the Commonwealth's Workforce and Its Compensation, Personnel and Management Policies, and to Recommend Improvements to Virginia's System, Joint Commission to Study
† Optometry, Board of
† Stormwater Management, Joint Subcommittee on

July 8
† Agriculture and Consumer Services, Department of
- Virginia Cattle Industry Board
Alcoholic Beverage Control Board
† Child Day-Care Council
† Crime and Violence Prevention Through Community Economic Stimulation and Development, Joint Subcommittee Studying
Health Professions, Board of

July 12
† ASAP Board, Valley

July 13
† Virginia Resources Authority

July 14
† Interagency Coordinating Council (VICC) Early Intervention, Virginia
† Motor, Vehicles, Department of
- Medical Advisory Board
† Pharmacy, Board of
† Sewage Handling and Disposal Appeals Review Board

July 15
† Game and Inland Fisheries, Board of
† Health, Department of
- Commissioner's Waterworks Advisory Committee

July 16
† Game and Inland Fisheries, Board of
Medicine, Board of
- Legislative Committee

July 19
† Nursing, Board of

July 20
† Hazardous Materials Training Committee
† Nursing, Board of
Psychology, Board of

July 21
† Nursing, Board of
† Pharmacy, Board of
Waterworks and Wastewater Works Operators, Board for

July 22
Corrections, Board of
- Liaison Committee
† Nursing, Board of
† State Water Commission

July 23
Alcoholic Beverage Control Board
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee

July 26
Longwood College
- Board of Visitors
† Lottery Department, State

July 27
† Virginia Health Services Cost Review Council
† Local Emergency Planning Committee - Henrico

July 28
† Local Emergency Planning Committee - Gloucester County
Mental Health, Mental Retardation and Substance Abuse Services Board, State
Visually Handicapped, Board for the

July 29
† Education, Board of

July 31
Visually Handicapped, Department for the
- Advisory Committee on Services

August 2
Alcoholic Beverage Control Board

August 3
Hopewell Industrial Safety Council

August 4
† Management of the Commonwealth's Workforce and

Its Compensation, Personnel and Management Policies, and to Recommend Improvements to Virginia's System, Joint Commission to Study

August 5
† Middle Virginia Board of Directors and the Middle Virginia Community Corrections Resources Board
† Military Institute, Virginia
- Board of Visitors

August 10
† Virginia Resources Authority

August 11
† Pharmacy, Board of

August 12
† Psychology, Board of

August 16
Alcoholic Beverage Control Board

August 23
† Lottery Department, State

September 15
† Local Debt, State Council on

PUBLIC HEARINGS

June 30
Agriculture and Consumer Services, Board of
Water Control Board, State

July 7
† Academic Preparation, Financial Aid and Incentive Programs, Joint Subcommittee Studying the Need for Virginia Voluntary Formulary Board

July 13
Air Pollution Control Board, State
Waste Management Board, Virginia

July 14
Air Pollution Control Board, State
Waste Management Board, Virginia

July 15
Air Pollution Control Board, State
Treasury Board
Waste Management Board, Virginia
Workers' Compensation Commission, Virginia

July 20
† Health, Board of

July 21
† Health, Board of

July 22
† Health, Board of

July 23
† Health, Board of

August 5
† State Education Assistance Authority

August 17
Aging, Department for the

August 24
† Health, Board of

October 6
† Criminal Justice Services, Board of