

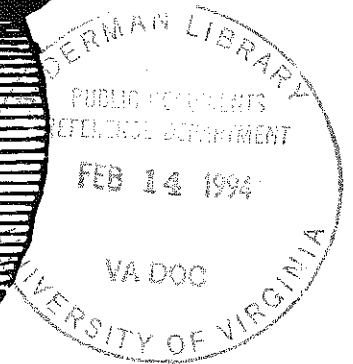
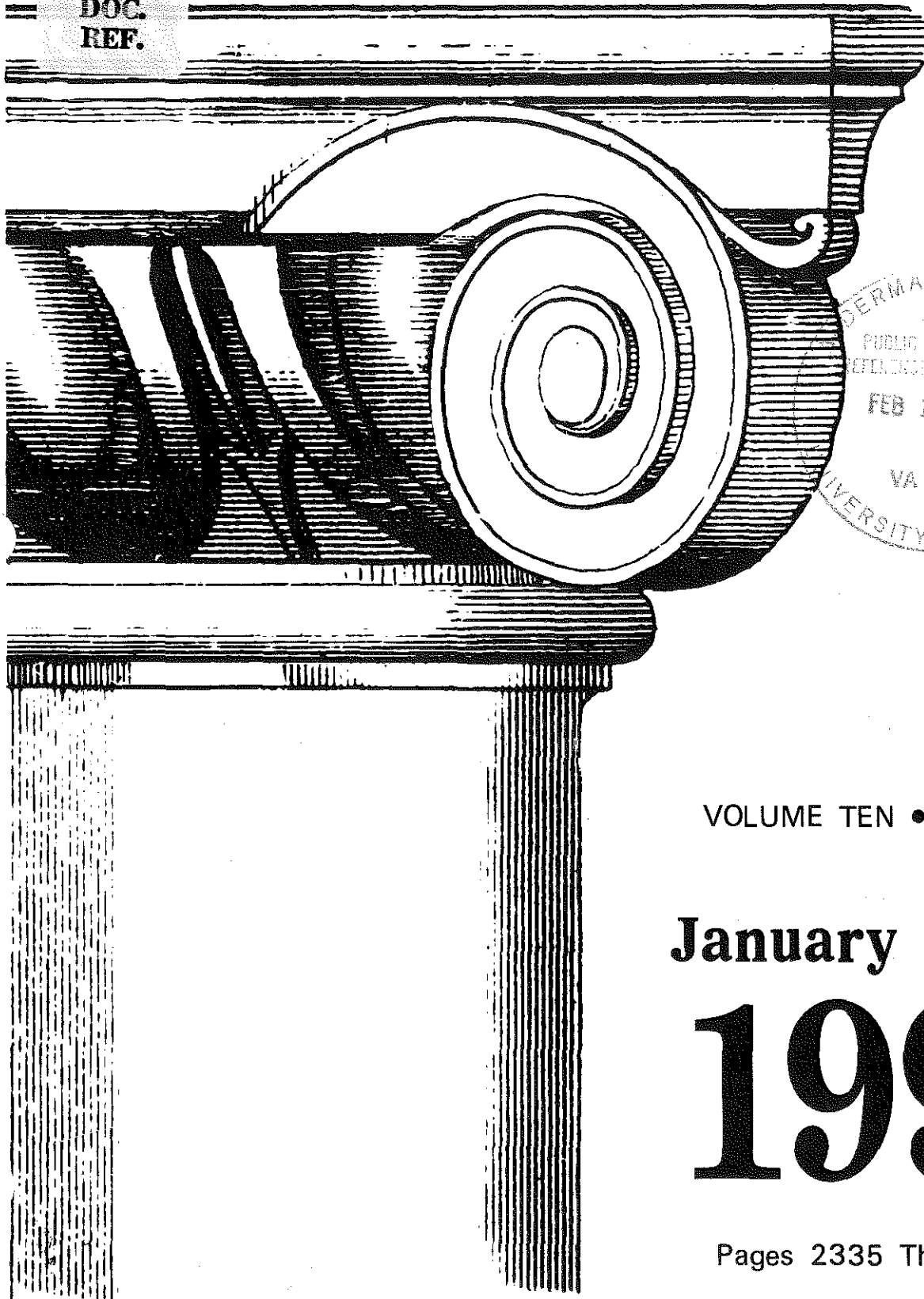
BY 3/K 26/10-9-12

THE VIRGINIA REGISTER

OF REGULATIONS

VA
DOC

DOC.
REF.



VOLUME TEN • ISSUE NINE

January 24, 1994

1994

Pages 2335 Through 2538

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 V.A.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.

"The *Virginia Register of Regulations*" (USPS-001831) is published bi-weekly, except four times in January, April, July and October for \$100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to the *Virginia Register of Regulations*, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

The *Virginia Register of Regulations* is published pursuant to Article 7 of Chapter 1.1:1 (§ 9-6.14:2 et seq.) of the Code of Virginia. Individual copies are available for \$4 each from the Registrar of Regulations.

Members of the Virginia Code Commission: Joseph V. Gartlan, Jr., Chairman, W. Tayloe Murphy, Jr., Vice Chairman; Russell M. Carneal; Bernard S. Cohen; Gail S. Marshall; E. M. Miller, Jr.; Theodore V. Morrison, Jr.; William F. Parkerson, Jr.; Jackson E. Reasor, Jr.

Staff of the Virginia Register: Joan W. Smith, Registrar of Regulations; Jane D. Chaffin, Assistant Registrar of Regulations.

VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

October 1993 through December 1994

MATERIAL SUBMITTED BY PUBLICATION DATE
Noon Wednesday

Volume 10 - 1993-94

Sept. 15	Oct. 4, 1993
Sept. 29	Oct. 18
Oct. 13	Nov. 1
Oct. 27	Nov. 15
Nov. 10	Nov. 29
Nov. 24	Dec. 13
Dec. 8	Dec. 27
Index 1 - Volume 10	

Dec. 22	Jan. 10, 1994
Jan. 5	Jan. 24
Jan. 19	Feb. 7
Feb. 2	Feb. 21
Feb. 16	Mar. 7
Mar. 2	Mar. 21
Index 2 - Volume 10	

Mar. 16	April 4
Mar. 30	April 18
April 13	May 2
April 27	May 16
May 11	May 30
May 25	June 13
June 8	June 27
Index 3 - Volume 10	

June 22	July 11
July 6	July 25
July 20	Aug. 8
Aug. 3	Aug. 22
Aug. 17	Sept. 5
Aug. 31	Sept. 19
Final Index - Volume 10	

Volume 11

Sept. 14	Oct. 3
Sept. 28	Oct. 17
Oct. 12	Oct. 31
Oct. 26	Nov. 14
Nov. 9	Nov. 28
Nov. 23	Dec. 12
Dec. 7	Dec. 26
Index 1 - Volume 11	

TABLE OF CONTENTS

NOTICES OF INTENDED REGULATORY ACTION

Notices of Intent 2341

PROPOSED REGULATIONS

BOARD OF DENTISTRY

Virginia Board of Dentistry Regulations. (VR 255-01-1) 2345

BOARD OF GAME AND INLAND FISHERIES

Definitions and Miscellaneous: In General. (VR 325-01-1) 2358

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Hospital Credit Balance Reporting. (VR 460-01-86) ... 2364

State Plan for Medical Assistance Relating to Organ Transplantation. 2368

Amount, Duration and Scope of Services (Supplement 1 to Attachment 3.1 A&B). (VR 460-03-3.1100) 2369

Standards for the Coverage of Organ Transplant Services. (VR 460-02-3.1500) 2383

FINAL REGULATIONS

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Special Education Program Standards. (VR 270-01-0057) 2387

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Rules and Regulations for HUD-Insured Home Equity Conversion Mortgage Loans to Elderly Persons of Low and Moderate Income. (VR 400-02-0017) 2397

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Safety Standards for General Industry Construction. 2401

Commercial Diving Standard (Subpart T), General Industry (1910.401 through 1910.441). (VR 425-02-04) 2401

Means of Egress, General Industry (1910.35 through 1910.40). (VR 425-02-41) 2401

Hydrogen, General Industry (1910.103). (VR 425-02-42) 2401

Explosive and Blasting Agents, General Industry (1910.109). (VR 425-02-45) 2401

Storage and Handling of Liquefied Petroleum Gases, General Industry (1910.110). (VR 425-02-46) 2401

Underground Construction Standard, Construction Industry (1926.800). (VR 425-02-65) 2401

Fire Protection, General Industry (1910.155 through 1910.165). (VR 425-02-96) 2401

Ionizing Radiation, Construction Industry (1926.53). (VR 425-02-107) 2401

Scaffolding, Construction Industry (1926.450 through 1926.453). (VR 425-02-119) 2401

Blasting and Use of Explosives, Construction Industry (1926.900 through 1926.914). (VR 425-02-121) 2401

Applicability of Standards, General Industry (1910.5). (VR 425-02-145) 2401

Shipyard Employment, General Industry (1910.15). (VR 425-02-146) 2401

Ventilation, General Industry (1910.94). (VR 425-02-147) 2401

Ionizing Radiation, General Industry (1910.96). (VR 425-02-148) 2401

Occupational Health and Environmental Control, Standards Organizations, General Industry (1910.100). (VR 425-02-149) 2401

Hazardous Materials, Standards Organizations, General Industry (1910.116). (VR 425-02-150) 2401

Personal Protective Equipment, General Industry (1910.132 through 1910.140). (VR 425-02-151) 2401

Compressed Gas and Compressed Air Equipment, General Industry (1910.166 through 1910.171). (VR 425-02-152) 2401

Materials Handling and Storage, Slings, General Industry (1910.184). (VR 425-02-153) 2401

Material Handling and Storage, Standards

Table of Contents

Organizations, General Industry (1910.190). (VR 425-02-154)	2401	Arsenic, General Industry (1910.1018). (VR 425-02-170)	2401
Special Industries (Subpart R), Standards Organizations, General Industry (1910.275). (VR 425-02-155)	2401	Toxic and Hazardous Substances, 1,2-dibromo-3-chloropropane (DBCP), General Industry (1910.1044). (VR 425-02-171)	2401
Toxic and Hazardous Substances, 4-Nitrobiphenyl, General Industry (1910.1003). (VR 425-02-156)	2401	Toxic and Hazardous Substances, Acrylonitrile (AN), General Industry (1910.1045). (VR 425-02-172)	2401
Toxic and Hazardous Substances, alpha-Naphthylamine, General Industry (1910.1004). (VR 425-02-157)	2401	Incorporation of General Industry Safety and Health Standards Applicable to Construction Work.	2404
Toxic and Hazardous Substances, Methyl Chloromethyl Ether, General Industry (1910.1006). (VR 425-02-158)	2401	Electrical Standards, Construction Industry (1926.400 through 1926.449). (VR 425-02-08)	2404
Toxic and Hazardous Substances, 3,3'-Dichlorobenzidine (and its salts), General Industry (1910.1007). (VR 425-02-0159)	2401	Cranes, Derricks, Hoists, Elevators, and Conveyors, Construction Industry (1926.550 through 1926.556). (VR 425-02-63)	2404
Toxic and Hazardous Substances, bis-Chloromethyl ether, General Industry (1910.1008). (VR 425-02-160)	2401	Safety Standards for Stairways and Ladders Used in the Construction Industry (1926.1050 through 1926.1060). (VR 425-02-79)	2404
Toxic and Hazardous Substances, beta-Naphthylamine, General Industry (1910.1009). (VR 425-02-161)	2401	General Safety and Health Provisions, Construction Industry (1926.20 through 1926.32). (VR 425-02-103)	2404
Toxic and Hazardous Substances, Benzidine, General Industry (1910.1010). (VR 425-02-162) ...	2401	Means of Egress, Construction Industry (1926.34). (VR 425-02-104)	2404
Toxic and Hazardous Substances, 4-Aminodiphenyl, General Industry (1910.1011). (VR 425-02-163)	2401	Employee Emergency Action Plans, Construction Industry (1926.35). (VR 425-02-105)	2404
Toxic and Hazardous Substances, Ethyleneimine, General Industry (1910.1012). (VR 425-02-164) ...	2401	Medical Services and First Aid, Construction Industry (1926.50). (VR 425-02-106)	2404
Toxic and Hazardous Substances, Beta-Propiolactone, General Industry (1910.1013). (VR 425-02-165)	2401	Ionizing Radiation, Construction Industry (1926.53). (VR 425-02-107)	2404
Toxic and Hazardous Substances, 2-Acetylaminofluorene, General Industry (1910.1014). (VR 425-02-166)	2401	Gases, Vapors, Fumes, Dusts, and Mists, Construction Industry (1926.55). (VR 425-02-108)	2404
Toxic and Hazardous Substances, 4-Dimethylaminoazobenzene, General Industry (1910.1015). (VR 425-02-167)	2401	Ventilation, Construction Industry (1926.57) (VR 425-02-109)	2404
Toxic and Hazardous Substances, N-Nitrosodimethylamine, General Industry (1910.1016). (VR 425-02-168)	2401	Process Safety Management of Highly Hazardous Chemicals, Construction Industry (1926.64). (VR 425-02-110)	2404
Toxic and Hazardous Substances, Vinyl Chloride, General Industry (1910.1017). (VR 425-02-169) ...	2401	Hazardous Waste Operations and Emergency Response, Construction Industry (1926.65). (VR 425-02-111)	2404
Toxic and Hazardous Substances, Inorganic		Criteria for Design and Construction of Spray Booths, Construction Industry (1926.66). (VR 425-02-112)	2404

Table of Contents

Personal Protective and Life Saving Equipment, Construction Industry (1926.95 through 1926.107). (VR 425-02-113)	2404	3,3'-Dichlorobenzidine (and its salts), Construction Industry (1926.1107). (VR 425-02-127)	2404
Fire Protection and Prevention, Construction Industry (1926.150 through 1926.159). (VR 425-02-114)	2404	Toxic and Hazardous Substances, bis-Chloromethyl ether, Construction Industry (1926.1108). (VR 425-02-128)	2404
Signs, Signals and Barricades, Construction Industry (1926.200 through 1926.203). (VR 425-02-115)	2404	Toxic and Hazardous Substances, beta-Naphthylamine, Construction Industry (1926.1109). (VR 425-02-129)	2404
Materials Handling, Storage, Use, and Disposal, Construction Industry (1926.250 through 1926.253 except 1926.250(b)(2)). (VR 425-02-116)	2404	Toxic and Hazardous Substances, Benzidine, Construction Industry (1926.1110). (VR 425-02-130)	2404
Hand and Power Tools, Construction Industry (1926.300 through 1926.307). (VR 425-02-117)	2404	Toxic and Hazardous Substances, 4-Aminodiphenyl, Construction Industry (1926.1111). (VR 425-02-131)	2404
Welding and Cutting, Construction Industry (1926.350 through 1926.354 except 1926.350(b)(4), 1926.352(g), 1926.353(b), 1926.353(b)(1), 1926.353(b)(2), 1926.353(c), 1926.353(c)(1), 1926.353(c)(1)(i), 1926.353(c)(1)(ii), 1926.353(c)(1)(iii), 1926.353(c)(1)(iv), 1926.353(c)(2), 1926.353(c)(2)(i), 1926.353(c)(2)(ii), 1926.353(c)(2)(iii), 1926.353(c)(2)(iv)). (VR 425-02-118)	2404	Toxic and Hazardous Substances, Ethyleneimine, Construction Industry (1926.1112). (VR 425-02-132)	2404
Scaffolding, Construction Industry (1926.450 through 1926.453). (VR 425-02-119)	2404	Toxic and Hazardous Substances, Beta-Propiolactone, Construction Industry (1926.1113). (VR 425-02-133)	2404
Motor Vehicles, Mechanized Equipment, and Marine Operations, Construction Industry (1926.600 through 1926.606). (VR 425-02-120)	2404	Toxic and Hazardous Substances, 2-Acetylaminofluorene, Construction Industry (1926.1114). (VR 425-02-134)	2404
Blasting and Use of Explosives, Construction Industry (1926.900 through 1926.914). (VR 425-02-121)	2404	Toxic and Hazardous Substances, 4-Dimethylaminoazobenzene, Construction Industry (1926.1115). (VR 425-02-135)	2404
Diving, Construction Industry (Subpart Y) (1926.1071 through 1926.1092). (VR 425-02-122) ..	2404	Toxic and Hazardous Substances, N-Nitrosodimethylamine, Construction Industry (1926.1116). (VR 425-02-136)	2404
Toxic and Hazardous Substances, Coal Tar Pitch Volatiles, Construction Industry (1926.1102). (VR 425-02-123)	2404	Toxic and Hazardous Substances, Vinyl Chloride, Construction Industry (1926.1117). (VR 425-02-137)	2404
Toxic and Hazardous Substances, 4-Nitrobiphenyl, Construction Industry (1926.1103). (VR 425-02-124)	2404	Toxic and Hazardous Substances, Inorganic Arsenic, Construction Industry (1926.1118). (VR 425-02-138)	2404
Toxic and Hazardous Substances, Alpha-Naphthylamine, Construction Industry (1926.1104). (VR 425-02-125)	2404	Toxic and Hazardous Substances, Benzene, Construction Industry (1926.1128). (VR 425-02-139)	2404
Toxic and Hazardous Substances, Methyl Chloromethyl Ether, Construction Industry (1926.1106). (VR 425-02-126)	2404	Toxic and Hazardous Substances, Coke Oven Emissions, Construction Industry (1926.1129). (VR 425-02-140)	2404
Toxic and Hazardous Substances,		Toxic and Hazardous Substances, 1,2-dibromo-3-chloropropane (DBCP), Construction Industry (1926.1144). (VR 425-02-141)	2404
		Toxic and Hazardous Substances, Acrylonitrile	

Table of Contents

(AN), Construction Industry (1926.1145). (VR 425-02-142)	2404	Investigating Telephone Regulatory Methods Pursuant to Virginia Code § 56-235.5, etc. (PUC930036)	2450
Toxic and Hazardous Substances, Ethylene Oxide (EtO), Construction Industry (1926.1147). (VR 425-02-143)	2404	FINAL ORDER	
Toxic and Hazardous Substances, Formaldehyde, Construction Industry (1926.1148). (VR 425-02-144)	2404	Evaluating the Experimental Plan for Alternative Regulation of Virginia Telephone Companies. (PUC920029)	2459
Underground Construction Standard (1926.800). (VR 425-02-65)	2407	STATE LOTTERY DEPARTMENT	
Virginia Excavation Standard (1926.650 through 1926.652). (VR 425-02-89)	2409	DIRECTOR'S ORDERS	
Permit-Required Confined Spaces Standard for General Industry (1910.146). (VR 425-02-92)	2411	Virginia's Twenty-Sixth Instant Game Lottery, "Cash Vault," and Virginia's Twenty-Eighth Instant Game Lottery, "Money Tree"; End of Game. (33-93)	2473
Toxic and Hazardous Substances, Ethylene Oxide, Construction Industry. (VR 425-02-143)	2413	"Cash Match"; Promotional Game and Drawing Rules. (34-93)	2473
BOARD OF MEDICINE		Virginia's Thirty-Ninth Instant Game Lottery; "\$10,000 Cash Match," Final Rules for Game Operation. (35-93)	2473
Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, and Acupuncture. (VR 465-02-1)	2415	MARINE RESOURCES COMMISSION	
Regulations Governing the Practice of Physical Therapy. (VR 465-03-01)	2424	Pertaining to the York River, Poquoson River and Back River Shellfish Management Area. (VR 450-01-0073)	2474
Regulations Governing the Practice of Physicians' Assistants. (VR 465-05-01)	2430	Pertaining to the Taking of Hard Clams. (VR 450-01-0077)	2475
Regulations for Certification of Occupational Therapists. (VR 465-08-1)	2435	Pertaining to Commercial Fishing and Mandatory Harvest Reporting. (VR 450-01-0079)	2476
Licensed Acupuncturists. (VR 465-11-1)	2438	Pertaining to Crab Dredge License Sales. (VR 450-01-0098)	2478
DEPARTMENT OF PERSONNEL AND TRAINING		GOVERNOR	
Public Participation Guidelines. (VR 525-01-1)	2441	GOVERNOR'S COMMENTS	
DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)		DEPARTMENT OF EDUCATION (STATE BOARD OF)	
Deeming of Stepparent Income in the Aid to Families with Dependent Children (AFDC) Program. (VR 615-01-21)	2443	Special Education Program Standards. (VR 270-01-0057)	2480
VIRGINIA CODE COMMISSION		STATE WATER CONTROL BOARD	
Regulations of the Virginia Code Commission for Implementing the Virginia Register Act.	2445	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing Facilities. (VR 680-14-16)	2480
STATE CORPORATION COMMISSION			
ORDER FOR NOTICE AND HEARING			

Table of Contents

Virginia Pollutant Discharge Elimination System (VPDES)
General Permit for Storm Water Discharges Associated
with Industrial Activities from Light Manufacturing
Facilities. (VR 680-14-17) 2480

Virginia Pollutant Discharge Elimination System
(VPDES) General Permit Regulation for Storm
Water Discharges Associated with Industrial Activity
from Transportation Facilities, Landfills, Land
Application Sites and Open Dumps, Materials
Recycling Facilities, and Steam Electric Power
Generating Facilities. (VR 680-14-18) 2480

Virginia Pollutant Discharge Elimination System
(VPDES) General Permit Regulation for Storm
Water Discharges from Construction Sites. (VR
680-14-19) 2480

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Waste Division

Designation of Regional Solid Waste Management
Planning Area. 2481

Designation of Regional Solid Waste Management
Planning Area. 2481

DEPARTMENT OF MOTOR VEHICLES

General Notice. 2481

VIRGINIA CODE COMMISSION

Notice of mailing address. 2481

Forms for filing material on dates for publication. .. 2481

CALENDAR OF EVENTS

EXECUTIVE

Open Meetings and Public Hearings 2483

CHRONOLOGICAL LIST

Open Meetings 2536

Public Hearings 2537

Table of Contents

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key †

† Indicates entries since last publication of the Virginia Register

AUDITOR OF PUBLIC ACCOUNTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Auditor of Public Accounts intends to consider promulgating regulations entitled: **Public Participation Guidelines**. The purpose of the proposed action is to provide interested parties with an opportunity for input in the formation and development of regulations adopted by the Auditor of Public Accounts. Public hearings will not be held.

Statutory Authority: §§ 2.1-164, 8.01-582, 15.1-166, 15.1-167, and 15.1-1003 of the Code of Virginia.

Written comments may be submitted until January 31, 1994, to Auditor of Public Accounts, P. O. Box 1295, Richmond, VA 23210.

Contact: William H. Cole, Jr., Deputy Auditor, P. O. Box 1295, Richmond, Va 23210, telephone (804) 225-3350.

VA.R. Doc. No. R94-345; Filed December 8, 1993, 11:22 a.m.

DEPARTMENT OF EDUCATION (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 Education intends to consider promulgating regulations entitled: **VR 270-01-0058. Regulations Governing Alternative Attendance Programs**. The purpose of the proposed regulations is to comply with § 22.1-269.1 of the Code of Virginia which includes the requirement that the Board of Education provide for the voluntary participation of Virginia school divisions in alternative attendance programs. The agency intends to hold public hearings on the proposed regulations after publication.

Statutory Authority: § 22.1-269.1 of the Code of Virginia.

Written comments may be submitted until January 27, 1994.

Contact: Dr. Judith Douglas, Principal Specialist, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2771, toll-free 1-800-292-3820, or FAX (804) 225-2831.

VA.R. Doc. No. R94-346; Filed December 6, 1993, 10:16 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **VR 320-01-03. Regulations for Preneed Funeral Planning**. The purpose of the proposed action is to amend current regulations for update and to incorporate legislative changes. There will be no public hearing since amendments reflect change in federal law.

Statutory Authority: § 54.1-2820 of the Code of Virginia.

Written comments may be submitted until February 25, 1994.

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, Va 23230, telephone (804) 662-9907.

VA.R. Doc. No. R94-347; Filed November 30, 1993, 2:50 p.m.

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: **VR 460-02-4.1710. Estate Recoveries**. The purpose of the proposed action is to comply with federal mandate in OBRA 93. This section requires states to seek recovery of payments for nursing facility services, home and community-based services, and related hospital and prescription drug services, on behalf of persons age 55 or older when they received the assistance. States also have the option to recover payments for all other Medicaid services provided to these individuals at age 55 or older. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 32.1-325, 32.1-326.1 and 32.1-327 of the Code of Virginia.

Written comments may be submitted until February 9, 1994, to Jesse Garland, Department of Medical Assistance Services, Fiscal Division, 600 E. Broad Street, Suite 1300,

Notices of Intended Regulatory Action

Richmond, VA 23219.

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

V.A.R. Doc. No. R94-425; Filed December 20, 1993, 10:11 a.m.

DEPARTMENT OF MOTOR VEHICLES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Motor Vehicles intends to consider amending regulations entitled: **VR 485-50-8502. Rules and Regulations for the Motorcycle Rider Safety Training Center Program.** The purpose of the proposed action is to revise current regulations by amending certain sections. Public hearings will be held on the proposed amendments after they are published.

Statutory Authority: §§ 46.2-203 and 46.2-1189 of the Code of Virginia.

Written comments may be submitted until February 20, 1994.

Contact: Bruce Biondo, Program Manager, Room 405, P. O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1813.

V.A.R. Doc. No. R94-426; Filed December 21, 1993, 3:52 p.m.

DEPARTMENT OF SOCIAL SERVICES (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 Social Services intends to consider amending regulations entitled: **VR 615-25-01:1. Minimum Standards for Licensed Family Day Homes.** The purpose of the proposed action is to review the existing standards for appropriateness and to make technical amendments for clarity. One public hearing is planned. The date, time and location will be announced.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until February 23, 1994, to Alfreda Redd, Department of Social Services, Theater Row Building, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804)

692-1820.

V.A.R. Doc. No. R94-444; Filed January 5, 1994, 11:25 a.m.

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 repealing regulations entitled: **VR 680-16-06. Tennessee-Big Sandy River Basin Water Quality Management Plan.** The purpose of the proposed action is to repeal the existing Tennessee-Big Sandy River Basin Water Quality Management Plan while concurrently promulgating a new, updated plan.

Basis and Statutory Authority: Section 62.1-44.15(13) of the Code of Virginia authorizes the board to establish policies and programs for effective area-wide or basin-wide water quality control and management. Section 62.1-44.15(10) of the Code of Virginia authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth.

Title 40, Parts 35 and 130, of the Code of Federal Regulations requires states to develop a continuing planning process of which Water Quality Management Plans (WQMP) are a part. No VPDES permit may be issued which is in conflict with an approved WQMP.

Need: WQMPs set forth measures for the department to implement in order to reach and maintain water quality goals in general terms and numeric loadings for, among other things, five-day biochemical oxygen demand. The Tennessee-Big Sandy WQMP was adopted by the board in 1977. This plan has not been updated to reflect current data, including total maximum daily loading and waste load allocations, scientific studies, new or revised legislation, procedures, policies and regulations, and changes in area growth and development.

Substance and Purpose: The purpose of this proposal is to repeal the existing Tennessee-Big Sandy River Basin WQMP. This plan has not been updated since it was originally adopted by the board in 1977 and is outdated. Concurrently with this proposed action, the board plans to adopt a new, updated Tennessee-Big Sandy River Basin WQMP which will incorporate policies, procedures, regulations, current data and information regarding point and nonpoint sources of pollution which have changed since the original plan was adopted in 1977.

Estimated Impacts: There are approximately 330,000 persons residing in the Tennessee-Big Sandy River Basin. There are 182 municipal and 76 industrial VPDES permits issued for the basin. No financial impact to the Department of Environmental Quality or the regulated community is anticipated by the repeal of the existing

Notices of Intended Regulatory Action

plan since a new plan will be adopted concurrently. The new proposal will provide the Commonwealth, local governments, industrial firms, agricultural interests and interested citizens with a more up-to-date management tool to assist in achieving and maintaining applicable water quality goals in the basin.

Alternatives: The Tennessee-Big Sandy River Basin WQMP has not been updated to reflect current data, scientific studies, new or revised legislation, policies or regulations, or changes in area growth and development since it was adopted in 1977. One alternative is to continue to use the existing, outdated WQMP. To do this would result in noncompliance with amendments to the Clean Water Act for achieving current water quality goals until a state WQMP is developed and adopted in late 1994.

Comments: The board seeks comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternative or other alternatives. In addition, the board will hold a public meeting to receive views and comments on Thursday, January 20, 1994, at 7 p.m. at the University of Virginia Southwest Center, Highway 19 N., Abingdon, VA 24210.

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 should contact Ms. Dalton. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than January 5, 1994.

Advisory Committee/Group: An advisory committee was convened to provide input to the department regarding the content of the proposed new Tennessee-Big Sandy River Basin WQMP. The committee was composed of federal, state and local government representatives and members of environmental organizations. The committee will be reconvened after the close of this public comment period to provide comments on the new draft plan.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold at least one informational proceeding (informal hearing) on this regulatory action after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a formal evidential hearing on this proposal after it is published in the Register of Regulations.

Statutory Authority: §§ 62.1-44.15(10) and 62.1-44.15(13) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 31, 1994, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240.

Contact: Ronald D. Sexton, Department of Environmental Quality, Water Division, P. O. Box 888, Abingdon, VA

24210, telephone (703) 676-5507.

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 680-16-06:1. Tennessee-Big Sandy River Basin.** The purpose of the proposed action is to adopt a new Tennessee-Big Sandy River Basin Water Quality Management Program.

Basis and Statutory Authority: Section 62.1-44.15(13) of the Code of Virginia authorizes the board to establish policies and programs for effective area-wide or basin-wide water quality control and management. Section 62.1-44.15(10) of the Code of Virginia authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth.

Title 40, Parts 35 and 130, of the Code of Federal Regulations requires states to develop a continuing planning process of which Water Quality Management Plans (WQMP) are a part. No VPDES permit may be issued which is in conflict with an approved WQMP.

Need: The Tennessee-Big Sandy WQMP was adopted by the board in 1977. This plan has not been updated to reflect current data, including total maximum daily loading and waste load allocations, scientific studies, new or revised legislation, procedures, policies and regulations, and changes in area growth and development.

Substance and Purpose: WQMPs set forth measures for the board to implement in order to reach and maintain water quality goals in general terms and numeric loadings for, among other things, five-day biochemical oxygen demand (BOD). The purpose of this proposal is to adopt a new Tennessee-Big Sandy River Basin WQMP to incorporate policies, procedures, regulations, current data and information regarding point and nonpoint sources of pollution which have changed since the original plan was adopted. Concurrently with this action, the board plans to repeal the existing plan.

Estimated Impacts: There are approximately 330,000 persons residing in the Tennessee-Big Sandy River Basin. There are 182 municipal and 76 industrial VPDES permits issued for the basin. No financial impact to the Department of Environmental Quality or the regulated community is anticipated. The proposal will provide the Commonwealth, local governments, industrial firms, agricultural interests and interested citizens with a more up-to-date management tool to assist in achieving and maintaining applicable water quality goals in the basin.

Alternatives: The Tennessee-Big Sandy River Basin WQMP has not been updated to reflect current data, scientific studies, new or revised legislation, policies or regulations, or changes in area growth and development since it was

Notices of Intended Regulatory Action

adopted in 1977. One alternative is to continue to use the existing, outdated WQMP. To do this would result in noncompliance with amendments to the Clean Water Act for achieving current water quality goals until a state WQMP is developed and adopted in late 1994.

Comments: The board seeks comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternative or other alternatives. In addition, the board will hold a public meeting to receive views and comments on Thursday, January 20, 1994, at 7 p.m. at the University of Virginia Southwest Center, Highway 19 N., Abingdon, VA 24210.

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 should contact Ms. Dalton. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than January 5, 1994.

Advisory Committee/Group: An advisory committee was convened to provide input to the department regarding the content of the proposed WQMP. The committee was composed of federal, state and local government representatives and members of environmental organizations. The committee will be reconvened, after the close of this public comment period, to provide comments on the draft plan.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold at least one informational proceeding (informal hearing) on this regulatory action after a proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a formal evidential hearing on this proposal after it is published in the Register of Regulations.

Statutory Authority: §§ 62.1-44.15(10) and 62.1-44.15(13) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 31, 1994, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240.

Contact: Ronald D. Sexton, Department of Environmental Quality, Water Division, P. O. Box 888, Abingdon, VA 24210, telephone (703) 676-5507.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

Symbol Key

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

BOARD OF DENTISTRY

Title of Regulation: VR 255-01-1. Virginia Board of Dentistry Regulations.

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

Public Hearing Date: February 17, 1994 - 9 a.m.

Written comments may be submitted until March 26, 1994.

(See Calendar of Events section for additional information)

Basis: Sections 54.1-2400 and 54.1-2401 grant the board the authority to establish the qualifications for registration, certification, or licensure in accordance with the applicable laws which are necessary to ensure competence and integrity to engage in the regulated professions.

Purpose: The purpose of the proposed amendments is to (i) ensure continued competency of professional licenses through mandatory continuing education; (ii) permit licensure of dentists in the Commonwealth of Virginia by means other than examination; (iii) establish administrative fees to assure that revenues are sufficient to meet budgeted expenditures; (iv) provide for an administrative procedure for reinstatement of license; and (v) allow specialists to advertise in a board-approved manner.

The amendments respond to comments received in response to the Notice of Intended Regulatory Action and are an effort to clarify and update requirements to current practice and educational standards. Whenever possible, amendments are proposed to make the rule less burdensome and more clear to licensees.

Substance: In addition to changes which are technical or clarifying, the following are proposed:

Section 1.2. - Delete Public Participation Guidelines.

Currently the Board of Dentistry is following emergency Public Participation Guidelines, VR 255-01-2, that are in the process of being promulgated as permanent regulations.

Section 1.3 D provides the authority for the executive director to reinstate a license previously revoked or indefinitely suspended upon completion of an application and payment of all fees. The proposed regulation clarifies that the director may act on behalf of the board.

Section 1.3 E sets fees as necessary to administer the regulation providing for the reinstatement of revoked licenses at \$750 and of indefinitely suspended licenses at \$300.

Section 1.4 L sets fees for licensure by endorsement for dentists at \$500 application fee for a total of \$565.

Section 1.6 provides for mandating continuing education for dentists and dental hygienists after April 1, 1995. The addition of this amendment allows the board to ensure continued competency through clinically relevant courses regarding treatment and care of patients. The proposed amendment will clarify that the licensee shall attest to compliance with continuing education on his renewal rather than providing information or documentation of continuing education. The proposed change will be less costly to the agency. In addition, the amendment sets forth requirements and procedures for board-approved continuing education programs and providers.

Section 2.3 provides for licensure by endorsement for dentists. The addition of this provision would allow qualified individuals to receive licensure in the state by means other than examination. The proposed regulation sets forth requirements and procedures for credentialing.

Only changes which clarify existing regulations were made in Part III.

Section 4.4 F 4 allows the board to prohibit an advertisement which contains a claim of professional superiority or claims a specialty without proper credentials or certification.

Section 5.3 A 4 provides for clarification of delegable duties for dental hygienists.

Issues: The amendments are proposed by the board to establish criteria for continuing education, to provide for licensure by endorsement, and to set rules for advertising that are reasonable for the licensees yet provide for the health and safety of the public. Issues addressed by the board include:

1. The deletion of Public Participation Guidelines within the regulations governing the practice of dentistry.

The board proposed deleting the Public Participation Guidelines from VR 255-01-1 and is in the process of promulgating a separate regulation, VR 255-01-2, which replaces emergency regulations currently in effect.

Proposed Regulations

(See § 1.2.)

2. The establishment of regulations to implement a requirement for continuing education.

The board determined that 15 hours of continuing education for dentists and dental hygienists to be a reasonable requirement which will assist the profession in remaining current with dental procedures. The board addressed the issue of acceptable courses for continuing education and determined that they will have to be clinically relevant to the treatment and care of patients. The board anticipates this regulation will increase public confidence in practitioners and more importantly, will result in a decrease of standard of care complaints. This regulation will impose a reasonable cost to the licensee in terms of course fees, transportation, and time away from the office. (See § 1.6 and Part V. Impact.)

3. The establishment of regulations to implement licensure by endorsement for dentists, thereby eliminating the provision for reciprocity.

The board determined that the provision for reciprocity was hindering qualified individuals from practicing in the state. The deleted regulation provided for reciprocity when comparable requirements existed but to date no state has established comparability with Virginia. Upon careful review of other states' practices, the board determined that a less restrictive means for licensure was necessary. Licensure by endorsement/credentialing for qualified individuals was seen as a reasonable alternative to licensure by examination. (See § 2.3.)

4. The amendment of regulations for revoked or indefinitely suspended licenses.

The board determined that the executive director can act on behalf of the board to reinstate revoked or indefinitely suspended licenses once the application and all the fees are submitted. (See § 1.3 D.)

5. The amendment of regulations on advertisement to minimize or eliminate public misconception.

The board determined that the public could be misled by advertisements proclaiming superiority or specialty when no proof of certification or credentials existed; the proposed regulation clarifies what is acceptable advertisement. (See § 4.4 F 4.)

Estimated Impact:

A. Regulated Entities: There are 4,727 dentists and 2,729 dental hygienists who will be affected by the regulation changes. After April 1995, dentists and dental hygienists will be directly affected by the 15 hours of continuing education required by license renewal. The board estimates that once credentialing is approved,

approximately 100 dentists will apply for licensure by endorsement in the first year.

B. Projected cost for implementation:

1. The board estimates that its cost for implementing licensure by endorsement and compliance with continuing education will be supported by the application and renewal fees. The estimated cost includes two staff person (FTE's) at \$15,000 each and related administrative processing costs.

2. The board will not derive any revenues from the continuing education regulation. All administrative costs will be supported by fees already established in the budget.

3. The board will not derive any revenues from the advertising regulation. All administrative costs will be supported by existing revenues.

C. Projected cost for compliance:

1. Individuals seeking licensure by endorsement will pay a one time application fee of \$500 plus \$65 for initial licensure for a total of \$565. The board reviewed other states' fees which ranged from \$50 to \$1,400 and determined that \$565 was reasonable for processing applications and checking credentials.

2. The proposed 15 continuing education units needed for annual renewal would cost about \$2,000 for dentists and \$1,000 for hygienists plus out-of-pocket expenses. The board does not derive any revenues from the continuing education provision.

3. The proposed regulation allowing the board to prohibit advertisement which is false and misleading will have no impact on a practitioner if he follows the guidelines set forth in regulation.

4. The cost for the proposed regulation allowing the executive director to reinstate revoked or indefinitely suspended licenses will be supported by the fees of \$750 for revoked and \$300 for indefinitely suspended licenses.

Summary:

The proposed amendments set forth requirements for continuing education for dentists and dental hygienists, allow licensure by endorsement for dentists, allow specialists to advertise in a board-approved manner, provide for an administrative procedure for reinstatement of license, establish administrative fees for licensure by credentials and licensure reinstatement to cover administrative costs, and amend regulations for clarity and simplicity.

In addition, the board has proposed deletion of § 1.2, Public Participation Guidelines, because a separate

regulation for Public Participation Guidelines (VR 255-01-2) is currently in effect as emergency regulations.

VR 255-01-1. Virginia Board of Dentistry Regulations.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Approved schools" means those dental schools, colleges, departments of universities or colleges or schools of dental hygiene currently accredited by the Commission on Dental Accreditation of the American Dental Association, which is hereby incorporated by reference.

"Competent instructor" means any person appointed to the faculty of a dental school, college or department or a university or a college who holds a license or teacher's license to practice dentistry or dental hygiene in the Commonwealth.

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by a pharmacologic or nonpharmacologic method, or a combination thereof.

"Dental assistant" means any unlicensed person under the supervision of a dentist who renders assistance for services provided to the patient as authorized under these regulations but shall not include an individual serving in purely a secretarial or clerical capacity.

"Dental hygiene student" means any person currently enrolled and attending an approved school/program of dental hygiene. No person shall be deemed to be a dental hygiene student who has not begun the first year of enrollment in the school; nor a person who is not attending the regularly scheduled sessions of the school in which he is enrolled.

"Dental student" means any person currently enrolled and attending an approved school of dentistry but shall not include persons enrolled in schools/programs of dental hygiene. No person shall be deemed to be a dental student who has not begun the first year of enrollment in school; nor a person who is not attending the regularly scheduled sessions of the school in which he is enrolled.

"Diagnosis" means an opinion of findings in an examination.

"Direction" means the presence of the dentist for the evaluation, observation, advice, and control over the performance of dental services.

"Examination of patient" means a study of all the structures of the oral cavity, including the recording of the conditions of all such structures and an appropriate history thereof. As a minimum, such study shall include charting of caries, identification of periodontal disease, occlusal discrepancies, and the detection of oral lesions.

"General anesthesia" means a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or its contiguous structures generally produced by a topically applied agent or injected agent without causing the loss of consciousness.

"Monitoring general anesthesia and conscious sedation" includes the following: recording and reporting of blood pressure, pulse, respiration and other vital signs to the attending dentist during the conduct of these procedures and after the dentist has induced a patient and established a maintenance level.

"Monitoring nitrous oxide oxygen inhalation analgesia" means making the proper adjustments of nitrous oxide machines at the request of the dentist during the administration of the sedation and observing the patient's vital signs.

"Nitrous oxide oxygen inhalation analgesia" means the utilization of nitrous oxide and oxygen to produce a state of reduced sensibility to pain designating particularly the relief of pain without the loss of consciousness.

"Radiographs" means intraoral and extraoral x-rays of the hard and soft oral structures to be used for purposes of diagnosis.

"Recognized governmental clinic" means any clinic operated or funded by any agency of state or local government which provides dental services to the public, the dental services of which shall be provided by a

Proposed Regulations

licensed dentist or by persons who may be authorized herein to provide dental services under the direction of a dentist.

§ 1-2. Public participation guidelines.

A. Mailing list.

The Virginia State Board of Dentistry will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of intent" to promulgate regulations.
2. "Notice of public hearing" or "informational proceeding," the subject of which is a proposed or existing regulation.
3. Final regulation adopted.

B. Being placed on list and deletion.

Any person wishing to be placed on the mailing list may have his or her name added by writing the board. In addition, the agency or board may, in its discretion, add to the list any person, organization, or publication whose inclusion it believes will further the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in subsection A of this section. Individuals and organizations will be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. Where mail is returned as undeliverable, individuals and organizations will be deleted from the list.

C. Notice of intent.

At least 30 days prior to publication of the notice to conduct an informational proceeding as required by § 9-6-14:1 of the Administrative Process Act, the board will publish a "notice of intent." This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register of Regulations.

D. Informational proceedings or public hearings for existing rules.

At least once each biennium, the board will conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and the cost of compliance. Notice of such proceeding will be transmitted to the Registrar of Regulations for inclusion in The Virginia Register of Regulations. Such proceeding may

be held separately from or in conjunction with other informational proceedings.

E. Petition of rulemaking.

Any person may petition the board to adopt, amend, or delete any regulation. Any petition received shall appear on the next agenda of the board. The board shall have sole authority to dispose of the petition.

F. Notice of formulation and adoption.

When a proposed regulation is formulated at any meeting of the board or of a board subcommittee, or when any regulation is adopted by the board, the subject matter shall be transmitted to The Registrar of Regulations for inclusion in The Virginia Register of Regulations.

G. Advisory committees.

The board may appoint advisory committees as it deems necessary to provide for adequate citizen participation in the formation, promulgation, adoption and review of regulations.

§ 1-3. 1.2. License renewal and reinstatement.

The board shall forward a renewal notice to each licensee at the address of record (§ 4.2 B) prior to the expiration of the license. Failure to receive such notice shall not relieve the licensee of the responsibility to renew the license.

A. Dental renewal fees.

Every person licensed to practice dentistry shall, on or before March 31, renew their license to practice dentistry and pay an annual renewal fee of \$65 except as otherwise provided in § 1-4 1.3 of these regulations.

B. Dental hygiene renewal fees.

Every person licensed to practice dental hygiene by this board shall, on or before March 31, renew their license to practice dental hygiene and pay an annual renewal fee of \$25 except as otherwise provided in § 1-4 1.3 of these regulations.

C. Penalty fees.

Any person who does not return the completed form and fee by March 31 shall be required to pay an additional \$35 penalty fee. The board shall renew a license when the renewal form is received by the following April 30, along with the completed form, the annual registration fee, and the penalty fee.

D. Reinstatement fees and procedures.

The license of any person who does not return the completed renewal form and fees by April 30 shall

automatically expire and become invalid and their practice of dentistry/dental hygiene shall be illegal. Upon such expiration, the board shall immediately notify the affected person of the expiration and the reinstatement procedures. Any person whose license has expired who wishes to reinstate such license shall submit to the board a reinstatement form, the application fee, the penalty fee, renewal fee and an assessment of \$50 per month for each month or part of a month the individual has practiced in Virginia without a valid license. ~~The board may reinstate the license of an applicant who satisfactorily completes the board-approved examinations unless the applicant demonstrates that he has maintained continuous ethical, legal and clinical practice during the period of licensure expiration or demonstrates that the lapse was due to factors beyond the applicant's control or was other than voluntary. The executive director shall reinstate such expired license provided that the applicant can demonstrate continuing competence; that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and § 4.3 of these regulations to deny said reinstatement; and that the applicant has paid all unpaid renewal fees and assessments.~~

E. Reinstatement of a license previously revoked or indefinitely suspended.

Any person whose license has been revoked shall submit to the board for its approval a reinstatement form and an application fee of \$750. Any person whose license has been indefinitely suspended shall submit to the board for its approval a reinstatement form and an application fee of \$300.

§ 1-4. 1.3. Other fees.

A. Dental licensure application fees.

The application for a dental license shall be accompanied by a check or money order for \$220, which includes a \$155 application fee and a \$65 initial licensure fee.

B. Dental hygiene licensure application fees.

The application for a dental hygiene license shall be accompanied by a check or money order for \$155, which includes a \$130 application fee and a \$25 initial licensure fee.

C. Duplicate wall certificate.

Licensees desiring a duplicate wall certificate shall submit a request in writing stating the necessity for such duplicate wall certificate, accompanied by a fee of \$15. A duplicate certificate may be issued for any of the following reasons: replacing certificate that has been lost, stolen, misplaced, destroyed or is otherwise irretrievable; recording the new name of a registrant whose name has been changed by court order or by marriage; or for multiple offices.

D. Duplicate license.

Licensees desiring duplicate license shall submit a request in writing stating the necessity for such duplicate license, accompanied by a fee of \$10. A duplicate license may be issued for any of the following reasons: maintaining more than one office (notarized photocopy may be used); replacing license that has been lost, stolen, misplaced, destroyed or is otherwise irretrievable; and recording the new name of a licensee whose name has been changed by court order or by marriage.

E. Licensure certification.

Licensees requesting endorsement or certification by this board shall pay a fee of \$25 for each endorsement or certification.

F. Restricted license.

Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of \$100.

G. Teacher's license.

License to teach dentistry and dental hygiene issued in accordance with §§ 54.1-2713 and 54.1-2725 of the Code of Virginia shall be at a fee of \$220 and \$155, respectively. The renewal fee shall be \$65 and \$25, respectively.

H. Temporary permit.

Temporary permit for dentists and dental hygienists issued in accordance with §§ 54.1-2715 and 54.1-2726 of the Code of Virginia shall be at a fee of \$220 and \$155, respectively. The renewal fee shall be \$65 and \$25, respectively.

I. Radiology safety examination.

Each examination administered in accordance with § 4.5(A)(11) of these regulations shall be at a fee of \$25.

J. Jurisprudence examination.

Each examination administered by the board outside the scheduled clinical examination site in accordance with §§ 2.2 A 3 and 2.2 B 3 shall be at a fee of \$25.

K. Full-time faculty license.

Full-time faculty license for dentists issued in accordance with § 54.1-2714.1 of the Code of Virginia, shall be at a fee of \$220. The renewal fee shall be \$65.

L. Endorsement license.

License by endorsement issued in accordance with § 2.3 for dental hygienists shall be at a fee of \$200 (\$175 application and \$25 initial licensure fee). The renewal fee shall be \$25. *License by endorsement issued in accordance*

Proposed Regulations

with § 2.3 for dentists shall be at a fee of \$565 (\$500 application fee and \$65 initial licensure fee).

M. Schedule VI topical medicinal agents certification.

Certifications issued in accordance with § 5.4 A 1 shall be at a fee of \$15.

§ 1.4. Refunds.

No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

§ 1.5. Requirements for continuing education.

A. After April 1, 1995, a dentist shall be required to have completed a minimum of 15 hours and a dental hygienist shall be required to have completed a minimum of 15 hours of continuing dental education in an approved program for each annual renewal of licensure.

Continuing education hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing dental education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dentistry and dental hygiene; or
2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any courses, to include audio and video presentations, which meet the requirements in § 1.6 B 1 and which are given by one of the following sponsors:

1. American Dental Association and National Dental Association, their constituent and component/branch associations;
2. American Dental Hygienists Association and National Dental Hygienists Association, their constituent and component/branch associations;
3. American Dental Association specialty organizations, their constituent and component/branch associations;
4. American Medical Association and National Medical Association, their specialty organizations, constituent and component/branch associations;

5. Academy of General Dentistry, its constituent and component/branch associations;

6. Community colleges with an approved dental hygiene program if offered under the auspices of the dental hygienist program;

7. A college, university or hospital service which is accredited by an accrediting agency approved by the U.S. Office of Education;

8. The American Heart Association and the American Cancer Society;

9. A medical school which is accredited by the American Medical Association's Liaison Committee for Medical Education; or

10. Federal government agencies (i.e., military dental division, Veteran's Administration, etc.).

D. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following his initial licensure.

E. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

F. A licensee is required to provide information on compliance with continuing education requirements in his annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

G. All licensees are required to maintain original documents verifying the date and subject of the program or activity. Documentation must be maintained for a period of five years following renewal.

H. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, must submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active.

I. Continuing education hours required by disciplinary order shall not be used to satisfy the continuing education requirement for license renewal.

J. Penalty for noncompliance of continuing education for dentists and dental hygienists is \$1,000 per violation.

PART II. ENTRY AND LICENSURE REQUIREMENTS.

Proposed Regulations

§ 2.1. Education.

A. Dental licensure.

An applicant for dental licensure shall be a graduate and a holder of a diploma from an accredited or approved dental school recognized by the Commission on Dental Accreditation of the American Dental Association, be of good moral character, and provide proof that the individual has not committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia.

B. Dental hygiene licensure.

An applicant for dental hygiene licensure shall have graduated from or be issued a certificate by an accredited school/program of dental hygiene recognized by the Commission on Dental Accreditation of the American Dental Association, be of good moral character, and provide proof that the individual has not committed any act which would constitute a violation of § 54.1-2728 of the Code of Virginia.

§ 2.2. Licensure examinations.

A. Dental examinations.

1. All applicants shall have successfully completed Part I and Part II of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board.

2. For the purpose of § 54.1-2709 of the Code of Virginia, all persons desiring to practice dentistry in the Commonwealth of Virginia will be required to satisfactorily pass the complete board-approved examinations in dentistry as a precondition for licensure, except those persons eligible for licensure pursuant to § 54.1-103 of the Code of Virginia and subsection A of § 2.3 of these regulations. Applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board ~~will~~ may be required to retake the examinations unless they demonstrate that they have maintained continuous clinical, ethical and legal practice since passing the board-approved examinations.

B. Dental hygiene examinations.

1. All applicants are required to successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board for licensure.

2. For the purpose of § 54.1-2722 of the Code of Virginia, all persons desiring to practice dental hygiene in the Commonwealth of Virginia shall be required to successfully complete the board-approved examinations in dental hygiene as a precondition for

licensure, except those persons eligible for licensure pursuant to § 54.1-103 of the Code of Virginia and subsection B of § 2.3 of these regulations. Applicants who successfully complete the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board ~~will~~ may be required to retake the board-approved examinations unless they demonstrate that they have maintained continuous clinical, ethical and legal practice since passing the board-approved examinations.

C. All applicants for dental/dental hygiene licensure by examination shall be required to pass an examination on the Virginia dental hygiene laws and the regulations of this board.

§ 2.3. Reciprocal licensure for dentists and licensure by endorsement for dental hygienists.

A. Dental reciprocal licensure.

An applicant for dental reciprocal licensure must:

1. Be a graduate of an accredited dental school recognized by the Commission on Dental Accreditation of the American Dental Association, and

2. Be currently licensed and engaged in the active, legal and ethical practice of dentistry in a state having licensure requirements comparable to those established by the Code of Virginia with which the Virginia Board of Dentistry has established reciprocity.

§ 2.3. Licensure by endorsement for dentists and dental hygienists.

A. Licensure by endorsement for the practice of dentistry.

No applicant for licensure to practice dentistry by endorsement will be considered for licensure unless the applicant has met all of the following requirements:

1. Is a graduate and holder of a diploma from an accredited or approved dental school recognized by the Commission on Dental Accreditation of the American Dental Association;

2. Has successfully completed a clinical licensing examination substantially equivalent to that required by Virginia;

3. Holds a current, unrestricted license to practice dentistry in another state, territory, District of Columbia or possession of the United States and has continuous clinical, ethical, and legal practice for five out of the past six years immediately preceding application for licensure. Active patient care in armed forces dental corps, state or federal agency, and intern or residency programs may substitute for

Proposed Regulations

required clinical practice;

4. Is certified to be in good standing from each state in which he is currently licensed or has ever held a license;

5. Has not failed any clinical examination accepted by the board, pursuant to § 54.1-2709 of the Code of Virginia, within the last five years;

6. Is of good moral character;

7. Has successfully completed Part I and Part II of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board;

8. Has passed an examination on the laws and the regulations governing the practice of dentistry in Virginia; and

9. Has not committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia and is not the respondent in any pending or unresolved board action or malpractice claim.

B. Dental hygiene endorsement .

An applicant for dental hygiene endorsement licensure shall:

1. Be a graduate or be issued a certificate from an accredited dental hygiene school/program of dental hygiene recognized by the Commission on Dental Accreditation of the American Dental Association;

2. Be currently licensed to practice dental hygiene in another state, territory, District of Columbia or possession of the U.S., and have continuous clinical, ethical and legal practice for two out of the past four years immediately preceding application for licensure. Active patient care in armed forces dental corps, state and or federal agency , and intern and or residency programs, may substitute for required clinical practice;

3. Be certified to be in good standing from each state in which he is currently licensed or has ever held a license;

4. Have successfully completed a clinical licensing examination substantially equivalent to that required by Virginia;

5. Not have failed the clinical examination accepted by the board, pursuant to § 54.1-2722 of the Code of Virginia, within the last five years;

6. Be of good moral character;

7. Provide proof of not having committed any act which would constitute a violation of § 54.1-2706 of

the Code of Virginia;

8. Successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board; and

9. Pass an examination on the laws and the regulations governing the practice of dentistry in Virginia.

§ 2.4. Temporary permit, teacher's license and full-time faculty license.

A. A temporary permit shall be issued only for the purpose of allowing dental and dental hygiene practice as limited by §§ 54.1-2715 and 54.1-2726 of the Code of Virginia until the release of grades of the next licensure examination given in this Commonwealth, after the issuance of the temporary permit.

B. A temporary permit will not be renewed unless the permittee shows that extraordinary circumstances prevented the permittee from taking the first examination given immediately after the issuance of the permit. Such permit reissuance shall expire seven days after the release of grades of the next examination given.

C. A full-time faculty license shall be issued to any dentist who meets the entry requirements of § 54.1-2713 of the Code of Virginia, who is certified by the Dean of a dental school in the Commonwealth and who is serving full time on the faculty of a dental school or its affiliated clinics intramurally in the Commonwealth. A full-time faculty license shall remain valid only while the license holder is serving full time on the faculty of a dental school in the Commonwealth. When any such license holder ceases to continue serving full time on the faculty of the dental school for which the license was issued, the licensee shall surrender the license, which shall be null and void upon termination of full-time employment. The Dean of the dental school shall notify the board within five working days of such termination of full-time employment.

D. A temporary permit issued pursuant to § 54.1-2715, a teacher's license issued pursuant to §§ 54.1-2713, 54.1-2714 and 54.1-2725 and full-time faculty license issued pursuant to § 54.1-2714.1 of the Code of Virginia may be revoked for any grounds for which the license of a regularly licensed dentist or dental hygienist may be revoked and for any act, acts or actions indicating the inability of the permittee or licensee to practice dentistry that is consistent with the protection of the public health and safety as determined by the generally accepted standards of dental practice in Virginia.

E. Applicants for a full-time faculty license or temporary permit shall be required to pass an examination on the laws and the regulations governing the practice of dentistry in Virginia.

§ 2.5. Other application requirements.

All applications for any license or permit issued by the board shall include:

1. A final certified transcript of the grades from the college from which the applicant received the dental degree, dental hygiene degree or certificate, or post-doctoral degree or certificate; and
2. An original grade card issued by the Joint Commission on National Dental Examinations.

PART III. GENERAL ANESTHESIA AND CONSCIOUS SEDATION.

§ 3.1. Requirements to administer general anesthesia.

A. Educational requirements.

A dentist may employ or use general anesthesia on an outpatient basis by meeting one of the following educational criteria and by posting the educational certificate, in plain view of the patient, which verifies completion of the advanced training as required in § 3.1 A 1 or 2. The foregoing shall not apply nor interfere with requirements for obtaining hospital staff privileges.

1. Has completed a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with Part II of the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry" as currently published by the American Dental Association; or
2. Is board certified or , board eligible , or educationally qualified in any dental specialty which incorporates into its curriculum the standards of teaching comparable to those set forth in Part II of the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry - " as currently published by the American Dental Association.

B. Exemptions.

A dentist who has not meet the requirements specified in subsection A of this section may treat patients under general anesthesia in his practice if a qualified anesthesiologist, or a dentist who fulfills the requirements specified in subsection A of this section is present and is responsible for the administration of the anesthetic. If a dentist fulfills requirements himself to use general anesthesia and conscious sedation, he may employ the services of a certified nurse anesthetist.

§ 3.2. Conscious sedation; intravenous and intramuscular.

A. Automatic qualification.

Dentists qualified to administer general anesthesia may administer conscious sedation.

B. Educational requirements.

A dentist may administer conscious sedation upon completion of training in conformity with requirements for this treatment modality as published by the American Dental Association in the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry," while enrolled at an approved dental school or while enrolled in a post-doctoral university or teaching hospital program.

§ 3.3. General information.

A. Emergency equipment and techniques.

A dentist who administers general anesthesia and conscious sedation (*excluding nitrous oxide*) shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation, and shall maintain the following emergency airway equipment in the dental facility:

1. Full face mask for children or adults, or both;
2. Oral and nasopharyngeal airways;
3. Endotracheal tubes for children or adults, or both, with appropriate connectors;
4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades for children or adults, or both;
5. Source of delivery of oxygen under controlled pressure; and
6. Mechanical (hand) respiratory bag.

B. Posting requirements.

Any dentist who utilizes general anesthesia or conscious sedation shall post in each facility the certificate of education required under §§ 3.1 A and 3.2 B or the self-certification certificate issued by the board.

C. Other.

1. The team for general anesthesia shall consist of the operating dentist, a second person to monitor and observe the patient, and a third person to assist the operating dentist.
2. Person in charge of the anesthesia must remain on the premises of the dental facility until the patient has

Proposed Regulations

regained consciousness and is discharged.

D. Scope of regulation.

Part III shall not apply to administration of General Anesthesia and Conscious Sedation in hospitals and surgi-centers.

§ 3.4. Report of adverse reactions.

A written report shall be submitted to the board by the treating dentist within 30 days following any mortality or morbidity that occurs in the facility or during the first 24 hours immediately following the patient's departure from the facility following and directly resulting from the administration of general anesthesia, conscious sedation, or nitrous oxide oxygen inhalation analgesia.

PART IV. RECORD KEEPING AND REPORTING.

§ 4.1. Records.

A. Laboratory work orders.

Written work order forms and subwork order forms to employ or engage the services of any person, firm or corporation to construct or reproduce or repair, extraorally, prosthetic dentures, bridges or other replacements for a part of a tooth or teeth as required by § 54.1-2719 of the Code of Virginia shall include as a minimum the following information:

1. Patient name or case number, and date.
2. The signature, license number and address of the dentist.

B. Patient records.

A dentist shall maintain patient records for not less than five years from the most recent date of service for purposes or review by the board to include the following:

1. Patient's name and date of treatment;
2. Updated health history;
3. Diagnosis and treatment rendered;
4. List of drugs prescribed, administered, dispensed and the quantity;
5. Radiographs;
6. Patient financial records and all insurance claim forms ; and
7. Name of dentist and dental hygienist providing service.

§ 4.2. Reporting.

A. Dental students as hygienists.

Prior to utilizing the services of a senior dental student as a dental hygienist as provided in § 54.1-2712 of the Code of Virginia a dentist shall supply the board with the name and address of the student, the school in which the senior student is enrolled, the hours during which the student is expected to be employed as a hygienist, the expected period of employment (June and July, only) and verification that the employing dentist holds faculty appointment.

B. Current business addresses.

Each licensee shall furnish the board at all times with his current primary Virginia business address (no P.O. Box accepted). If not practicing in Virginia, the primary out-of-state business address must be furnished (no P.O. Box accepted). Each dental hygienist shall furnish current resident address (no P.O. Box accepted). All notices required by law or by these regulations to be mailed by the board to any such licensee shall be validly given when mailed to the latest address given by the licensee. All changes of address shall be furnished to the board in writing within 30 days of such changes.

§ 4.3. Unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-2706 of the Code of Virginia:

1. Fraudulently obtaining, attempting to obtain or cooperating with others in obtaining payment for services.
2. Performing services for a patient under terms or conditions which are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress.
3. Misrepresenting to a patient and the public the materials or methods and techniques the licensee uses or intends to use.
4. Committing any act in violation of the Code of Virginia reasonably related to the practice of dentistry and dental hygiene.
5. Delegating any service or operation which requires the professional competence of a dentist or dental hygienist to any person who is not a dentist or dental hygienist except as otherwise authorized by these regulations.
6. Certifying completion of a dental procedure that has not actually been completed.

Proposed Regulations

7. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including, but not limited to, current regulations promulgated by the Virginia Department of Health.

8. Permitting or condoning the placement or exposure of dental x-ray film by an unlicensed person, except where the unlicensed person has complied with § 4.5 A 11 of these regulations.

§ 4.4. Advertising.

A. Practice limitation.

A general dentist who limits his practice shall state in conjunction with his name that he is a general dentist providing only certain services, i.e., orthodontic services.

B. Fee disclosures.

Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services and products which, to a substantial likelihood will be necessary for the completion of the advertised services as it would be understood by an ordinarily prudent person, shall be deemed to be deceptive or misleading. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of fees for specifically described dental services shall not be deemed to be deceptive or misleading.

C. Discounts.

Discount offers for a dental service are permissible for advertising only when the nondiscounted or full fee and the final discounted fee are also disclosed in the advertisement. The dentist shall maintain documented evidence to substantiate the discounted fee.

D. Retention of broadcast advertising.

A prerecorded copy of all advertisements on radio or television shall be retained for a six-month period following the final appearance of the advertisement. The advertising dentist is responsible for making prerecorded copies of the advertisement available to the board within five days following a request by the board.

E. Routine dental services.

The purpose of this subsection is to delineate those routine dental services which may be advertised pursuant to § 54.1-2706(7) of the Code of Virginia and subsection F of § 4.4 of these regulations. The definitions as set out in Regulation I § 1.1 of these regulations are intended to set forth a minimum standard as to what constitutes such services for advertising purposes in order to allow the public to accurately compare the fees charged for a given service and to preclude potentially misleading advertisement of fees for a given service which may be

delivered on a superficial or minimum basis. Advertising of fees pursuant to of § 4.4 F 3 of these regulations is limited to the following routine dental services:

1. "Examination." A study of all the structures of the oral cavity, including the recording of the conditions of all such structures and an appropriate history thereof. As a minimum, such study shall include charting of caries, identification of periodontal disease, occlusal discrepancies, and the detection of oral lesions.

2. "Diagnosis." An opinion of findings in an examination.

3. "Treatment planning." A written statement of treatment recommendations following an examination and diagnosis. This statement shall include a written itemized treatment recommendation and written itemized fee statement.

4. "Radiographs." Shall document type and quantity. (See definitions).

5. "Complete or partial dentures and crowns." Any advertisement shall include full disclosure of all related fees and procedures.

6. "Prophylaxis." The removal of calculus, accretions and stains from exposed surfaces of the teeth and from the gingival sulcus.

7. "Simple extractions." A service for the removal of nonimpacted teeth, including a full disclosure of all related fees and procedures.

8. Other procedures which are determined by the board to be routine dental services are those services set forth in the American Dental Association's "Code on Dental Procedures and Nomenclature," as published in the Journal of the American Dental Association (JADA), as amended, which is hereby adopted and incorporated by reference.

F. The following practices shall constitute false, deceptive or misleading advertising within the meaning of § 54.1-2706(7) of the Code of Virginia.

1. Publishing an advertisement which contains a material misrepresentation or omission of facts.

2. Publishing an advertisement which contains a representation or implication that is likely to cause an ordinarily prudent person to misunderstand or be deceived, or that fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive.

3. Publishing an advertisement which fails to include the information and disclaimers required by § 4.4 of these regulations.

Proposed Regulations

4. Publishing an advertisement which contains a claim of professional superiority, claims to be a specialist, or uses any of the terms to designate a dental specialty such as: (i) endodontist; (ii) oral or maxillofacial surgeon; (iii) oral pathologist; (iv) orthodontist; (v) pediatric dentist; (vi) periodontist; (vii) prosthodontist; (viii) public health or any derivation of these specialties unless he is entitled to such specialty designation under the guidelines or requirements for specialties approved by the Commission on Dental Accreditation and the Council on Dental Education of the American Dental Association in effect on January 1, 1988, or such guidelines or requirements as subsequently amended and approved by the dental disciplinary board, or other such organization recognized by the board.

A dentist not currently entitled to such specialty designation shall not represent that his practice is limited to providing services in a specialty area without clearly disclosing in the representation that he is a general dentist. A specialist who represents services in areas other than his specialty is considered general dentistry.

G. Signage.

Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§ 54.1-2718 and 54.1-2720 of the Code of Virginia are complied with.

§ 4.5. Nondelegable duties.

A. Nondentists.

The following duties shall not be delegated to a nondentist:

1. Final diagnosis and treatment planning.
2. Performing surgical or cutting procedures on hard or soft tissue.
3. Prescribing drugs, medicaments and work authorizations.
4. Adjusting fixed or removable appliances or restorations in the oral cavity.
5. Making occlusal adjustments in the oral cavity.
6. Performing pulp capping and pulpotomy procedures.
7. Administering and monitoring local or general anesthetics, conscious sedation and administering nitrous oxide oxygen inhalation analgesia, except as provided for in § 54.1-2701 of the Code of Virginia and § 5.4 A 17 of these regulations.

8. Condensing and carving amalgam restorations.

9. Placing and contouring silicate cement and composite resin restorations.

10. Placement and fitting of orthodontic arch wire and making ligature adjustments creating active pressure on the teeth wires.

11. No person, not otherwise licensed by the board, shall place or expose dental x-ray film unless he has (i) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association, or (ii) been certified by the American Society of Radiological Technicians, (iii) satisfactorily completed a course and passed an examination in compliance with guidelines provided by the board, or (iv) passed the board's examination in radiation safety and hygiene followed by on-the-job training. Any individual not able to successfully complete the board's examination after two attempts may be certified only by completing clause (i), (ii) or (iii) of this provision. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

12. Taking impressions for any working model except as provided in § 5.3 A 2 of these regulations.

PART V. DIRECTION AND UTILIZATION OF DENTAL HYGIENISTS AND DENTAL ASSISTANTS.

§ 5.1. Employment of dental hygienists.

No dentist shall direct more than two dental hygienists at one and the same time.

§ 5.2. Required direction.

In all instances, a licensed dentist assumes ultimate responsibility for determining, on the basis of his diagnosis, the specific treatment the patient will receive and which aspects of treatment will be delegated to qualified personnel in accordance with these regulations and the Code of Virginia.

Dental hygienists and assistants shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency and under the direction and control of the employing dentist or the dentist in charge, or the dentist in charge or control of the governmental agency. The dentist shall be present and evaluate the patient during the time the patient is in the facility. Persons acting within the scope of a license issued to them by the board under § 54.1-2725 of the Code of Virginia to teach dental hygiene and those persons licensed pursuant to § 54.1-2722 of the Code of Virginia providing oral health education and preliminary dental screenings in any setting are exempt from this section.

Proposed Regulations

§ 5.3. Dental hygienists.

A. The following duties may be delegated to dental hygienists under direction:

1. Scaling, root planing and polishing natural and restored teeth using hand instruments, rotary instruments, prophy-jets and ultrasonic devices.
2. Taking of working impressions for construction of athletic and fluoride guards.
3. Performing an original or clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for assisting the dentist in the diagnosis.
4. *Subgingival irrigation or application of Schedule VI medicinal agents.*

§ 5.4. Dental hygienists and dental assistants.

A. Only the following duties may be delegated to dental hygienists and dental assistants under direction:

1. No person not otherwise licensed by the board shall apply Schedule VI topical medicinal agents, including topical fluoride or desensitizing agents (aerosol topical anesthesia excluded), unless the individual has (i) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association and been certified by the board, or (ii) satisfactorily completed a training program approved by the board and been certified by the board. This training program may be implemented by dentists and dental hygienists who are currently licensed to practice dentistry and dental hygiene in Virginia, and by certified dental assistants who are currently certified by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.
2. Acid etching in those instances where the procedure is reversible.
3. Application of sealants.
4. Serving as a chairside assistant aiding the dentist's treatment by concurrently performing supportive procedures for the dentist, including drawing up and compounding medications for administration by the dentist. The foregoing shall not prohibit the dentist from delegating to another licensed health care professional duties within the scope of their respective practice.
5. Placing and removing matrixes for restorations.
6. Placing and removing rubber dam.

7. Placing and removing periodontal packs.

8. Polishing natural and restored teeth by means of a rotary rubber cup or brush and appropriate polishing agent.

9. Holding and removing impression material for working models after placement in the patient's mouth by the dentist.

10. Taking nonworking impressions for diagnostic study models.

11. Placing of amalgam in prepared cavities with the carrier to be condensed and carved by the dentist.

12. Placing and removing elastic orthodontic separators.

13. Checking for loose orthodontic bands.

14. Removing arch wires and ligature ties.

15. Placing ligatures to tie in orthodontic arch wire that has been fitted and placed by the dentist.

16. Selecting and prefitting of orthodontic bands for cementation by the dentist.

17. Monitoring of nitrous oxide oxygen inhalation analgesia.

18. Placing and exposing dental x-ray film. (No person who is not otherwise licensed by the board shall place or expose dental x-ray film unless the requirements of subsection A, paragraph 11, of § 4.5 of these regulations have been fulfilled.)

19. Removing socket dressings.

20. Instructing patients in placement and removal of retainers and appliances after they have been completely fitted and adjusted in the patient's mouth by the dentist.

21. Removing sutures.

22. Removing supragingival cement on crowns, bands, and restorations.

Any procedure not listed above is prohibited.

§ 5.5. What does not constitute practice.

A. Oral health education and preliminary dental screenings in any setting are not considered the practice of dental hygiene and dentistry.

B. Recording a patient's pulse, blood pressure, temperature, and medical history.

Proposed Regulations

V.A.R. Doc. No. R94-441; Filed January 3, 1994, 2:37 p.m.

BOARD OF GAME AND INLAND FISHERIES

Title of Regulation: VR 325-01-1. Definitions and Miscellaneous: In General.

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Date: March 18, 1994 - 9:30 a.m.

Written comments may be submitted until March 28, 1994.

(See Calendar of Events section for additional information)

Basis: Authority for the adoption of this proposed regulation by the board is provided in §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Purpose: The purpose of this proposed regulation is to enable the agency to implement legislation enacted by the General Assembly in its 1993 Session by establishing the fees for permits which are required to engage in specified activities.

Substance: The proposed amendments prescribe in regulation the fees to be charged by the Board of Game and Inland Fisheries for permits required by the Code of Virginia to (i) capture, hold, propagate, and dispose of wildlife as specified in § 29.1-417; (ii) collect specimens as specified in § 29.1-418; (iii) conduct field trials as specified in § 29.1-422; and (iv) conduct regattas, races, marine parades, tournaments, or exhibitions as specified in § 29.1-743. The proposed amendments also exempt veterinarians from permit requirements when wildlife is being held temporarily for medical treatment.

Issues: In its 1993 Session, the General Assembly passed HB 1777 (Chapter 623, 1993 Acts of Assembly). This legislation revised a number of permits required by the Code of Virginia to capture, hold, propagate, and dispose of wildlife; to collect specimens; to conduct field trials; and to conduct regattas, races, or marine parades, tournaments, or exhibitions. This legislation also changed the fees which must be paid to obtain those permits, and gave the Board of Game and Inland Fisheries the discretion to set the exact amount of each permit fee, but within a specified maximum amount.

In 1988, the Attorney General issued a formal opinion to the State Health Commissioner which stated that the assessment of fees for permits issued by the State Department of Health must be established in regulation. Recent advice from the Attorney General's office to the Department of Game and Inland Fisheries indicated that the situation facing the department with respect to the establishment of permit fees was identical to that facing the Department of Health in 1988, and that the promulgation of a formal regulation(s) was required. The

purpose of this proposed regulation, therefore, is to enable the agency to establish the required fees pursuant to advice from the Attorney General. The department cannot comply with state law until this regulation is adopted.

The department has carefully investigated the possibility of other alternatives to promulgation of the proposed regulation and has found none to be available. Failure to promulgate this regulation will prevent the department from charging fees for the permits required under HB 1777. The inability to charge fees will prevent the agency from coming into compliance with the language requiring the recovery of the costs associated with the permits.

The public participation process being used by the Department of Game and Inland Fisheries is different than the process used by the department for the consideration of wildlife management regulations. Persons interested in commenting on the proposed permit fee structure regulation need to follow the provisions of the department's Public Participation Guidelines (PPGs) adopted in accordance with the Administrative Process Act. Copies of the department's PPGs are available upon request.

Estimated Impact:

A. Entities Impacted: The Code of Virginia requires, with a few exceptions, all individuals who wish to hold, capture, propagate, or dispose of wildlife, whether for personal or commercial purposes, to obtain a permit from the Department of Game and Inland Fisheries. Similar requirements were enacted for individuals who wish to collect specimens; to conduct field trials; or to conduct regattas, races, or marine parades, tournaments, or exhibitions. Therefore, the proposed regulation will impact all individuals who are interested in participating in the permitted activities. For FY 1992-93, approximately 1,500 such permits were issued.

B. Fiscal Impact:

1. Costs to Affected Entities: The Code of Virginia requires all affected individuals to pay an amount for the permits "sufficient to defray the costs of processing the permit and administering the permitted activity" and sets varying amounts for the different permits. The cost of a permit is, therefore, dependent on the permitted activity. For example, the fee associated with a permit to hold and exhibit wildlife for educational purposes is \$20. The fee associated with a permit to hold and propagate wildlife for sale is \$50. In all cases, the amounts to be charged are based on the agency's anticipated cost of issuing the permit and administering the permitted activity.

2. Costs to Agency: Costs associated with this regulation will be offset by the fees charged for the permits.

3. Source of Agency Funds: The source of funds

Proposed Regulations

associated with this regulation will be the fees to be charged for the permits.

4. Benefits: More and more people are becoming interested in buying, selling, and making pets of wildlife, including native animals, exotic and dangerous animals, and threatened and endangered species. As the interest in trading in and making pets of wildlife increases, the need to protect wildlife resources increases. Implementation of this regulation will improve the agency's ability to identify the individuals holding wildlife, thereby providing that protection, especially in the growing area of commercialization. Implementation of this regulation will also improve the agency's ability to prevent unwanted species of animals from being brought into the Commonwealth and accidentally released into the wild.

5. Small Business Impact: It is anticipated that implementation of this regulation will benefit most small businesses. For example, prior to enactment of HB 1777, pet stores and aquaculture establishments could obtain permits only for game species. This precluded, for example, the sale of captive-bred native species of snakes in pet stores and nongame species of fish (such as carp) by aquaculturists, both of which are in demand by the public. Implementation of this regulation will enable small businesses to legally engage in these activities. Discussions with representatives of these industries indicate that the cost of the required permits will be negligible and will not impact their operations. Small businesses that sell certain types of live bait will be required to obtain a permit for the first time for activities that had been routine in the past. These businesses could be negatively impacted by the permit fees that can range up to \$50 per year.

Applicable Federal Requirements: There are no applicable federal requirements.

Summary:

The proposed amendments prescribe in regulation the fees to be charged by the Board of Game and Inland Fisheries for permits required by the Code of Virginia to (i) capture, hold, propagate, and dispose of wildlife as specified in § 29.1-417; (ii) collect specimens as specified in § 29.1-418; (iii) conduct field trials as specified in § 29.1-422; and (iv) conduct regattas, races, marine parades, tournaments, or exhibitions as specified in § 29.1-743. The proposed amendments also exempt veterinarians from permit requirements when wildlife is being held temporarily for medical treatment.

VR 325-01-1. Definitions and Miscellaneous: In General.

§ 1. Definitions; generally.

Words and phrases used in any regulations made by the board shall have the same meaning, unless the context clearly indicates otherwise, as is given for such words and phrases in the Virginia Game and Inland Fisheries laws contained in Title 29.1 of the Code of Virginia.

§ 2. Definitions; "Counties east of the Blue Ridge Mountains."

Whenever the words "counties east of the Blue Ridge Mountains," or language equivalent thereto, appear in a regulation of the board, such words shall apply to the following counties and cities:

Accomack, Albemarle, Amelia, Amherst, Appomattox, Arlington, Bedford, Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesapeake City, Chesterfield, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Franklin, Gloucester, Goochland, Greene, Greensville, Halifax, Hampton City, Hanover, Henrico, Henry, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Nelson, New Kent, Newport News City, Northampton, Northumberland, Nottoway, Orange, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Southampton, Spotsylvania, Stafford, Suffolk City, Surry, Sussex, Virginia Beach City, Westmoreland, and York.

§ 3. Definitions; "Counties west of the Blue Ridge Mountains."

Whenever the words "counties west of the Blue Ridge Mountains," or language equivalent thereto, appear in a regulation of the board, such words shall apply to the following counties:

Alleghany	Lee
Augusta	Montgomery
Bath	Page
Bland	Pulaski
Botetourt	Roanoke
Buchanan	Rockbridge
Carroll	Rockingham
Clarke	Russell
Craig	Scott
Dickenson	Shenandoah
Floyd	Smyth
Frederick	Tazewell
Giles	Warren
Grayson	Washington
Highland	Wise
	Wythe

§ 3-1. Definitions; Dismal Swamp Line.

Whenever the words "Dismal Swamp Line," or language equivalent thereto, appear in a regulation of the board, such words shall apply to a line: Beginning at a point on State Highway 10 where it intersects the Isle of Wight

Proposed Regulations

County line, thence along such highway to its intersection with the corporate limits of the City of Suffolk, thence through the corporate limits of the City of Suffolk to its intersection with State Secondary Highway 642, and thence along State Secondary Highway 642 (White Marsh Road) in a southerly and westerly direction to State Secondary Highway 604 (Desert Road), and thence southerly along State Secondary Highway 604 to the North Carolina line.

§ 4. [Repealed].

§ 5. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal" and "domestic animal."

In accordance with § 29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

"Wild animal" means any member of the animal kingdom, except domestic animals, including without limitation any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any hybrid thereof, except as otherwise specified in regulations of the board, or part, product, egg, or offspring thereof, or the dead body or parts thereof.

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's 1991 official listing of "Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia which have established wild, self-sustaining populations, as included in the department's 1991 official listing of "Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals.

Domestic dog (*Canis familiaris*).

Domestic cat (*Felis catus*), including hybrids with wild felines.

Domestic horse (*Equus caballus*), including hybrids with *Equus asinus*.

Domestic ass, burro, and donkey (*Equus asinus*).

Domestic cattle (*Bos taurus* and *Bos indicus*).

Domestic sheep (*Ovis aries*) including hybrids with

wild sheep.

Domestic goat (*Capra hircus*).

Domestic swine (*Sus scrofa domestica*), including pot-bellied pig.

Llama (*Lama glama*).

Alpaca (*Lama pacos*).

Camels (*Camelus bactrianus* and *Camelus dromedarius*).

Domesticated races of hamsters (*Mesocricetus* spp.).

Domesticated races of mink (*Mustela vison*) where adults are heavier than 1.15 kg or their coat color can be distinguished from wild mink.

Domesticated races of red fox (*Vulpes*) where their coat color can be distinguished from wild red fox.

Domesticated races of guinea pigs (*Cavia porcellus*).

Domesticated races of gerbils (*Meriones unguiculatus*).

Domesticated races of chinchillas (*Chinchilla laniger*).

Domesticated races of rats (*Rattus norvegicus* and *Rattus rattus*).

Domesticated races of mice (*Mus musculus*).

Domesticated races of European rabbit (*Oryctolagus cuniculus*).

Domesticated races of chickens (*Gallus*).

Domesticated races of turkeys (*Meleagris gallopavo*).

Domesticated races of ducks and geese distinguishable morphologically from wild birds.

Feral pigeons (*Columba domestica* and *Columba livia*) and domesticated races of pigeons.

Domesticated races of guinea fowl (*Numida meleagris*).

Domesticated races of peafowl (*Pavo cristatus*).

§ 6. Definitions; "Person."

The word "person," when used in the regulations of the board, may extend and be applied to bodies politic and corporate as well as individuals.

§ 7. Violations of regulations.

Any violation of any regulation or part thereof of the

Proposed Regulations

board is made a misdemeanor by §§ 29.1-505 and 29.1-746 of the Code of Virginia and persons convicted of such violation will be punished as provided in said sections or other applicable provisions of the Code of Virginia.

§ 8. Certificate on hunting, trapping and fishing license to be executed by licensee.

No state or county resident license to hunt, trap or fish in or on the lands or inland waters of this Commonwealth shall be deemed to be issued until the certificate printed on the reverse side thereof shall have been executed by the named licensee.

§ 9. Permits for drilling, dredging and other operations in Back Bay area.

Drilling, dredging and any other operation designed to recover or obtain shell, minerals or any other substance shall be unlawful on lands owned by or under the control of the Commonwealth of Virginia under Back Bay, its tributaries and the North Landing River from the North Carolina line to North Landing Bridge unless a permit is first obtained from the board. Application for a permit under this section shall be made to the board in such form and substance as the board may require. Under the authority of § 29.1-103 of the Code of Virginia, the board shall grant or refuse such permits as conditions may require in order to prevent practices and operations which would harm the area for fish and wildlife.

§ 10. Prohibited use of vehicles on department-owned lands.

It shall be unlawful on department-owned lands to drive through or around gates designed to prevent entry with any type of motorized vehicle or to use such vehicles to travel anywhere on such lands except on roads open to vehicular traffic. Any motor-driven conveyance shall conform with all state laws for highway travel; provided, that this requirement shall not apply to the operation of motor vehicles for administrative purposes by department-authorized personnel on department-owned lands.

§ 11. Refusal to surrender licenses, permits, stamps or records to department representatives.

No agent, or any other person for him, in possession of issued or unissued hunting, fishing or trapping licenses, permits or stamps or records pertaining thereto, shall refuse to surrender upon demand such licenses, permits, stamps or records to department representatives authorized by the director to take such licenses, permits, stamps and records into custody.

§ 12. Appointment of new consignment agents for sale of hunting and fishing licenses.

A. Except as provided below, no person shall be appointed as a consignment agent for the sale of hunting

and fishing licenses unless he first sells licenses on a cash basis for at least one year. In addition, the dollar volume of actual or projected sales must equal at least 90% of the average hunting and fishing license sales of consignment agents in the locality.

B. If the cash agent sells the required number of licenses, he may be appointed as a consignment agent, provided he is approved for a surety bond by the board's bonding company.

C. This regulation is applicable to new appointments and not to transfers of existing appointments; provided, that the director may appoint consignment agents as needed to provide for a minimum of two consignment agents within a locality. In addition, the director may appoint consignment agents on state-owned or state-leased facilities.

§ 13. Endangered and threatened species. Adoption of federal list; additional species enumerated.

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 U.S.C. 1531-1543), as amended, and declares all species listed thereon to be endangered or threatened species in the Commonwealth.

B. In addition to the provisions of subsection A, the following species are declared endangered or threatened in this Commonwealth, and are afforded the protection provided by Article 6, Chapter 5, Title 29.1 of the Code of Virginia:

1. Fish:

Endangered:

Dace, Tennessee	Phoxinus Tennesseeensis
Darter, duskytail	Etheostoma sp
Darter, sharphead	Etheostoma acuticeps
Darter, variegate	Etheostoma variatum
Sunfish, blackbanded	Enneacanthus chaetodon

Threatened:

Darter, Carolina	Etheostoma collis
Darter, Tippecanoe	Etheostoma tippecanoe
Darter, greenfin	Etheostoma chlorobranchium
Darter, longhead	Percina macrocephala
Darter, western sand	Ammocrypta clara
Madtom, orangefin	Noturus gilberti
Paddlefish	Polyodon spathula
Shiner, emerald	Notropis atherinoides
Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus

2. Amphibians:

Endangered:

Salamander, eastern tiger	Ambystoma tigrinum
---------------------------	--------------------

Threatened:

Proposed Regulations

Salamander, Mabee's	<i>Ambystoma mabeei</i>	Pigtoe, Atlantic	<i>Fusconaia masoni</i>
Treefrog, barking	<i>Hyla gratiosa</i>	Pimpleback	<i>Quadrula pustulosa</i> <i>pustulosa</i>
3. Reptiles:		Rabbitsfoot, rough	<i>Quadrula cylindrica</i> <i>strigillata</i>
Endangered:		Riversnail, spiny	<i>Io fluviialis</i>
Rattlesnake, canebrake	<i>Crotalus horridus</i> <i>atricaudatus</i>	Sandshell, black	<i>Ligumia recta</i>
Turtle, bog	<i>Clemmys muhlenbergii</i>	Sheepnose	<i>Plethobasus cyphus</i>
Turtle, chicken	<i>Deirochelys reticularia</i>	Supercoil, brown	<i>Paravitrea septadens</i>
Threatened:		7. Arthropods:	
Lizard, eastern glass	<i>Ophisaurus ventralis</i>	Threatened:	
Turtle, wood	<i>Clemmys insculpta</i>	Amphipod, Madison Cave	<i>Stygobromus stegerorum</i>
4. Birds:		Pseudotremia, Ellett Valley	<i>Pseudotremia cavernarum</i>
Endangered:		Xystodesmid, Laurel Creek	<i>Sigmoria whiteheadi</i>
Plover, Wilson's	<i>Charadrius wilsonia</i>	C. It shall be unlawful to take, transport, process, sell or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife.	
Wren, Bewick's	<i>Thryomanes bewicki</i>	§ 14. Endangered species; definitions.	
Threatened:		For the purposes of §§ 29.1-564 through 29.1-570 of the Code of Virginia, § 13 of this regulation and this section:	
Sandpiper, upland	<i>Bartramia longicauda</i>	1. "Endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range within the Commonwealth, other than a species of the class Insecta deemed to be a pest whose protection would present an overriding risk to the health or economic welfare of the Commonwealth.	
Shrike, loggerhead	<i>Lanius ludovicianus</i>	2. "Fish or wildlife" means any member of the animal kingdom, vertebrate or invertebrate, without limitation, and includes any part, products, egg or the dead body or parts thereof.	
Sparrow, Bachman's	<i>Ammophila aestivalis</i>	3. "Harass," in the definition of "take," means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.	
Sparrow, Henslow's	<i>Ammodrammus henslowii</i>	4. "Harm," in the definition of "take," means an act which actually kills or injures wildlife. Such act may include significant habitat modifications or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.	
Tern, gull-billed	<i>Sterna nilotica</i>	5. "Person" means any individual, firm, corporation, association or partnership.	
5. Mammals:		6. "Special concern" means any species, on a list maintained by the director, which is restricted in distribution, uncommon, ecologically specialized or threatened by other imminent factors.	
Endangered:			
Bat, eastern big-eared	<i>Plecotus rafinesquii</i> <i>macrotis</i>		
Hare, snowshoe	<i>Lepus americanus</i>		
Shrew, water	<i>Sorex palustris</i>		
Vole, rock	<i>Microtus chrotorrhinus</i>		
6. Molluscs:			
Endangered:			
Bean, purple	<i>Villosa perpurpurea</i>		
Cavesnail, Unthanks	<i>Holsingeria unthinksensis</i>		
Coil, rubble	<i>Helicodiscus lirellus</i>		
Coil, shaggy	<i>Helicodiscus diadema</i>		
Combsnail, Cumberland	<i>Epioblasma brevidens</i>		
Deertoe	<i>Truncilla truncata</i>		
Elephant-ear	<i>Elliptio crassidens</i>		
Floater, brook	<i>Alasmidonta varicosa</i>		
Heelsplitter, Tennessee	<i>Lasmigona holstonia</i>		
Lilliput, purple	<i>Toxolasma lividus</i>		
Mussel, oyster	<i>Epioblasma capsaeformis</i>		
Mussel, slippershell	<i>Alasmidonta viridis</i>		
Pigtoe, Ohio	<i>Pleurobema cordatum</i>		
Pigtoe, pink	<i>Pleurobema rubrum</i>		
Snuffbox	<i>Epioblasma triquetra</i>		
Spectaclecase	<i>Cumberlandia monodonta</i>		
Supercoil, spirit	<i>Paravitrea hera</i>		
Threatened:			
Papershell, fragile	<i>Leptodea fragilis</i>		
Pearlymussel, slabside	<i>Lexingtonia dolabelloides</i>		

Proposed Regulations

7. "Species" includes any subspecies of fish or wildlife and any district population segment of any species or vertebrate fish or wildlife which interbreed when mature.

8. "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, possess or collect, or to attempt to engage in any such conduct.

9. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the Commonwealth.

§ 15. Structures on department-owned lands and national forest lands.

A. It shall be unlawful to construct, maintain or occupy any permanent structure, except by permit, on department-owned lands and national forest lands. This provision shall not apply to structures, stands or blinds provided by the department.

B. It shall be unlawful to maintain any temporary dwelling on department-owned lands for a period greater than 14 consecutive days. Any person constructing or occupying any temporary structure shall be responsible for complete removal of such structures when vacating the site.

C. It shall be unlawful to construct, maintain or occupy any tree stand on department-owned lands and national forest lands ; provided, that portable tree stands which are not permanently affixed may be used.

§ 16. Nuisance species designated.

A. The board hereby designates the following species as nuisance species pursuant to § 29.1-100 of the Code of Virginia.

1. Mammals:

- a. House mouse (*Mus musculus*).
- b. Norway rat (*Rattus norvegicus*).
- c. Black rat (*Rattus rattus*).
- d. Coyote (*Canis latrans*).

2. Birds:

- a. European starling (*Sturnus vulgaris*).
- b. English (house) sparrow (*Passer domesticus*).
- c. Pigeon (Rock Dove) (*Columba livia*).

B. It shall be unlawful to take, possess, transport or sell all other wildlife species not classified as game, furbearer

or nuisance, or otherwise specifically permitted by law or regulation.

§ 17. Taking and possession of certain rodents for private use.

Except as otherwise provided for in the Code of Virginia and regulations of the board, it shall be lawful to take and possess no more than three individuals of any single species of rodents (order Rodentia) for private use except for those species listed as game or furbearers, endangered or threatened (Code of Virginia, § 29.1-568), or listed as special concern, including the following:

1. Allegheny woodrat (*Neotoma floridana*).
2. Pungo mouse (*Peromyscus leucopus easti*).
3. Rock vole (*Microtus chrotorrhinus carolinensis*).
4. Cotton mouse (*Peromyscus gossypinus gossypinus*).

§ 18. Taking of invertebrates.

A. Earthworms.

Earthworms may be taken at any time for private or commercial use.

B. Other invertebrates.

Except as otherwise provided for in §§ 3.1-1020 through 3.1-1030 and 29.1-418 of the Code of Virginia and in VR 325-01-1, § 13, VR 325-01-2 and VR 325-03-5, § 1 invertebrates, other than those listed in endangered or threatened, may be taken for private use.

§ 19. Definitions; "designated stocked trout waters."

When used in regulations of the board, "designated stocked trout waters" will include those waters that are stocked with harvestable-sized trout and are listed by the director in the annual Trout Stocking Plan. Designated stocked trout waters are posted by the department with appropriate "stocked trout waters" signs.

§ 20. Fees for miscellaneous permits.

A. Pursuant to §§ 29.1-417, 29.1-418, 29.1-422, 29.1-743 and other applicable provisions of the Code of Virginia, except as provided by these regulations the following fees shall be paid by applicants for the specified permits before any such permit may be issued.

Boat Ramp Special Use

Nonprofit Public Use\$10

Private/Commercial Use\$50

Boat Regattas/Tournaments\$50/day

Proposed Regulations

<i>Collect and Sell</i>	\$50
<i>Commercial Nuisance Animals</i>	\$25
<i>Deer Farming</i>	\$350
<i>Exhibitors</i>	
<i>Commercial Use</i>	\$50
<i>Educational/Scientific Use</i>	\$20
<i>Exotic Importation and Holding</i>	\$10
<i>Field Trial</i>	\$25
<i>Fish Stocking</i>	\$ 5
<i>Hold for Commercial Use</i>	\$50
<i>Propagation</i>	
<i>Commercial Use</i>	\$50
<i>Private Use</i>	\$20
<i>Licensed Shooting Preserves</i>	\$20
<i>Rehabilitation</i>	\$10
<i>Scientific Collection</i>	\$20
<i>Special Hunting Permit</i>	\$10
<i>Striped Bass Tournament</i>	\$10
<i>Threatened & Endangered Species</i>	\$20
<i>Wolf Hybrid – Individual</i>	
<i>Nonneutered</i>	\$20/animal
<i>Neutered</i>	\$10/animal
<i>Wolf Hybrid – Kennel</i>	\$100

B. Veterinarians shall not be required to obtain a permit to hold wildlife temporarily for medical treatment.

VA.R. Doc. No. R94-446; Filed January 5, 1994, 11:48 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-01-86. Hospital Credit Balance Reporting.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted through March 25, 1994.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. Section 9-6.14:7.1 of the Administrative Process Act provides for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews.

The Social Security Act § 1902(a)(25) requires that the states take all reasonable measures to ascertain legally liable third parties in order to pay for the care and services available to recipients.

Purpose: The purpose of this proposal is to promulgate regulations which ensure that hospitals refund Medicaid overpayments in a timely fashion. Untimely review and refunding of Medicaid overpayments result in Medicaid program funds being unavailable for payment of services.

Summary and Analysis: The section of the State Plan for Medical Assistance which is affected by this action are new pages 86 and 86.1, which create § 6.4, Hospital Credit Balance Reporting.

Title XIX of the Social Security Act § 1902(a)(25) provides that states take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available to recipients of Medicaid. Medicaid is by law the payor of last resort.

In December 1992, the Office of the Inspector General of the U.S. Department of Health and Human Services issued a report entitled "Medicaid Accounts Receivables with Credit Balances at Hospitals Participating in the Medicaid Program Administered by the Virginia Department of Medical Assistance Services." As a result of a review of a sample number of hospitals participating in the Virginia Medicaid program, hospitals were determined to be receiving and retaining Medicaid overpayments contrary to federal law and regulations.

The requirement that Medicaid be the payor of last resort is important because the majority of Medicaid credit balance accounts reviewed by the Inspector General resulted from payments by Medicaid and a primary third party insurer. Other credit balances resulted from various billing practices by the hospital providers which resulted in duplicate payments or the billing for an anticipated service not actually delivered.

Since the states share responsibility with hospitals for ensuring that Medicaid credit balances caused by overpayments are refunded to the Medicaid program, the Inspector General recommended that the department

Proposed Regulations

require hospitals to report Medicaid credit balance accounts on a quarterly basis and to make timely refunds of all identified Medicaid overpayments. A similar requirement is already in effect for all hospitals under the Medicare program.

Failure to enact this regulation will result in Medicaid overpayments not being refunded to this agency either in a timely manner or at all.

Issues: The primary advantage to the public of the adoption of this regulation is that public funds appropriated for the coverage of medical care services for the indigent and poor will be more quickly returned to DMAS for appropriate expenditure. There is no primary disadvantage to the public in the adoption of this regulation.

The primary disadvantage to the hospital providers, which receive Medicaid funds in payment for services rendered, is that they will be required to more diligently monitor their credit balance accounts and more quickly return funds to DMAS. These providers will no longer have the short term use of these public funds. Since these same providers are being required by the Medicare Program to perform the same function, Medicaid's requirements are expected to be minimally additional to Medicare's.

The primary advantage to DMAS of the adoption of this regulation is the improved management and accountability of public funds. There is no disadvantage to the agency in implementing this regulation.

Impact: Prior to this regulation, there was no assurance that hospitals were performing timely reviews of accounts with credit balances and refunding all identified Medicaid overpayments to the department. This regulation is budget neutral since these funds would have eventually been recovered by DMAS during the cost settlement or third party liability processes.

All hospitals, which number approximately 150, will be affected by this proposed regulation. There will be no additional costs to this provider group's operations because reviewing accounts for credit balances is part of routine bookkeeping practice. There will be no additional costs to DMAS to administer this regulation because these funds would have eventually been recovered through the cost settlement or third party liability processes. This regulation will merely speed up the funds recovery process.

Forms: A new form, the Medicaid Credit Balance Report, specifically designed for reporting Medicaid credit balances has been developed. The form is almost identical to the form used by HCFA for hospitals to report Medicare credit balances.

Summary:

The purpose of this proposal is to promulgate regulations which ensure that hospitals refund

Medicaid overpayments in a timely fashion. Untimely review and refunding of Medicaid overpayments result in Medicaid program funds being unavailable for payment of services.

The section of the State Plan for Medical Assistance which is affected by this action are new pages 86 and 86.1, which create § 6.4, Hospital Credit Balance Reporting.

Title XIX of the Social Security Act § 1902(a)(25) provides that states take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available to recipients of Medicaid. Medicaid is by law the payor of last resort.

In December 1992, the Office of the Inspector General of the U.S. Department of Health and Human Services issued a report entitled "Medicaid Accounts Receivables with Credit Balances at Hospitals Participating in the Medicaid Program Administered by the Virginia Department of Medical Assistance Services." As a result of a review of a sample number of hospitals participating in the Virginia Medicaid program, hospitals were determined to be receiving and retaining Medicaid overpayments contrary to federal law and regulations.

The requirement that Medicaid be the payor of last resort is important because the majority of Medicaid credit balance accounts reviewed by the Inspector General resulted from payments by Medicaid and a primary third party insurer. Other credit balances resulted from various billing practices by the hospital providers which resulted in duplicate payments or the billing for an anticipated service not actually delivered.

Since the states share responsibility with hospitals for ensuring that Medicaid credit balances caused by overpayments are refunded to the Medicaid program, the Inspector General recommended that the department require hospitals to report Medicaid credit balance accounts on a quarterly basis and to make timely refunds of all identified Medicaid overpayments. A similar requirement is already in effect for all hospitals under the Medicare program.

Failure to enact this regulation will result in Medicaid overpayments not being refunded to this agency either in a timely manner or at all.

VR 460-01-86. Hospital Credit Balance Reporting.

Citations: § 1902(a)(25) of the Act; 42 CFR Part 43 B, Subparts D and F

§ 6.4. Hospital credit balance reporting.

Hospitals shall be required to report Medicaid credit balances on a quarterly basis no later than 30 days after

Proposed Regulations

the close of each quarter. For a credit balance arising on a Medicaid claim within three years of the date paid by the DMAS, the hospital shall either submit a check for the balance due or an adjustment claim with the Credit Balance Report. For credit balances arising on claims over three years old, the hospital shall submit a check for the balance due. Interest at the maximum rate allowed shall be assessed for those credit balances (overpayments) which are identified on the quarterly report but not reimbursed with the submission of the form. Interest will begin to accrue 30 days after the end of the quarter and will continue to accrue until the overpayment has been refunded or adjusted. A penalty shall be imposed for failure to submit the form timely as follows:

1. Hospitals which have not submitted their Medicaid credit balance data within the required 30 days after the end of a quarter shall be notified in writing. If the required report is not submitted within the next 30 days, there will be a 20% reduction in the Medicaid per diem payment.

2. If the required report is not submitted within the next 30 days (60 days after the due date), the per diem payments shall be reduced to -0- until the report is received.

3. If the credit balance has not been refunded within 90 days of the end of a quarter, it shall be recovered, with interest, through the use of a negative balance transaction on the weekly remittance.

A periodic audit shall be conducted of hospitals' quarterly submission of Medicaid credit balance data. Hospitals shall maintain an audit trail back to the underlying accounts receivable records supporting each quarterly report.

VA.R. Doc. No. R94-445; Filed January 5, 1994, 11:34 a.m.

MEDICAID CREDIT BALANCE REPORT

Provider Name: _____

Provider Number: _____

Quarter Ending: _____

Type of Claim: _____ (Inpatient/Outpatient)

DRAFT

Page ____ of ____

Contact Person: _____

Phone #: () _____ - _____

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Beneficiary Name	Medicaid #	Claim Reference #	Admission Date MM/DD/YY	Discharge Date MM/DD/YY	Paid Date MM/DD/YY	Cost Report O/C	Amount of Credit Balance	Amount Repaid	Method of Payment	Credit Balance Outstanding	Reason	Name/Address of Primary Insurer	Amount of Primary Payment	Adj (x)

Proposed Regulations

Title of Regulation: State Plan for Medical Assistance Relating to Organ Transplantation.

VR 460-03-3.1100. Amount, Duration and Scope of Services (Supplement 1 to Attachment 3.1 A&B).

VR 460-02-3.1500. Standards for the Coverage of Organ Transplant Services.

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

Public Hearing Date: N/A – Written comments may be submitted through March 25, 1994.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. Section 9-6.14:7.1 of the Administrative Process Act provides for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews. Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA.

Purpose: The purpose of this proposal is to promulgate permanent regulations, to supersede the existing emergency regulations, which conform to federal law and the January 24, 1993, Circuit Court decision in *Pereira v. Kozlowski*.

Summary and Analysis: The sections of the State Plan for Medical Assistance which are affected by this action are the Amount, Duration, and Scope of Services (Supplement 1 to Attachment 3.1 A&B) and Standards for the Coverage of Organ Transplant Services (Attachment 3.1 E).

Medicaid's transplant policy prior to the implementation of the emergency regulation limited coverage to cornea and kidney transplantation only. This policy became effective February 1989 following an extensive study by the Board of Medical Assistance Services (BMAS) of transplantation issues.

In March 1992 BMAS, at the request of the Secretary of Health and Human Services, undertook a study of coverage of transplantation services by the Virginia Medicaid program. Transplantation is a rapidly transforming area of medicine, in which the efficacy of procedures, as well as the procedures themselves, are continually evolving. The board periodically reviews transplant coverage to ensure that medically appropriate care is available and accessible to Medicaid recipients.

In conducting its study, BMAS reviewed current literature to evaluate the status of organ and tissue transplantation for end stage renal, liver, lung, heart, and other diseases.

Its inquiry included consideration of medical effectiveness, outcomes and survival rates, organ procurement, costs and financing, and ethical and social issues. It also examined the practices among other third party payers in terms of coverage and reimbursement.

BMAS also invited experts knowledgeable about transplantation issues to testify before it. Those making presentations included bio-medical ethicists, the director of the federal office of organ transplantation, organ procurement specialists, policy experts in the field of transplantation and its coverage, and physicians specializing in transplant procedures. Additionally, BMAS contacted all of the Commonwealth's medical facilities that perform organ transplants to solicit their input. These facilities were extremely responsive in meeting with BMAS and providing information and recommendations. In August 1992, BMAS conducted four public hearings throughout the Commonwealth for the purpose of giving the public the opportunity to comment regarding Medicaid coverage of transplantation. Sixteen people made presentations at these hearings.

Additionally, on June 24, 1993, the decision in *Pereira v. Kozlowski* (CA-92-255) (4th Circuit, 1993) required the Virginia Medicaid program to provide coverage of transplantation services for children under 21 according to the requirements of the Early Periodic Screening, Diagnosis, and Treatment Program.

On July 9, 1993, BMAS acted to adopt the recommendations of its study which would amend the present coverage policy. Coverage of transplantation will be continued for cornea and kidney. Coverage will be expanded, for children (under age 21) only, to liver, heart, and bone marrow (both autologous and allogeneic) transplantation and any other medically necessary transplant procedure that is not experimental or investigational.

Federal law requires that, in order to receive federal matching funds, states specify in their Medicaid State Plans any transplant procedures that are covered. Criteria for patient and facility selection for transplantation procedures must also be incorporated in the State Plan.

Impact: DMAS is issuing these regulations to comply with the order of the Fourth Circuit Court in the case of *Pereira v. Kozlowski* (CA-92-255). There is no funding in the current appropriation for coverage of these expanded services.

It is currently estimated that the cost for providing liver, heart, and bone marrow transplantation services to children will be \$7.4 million (\$3.7 GF) during the first year of coverage and \$7.7 million (\$3.8 GF) during the second year.

Summary:

Medicaid's transplant policy prior to the

implementation of the emergency regulation limited coverage to cornea and kidney transplantation only. This policy became effective February 1989 following an extensive study by the Board of Medical Assistance Services (BMAS) of transplantation issues.

In March 1992 BMAS, at the request of the Secretary of Health and Human Services, undertook a study of coverage of transplantation services by the Virginia Medicaid program. In conducting its study, BMAS reviewed current literature to evaluate the status of organ and tissue transplantation for end stage renal, liver, lung, heart, and other diseases. Its inquiry included consideration of medical effectiveness, outcomes and survival rates, organ procurement, costs and financing, and ethical and social issues. It also examined the practices among other third party payers in terms of coverage and reimbursement.

BMAS also invited experts knowledgeable about transplantation issues to testify before it. Those making presentations included bio-medical ethicists, the director of the federal office of organ transplantation, organ procurement specialists, policy experts in the field of transplantation and its coverage, and physicians specializing in transplant procedures. Additionally, BMAS contacted all of the Commonwealth's medical facilities that perform organ transplants to solicit their input. These facilities were extremely responsive in meeting with BMAS and providing information and recommendations. In August 1992, BMAS conducted four public hearings throughout the Commonwealth for the purpose of giving the public the opportunity to comment regarding Medicaid coverage of transplantation.

Additionally, on June 24, 1993, the decision in *Pereira v. Kozlowski* (CA-92-255) (4th Circuit, 1993) required the Virginia Medicaid program to provide coverage of transplantation services for children under 21 according to the requirements of the Early Periodic Screening, Diagnosis, and Treatment Program.

On July 9, 1993, BMAS acted to adopt the recommendations of its study which would amend the present coverage policy. Coverage of transplantation will be continued for cornea and kidney. Coverage will be expanded, for children (under age 21) only, to liver, heart, and bone marrow (both autologous and allogeneic) transplantation and any other medically necessary transplant procedure that is not experimental or investigational.

Federal law requires that, in order to receive federal matching funds, states specify in their Medicaid State Plans any transplant procedures that are covered. Criteria for patient and facility selection for transplantation procedures must also be incorporated in the State Plan.

VR 460-03-3.1100. Amount, Duration and Scope of

Services.

General.

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home health services. Physical therapy services will be reimbursed only when prescribed by a physician.

§ 1. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 15 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such

Proposed Regulations

admissions will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Repealed.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of ~~transplant services for all eligible persons is limited to transplants for kidneys and corneas. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children under 21 years of age. Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational~~ require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. ~~Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically~~

necessary transplantation procedures that are determined to not be experimental or investigational shall be based upon a rate negotiated with providers on an individual case basis, or a flat rate by procedure, or by procedure and facility. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

J. The department may exempt portions or all of the utilization review documentation requirements of subsections A, D, E, F as it pertains to recipients under age 21, G, or H in writing for specific hospitals from time to time as part of their ongoing hospital utilization review performance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pended claims on a prepayment hospital utilization review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals:

1. The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays.
2. The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the department's auditors to conduct such review.
3. The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.
4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.
5. The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

Proposed Regulations

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

A. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

1. Are furnished to outpatients;
2. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and
3. Are furnished by an institution that:
 - a. Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and
 - b. Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

B. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

C. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.

2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

The same service limitations apply to rural health clinics as to all other services.

2c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

The same service limitations apply to FQHCs as to all other services.

§ 3. Other laboratory and x-ray services.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

§ 4. Skilled nursing facility services, EPSDT and family planning.

4a. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

A. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

B. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

C. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

D. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in the Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients age 21 and over, provided for by the Act § 1905(a).

4c. Family planning services and supplies for individuals of child-bearing age.

A. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

B. Family planning services shall be defined as those services which delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

§ 5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or

Proposed Regulations

elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. These limitations also apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

I. Repealed.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. ~~Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants~~ *Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children under 21 years of age. Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational* require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. ~~The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be based upon a rate negotiated with providers on an individual case basis, or a flat rate by procedure, or by procedure and facility.~~ Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 6. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization

control, or both.

B. Optometrists' services.

Diagnostic examination and optometric treatment procedures and services by ophthalmologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

§ 7. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to 32 visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services. Payment shall not be made for additional service unless authorized by DMAS.

C. Home health aide services provided by a home health

agency.

1. Home health aides must function under the supervision of a professional nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.

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

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medically necessary supplies, equipment, and appliances are covered for patients of the home health agency. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, respiratory equipment and oxygen, and ostomy supplies, as authorized by the agency.

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

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

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

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

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

e. Prosthesis, except for artificial arms, legs, and

Proposed Regulations

their supportive devices which must be preauthorized by the DMAS central office (effective July 1, 1989).

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

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

h. Home or vehicle modifications.

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

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

4. For coverage of blood glucose meters for pregnant women, refer to Supplement 3 to Attachments 3.1 A and B.

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

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually. Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services

that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 dentist.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; dental sealants; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. The following services are also covered through preauthorization: medically necessary full banded orthodontics, for handicapping malocclusions, minor tooth guidance or repositioning appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges. The following service is not covered: routine bases under restorations.

D. The state agency may place appropriate limits on a service based on medical necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray - two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once per 5 years); extractions, orthodontics, tooth guidance appliances, permanent crowns, and bridges, endodontics, patient education and sealants (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services. These services shall be prescribed by a physician and be part of a written plan of care. Any one of these services may be offered as the sole service and shall not be contingent upon the provision of another service. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

11a. Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing homes' operating cost.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;
2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.
3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11b. Occupational therapy.

A. Services for individuals requiring occupational therapy

are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.
2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.
3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see Page 1, General and Page 12, Physical Therapy and Related Services.)

A. These services are provided by or under the

Proposed Regulations

supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);
2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by or under the direction of a speech-language pathologist who meets the qualifications in number 1. The program shall meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and
3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11d. Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service within a 60-day period. A recipient may receive a maximum of 48 visits annually without authorization. The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. This request must be signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision

of services has been authorized by DMAS.

11e. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, a school division, or a rehabilitation agency shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient's condition;
2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;
3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;
4. Include a copy of the physician's orders and plan of care;
5. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);
6. Describe changes in each patient's condition and response to the rehabilitative treatment plan;
7. (Except for school divisions) describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination; and
8. In school divisions, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

11f. Service limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

Proposed Regulations

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

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

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Physical therapy, occupational therapy and speech-language services are to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

A. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered except for over-the-counter drugs when prescribed for nursing facility residents.

B. The following prescribed, nonlegend drugs/drug devices shall be covered: (i) insulin, (ii) syringes, (iii) needles, (iv) diabetic test strips for clients under 21 years of age, (v) family planning supplies, and (vi) those prescribed to nursing home residents.

C. Legend drugs are covered, with the exception of anorexiants prescribed for weight loss and the drugs for classes of drugs identified in Supplement 5.

D. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR § 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be

dispensed as written.

E. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

F. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

G. Drug prior authorization.

1. Definitions.

"Board" means the Board for Medical Assistance Services.

"Committee" means the Medicaid Prior Authorization Advisory Committee.

"Department" means the Department of Medical Assistance Services.

"Director" means the Director of Medical Assistance Services.

"Drug" shall have the same meaning, unless the context otherwise dictates or the Board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq.)

2. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 10 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; and one shall be a Medicaid recipient.

a. A quorum for action by the committee shall consist of six members.

b. The members shall serve at the pleasure of the board; vacancies shall be filled in the same manner as the original appointment.

c. The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion Medical Society and the Virginia Pharmaceutical Association when making appointments to the committee.

d. The committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the board, the director, or any two members of the committee. The department shall provide appropriate staffing to the committee.

3. Duties of the committee.

a. The committee shall make recommendations to the board regarding drugs or categories of drugs to

Proposed Regulations

be subject to prior authorization, prior authorization requirements for prescription drug coverage and any subsequent amendments to or revisions of the prior authorization requirements. The board may accept or reject the recommendations in whole or in part, and may amend or add to the recommendations, except that the board may not add to the recommendation of drugs and categories of drugs to be subject to prior authorization.

b. In formulating its recommendations to the board, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 9-6.14:1 et seq.). The committee shall, however, conduct public hearings prior to making recommendations to the board. The committee shall give 30 days written notice by mail of the time and place of its hearings and meetings to any manufacturer whose product is being reviewed by the committee and to those manufacturers who request of the committee in writing that they be informed of such hearings and meetings. These persons shall be afforded a reasonable opportunity to be heard and present information. The committee shall give 30 days notice of such public hearings to the public by publishing its intention to conduct hearings and meetings in the Calendar of Events of The Virginia Register of Regulations and a newspaper of general circulation located in Richmond.

c. In acting on the recommendations of the committee, the board shall conduct further proceedings under the Administrative Process Act.

4. Prior authorization of prescription drug products, coverage.

a. The committee shall review prescription drug products to recommend prior authorization under the state plan. This review may be initiated by the director, the committee itself, or by written request of the board. The committee shall complete its recommendations to the board within no more than six months from receipt of any such request.

b. Coverage for any drug requiring prior authorization shall not be approved unless a prescribing physician obtains prior approval of the use in accordance with regulations promulgated by the board and procedures established by the department.

c. In formulating its recommendations to the board, the committee shall consider the potential impact on patient care and the potential fiscal impact of prior authorization on pharmacy, physician, hospitalization and outpatient costs. Any proposed regulation making a drug or category of drugs subject to prior authorization shall be accompanied by a statement of the estimated impact of this action on pharmacy,

physician, hospitalization and outpatient costs.

d. The committee shall not review any drug for which it has recommended or the board has required prior authorization within the previous 12 months, unless new or previously unavailable relevant and objective information is presented.

e. Confidential proprietary information identified as such by a manufacturer or supplier in writing in advance and furnished to the committee or the board according to this subsection shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.1-340 et seq.). The board shall establish by regulation the means by which such confidential proprietary information shall be protected.

5. Immunity. The members of the committee and the board and the staff of the department shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.

6. Annual report to joint commission. The committee shall report annually to the Joint Commission on Health Care regarding its recommendations for prior authorization of drug products.

12b. Dentures.

Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

12c. Prosthetic devices.

A. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

B. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

Proposed Regulations

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

A. Intensive physical rehabilitation.

1. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision A 4 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient physical rehabilitation services as defined in subdivision A 4 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

5. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

B. Community mental health services.

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

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

1. Mental health services. The following services, with their definitions, shall be covered:

a. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 260 days, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.

c. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more

Proposed Regulations

consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 260 days, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment.

d. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 312 days, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and education within a supportive and normalizing program structure and environment.

e. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit or both, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

2. Mental retardation services. Day health and rehabilitation services shall be covered and the following definitions shall apply:

a. Day health and rehabilitation services (limited to 500 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be

licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

- (1) Self-care and hygiene skills;
- (2) Eating and toilet training skills;
- (3) Task learning skills;
- (4) Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);
- (5) Environmental and behavior skills (e.g., training in punctuality, self-discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);
- (6) Medication management;
- (7) Travel and related training to and from the training sites and service and support activities;
- (8) Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.

b. There shall be two levels of day health and rehabilitation services: Level I and Level II.

- (1) Level I services shall be provided to individuals who meet the basic program eligibility requirements.
- (2) Level II services may be provided to individuals who meet the basic program eligibility requirements and for whom one or more of the following indicators are present.
 - (a) The individual requires physical assistance to meet basic personal care needs (toilet training, feeding, medical conditions that require special attention).
 - (b) The individual has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish individual service goals.
 - (c) The individual requires extensive personal care or constant supervision to reduce or eliminate behaviors which preclude full participation in programming. A formal, written behavioral program is required to address behaviors such as, but not limited to, severe depression, self injury, aggression, or self-stimulation.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the Act).

A. Covered hospice services shall be defined as those services allowed under the provisions of Medicare law and regulations as they relate to hospice benefits and as specified in the Code of Federal Regulations, Title 42, Part 418.

B. Categories of care.

As described for Medicare and applicable to Medicaid, hospice services shall entail the following four categories of daily care:

1. Routine home care is at-home care that is not continuous.
2. Continuous home care consists of at-home care that is predominantly nursing care and is provided as

short-term crisis care. A registered or licensed practical nurse must provide care for more than half of the period of the care. Home health aide or homemaker services may be provided in addition to nursing care. A minimum of eight hours of care per day must be provided to qualify as continuous home care.

3. Inpatient respite care is short-term inpatient care provided in an approved facility (freestanding hospice, hospital, or nursing facility) to relieve the primary caregiver(s) providing at-home care for the recipient. Respite care is limited to not more than five consecutive days.

4. General inpatient care may be provided in an approved freestanding hospice, hospital, or nursing facility. This care is usually for pain control or acute or chronic symptom management which cannot be successfully treated in another setting.

C. Covered services.

1. As required under Medicare and applicable to Medicaid, the hospice itself shall provide all or substantially all of the "core" services applicable for the terminal illness which are nursing care, physician services, social work, and counseling (bereavement, dietary, and spiritual).

2. Other services applicable for the terminal illness that shall be available but are not considered "core" services are drugs and biologicals, home health aide and homemaker services, inpatient care, medical supplies, and occupational and physical therapies and speech-language pathology services.

3. These other services may be arranged, such as by contractual agreement, or provided directly by the hospice.

4. To be covered, a certification that the individual is terminally ill shall have been completed by the physician and hospice services must be reasonable and necessary for the palliation or management of the terminal illness and related conditions. The individual must elect hospice care and a plan of care must be established before services are provided. To be covered, services shall be consistent with the plan of care. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no coverage will be provided.

5. All services shall be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

Proposed Regulations

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

b. Medical social services. Medical social services shall be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

c. Physician services. Physician services shall be performed by a professional who is licensed to practice, who is acting within the scope of his or her license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy.

d. Counseling services. Counseling services shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

e. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

f. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

g. Drugs and biologicals. Only drugs used which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

h. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides

may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

i. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

D. Eligible groups.

To be eligible for hospice coverage under Medicare or Medicaid, the recipient must have a life expectancy of six months or less, have knowledge of the illness and life expectancy, and elect to receive hospice services rather than active treatment for the illness. Both the attending physician and the hospice medical director must certify the life expectancy. The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

1. For the first 90-day period of hospice coverage, the hospice must obtain, within two calendar days after the period begins, a written certification statement signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician if the individual has an attending physician. For the initial 90-day period, if the hospice cannot obtain written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

2. For any subsequent 90-day or 30-day period or a subsequent extension period during the individual's lifetime, the hospice must obtain, no later than two calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is that his or her life expectancy is six months or less and the signature(s) of the physician(s). The hospice must maintain the certification statements.

§ 19. Case management services for high-risk pregnant women and children up to age 1, as defined in Supplement 2 to Attachment 3.1-A in accordance with § 1915(g)(1) of the Act.

Provided, with limitations. See Supplement 2 for detail.

§ 20. Extended services to pregnant women.

20a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

20b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 21. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

21a. Transportation.

Transportation services are provided to Virginia Medicaid recipients to ensure that they have necessary access to and from providers of all medical services. Both emergency and nonemergency services are covered. The single state agency may enter into contracts with friends of recipients, nonprofit private agencies, and public carriers to provide transportation to Medicaid recipients.

21b. Services of Christian Science nurses.

Not provided.

21c. Care and services provided in Christian Science sanatoria.

Provided, no limitations.

21d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

21e. Emergency hospital services.

Provided, no limitations.

21f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Not provided.

§ 22. Emergency Services for Aliens.

A. No payment shall be made for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law unless such services

are necessary for the treatment of an emergency medical condition of the alien.

B. Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

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

C. Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

D. Claims for conditions which do not meet emergency criteria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

VR 460-02-3.1500. Standards for the Coverage of Organ Transplant Services.

The following criteria will be used to evaluate specific organ transplant requests.

PART I. KIDNEY TRANSPLANTATION.

§ 1.1. Patient selection criteria for provision of kidney transplantation (KT).

A. Transplantation of the kidney is a surgical treatment whereby a diseased kidney is replaced by a healthy organ. Preauthorization is required. The following patient selection criteria shall apply for the consideration of all approvals for coverage and reimbursement for kidney transplantation.

1. Current medical therapy has failed and patient has failed to respond to appropriate conservative management;
2. The patient does not have other systemic disease including but not limited to the following:
 - a. Reversible renal conditions;
 - b. Major extra-renal complications (malignancy, systemic disease, cerebral cardio-arterial disease);

Proposed Regulations

c. Active infection;

d. Severe malnutrition; or

e. Pancytopenia.

3. The patient is not in both an irreversible terminal state and on a life support system;

4. Adequate supervision will be provided to assure there will be strict adherence to the medical regimen which is required;

5. The KT is likely to prolong life and restore a range of physical and social ~~function~~ functions suited to activities of daily living;

6. A facility with appropriate expertise has evaluated the patient, and has indicated willingness to undertake the procedure;

7. The patient does not have multiple uncorrectable severe major system congenital anomalies;

8. Failure to meet (4) subdivisions 1 through (7) above 7 shall result in denial of preauthorization and coverage for the requested kidney transplant procedures.

§ 1.2. Facility selection criteria for kidney transplantation (KT).

A. For medical facility to qualify as an approved Virginia Medicaid provider for performing kidney transplants, the following conditions must be met:

1. The facility has available expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;

2. The KT program staff has extensive experience and expertise in the medical and surgical treatment of renal disease;

3. Transplant surgeons on the staff have been trained in the KT technique at an institution with a well established KT program;

4. The transplantation program has adequate services to provide specialized psychosocial and social support for patients and families;

5. Adequate blood bank support services are present and available;

6. Satisfactory arrangements exist for donor procurement services;

7. The institution is committed to a program of at least 25 KTs a year;

8. The center has a consistent, equitable, and practical protocol for selection of patients (at a minimum, the DMAS Patient Selection Criteria must be met and adhered to);

9. The center has the capacity and commitment to conduct a systematic evaluation of outcome and cost;

10. In addition to hospital administration and medical staff endorsement, hospital staff support also exists for such a program;

11. The hospital has an active, ongoing renal dialysis service;

12. The hospital has access to staff with extensive skills in tissue typing, immunological and immunosuppressive techniques;

13. Initial approval as KT center requires performance of 25 KTs within the most recent 12 months, with a one year survival rate of at least 90%. Centers that fail to meet this requirement during the first year will be given a one-year conditional approval. Failure to meet the volume requirement following the conditional approval will result in loss of approval.

PART II. CORNEAL TRANSPLANTATION.

§ 2.1. Patient selection criteria for provision of corneal transplantation (CT).

A. Transplantation of the cornea is a surgical treatment whereby a diseased cornea is replaced by a healthy organ. While preauthorization is not required, the following patient selection criteria shall apply for the consideration of all approvals for reimbursement for cornea transplantation.

1. Current medical therapy has failed and will not prevent progressive disability;

2. The patient is suffering from one of the following conditions:

a. Post-cataract surgical decompensation,

b. Corneal dystrophy,

c. Post-traumatic scarring,

d. Keratoconus, or

e. Aphakia Bullous Keratopathy;

3. Adequate supervision will be provided to assure there will be strict adherence by the patient to the long term medical regimen which is required;

4. The CT is likely to restore a range of physical and

social function suited to activities of daily living;

5. The patient is not in both an irreversible terminal state and on a life support system;

6. The patient does not have untreatable cancer, bacterial, fungal, or viral infection;

7. The patient does not have the following eye conditions:

- a. Trichiasis,
- b. Abnormal lid brush ~~and/or~~ or function or both ,
- c. Tear film deficiency,
- d. Raised transocular pressure,
- e. Intensive inflammation, and
- f. Extensive neo-vascularization.

§ 2.2. Facility selection criteria for cornea transplantation (CT).

A. For medical facility to qualify as an approved Medicaid provider for performing cornea transplants, the following conditions must be met:

1. The facility has available expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;
2. The CT program staff has extensive experience and expertise in the medical and surgical treatment of eye disease;
3. Transplant surgeons on the staff have been trained in the CT technique at an institution with a well established CT program;
4. The transplantation program has adequate services to provide social support for patients and families;
5. Satisfactory arrangements exist for donor procurement services;
6. The institution is committed to a program of eye surgery;
7. The center has a consistent, equitable, and practical protocol for selection of patients (at a minimum, the DMAS Patient Selection Criteria must be met and adhered to);
8. The center has the capacity and commitment to conduct a systematic evaluation of outcome and cost;
9. In addition to hospital administration and medical staff endorsement, hospital staff support also exists for

such a program;

10. Initial approval as CT center requires performance of corneal transplant surgery, with a one year graft survival rate of at least 75%. Centers that fail to meet this requirement during the first year will be given a one-year conditional approval. Failure to meet this requirement following the conditional approval will result in loss of approval.

**PART III.
LIVER, HEART, ALLOGENEIC AND AUTOLOGOUS
BONE MARROW TRANSPLANTATION AND ANY
OTHER MEDICALLY NECESSARY
TRANSPLANTATION PROCEDURES NOT
DETERMINED EXPERIMENTAL OR
INVESTIGATIONAL.**

§ 3.1. *Patient selection criteria for provision of liver, heart, allogeneic and autologous bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational.*

A. *The following general conditions shall apply to these services:*

1. *Coverage shall not be provided for procedures that are provided on an investigational or experimental basis.*
2. *There must be no effective alternative medical or surgical therapies available with outcomes that are at least comparable.*
3. *The transplant procedure and application of the procedure in treatment of the specific condition for which it is proposed have been clearly demonstrated to be medically effective and not experimental or investigational.*
4. *Prior authorization by the Department of Medical Assistance Services (DMAS) is required. The prior authorization request must contain the information and documentation as required by DMAS.*

B. *The following patient selection criteria shall apply for the consideration of authorization and coverage and reimbursement:*

1. *The patient must be under 21 years of age at time of surgery.*
2. *The patient selection criteria of the transplant center where the surgery is to be performed shall be used in determining whether the patient is appropriate for selection for the procedure. Transplant procedures will be preauthorized only if the selection of the patient adheres to the transplant center's patient selection criteria, based upon review by DMAS of information submitted by the transplant*

Proposed Regulations

team or center.

The recipient's medical condition shall be reviewed by the transplant team or program according to the transplant facility's patient selection criteria for that procedure and the recipient shall be determined by the team to be an appropriate transplant candidate. Patient selection criteria used by the transplant center shall include, but not necessarily be limited to, the following:

1. Current medical therapy has failed and the patient has failed to respond to appropriate therapeutic management;
2. The patient is not in an irreversible terminal state; and
3. The transplant is likely to prolong life and restore a range of physical and social function suited to activities of daily living.

§ 3.2. Facility selection criteria for liver, heart, allogeneic and autologous bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational.

A. The following general conditions shall apply:

1. Procedures may be performed out of state only when the authorized transplant cannot be performed in the Commonwealth because the service is not available or, due to capacity limitations, the transplant can not be performed in the necessary time period.
2. Criteria applicable to transplantation services and centers in the Commonwealth also apply to out-of-state transplant services and facilities.

B. To qualify for coverage, the facility must meet, but not necessarily be limited to, the following criteria:

1. The transplant program staff has demonstrated expertise and experience in the medical and surgical treatment of the specific transplant procedure;
2. The transplant surgeons have been trained in the specific transplant technique at an institution with a well established transplant program for the specific procedure;
3. The facility has expertise in immunology, infectious disease, pathology, pharmacology, and anesthesiology;
4. The facility has staff or access to staff with expertise in tissue typing, immunological and immunosuppressive techniques;
5. Adequate blood bank support services are available;
6. Adequate arrangements exist for donor

procurement services;

7. Current full membership in the United Network for Organ Sharing, for the facilities where solid organ transplants are performed;

8. Membership in a recognized bone marrow accrediting or registry program for bone marrow transplantation programs;

9. The transplant facility or center can demonstrate satisfactory transplantation outcomes for the procedure being considered;

10. Transplant volume at the facility is consistent with maintaining quality services;

11. The transplant center will provide adequate psychosocial and social support services for the transplant recipient and family.

V.A.R. Doc No. R94-427; Filed December 22, 1993, 12:12 p.m.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF EDUCATION (STATE BOARD OF)

VR 270-01-0057. Special Education Program Standards.

Title of Regulation: VR 270-01-0057. Special Education Program Standards.

PART I. DEFINITIONS.

Statutory Authority: § 22.1-214 of the Code of Virginia.

§ 1.1. Definitions.

Effective Date: February 23, 1994.

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

Summary:

These regulations set standards for special education programs for children with disabilities in Virginia. The areas in which specific standards are set include teaching assignments, waivers for certain educational interpreters, and program models for school-age and preschool-age students. Criteria are set forth for teacher assignments, caseload maximums, and mixing students with different disabilities together for instruction. In addition, procedures are included for school division superintendents and directors of nonpublic education agencies to request conditional licenses for teachers, waivers for educational interpreters who have not documented their qualifications, and waivers to digress from the program models addressing caseload or mixing students with different disabilities together for instruction.

"Combined self-contained/resource" means programs where some students receive special education services 50% or more of the day and some students receive services less than 50% of their instructional day (excluding lunch). Time in special education is calculated on the basis of special education services defined in the individualized education program (IEP), rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom.

The final regulations contain two technical amendments which provide the following information:

"Departmentalized program" means programs where several special education teachers subdivide the curriculum, allowing each to teach in fewer content areas. Departmentalized programs may include collaborative, consulting or team teaching models offered in general class settings, in addition to traditional special education classes.

1. The conditions for requesting a waiver for educational interpreters have been clarified and a waiver request form has been included, to correspond with the revised interpreter certification process.

"Early childhood special education programs" means programs for students of preschool ages (2 - 5 years old) who are eligible for special education.

2. A correction in the value for self-contained students with other health impairments (OHI) when combined with resource students has been corrected to match the allocation of funds.

"Resource" means programs where students receive special education services less than 50% of their instructional school day (excluding lunch). Time in special education is calculated on the basis of special education services defined in the individualized education program (IEP), rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

"Self-contained" means programs where students receive special education services 50% or more of their instructional school day (excluding lunch). Time in special education is calculated on the basis of special education services defined in the individualized education program (IEP), rather than the location of services. As a result, services may be offered using collaborative, consulting or

Agency Contact: Copies of the regulation may be obtained from Dr. Patricia Abrams, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2874. There may be a charge for copies.

Final Regulations

team teaching models, in a general class setting, in addition to the traditional self-contained special education classroom.

PART II SPECIAL EDUCATION TEACHERS.

§ 2.1. Special education teachers; license required.

Special education teachers shall hold a current Virginia teaching license. In addition, each special education teacher shall hold specific endorsement(s) which correspond to the area(s) of disability(ies) of students assigned to his classroom or caseload or both (refer to Figure A, Special Education Teacher Assignment Requirements).

§ 2.2. Special education conditional license.

An individual who does not hold an endorsement in the area of disability assigned may be licensed on a two-year special education conditional license if the following criteria are met:

1. The individual is employed as a teacher of special education by a Virginia public or nonpublic school; and
2. The individual holds a current Virginia teaching license (the teaching license must be effective during the two-year validity period of the special education conditional license).

The two-year special education conditional license is a nonrenewable teaching license issued to unendorsed special education teachers in order to provide them an opportunity to attain endorsement while employed in the Commonwealth of Virginia. Individuals issued the special education conditional license will be required to satisfy the special education endorsement requirements in the two-year validity period of the conditional license. However, the license may be extended for one additional year at the request of the school division superintendent or director of nonpublic education agency. Endorsement in special education areas of disability(ies) may be attained by completing the prescribed course work for endorsement through an institution of higher education or by completing the Department of Education's special education teacher endorsement program.

§ 2.3. Conditions for application of conditional license.

Local school division superintendents and directors of nonpublic education agencies shall apply for a special education conditional license for any certified individual who is not endorsed in the area assigned to teach. The conditional license for individuals shall be requested when the individual is the best suited of the applicants for the position, the school division has advertised the position, and has made reasonable efforts to recruit and hire qualified individuals.

§ 2.4. Timeline for application of special education conditional license.

Conditional license applications are to be submitted to the Superintendent of Public Instruction, Virginia Department of Education using the Application for Special Education Conditional License (form number PS-1) within 30 days of assignment in an unendorsed area of disability.

PART III EDUCATIONAL INTERPRETERS.

§ 3.1. Qualified educational interpreter requirements.

Requirements for personnel providing interpreting services for students who have hearing impairments, are hard of hearing or are deaf are detailed in the Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia (VR 270-01-0007).

§ 3.2. Waiver of requirements.

A. Conditions for requesting a waiver.

Local education agency superintendents and directors of nonpublic education agencies shall request a waiver to the requirements for any individual who does not meet the qualifications [to serve as an educational interpreter for providing interpreting services to students using sign language or cued speech] . Individuals hired must be in the process of being screened for competency or be completing training to develop their interpreting skills or both. The waiver shall be requested when the individual is the best suited of the applicants for the position, the school division has advertised the position, and has made reasonable efforts to recruit and hire qualified individuals.

[A nonrenewable waiver may be provided for individuals who have not achieved a Virginia Quality Assurance Screening Level I for one year after the individual's hiring date (or one year after the Regulations Governing Special Education Programs for Children with Disabilities in Virginia are implemented).

A nonrenewable waiver may be provided for one year for individuals who have not attained a Virginia Quality Assurance Screening Level III by the third anniversary of their hiring date (or three years after the Regulations Governing Special Education Programs for Children with Disabilities in Virginia are implemented).]

B. Timeline for requesting a waiver.

Waiver of educational interpreter qualification requirements requests are to be submitted to the [Superintendent of Public Instruction Associate Specialist for Hearing Impaired Programs] , Virginia Department of Education within 30 days of assignment [using the Request for Waiver of Educational Interpreter Qualifications Requirements form] .

PART IV. SPECIAL EDUCATION PROGRAMS FOR SCHOOL-AGE YOUTH.

§ 4.1. General.

The standards in Part IV specify class mix, caseload, and teacher assignment for special education programs for school-age children and youth. Public and nonpublic education agencies may offer programs for students eligible for special education outside the boundaries of these standards. However, the education agency must receive a waiver from the Virginia Department of Education to offer such programs.

§ 4.2. Self-contained programs.

Students receiving self-contained services have IEPs identifying 50% or more of their instruction each school day (excluding lunch) in special education. Time in special education is calculated on the basis of special education services defined in the IEP, rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional self-contained special education classroom.

1. *Class mix.* Self-contained programs are for students with the same primary disability category. Programs may include students with different secondary disability categories if the students' primary disability is the same (e.g., student with learning disability, student with learning disability and emotional disturbance and student with learning disability and speech-language impairment). Noncategorical primary (grades K-2) special education programs, for students identified as developmentally delayed (DD) may include certain students with identified disabilities, when student learning needs are similar. Students identified with traumatic brain injury may be placed in any program, in accordance with their IEP.

2. *Caseload.* Figure B prescribes maximum caseload standards.

3. *Teacher assignment.* Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive the majority of their services from a teacher endorsed to serve their area of disability (e.g., student with educable mental retardation receives social skills instruction from a teacher endorsed in emotional disturbance but receives the majority of services from a teacher endorsed in mental retardation).

b. Teachers providing services to a student with more than one disability (e.g., student with learning

disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities. However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with teacher endorsed in emotional disturbance for affective education).

c. Teacher caseloads must include all students to whom they provide special education. Students receiving special education services from more than one special education teacher must be counted on the caseloads of each teacher.

§ 4.3. Resource programs.

Students receiving resource services have IEPs identifying that less than 50% of their instruction each school day (excluding lunch) is in special education. Time in special education is calculated on the basis of special education services defined in the IEP, rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom. Resource programs include students receiving consultation or monitoring services.

1. *Class mix.* Resource caseloads may combine students of different disabilities, if students receive services from at least one special education teacher who holds endorsement in the students' area(s) of disability.

2. *Caseload.* Figure B prescribes caseload standards. Resource caseloads must include students receiving consultation or monitoring services.

3. *Teacher assignment.* Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive the majority of their services from a teacher endorsed to serve their area of disability (e.g., student with educable mental retardation receives social skills instruction from a teacher endorsed in emotional disturbance but receives the majority of services from a teacher endorsed in mental retardation).

b. Teachers providing services to a student with more than one disability (e.g., student with learning disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities. However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with

Final Regulations

teacher endorsed in emotional disturbance for affective education).

c. Teacher caseloads must include all students to whom they provide special education. Students receiving special education services from more than one special education teacher must be counted on the caseloads of each teacher.

§ 4.4. Combined self-contained resource.

Combined self-contained/resource programs are programs for students of one disability category where some students receive special education services 50% or more of the day and some students receive services less than 50% of the day. Time in special education is calculated on the basis of special education services defined in the IEP, rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom.

1. Class mix. Combined self-contained/resource programs are for students with one primary disability category. The class mix standards for self-contained programs apply.

a. Students with different secondary disability categories may receive services in combined self-contained/resource settings if their primary disability is the same (e.g., student with learning disability, student with learning disability and emotional disturbance).

b. Noncategorical primary (K-2) special education programs for students identified as developmentally delayed (DD) may include certain students with identified disabilities when student learning needs are similar.

c. Students identified with traumatic brain injury may be placed in any program in accordance with their IEP.

2. Caseload. Caseload maximums for teachers serving students receiving self-contained (S/C) services and students receiving resource (R) services are computed on the basis of a maximum point value of 20. To determine the value for a class, the following procedure should be used (refer to Figure C):

a. Determine the value to be assigned a student receiving self-contained instruction under the disability category (e.g., S/C student with learning disability with paraprofessional = 2).

b. Multiply the number of self-contained students by the assigned value (8 students x 2 = 16).

c. Add this total value for self-contained to the

number of resource students (16 points + 3 R students = 19).

d. This total combined value cannot exceed the maximum value of 20.

3. Teacher assignment. Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive the majority of their services from a teacher endorsed to serve their area of disability (e.g., student with educable mental retardation receives social skills instruction from a teacher endorsed in emotional disturbance but receives the majority of services from a teacher endorsed in mental retardation).

b. Teachers providing services to a student with more than one disability (e.g., learning disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities. However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with teacher endorsed in emotional disturbance for affective education).

c. Teacher caseloads must include all students to whom they provide special education. Students receiving special education services from more than one special education teacher must be counted on the caseloads of each teacher.

§ 4.5. Departmentalized programs.

A departmentalized program allows several special education teachers to subdivide the curriculum, allowing each to teach in fewer content areas. Departmentalized programs may include collaborative, consulting or team teaching models offered in general class settings, in addition to traditional special education classes.

1. Departmentalized special education programs shall meet the following standards:

a. The general education program in that building uses a departmentalized model.

b. Teachers are assigned to subject matter on the basis of their expertise (e.g., one endorsed teacher has instructional skills in reading while another has instructional skills in math).

c. Student placements are based upon similar learning needs (as defined in their IEPs).

d. Courses offered for graduation credit must

comply with the Standards for Accrediting Public Schools in Virginia (VR 270-01-0012), particularly the number of hours of instruction.

2. *Class mix.* Departmentalized programs may mix students of different disability categories if students receive services from at least one teacher who holds endorsement in their area(s) of disability.

3. *Caseload.* Departmentalized models may include students who are considered self-contained and students who are considered resource.

a. If all of the students are considered resource students (e.g., 2 of 6 periods or 3 of 7 periods per day in special education), the maximum caseload is 24 students. Building averages must be 24 students or less per teacher.

b. If the departmentalized model includes students who are considered self-contained students, caseload maximums are computed in the same manner as under combined self-contained/resource. The maximum point value per teacher must be 20. Building averages must be 20 points or less per teacher.

c. The following maximums per class period apply:

(1) 14 students: Similar student/achievement levels: One subject area and level taught to all students (e.g., English 9).

(2) 10 students: Varying student achievement levels: More than one subject area and level taught in one period (e.g., English 7 and 8; English 8 and General Math 8).

d. Special education teachers also may teach in general education, if endorsed in the assigned area(s). However, a reduction in the teacher's special education caseload must be made in proportion to the percentage of school time spent teaching in general education (e.g., 2 of 6 periods per day assigned to general education would reduce the maximum special education caseload allowed by one-third).

4. *Teacher assignment.* Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive services from a teacher endorsed to serve their area of disability.

b. Teachers providing services to a student with more than one disability (e.g., student with learning disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities.

However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with teacher endorsed in emotional disturbance for affective education).

PART V. PROGRAMS FOR EARLY CHILDHOOD SPECIAL EDUCATION.

§ 5.1. Early childhood special education.

Students of preschool ages (2 - 5) eligible for special education receive early childhood special education programs. Preschool aged students with disabilities shall receive the full range and amount of services necessary. A full-day (5 1/2 hours) program should be available to all students. A shorter program may be provided, if determined appropriate by the IEP committee and included in the student's IEP.

1. *Class mix.* Early childhood special education programs may mix preschool aged students with different disabilities.

2. *Caseload.* Figure B prescribes caseload standards.

3. *Teacher assignment.*

a. Figure A prescribes teacher assignment standards.

b. A teacher endorsed in hearing impairment may serve as the primary service provider for preschool-aged students identified as having a hearing impairment or deafness. However, this teacher must have evidence of coursework in the following two areas: normal growth and development from birth to age five and early childhood special education curriculum and program development.

PART VI. PROCESS FOR REQUESTING WAIVERS FOR SPECIAL EDUCATION PROGRAMS.

§ 6.1. Conditions.

Local education agency superintendents and directors of nonpublic education agencies must request a waiver of the program standards when the programs provided for students with disabilities are outside the boundaries of these program standards, and must receive the approval from the Virginia Department of Education. This approval is in the form of a waiver of special education program standards.

§ 6.2. Requesting a waiver.

Local education agency superintendents and directors of nonpublic education agencies shall complete a separate request for each class/caseload. The Department of

Final Regulations

Education grants waivers on a class-by-class (caseload-by-caseload) basis, according to the description of the class provided by education agency. The education agency must notify the Department of Education if the student population in the class changes in any way.

§ 6.3. Timelines.

Waiver of special education program standards requests are to be submitted to the Superintendent of Public Instruction, Virginia Department of Education using the Program Standards Waiver Request (form number PS-2) within 30 days of placement/assignment outside of the boundaries of these standards. Requests for continuation of a model approved in the previous school year should be submitted before September 1 of the school year.

VA.R. Doc. No. R93-709; Filed July 7, 1993, 9:22 a.m.

FIGURE A. SPECIAL EDUCATION TEACHER ASSIGNMENT REQUIREMENTS

Disability Category	Endorsement
Autism	severe disabilities OR any other special education endorsement, as appropriate to student needs
Deaf-blind	
Multihandicaps	
Developmental Delay: age 2-5	early childhood special education
Educable Mental Retardation Primary Elementary Middle Secondary	mental retardation
Emotional Disturbance	emotional disturbance
Hearing Impairment/Deaf	hearing impairment
Specific Learning Disabilities	specific learning disabilities
Severe and Profound Disabilities	severe disabilities
Visual Impairment	visual impairment
Developmental Delay: age 5-7 (Non-Categorical K-2nd)	any special education endorsement, as appropriate to student needs
Orthopedic Impairment	
Other Health Impairment*	
Traumatic Brain Injury	
Speech and/or Language Impairment a. itinerant b. self-contained	a. speech/language disorders b. speech/language disorders and have either elementary instruction, learning disabilities, or hearing impairment for S/C class.

certain students with Other Health Impairment may be served by appropriate pupil personnel staff, as determined by the IEP

FIGURE B. SPECIAL EDUCATION MAXIMUM CLASS/CASELOADS

Disability Category	Self Contained		Resource
	With 100% Para-professional	Without Para-professional	
Autism	8*	6*	24
Deaf-blind	8*	6*	
Developmental Delay: age 5-7 (Non-Categorical K-2nd)	10	8	
Developmental Delay: age 2-5	8 Center Based 10 Combined**	12 Home Based and/or Itinerant	
Educable Mental Retardation: Primary	10***	8***	24
Elementary	12***	8***	24
Middle School	13***	8***	24
Secondary	15***	8***	24
Trainable Mental Retardation	10*	8*	
Hearing Impairment/Deaf	10	8	24
Multihandicaps	8*	6*	
Orthopedic Impairment	10	8	8 [24]
Other Health Impairment	10	8	8 [24]
Serious Emotional Disturbance	10	8	24
Severe and Profound Disabilities	8*	6*	
Specific Learning Disability	10	8	24
Speech and/or Language Impairment	10	8	75 (itinerant)
Traumatic Brain Injury	May be placed in any program, according to IEP.		
Mixed Category (SLD, ED, EMR, HI, OHI, TBI)	[Combined self-contained and resource]		20 points

* Maximum caseload when integrating students into general classroom.
 ** Combined includes center-based preschoolers plus home based and/or itinerant preschoolers
 *** Per 1993 General Assembly budget.

Final Regulations

FIGURE C. VALUES FOR SELF-CONTAINED STUDENTS
WHEN COMBINED WITH RESOURCE

Disability Category	With 100% Para-professional	Without Para-professional
Autism	2.5	3.3
Deaf-Blind	2.5	3.3
Developmental Delay: age 5-7	2.0	2.5
Educable Mental Retardation:		
Primary	2.0*	2.5*
Elementary	1.6*	2.5*
Middle School	1.5*	2.5*
Senior High	1.3*	2.5*
Trainable Mental Retardation	2.0	2.5
Hearing Impairment/Deaf	2.0	2.5
Multihandicaps	2.5	3.3
Orthopedic Impairment	2.0	2.5
Other Health Impairment	2.5 [2.0]	3.3 [2.5]
Serious Emotional Disturbance	2.0	2.5
Specific Learning Disability	2.0	2.5

* Per 1993 General Assembly Budget

Application For Special Education Conditional License													Department of Education Approval	
NAME OF SCHOOL DIVISION				NUMBER		NON-PUBLIC EDUCATION AGENCY							YES	NO
Full Name	Social Security Number	Endorse Held	Yr. Expires	Years Experience in SPED	Unendorsement SPED Area Assignment	Date Hired for Unendorsement Assignment: MM/DD/YY	Grade Levels Assigned: P=Preach E=K-5 N=6-8 S=9-12	Years Explicited in SPED Area Assignment	# Semester Hrs. Completed Toward Endorsement	Program of Study on File (Y or N)	Mentor Teacher or Resource Person Name	Mentor Teacher Resource Person Social Security Number		

Assurance Statement: I assure that the applicant for the Special Education Conditional License:

(1) holds a current Virginia teaching license and will maintain that license during the two year conditional period; (2) are the best suited of the applicants for the position; and (3) the school division has advertised the position and made reasonable efforts to recruit and hire qualified individuals. Documentation of these assurances is kept in the office of

 Function of Local Staff Member Telephone Number

Printed Name Superintendent Signature of Superintendent Date

Due to Virginia Department of Education within 30 days of Personnel Assignment

Return to: Superintendent of Public Instruction
 Virginia Department of Education
 P. O. Box 2120
 Richmond, Virginia 23216-2120

UPON APPROVAL BY THE DEPARTMENT OF EDUCATION, THE SPECIAL EDUCATION CONDITIONAL LICENSES WILL BE FORWARDED TO THE SCHOOL DIVISION SUPERINTENDENT

PROGRAM STANDARDS WAIVER REQUEST FORM NUMBER PS-2
PAGE 1 OF 2

Education Agency: _____ Public School Division Number: _____

Agency Contact: _____ Phone: _____
Program Waiver Requested for (one class/caseload per form):

<input type="checkbox"/>	Cross-categorical Self-Contained Special Education Program
<input type="checkbox"/>	Cross-categorical Self-Contained/Resource Special Education Program
<input type="checkbox"/>	Excess Caseload
<input type="checkbox"/>	Other _____

Date of Placement/Assignment which necessitates request _____
School Name _____ School Number _____
School Level _____ (Primary, Elem., Middle, Secondary)
Teacher Name _____ SS# _____

Endorsement area(s): _____
Paraprofessional (circle): NO YES _____ % of instructional day

TOTAL STUDENTS BY DISABILITY CATEGORY AND PLACEMENT

DISABILITY CATEGORY	NUMBER OF STUDENTS SELF-CONTAINED (50% or >)	NUMBER OF STUDENTS RESOURCE (< 50%)	Age Range
Autism			
Deaf-Blind			
Developmental Delay			
Educable Mental Retardation			
Hearing Impairment or Deaf			
Multiple Handicaps			
Other Health Impairment			
Orthopedic Impairment			
Serious Emotional Disturbance			
Specific Learning Disability			
Speech/Language Impairment			
Severe/Profound Disabilities			
Trainable Mental Retardation			
Traumatic Brain Injury			
Visual Impairment			
TOTAL NUMBER OF STUDENTS			
TOTAL NUMBER OF POINTS			

CONTRIBUTION BY PAGE

PROGRAM WAIVER REQUEST FORM (PS-2)
PAGE 2 OF 2

Justification (use space below to include information pertinent to provide reader with a full understanding of the program, attach additional pages if necessary):

Printed Name of Division Superintendent (or Director of non-public agency) _____

Signature of Division Superintendent (or Director of non-public agency) _____ Date _____

Submit to: Superintendent of Public Instruction
Virginia Department of Education
P. O. Box 2120
Richmond, Virginia 23216-2210

FOR DEPARTMENT OF EDUCATION USE ONLY

Disposition: _____

Deputy Superintendent for Administrative Services _____ Date _____

Final Regulations

SCHOOL DIVISION _____			SCHOOL DIVISION NUMBER _____			Requesting: <input type="checkbox"/> Pre-Level I (one year non-renewable) <input type="checkbox"/> Pre-Level III (one year non-renewable)						For Department of Education Use	
Interpreter's Name	Current QAS Level	Social Security Number	Type of Interpreting (Sign/Cued)	Date first hired as an interpreter	School Division where first hired	QAS History						Approved	Not Approved
						All Written QAS Scores			All Performance QAS Scores				
						Failed	Date	Passed	Failed	Date	Passed		

Assurance Statement: I assure that the applicants for waivers of endorsement requirements listed:

(1) are receiving training in interpreting in accordance with the Annual Professional Development Plan;
 (2) are the best suited of the applicants for the position; and
 (3) the school division has advertised the position and made reasonable efforts to recruit and hire qualified individuals.

Documentation of these assurances is kept in the office of:

Position of Local Staff member _____
 Telephone Number _____
 Printed Name Superintendent _____
 Signature of Superintendent _____
 Date _____

Due to Virginia Department of Education within 30 days of Interpreter Assignment

Return to: Associate Specialist, Hearing Impaired Programs
 Virginia Department of Education
 P. O. Box 2120
 Richmond, Virginia 23216-2120

Deputy Superintendent's Signature _____
 Date _____

cc: Accreditation

<p>Annual Professional Development Plan" page 2 of 2 (to be filled out by Division Superintendent or Designee in consultation with the educational interpreters)</p> <p>Professional Development Plan (include all courses to be taken, workshops, seminars, etc. with projected dates and projected dates for receiving on VQAS)</p>	
Name	
Comments	

These Plans will be used by Virginia Department of Education and the Virginia Department for the Deaf and Hard of Hearing to project training and VQAS screening needs for educational interpreters.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt 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 400-02-0017. Rules and Regulations for HUD-Insured Home Equity Conversion Mortgage Loans to Elderly Persons of Low and Moderate Income.

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: December 31, 1993.

Summary:

The amendments (i) increase the origination fee charged to borrowers under the program from 1.0% of the maximum claim amount (the lesser of the home's appraised value or the FHA 203 (b) (2) mortgage insurance limit) to an amount not to exceed the maximum amount permitted in the federal regulations; (ii) change the maximum gross family income limit for borrowers under the program from 80% of area median family income to amounts equal to the income limits in effect under or pursuant to the authority's Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income; and (iii) restate the definition of the term "area median family income" to be the "applicable median family income" as defined in Section 143 (f) (4) of the Internal Revenue Code.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from J. Judson McKellar, Jr., Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 786-1986. There may be a charge for copies.

VR 400-02-0017. Rules and Regulations for HUD-Insured Home Equity Conversion Mortgage Loans to Elderly Persons of Low and Moderate Income.

PART I. GENERAL PROVISIONS.

§ 1.1. General.

The following rules and regulations will be applicable to home equity conversion mortgage loans insured by the U.S. Department of Housing and Urban Development ("HUD") which are made or are proposed to be made by the Virginia Housing Development Authority ("authority") to enable low and moderate income elderly homeowners to convert a portion of their accumulated home equity into cash funds in order to continue living independently in

their own homes.

Home equity conversion mortgage loans may be made 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 home equity conversion 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 program requirements and are not intended to include all actions involved or required in the originating and administration of home equity conversion mortgage loans under the authority's HUD-insured home equity conversion mortgage loan 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. Originating agents.

A. Approval.

The originating of home equity conversion mortgage loans and the processing of applications for the making thereof in accordance herewith may, at the authority's discretion, be performed through commercial banks, savings and loan associations and private mortgage bankers that are approved as originating agents ("originating agents") of the authority under the authority's rules and regulations for single family loans to persons and families of low and moderate income.

Each originating agent 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, or origination and processing, of home equity conversion mortgage loans hereunder.

Originating agents shall maintain adequate books and records with respect to home equity conversion mortgage loans which they originate or originate and process, as applicable, shall permit the authority to examine such books and records, and shall submit to the authority such

Final Regulations

reports (including annual financial statements) and information as the authority may require. The fees payable to the originating agents for originating or originating and processing home equity conversion mortgage loans hereunder shall be established from time to time by the executive director and shall be set forth in the originating agreements applicable to such originating agents.

B. Selection of limited number of originating agents.

The executive director may limit the number of originating agents based upon such factors as he deems relevant, including any of the following:

1. The need and demand for the financing of HUD-insured home equity conversion mortgage loans in various geographic areas of the Commonwealth;
2. The availability of HUD-insured home equity conversion mortgage loans from private lenders in various geographic areas of the Commonwealth;
3. The availability of HUD-certified counseling for applicants for HUD-insured home equity conversion mortgage loans in various geographic areas of the Commonwealth;
4. The need for the expeditious commitment and disbursement of home equity conversion mortgage loans;
5. The cost and difficulty of originating and processing HUD-insured home equity conversion mortgage loans; and
6. The time and cost of training originating agents.

The executive director shall select the limited number of originating agents in such manner, for such periods, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. In so selecting originating agents, the executive director may consider such factors as he deems relevant, including the capability, history and experience of any lender seeking selection and the amount of the origination fee requested by any such lender.

C. Allocation of funds.

The executive director shall allocate funds for the making or financing of home equity conversion 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 home equity conversion mortgage loan applicants on a first-come, first-serve or other basis and/or (ii) to originating agents for the origination of home equity conversion mortgage loans 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 home equity conversion mortgage loans;
2. The need and demand for the financing of home equity conversion 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; and
4. The capability, history and experience of any originating agents who are to receive an allocation.

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.

D. Originating guide.

The executive director is authorized to prepare and from time to time revise an originating guide which shall set forth the procedures to be followed by all originating agents responsible for the origination and/or processing of mortgage loans under the applicable originating agreements. Copies of the originating guide shall be available upon request. The executive director shall be responsible for the implementation and interpretation of the provisions of the originating guide.

E. Making of new mortgage loans.

Home equity conversion mortgage loans shall be made by the authority directly to borrowers with the assistance and services of its originating agents. The review of applications for such home equity conversion mortgage loans and the terms and conditions relating to such home equity conversion mortgage loans shall be governed by and shall comply with the provisions of the applicable originating agreement, the originating guide, the Act and

these rules and regulations.

If the applicant and the application for a home equity conversion mortgage loan meet the requirements of the Act and these rules and regulations, the executive director may issue on behalf of the authority a home equity conversion mortgage loan commitment to the applicant, subject to the approval of ratification thereof by the board. Such home equity conversion mortgage loan commitment shall be issued only upon the determination of the authority that such a home equity conversion mortgage loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions in the area where the applicant resides. The initial principal limit and term of such home equity conversion mortgage loan, the terms and conditions relating to the disbursement of funds by the authority to the applicant, 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 home equity conversion mortgage loan commitment issued on behalf of the authority with respect to such home equity conversion mortgage loan.

F. Sale of servicing rights.

The authority may, at its discretion, sell to one or more financial institutions the servicing rights to any home equity conversion mortgage loan made pursuant to these rules and regulations. Such financial institution or institutions shall be selected in such manner, on the basis of such criteria, for such period and subject to such terms and conditions as the executive director shall deem appropriate in order to best accomplish the purposes and goals of the authority.

PART II LOAN PROCESSING.

§ 2.1. Compliance with HUD and FNMA requirements.

Each home equity conversion mortgage loan must be insured pursuant to the Code of Federal Regulations 24 CFR Parts 200 and 206, as amended (hereinafter the "federal regulations"). These federal regulations impose certain requirements and restrictions on the eligibility of home equity conversion borrowers and residences for insurance by HUD. No loan will be approved or made by the authority unless all of the requirements and restrictions under the federal regulations are met.

The authority intends to sell all of the home equity conversion mortgage loans to the Federal National Mortgage Association ("FNMA"). Therefore, each home equity conversion mortgage loan must satisfy all of the applicable guidelines, requirements, terms and conditions imposed by FNMA.

§ 2.2. Compliance with authority requirements.

A. Location.

The property which is to secure the home equity conversion mortgage loan shall be located entirely within the Commonwealth of Virginia.

B. Citizenship.

Each borrower for a home equity conversion mortgage loan must either be a United States citizen or have a valid and current alien registration card (U.S. Department of Immigration Form 1-551 or U.S. Department of Immigration Form 1-151).

C. Maximum gross family income.

The gross family income of an applicant for an authority home equity conversion mortgage loan may not exceed ~~80%~~ *of the area median family income; the percentage of the applicable median family income with respect to the residence of the applicant in effect under the authority's Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income (VR 400-02-0003) or, if the foregoing income limit shall be waived by the executive director pursuant to such rules and regulations, such other income limit as shall be specified therein or established pursuant thereto [(the applicable percentage or income limit being determined by the authority is if the applicant were applying for a mortgage loan to purchase the residence under such rules and regulations)]*.

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 income from overtime, part-time employment, bonuses, 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 the purposes hereof, the term "area applicable median family income" means the median family income, adjusted for family size, for the area of the Commonwealth in which the residence is located, as established and published from time to time by HUD; shall be as defined in Section 143 (f) (4) of the Internal Revenue Code of 1986, as amended.~~

The authority shall from time to time inform its originating agents by written notification thereto of the foregoing maximum gross family income limits expressed in dollar amounts for each area of the state and each family size. The effective dates of such limits shall be determined by the executive director.

Final Regulations

§ 2.3. Terms and conditions of home equity conversion mortgage loans.

A. Compliance with HUD and FNMA requirements.

The provisions, terms and conditions of each authority home equity conversion mortgage loan shall conform to all requirements under the federal regulations and all guidelines and requirements of FNMA for the purchase of the home equity conversion mortgage loan.

B. Interest rate.

The interest rate to be charged on each home equity conversion mortgage loan shall be an adjustable rate which shall be established and increased or decreased at the times and in the manner specified by the guidelines and requirements of FNMA consistent with the federal regulations.

C. Fees and charges at closing.

Pursuant to the federal regulations, the following fees and charges incurred in connection with the origination of the home equity conversion mortgage loan shall be collected from the borrower, either in cash at the time of closing or through an initial payment under the home equity conversion mortgage loan:

1. An origination fee equal to ~~1.0%~~ of the ~~maximum claim amount~~ as defined in such amount as shall be determined by the executive director, but in no event greater than the maximum amount permitted in the federal regulations;
2. Recording fees and recording taxes or other charges incident to the recordation of the mortgage;
3. Credit report fee;
4. Survey fee, if required;
5. Title examination fee;
6. Title insurance charge;
7. Appraisal fee; and
8. Such other charges as incurred in closing the home equity conversion mortgage loan and as approved by HUD.

D. Monthly servicing fee.

The borrower shall be charged a fixed monthly servicing fee in an amount approved by HUD. The servicing fee shall be added to the outstanding balance of the home equity conversion mortgage loan in accordance with the procedures and requirements established in the federal regulations.

§ 2.4. Application package.

The originating agent shall submit to the authority for its review such documents and forms as the authority shall require to determine compliance with the requirements imposed by the federal regulations, the guidelines and requirements of FNMA for purchase of the home equity conversion mortgage loan, and the provisions of these rules and regulations.

§ 2.5. Firm commitment.

A. General.

The authority will review the application package submitted by the originating agent and, if and when approved, prepare a submission package to HUD for a firm mortgage insurance commitment. Upon issuance by HUD of a firm mortgage insurance commitment, the authority will issue a mortgage loan commitment to the borrower. The mortgage loan commitment must be accepted and signed by the applicant prior to closing of the home equity conversion mortgage loan. The term of a mortgage loan commitment may be extended in certain cases upon written request by the applicant and approval by the authority.

B. Loan rejection.

If the application fails to meet any of the standards, criteria and requirements herein, a rejection letter will be issued by the authority. 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, any and all credit documentation cannot be more than 90 days old and any appraisal not more than six months old.

§ 2.6. Loan settlement.

A. Loan closing.

Upon the applicant's acceptance of the mortgage loan commitment, the closing instructions and documents will be sent to the closing attorney.

When the authority has determined that all closing requirements have been or will be satisfied, it will approve closing and, an initial payment check will be sent to the closing attorney together with any additional closing instructions. The closing attorney may disburse the initial payment only after he or she has conducted the loan closing and recorded all necessary documents, including the deed of trust securing repayment of the home equity conversion mortgage loan and in all other respects is in a position to disburse the initial payment in accordance with the commitment and the authority's instructions to the closing attorney.

B. Post-closing requirements.

Any fees and charges to be paid in cash by the borrower and all closing documents shall be forwarded to the authority within such time period or periods as the authority shall require.

V.A.R. Doc. No. R94-435; Filed December 28, 1993, 12:11 p.m.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulations: VR 425-02-04. Commercial Diving Standard (Subpart T), General Industry (1910.401 through 1910.441).

VR 425-02-41. Means of Egress, General Industry (1910.35 through 1910.40).

VR 425-02-42. Hydrogen, General Industry (1910.103).

VR 425-02-45. Explosive and Blasting Agents, General Industry (1910.109).

VR 425-02-46. Storage and Handling of Liquefied Petroleum Gases, General Industry (1910.110).

VR 425-02-65. Underground Construction Standard, Construction Industry (1926.800).

VR 425-02-96. Fire Protection, General Industry (1910.155 through 1910.165).

VR 425-02-107. Ionizing Radiation, Construction Industry (1926.53).

VR 425-02-119. Scaffolding, Construction Industry (1926.450 through 1926.453).

VR 425-02-121. Blasting and Use of Explosives, Construction Industry (1926.900 through 1926.914).

VR 425-02-145. Applicability of Standards, General Industry (1910.5).

VR 425-02-146. Shipyard Employment, General Industry (1910.15).

VR 425-02-147. Ventilation, General Industry (1910.94).

VR 425-02-148. Ionizing Radiation, General Industry (1910.96).

VR 425-02-149. Occupational Health and Environmental Control, Standards Organizations, General Industry (1910.100).

VR 425-02-150. Hazardous Materials, Standards Organizations, General Industry (1910.116).

VR 425-02-151. Personal Protective Equipment, General Industry (1910.132 through 1910.140).

VR 425-02-152. Compressed Gas and Compressed Air Equipment, General Industry (1910.166 through 1910.171).

VR 425-02-153. Materials Handling and Storage, Slings, General Industry (1910.184).

VR 425-02-154. Material Handling and Storage, Standards Organizations, General Industry (1910.190).

VR 425-02-155. Special Industries (Subpart R), Standards Organizations, General Industry (1910.275).

VR 425-02-156. Toxic and Hazardous Substances, 4-Nitrobiphenyl, General Industry (1910.1003).

VR 425-02-157. Toxic and Hazardous Substances, alpha-Naphthylamine, General Industry (1910.1004).

VR 425-02-158. Toxic and Hazardous Substances, Methyl Chloromethyl Ether, General Industry (1910.1006).

VR 425-02-0159. Toxic and Hazardous Substances, 3,3'-Dichlorobenzidine (and its salts), General Industry (1910.1007).

VR 425-02-160. Toxic and Hazardous Substances, bis-Chloromethyl ether, General Industry (1910.1008).

VR 425-02-161. Toxic and Hazardous Substances, beta-Naphthylamine, General Industry (1910.1009).

VR 425-02-162. Toxic and Hazardous Substances, Benzidine, General Industry (1910.1010).

VR 425-02-163. Toxic and Hazardous Substances, 4-Aminodiphenyl, General Industry (1910.1011).

VR 425-02-164. Toxic and Hazardous Substances, Ethyleneimine, General Industry (1910.1012).

VR 425-02-165. Toxic and Hazardous Substances, Beta-Propiolactone, General Industry (1910.1013).

VR 425-02-166. Toxic and Hazardous Substances, 2-Acetylaminofluorene, General Industry (1910.1014).

VR 425-02-167. Toxic and Hazardous Substances, 4-Dimethylaminoazobenzene, General Industry (1910.1015).

VR 425-02-168. Toxic and Hazardous Substances, N-Nitrosodimethylamine, General Industry (1910.1016).

VR 425-02-169. Toxic and Hazardous Substances, Vinyl Chloride, General Industry (1910.1017).

VR 425-02-170. Toxic and Hazardous Substances, Inorganic Arsenic, General Industry (1910.1018).

VR 425-02-171. Toxic and Hazardous Substances, 1,2-dibromo-3-chloropropane (DBCP), General Industry (1910.1044).

VR 425-02-172. Toxic and Hazardous Substances, Acrylonitrile (AN), General Industry (1910.1045).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: March 1, 1994.

Summary:

Federal OSHA made nomenclature changes, address changes, and minor technical amendments to occupational safety and health standards for general industry and construction. These changes, many of which resulted from federal OSHA's redesignation of existing construction standards in Part 1926, reflect transfers of authority and editorial corrections to general industry and construction standards that have not undergone recent revision. An example of the type of changes made includes the replacement of the Atomic Energy Commission by the Nuclear Regulatory Commission and the transfer of certain regulatory authority from the Internal Revenue Service to the Bureau of Alcohol, Tobacco and Firearms.

Final Regulations

Typographical errors were corrected in tables of decompression times for employees who work in compressed air environments. In addition, typographical errors were corrected in tables of rated capacities for different sizes, configurations, and types of wire rope and synthetic web slings.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the document containing the technical amendments to federal OSHA final rules collectively entitled "Safety Standards for General Industry and Construction" is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 910 Capitol Street, Richmond, Virginia.

On November 15, 1993, the Virginia Occupational Safety and Health Codes Board adopted an identical version of the technical amendments to federal OSHA's final rules collectively entitled, "Safety Standards for General Industry and Construction," as published in the Federal Register, Vol. 58, No. 124, pp. 35308-35311, Wednesday, June 30, 1993. The amendments as adopted are not set out.

V.A.R. Doc. No. R94-368; Filed December 20, 1993, 4:42 p.m.



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

January 4, 1994

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-145, etc. - Safety Standards for General
Industry and Construction;
Final Rule; Technical Amendments

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Handwritten signature of Joan W. Smith in cursive script.
Joan W. Smith
Registrar of Regulations

JWS:jbc

Final Regulations

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulations: VR 425-02-08. Electrical Standards, Construction Industry (1926.400 through 1926.449).
VR 425-02-63. Cranes, Derricks, Hoists, Elevators, and Conveyors, Construction Industry (1926.550 through 1926.556).
VR 425-02-79. Safety Standards for Stairways and Ladders Used in the Construction Industry (1926.1050 through 1926.1060).
VR 425-02-103. General Safety and Health Provisions, Construction Industry (1926.20 through 1926.32).
VR 425-02-104. Means of Egress, Construction Industry (1926.34).
VR 425-02-105. Employee Emergency Action Plans, Construction Industry (1926.35).
VR 425-02-106. Medical Services and First Aid, Construction Industry (1926.50).
VR 425-02-107. Ionizing Radiation, Construction Industry (1926.53).
VR 425-02-108. Gases, Vapors, Fumes, Dusts, and Mists, Construction Industry (1926.55).
VR 425-02-109. Ventilation, Construction Industry (1926.57).
VR 425-02-110. Process Safety Management of Highly Hazardous Chemicals, Construction Industry (1926.64).
VR 425-02-111. Hazardous Waste Operations and Emergency Response, Construction Industry (1926.65).
VR 425-02-112. Criteria for Design and Construction of Spray Booths, Construction Industry (1926.66).
VR 425-02-113. Personal Protective and Life Saving Equipment, Construction Industry (1926.95 through 1926.107).
VR 425-02-114. Fire Protection and Prevention, Construction Industry (1926.150 through 1926.159).
VR 425-02-115. Signs, Signals and Barricades, Construction Industry (1926.200 through 1926.203).
VR 425-02-116. Materials Handling, Storage, Use, and Disposal, Construction Industry (1926.250 through 1926.253 except 1926.250(b)(2)).
VR 425-02-117. Hand and Power Tools, Construction Industry (1926.300 through 1926.307).
VR 425-02-118. Welding and Cutting, Construction Industry (1926.350 through 1926.354 except 1926.350(b)(4), 1926.352(g), 1926.353(b), 1926.353(b)(1), 1926.353(b)(2), 1926.353(c), 1926.353(c)(1), 1926.353(c)(1)(i), 1926.353(c)(1)(ii), 1926.353(c)(1)(iii), 1926.353(c)(1)(iv), 1926.353(c)(2), 1926.353(c)(2)(i), 1926.353(c)(2)(ii), 1926.353(c)(2)(iii), 1926.353(c)(2)(iv)).
VR 425-02-119. Scaffolding, Construction Industry (1926.450 through 1926.453).

VR 425-02-120. Motor Vehicles, Mechanized Equipment, and Marine Operations, Construction Industry (1926.600 through 1926.606).
VR 425-02-121. Blasting and Use of Explosives, Construction Industry (1926.900 through 1926.914).
VR 425-02-122. Diving, Construction Industry (Subpart Y) (1926.1071 through 1926.1092).
VR 425-02-123. Toxic and Hazardous Substances, Coal Tar Pitch Volatiles, Construction Industry (1926.1102).
VR 425-02-124. Toxic and Hazardous Substances, 4-Nitrobiphenyl, Construction Industry (1926.1103).
VR 425-02-125. Toxic and Hazardous Substances, Alpha-Naphthylamine, Construction Industry (1926.1104).
VR 425-02-126. Toxic and Hazardous Substances, Methyl Chloromethyl Ether, Construction Industry (1926.1106).
VR 425-02-127. Toxic and Hazardous Substances, 3,3'-Dichlorobenzidine (and its salts), Construction Industry (1926.1107).
VR 425-02-128. Toxic and Hazardous Substances, bis-Chloromethyl ether, Construction Industry (1926.1108).
VR 425-02-129. Toxic and Hazardous Substances, beta-Naphthylamine, Construction Industry (1926.1109).
VR 425-02-130. Toxic and Hazardous Substances, Benzidine, Construction Industry (1926.1110).
VR 425-02-131. Toxic and Hazardous Substances, 4-Aminodiphenyl, Construction Industry (1926.1111).
VR 425-02-132. Toxic and Hazardous Substances, Ethyleneimine, Construction Industry (1926.1112).
VR 425-02-133. Toxic and Hazardous Substances, Beta-Propiolactone, Construction Industry (1926.1113).
VR 425-02-134. Toxic and Hazardous Substances, 2-Acetylaminofluorene, Construction Industry (1926.1114).
VR 425-02-135. Toxic and Hazardous Substances, 4-Dimethylaminoazobenzene, Construction Industry (1926.1115).
VR 425-02-136. Toxic and Hazardous Substances, N-Nitrosodimethylamine, Construction Industry (1926.1116).
VR 425-02-137. Toxic and Hazardous Substances, Vinyl Chloride, Construction Industry (1926.1117).
VR 425-02-138. Toxic and Hazardous Substances, Inorganic Arsenic, Construction Industry (1926.1118).
VR 425-02-139. Toxic and Hazardous Substances, Benzene, Construction Industry (1926.1128).
VR 425-02-140. Toxic and Hazardous Substances, Coke Oven Emissions, Construction Industry (1926.1129).
VR 425-02-141. Toxic and Hazardous Substances, 1,2-dibromo-3-chloropropane (DBCP), Construction Industry (1926.1144).
VR 425-02-142. Toxic and Hazardous Substances, Acrylonitrile (AN), Construction Industry (1926.1145).
VR 425-02-143. Toxic and Hazardous Substances, Ethylene Oxide (EtO), Construction Industry (1926.1147).
VR 425-02-144. Toxic and Hazardous Substances, Formaldehyde, Construction Industry (1926.1148).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: March 1, 1994.

Summary:

Federal OSHA incorporated into the Construction Industry Safety and Health Standards (29 CFR Part 1926) the regulatory text of the General Industry Safety and Health Standards (29 CFR Part 1910) which had been identified as applicable to construction work. Many of the general industry standards included in this incorporation of standards had already been identified as applicable to the construction industry, therefore, this incorporation of standards formally provides for construction standards which correspond to those general industry standards included. It also provides these construction standards with construction number designations.

The Safety and Health Codes Board adopted all but two of the standards included in this incorporation: Access to Employee Exposure and Medical Records, Construction Industry, § 1926.33, and Sanitation, Construction Industry, § 1926.51. The board did not adopt these two above mentioned standards because Virginia already has its own unique standards.

The incorporation of standards by federal OSHA will assist employers and employees in obtaining more up-to-date information on their construction safety and health obligations. Additionally, a limited number of general industry standards that were not previously identified as being applicable to construction activities have now been identified and incorporated into the construction standards.

Appendix A of the construction standards lists the section numbers for the General Industry Safety and Health Standards which were incorporated into the construction standards, as well as the construction standard designations for the incorporated general industry standards. Appendix A was added to the end of the Construction Industry Safety and Health Standards to enable construction industry employers and employees to readily identify the general industry standards that have been incorporated into the construction industry standards.

Where circumstances exist in which general industry standards, other than those already identified, are also applicable to construction, federal OSHA will modify the construction standards through the issuance of technical amendments.

The Virginia Occupational Safety and Health Codes Board adopted an identical version of federal OSHA's final rules collectively entitled, "Incorporation of General Industry Safety and Health Standards Applicable to Construction Work," as published in the Federal Register, Vol. 58, No. 124, pp. 35077-35306, Wednesday, June 30, 1993. The amendments as adopted are not set out.

V.A.R. Doc. No. R94-369; Filed December 20, 1993, 4:47 p.m.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the federal OSHA final rules collectively entitled "Incorporation of General Industry Safety and Health Standards Applicable to Construction Work" is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 910 Capitol Street, Richmond, Virginia.

Final Regulations



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

January 4, 1994

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-103, etc. - Incorporation of General Industry
Safety and Health Standards
Applicable to Construction Work

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS:jbc

* * * * *

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

adopted a technical correction to the Underground Construction Standard as codified in 29 CFR 1926.800, and published in the Federal Register, Vol. 54, No. 105, pp. 23850-23857, Friday, June 2, 1989. The content of the standard is identical to the federal standard except for an additional reference to the Virginia Confined Space Standard for the Construction Industry, CNSP.146.

VA.R. Doc. No. R94-371; Filed December 20, 1993, 4:45 p.m.

Title of Regulation: VR 425-02-65. Underground Construction Standard (1926.800).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: March 1, 1994.

Summary:

On June 21, 1993, the Safety and Health Codes Board adopted the federal-identical Permit-Required Confined Spaces Standard for General Industry, 1910.146 (VR 425-02-92) It also adopted revisions to the existing Virginia unique Confined Space Standard for the Construction Industry, CNSP.146 (VR 425-02-12), which resulted from the adoption of the Permit-Required Confined Spaces Standard for General Industry.

As a result of the board's adoption of the Permit-Required Confined Spaces Standard, applicability of the Virginia unique Confined Space Standard for General Industry and Construction Industry was restricted to the construction industry and renamed the Virginia Confined Space Standard for the Construction Industry, CNSP.146, VR 425-02-12.

On November 15, 1993, the board adopted a technical correction to Virginia's Underground Construction Standard, 1926.800 (VR 425-02-65) to avoid confusion and maintain accuracy. The technical correction replaces the reference to "Virginia Confined Space Standard for General Industry and the Construction Industry, 1910.146," which appears in paragraph (a), "Scope and application," of Virginia's Underground Construction Standard with the reference to the "Virginia Confined Space Standard for the Construction Industry, CNSP.146."

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Underground Construction Standard (1926.800) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 910 Capitol Street, Richmond, Virginia.

On November 15, 1993, the Safety and Health Codes Board

Final Regulations



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 783-3591

December 27, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-65 - Underground Construction Standard, Sec. 1926.800.

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".
Joan W. Smith
Registrar of Regulations

JWS:jbc

* * * * *

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

On November 15, 1993, the Safety and Health Codes Board adopted a technical correction to the Virginia Excavation Standard as codified in 29 CFR 1926.650 through 1926.652, and published in the Federal Register, Vol. 54, No. 209, pp. 45959-45991, Tuesday, October 31, 1989. The content of the standard is identical to the federal standard, except for an additional reference to the Virginia Confined Space Standard for the Construction Industry, CNSP.146.

V.A.R. Doc. R94-370; Filed December 20, 1993, 4:45 p.m.

Title of Regulation: VR 425-02-89. Virginia Excavation Standard (1926.650 through 1926.652).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: March 1, 1994.

Summary:

On June 21, 1993, the Safety and Health Codes Board adopted the federal-identical Permit-Required Confined Spaces Standard for General Industry, 1910.146 (VR 425-02-92). It also adopted revisions to the existing Virginia unique Confined Space Standard for the Construction Industry, CNSP.146 (VR 425 02 12), which resulted from the adoption of the Permit-Required Confined Spaces Standard for General Industry.

As a result of the board's adoption of the Permit-Required Confined Spaces Standard, applicability of the Virginia unique Confined Space Standard for General Industry and Construction Industry was restricted to the construction industry and renamed the Virginia Confined Space Standard for the Construction Industry, CNSP.146 (VR 425-02-12) .

On November 15, 1993, the board adopted a technical correction to the Virginia Excavation Standard, §§ 1926.650 through 1926.652 (VR 425-02-89) to avoid confusion and maintain accuracy. The technical correction, which appears in § 1926.651(g), "Hazardous atmospheres," of the Excavation Standard, replaces the reference to "Virginia Confined Space Standard for General Industry and the Construction Industry, 1910.146" with the reference to the "Virginia Confined Space Standard for the Construction Industry, CNSP.146."

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Virginia Excavation Standard (1926.650 through 1926.652) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 910 Capitol Street, Richmond, Virginia.

Final Regulations



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

December 27, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-89 - Virginia Excavation Standard, Sec. 1926.650
through 1926.650.

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4. (c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS:jbc

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 425-02-92. Permit-Required Confined Spaces Standard for General Industry (1910.146).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: March 1, 1994.

Summary:

Federal OSHA made revisions to the Permit-Required Confined Spaces, Final Rule (58 Fed. Reg. 4462, January 14, 1993) to correct typographical errors contained in the final rule and to correct language that did not clearly express federal OSHA's intent.

Employers that choose alternative entry procedures under paragraph (c)(5) of the standard do not have to provide a pre-entry written certification for some preventive measures such as periodic monitoring.

The alternative entry procedures allow employers to skip the standard's more lengthy requirements if the space is deemed to contain only atmospheric hazards which the employer demonstrates can be controlled with ventilation alone.

Employers, however, were confused by the requirement because paragraph (c)(5)(ii)(H) of the standard required employers to first provide verification that certain precautions, such as periodic monitoring, had been taken to ensure that workers were protected when entering the spaces. Some measures (such as periodic monitoring) required by paragraph (c)(5)(ii) of the standard could not be performed before entry takes place and employers could not provide pre-entry certification of a post-entry event that had not yet occurred.

Federal OSHA corrected this inconsistency by making it clear that the certification requirement applies only to pre-entry measures required under paragraph (c)(5)(ii).

In Appendix A, Decision Flow Chart, a decision box was added at the beginning of the flow chart which asks whether or not the workplace contains any confined spaces.

In Appendix B, paragraph (1), certified marine chemists were added to the list of technically qualified professionals who are qualified to interpret atmospheric testing data.

Also in Appendix B, paragraph (5) was added to address the order of testing for atmospheric hazards.

In Appendix C, minor changes were made including: the reference to an alarm only gas monitor is clarified so that an employer will not mistakenly believe that an alarm only gas meter is necessary. This type of monitor was mentioned as an example of the monitoring equipment which is available.

Appendix D-1A was deleted since it contained material which was not required by the standard's regulatory text, and it was called a "pre-entry check list." Appendix D-1B was redesignated as D-1. Minor changes were made to Appendix D-2.

In Appendix E, all references to broad sensor instrument were removed. Employers may select the atmosphere testing equipment that best fits a specific permit space operation. It was inappropriate for Appendix E to suggest that a particular type of sensor instrument be used for sewer entry.

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Permit-Required Confined Spaces Standard for General Industry (1910.146) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for public inspection at the Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia, and in the office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia.

On November 15, 1993, the Safety and Health Codes Board adopted an identical version of federal OSHA's final rule entitled: "Permit-Required Confined Spaces for General Industry," 29 CFR 1910.146, as published in the Federal Register, Vol. 58, No. 123, pp. 34844-34851, Tuesday, June 29, 1993. The amendments as adopted are not set out.

When the regulations, as set forth in the Corrections to Permit-Required Confined Spaces, Final Rule, § 1910.146, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as below:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
Assistant Secretary	Commissioner of Labor and Industry
29 CFR 1910.146	1910.146

V.A.R. Doc. No. R94-367; Filed December 20, 1993, 4:43 p.m.

Final Regulations



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

December 27, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-92 - Permit-Required Confined Spaces Standard for
General Industry Sec., 1910.146.

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS:jbc

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulations: VR 425-02-143. Toxic and Hazardous Substances, Ethylene Oxide, Construction Industry.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: March 1, 1994.

Summary:

On July 28, 1993, federal OSHA published the correction to an error that appeared in Appendix D of the construction industry standard for Ethylene Oxide, § 1926.1147 (58 Fed. Reg. 35076, June 30, 1993). This nonmandatory appendix, "Sampling and Analytical Methods for Ethylene Oxide," discusses several available methods for monitoring employee exposures to Ethylene Oxide (EtO). The revision substitutes an incorrect mathematical equation for the correct equation in evaluating data to determine the precision of the analytical method used.

In the correction which appears in the first column of Appendix D, federal OSHA removed the reference, "Insert illus. 44," and replaced the equation, "CV+0.036," with the following equation:

$$CV = \frac{3(.0277)^2 + 3(.0452)^2 + 3(.0333)^2}{3+3+3}$$

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Toxic and Hazardous Substances, Ethylene Oxide, Construction Industry (1926.1147) final rule is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 910 Capitol Street, Richmond, Virginia.

On November 15, 1993, the Safety and Health Codes Board adopted an identical version of the correction to federal OSHA's final rule entitled, "Toxic and Hazardous Substances, Ethylene Oxide, Construction Industry," 29 CFR 1926.1147, as published in the Federal Register, Vol. 58, No. 143, p. 40468, Wednesday, July 28, 1993. The amendment as adopted is set out below.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Incorporation of General Industry Safety and Health Standards Applicable to Construction Work

Correction

In rule document 93-15063 beginning on page 35076 in the issue of Wednesday, June 30, 1993, on page 35285, in "Appendix D to § 1926.1147," in the first column remove "Insert illus. 44" and add the following equation:

$$CV = \frac{3(.0277)^2 + 3(.0452)^2 + 3(.0333)^2}{3+3+3}$$

VA.R. Doc. No. R94-366; Filed December 20, 1993, 4:44 p.m.



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

December 27, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-143 - Toxic and Hazardous Substances, Ethylene Oxide,
Construction Industry, Section 1926.1147.

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS:jbc

BOARD OF MEDICINE

Title of Regulations: VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, and Acupuncture.

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

Effective Date: February 23, 1994.

Summary:

The final amendments establish requirements governing the practice of medicine, osteopathy, podiatry, chiropractic, clinical psychology, and acupuncture in the Commonwealth. They include requirements necessary to prevent misleading or deceptive advertising, standards for pharmacotherapy for weight loss, examination for licensure in medicine and osteopathy, and an examination fee for licensure in medicine and osteopathy.

The final amendments respond to continuing review of the regulations by the board and staff concerning (i) specification of board certification for advertising due to such cases brought to the board; (ii) specification of standards of care for prescriptions for weight loss due to such cases brought to the board; (iii) compliance with changes in national licensure examinations; (iv) coverage of examination costs as a result of changes in national licensure examination; and (v) deletion of regulation lacking statutory authority. A technical change was made to the proposed regulation for final promulgation. Section 1.10 C was changed to concur with § 1.10 A.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Richard D. Morrison, Ph.D., Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918. There may be a charge for copies.

VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, and Acupuncture.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

A. The following words and terms, when used in these regulations, shall have the meaning ascribed to them in § 54.1-2900 of the Code of Virginia:

Acupuncture

Board

Clinical psychologist

Practice of clinical psychology

Practice of medicine or osteopathy

Practice of chiropractic

Practice of podiatry

The healing arts.

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

"American institution" means any accredited licensed medical school, college of osteopathic medicine, school of podiatry, chiropractic college, or institution of higher education offering a doctoral program in clinical psychology, located in the United States, its territories, or Canada.

"Approved foreign institution" means any foreign institution that is approved by the board under the provisions of VR 465-02-2, Regulations for Granting Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts.

"Foreign institution" means any medical school, college of osteopathic medicine, school of podiatry, chiropractic college, or institution of higher education offering a doctoral program in clinical psychology, located elsewhere than in the United States, its territories, or Canada.

"Home country" means the country in which a foreign institution's principal teaching and clinical facilities are located.

"Principal site" means the location in the home country where a foreign institution's principal teaching and clinical facilities are located.

§ 1.2. Approval of foreign medical schools.

A separate Virginia State Board of Medicine regulation, VR 465-02-02, Requirements for Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts, is incorporated by reference in these regulations. Prospective applicants for licensure in Virginia who studied at a foreign institution should refer to that regulation in addition to the regulations contained here.

§ 1.3. Public Participation Guidelines.

A separate board regulation, VR 465-01-01, entitled Public Participation Guidelines, which provides for

Final Regulations

involvement of the public in the development of all regulations of the Virginia State Board of Medicine, is incorporated by reference in these regulations.

§ 1.4. Advertising ethics.

A. Any statement specifying a fee for professional services which does not include the cost of all related procedures, services and products which, to a substantial likelihood will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person, shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment which is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bonafide emergency.

C. Advertisements of discounts shall disclose the full fee and documented evidence to substantiate the discounted fees.

§ 1.5. Vitamins, minerals and food supplements.

A. The use or recommendations of vitamins, minerals or food supplements and the rationale for that use or recommendation shall be documented by the practitioner. The rationale for said use must be therapeutically proven and not experimental.

B. Vitamins, minerals, or food supplements, or a combination of the three, shall not be sold, dispensed, recommended, prescribed, or suggested in toxic doses.

C. The practitioner shall conform to the standards of his particular branch of the healing arts in the therapeutic application of vitamins, minerals or food supplement therapy.

§ 1.6. Anabolic steroids.

It shall be considered unprofessional conduct for a licensee of the board to sell, prescribe, or administer anabolic steroids to any patient for other than accepted therapeutic purposes.

§ 1.7. Misleading or deceptive advertising.

A. A licensee or certificate holder's authorization of or use in any advertising for his practice of the term "board certified" or any similar words or phrase calculated to convey the same meaning shall constitute misleading or deceptive advertising under § 54.1-2914 of the Code of Virginia, unless the licensee or certificate holder discloses

the complete name of the specialty board which conferred the aforementioned certification.

B. It shall be considered unprofessional conduct for a licensee of the board to publish an advertisement which is false, misleading, or deceptive.

§ 1.8. Current business addresses.

Each licensee shall furnish the board his current business address. All notices required by law or by these regulations to be mailed by the board to any such licensee shall be validly given when mailed to the latest address given by the licensee. Any change of address shall be furnished to the board within 30 days of such change.

§ 1.9. Solicitation or remuneration in exchange for referral.

It shall be unprofessional conduct for a licensee of the board to knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in § 37.1-179 of the Code of Virginia, or hospital as defined in § 32.1-123.

Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by Title 42, § 1320a-7b(b) of the United States Code, as amended, or any regulations promulgated thereto.

§ 1.10. Pharmacotherapy for weight loss.

A. It shall be unprofessional conduct for a physician to prescribe amphetamine, Schedule II, for the purpose of weight reduction or control.

B. It shall also be unprofessional conduct for a physician to prescribe amphetamine-like drugs, Schedules III and IV, for the purpose of weight reduction or control in the treatment of obesity, except as a short-term adjunct to a therapeutic regimen of weight reduction.

C. It shall be unprofessional conduct for a physician to prescribe [amphetamine or] amphetamine-like substances for use as an anorectic agent in children under 12 years of age.

PART II.

LICENSURE: GENERAL REQUIREMENTS AND LICENSURE BY EXAMINATION.

§ 2.1. Licensure, general.

A. No person shall practice medicine, osteopathy, chiropractic, podiatry, acupuncture, or clinical psychology in the Commonwealth of Virginia without a license from this board, except as provided in § 4.3, Exemption for temporary consultant, of these regulations.

B. For all applicants for licensure by this board except those in clinical psychology, licensure shall be by examination by this board or by endorsement, whichever is appropriate.

C. Applicants for licensure in clinical psychology shall take the examination of the Virginia State Board of Psychology, which will recommend those qualifying to the Board of Medicine for licensure.

§ 2.2. Licensure by examination.

A. Prerequisites to examination.

1. Every applicant for examination by the Board of Medicine for initial licensure shall:

- a. Meet the educational requirements specified in subdivision 2 or 3 of this subsection;
- b. File the complete application and credentials required in subdivision 4 of this subsection with the executive director of the board not less than 75 days prior to the date of examination; and
- c. Pay the appropriate fee, specified in § 7.1, of these regulations, at the time of filing the application.

2. Education requirements: Graduates of American institutions.

Such an applicant shall be a graduate of an American institution that meets the criteria of subdivision a, b, c, or d of § 2.2 A.2, whichever is appropriate to the profession in which he seeks to be licensed:

- a. For licensure in medicine. The institution shall be a medical school that is approved or accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association, or by the Committee for the Accreditation of Canadian Medical Schools or its appropriate subsidiary agencies or any other organization approved by the board.

An applicant shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

- b. For licensure in osteopathy. The institution shall be a college of osteopathic medicine that is approved or accredited by the Committee on Colleges and Bureau of Professional Education of the American Osteopathic Association or any other organization approved by the board.

An applicant shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

c. For licensure in podiatry. The institution shall be a school of podiatry approved and recommended by the Council on Podiatry Education of the American Podiatry Medical Association or any other organization approved by the board.

An applicant shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

d. For licensure in chiropractic.

(1) If the applicant matriculated in a chiropractic college on or after July 1, 1975, he shall be a graduate of a chiropractic college accredited by the Commission on Accreditation of the Council of Chiropractic Education or any other organization approved by the board.

(2) If the applicant matriculated in a chiropractic college prior to July 1, 1975, he shall be a graduate of a chiropractic college accredited by the American Chiropractic Association or the International Chiropractic Association or any other organization approved by the board.

3. Educational requirements: Graduates and former students of foreign institutions.

a. No person who studied at or graduated from a foreign institution shall be eligible for board examination unless that institution has been granted approval by the board according to the provisions of VR 465-02-2, Regulations for Granting Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts.

b. A graduate of an approved foreign institution applying for board examination for licensure shall also present documentary evidence that he:

(1) Was enrolled and physically in attendance at the institution's principal site for a minimum of two consecutive years and fulfilled at least half of the degree requirements while enrolled two consecutive academic years at the institution's principal site.

(2) Received a degree from the institution; and

Final Regulations

(3) Has fulfilled the applicable requirements of § 54.1-2930 of the Code of Virginia.

(4) Has completed three years of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering an approved internship or residency training program when such a program is approved by an accrediting agency recognized by the board for internship and residency. The board may substitute other postgraduate training or study for up to two years of the three-year requirement when such training or study has occurred in the United States or Canada and is:

(a) An approved fellowship program; or

(b) A position teaching medical students, interns, or residents in a medical school program approved by an accrediting agency recognized by the board for internship and residency training.

(5) The Virginia Board of Medicine recognizes as accrediting agencies the Liaison Committee on Graduate Medical Education (LCGME) and the Liaison Committee on Medical Education (LCME) of the American Medical Association, the American Osteopathic Association and the American Podiatric Medical Association and the License Medical Council of Canada (LMCC) or other official accrediting bodies recognized by the American Medical Association.

c. A graduate of an approved foreign institution applying for examination for licensure in medicine or osteopathy shall also possess a standard Educational Council of Foreign Medical Graduates certificate (ECFMG), or its equivalent. Proof of licensure by the board of another state or territory of the United States or a Province of Canada may be accepted in lieu of ECFMG certification.

d. An applicant for examination for licensure in medicine who completed all degree requirements except social services and postgraduate internship at an approved foreign institution shall be admitted to examination provided that he:

(1) Was enrolled at the institution's principal site for a minimum of two consecutive years and fulfilled at least half of the degree requirements while enrolled at the institution's principal site;

(2) Has qualified for and completed an appropriate supervised clinical training program as established by the American Medical Association;

(3) Has completed the postgraduate hospital training required of all applicants for licensure as defined in § 54.1-2930 of the Code of Virginia; and

(4) Has completed three years of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering an approved internship or residency training program when such a program is approved by an accrediting agency recognized by the board for internship and residency. The board may substitute other postgraduate training or study for up to two years of the three-year requirement when such training or study has occurred in the United States or Canada and is:

(a) An approved fellowship program; or

(b) A position teaching medical students, interns, or residents in a medical school program approved by an accrediting agency recognized by the board for internship and residency training.

(5) The Virginia Board of Medicine recognizes as accrediting agencies the Liaison Committee on Graduate Medical Education (LCGME) and the Liaison Committee on Medical Education (LCME) of the American Medical Association, the American Osteopathic Association and the American Podiatric Medical Association and the License Medical Council of Canada (LMCC) or other official accrediting bodies recognized by the American Medical Association.

(6) Presents a document issued by the approved foreign institution certifying that he has met all the formal requirements of the institution for a degree except social services and postgraduate internship.

These regulations are promulgated pursuant to § 54.1-2958 of the Code of Virginia and shall not be deemed to apply to graduates of foreign medical schools who matriculated before July 1, 1985. By resolution adopted at a public meeting on November 20, 1982, the board voted to promulgate the following regulations to be effective July 1, 1985, thereby placing potential foreign medical students on notice that such regulations would become effective on said date. Foreign medical students matriculating on and after July 1, 1985, should take care to determine whether their school satisfies these regulations before applying for licensure in Virginia. Inquiries may be directed to the board office at 1601 Rolling Hills Drive, Richmond, Virginia 23220-5005, (804) 662-9808.

4. Credentials to be filed prior to examination.

Applicants shall file with the executive director of the board, along with their applications for board examination (and at least 75 days prior to the date of examination) the credentials specified in subdivisions a, b, or c of § 2.2 A 4, whichever are appropriate:

a. Every applicant who is a graduate of an American institution shall file:

(1) Documentary evidence that he received a degree from the institution; and

(2) A complete chronological record of all professional activities since graduation, giving location, dates, and types of services performed.

b. Every applicant who attended a foreign institution shall file:

(1) The documentary evidence of education required by subdivisions 3 b, c, or d of this subsection, whichever is or are appropriate;

(2) For all such documents not in the English language, a translation made and endorsed by the consul of the home country of the applicant or by a professional translating service; and

(3) A complete chronological record of all professional activities since the applicant attended the foreign institution, giving location, dates, and types of services performed.

c. Every applicant discharged from the United States military service within the last 10 years shall in addition file with his application a notarized photostatic copy of his discharge papers.

B. Applicants for licensure by board examination shall take the appropriate examination prescribed by the board as provided in § 3.1 Examinations, of these regulations.

§ 2.3. Supervision of unlicensed persons practicing as psychologists in exempt settings.

A. Supervision.

Pursuant to subdivision 4 of § 54.1-3601 of the Code of Virginia, supervision by a licensed psychologist, shall mean that the supervisor shall:

1. Provide supervision of unlicensed personnel who are providing psychological services as defined in § 54.1-3600 and who are functioning in practice and title as a professional psychologist, including the review of assessment protocols, intervention plans and psychological reports, with review denoted by countersignature on all client records and reports as specified in the required protocols within 30 days of origination;

2. Determine and carry out instructional and evaluative consultation with supervisees appropriate to their levels of training and skill, and adjust their service delivery according to current standards of professional practice; and

3. Supervise only those psychological services that fall within the supervisor's area of competence as demonstrated by his own professional practice and

experience.

B. Reporting.

A clinical psychologist who is providing supervision, as provided for in subdivision 4 of § 54.1-3601, shall:

1. Submit to the board, within 120 days of the effective date of this regulation, a copy of the supervisory protocol established for each unlicensed supervisee and signed by the supervisor, supervisee, and authorized representative of the institution or agency.

2. Notify the board of any changes in supervisory relationships, including terminations or additions, prior to or within 10 days of such change, with copies of supervisory protocol for all new supervisory relationships to follow within 30 days of such notice.

PART III. EXAMINATIONS.

§ 3.1. Examinations, general.

The following general provisions shall apply for applicants taking Board of Medicine examinations:

A. Applicants for licensure in medicine and osteopathy may take Components I and II of the Federation Licensing Examination (FLEX) separately or as a unit. However, in no case shall an applicant who has not passed Component I be eligible to sit for Component II as a separate examination. The examination results shall be reported to the candidate as pass/fail.

1. Applicants for licensure in medicine and osteopathy may be eligible to sit for ~~Section Step~~ 3 of the United States Medical Licensing Examination (USMLE) upon evidence of having passed ~~Sections Steps~~ 1 and 2 of the United States Medical Licensing Examination (USMLE).

2. Applicants who have successfully passed ~~one component~~ *Component I* of the FLEX may, upon evidence of having passed ~~one component of the FLEX~~, be eligible to sit for ~~Section Step~~ 3 of the United States Medical Licensing Examination (USMLE) for licensure in Virginia.

B. Applicants who have taken both Components I and II of the Federation Licensing Examination (FLEX), in one sitting, and have failed to pass both components, or have taken and passed only one component in another state or territory of the United States, the District of Columbia, or Province of Canada, and have met all other requirements for licensure in Virginia may be eligible to take the failed or missing component upon payment of the fee prescribed in § 7.1.

C. Applicants for licensure in podiatry shall provide

Final Regulations

evidence of having passed the National Board of Podiatric Medical Examiners Examination, Parts I and II, to be eligible to sit for the Podiatric Medical Licensing Examination (PMLEXIS) in Virginia. The examination results shall be reported to the candidate as pass/fail.

D. Applicants for licensure in chiropractic shall provide evidence of having passed the National Board of Chiropractic Examiners Examination, Parts I, II and III, to be eligible to sit for the Virginia licensure examination administered by the board. Applicants who graduated prior to January 31, 1991, shall not be required to show evidence of having passed the National Board of Chiropractic Examiners Examination Part III to be eligible to sit for the licensure examination required by the board. A minimum score of 75 is required to pass the examination.

§ 3.2. Reexamination.

An applicant for licensure by examination who fails three consecutive attempts to pass the examination(s) administered by the board shall be eligible to sit for another series of three consecutive attempts upon presenting proof to the Credentials Committee of the board that he has fulfilled the requirements of subsection A, B, or C of this section, whichever is appropriate.

A. An applicant for licensure in medicine or osteopathy who fails three consecutive attempts to pass Component I and Component II, or Parts I, II, and III of the FLEX examination or the United States Medical Licensing Examination in Virginia or any other state or territory of the United States, the District of Columbia, or Province of Canada, or a combination of either of these examinations, shall engage in one year of additional postgraduate training to be obtained in a hospital in the United States or Canada approved by the American Medical Association or the American Osteopathic Association.

B. An applicant for licensure in podiatry who fails three consecutive attempts to pass the Virginia examination administered by the board shall appear before the Credentials Committee of the board and shall engage in such additional postgraduate training as may be deemed appropriate by the Credentials Committee.

C. An unsuccessful candidate for chiropractic licensure after each series of three unsuccessful attempts for licensure by examination, shall engage in one year of additional professional training approved by the board before he will be eligible to retake another series of examinations.

§ 3.3. Administration of examination.

A. The board may employ monitors for the examination.

B. For examinations given by the board other than those for which answer sheets are furnished, plain paper shall be used, preferably white, and no reference shall be made

indicating either school or date of graduation. One side of paper only may be written upon and as soon as each sheet is finished, it shall be reversed to prevent its being read by others.

C. Questions will be given out and papers collected punctually at the appointed time and all papers shall be handed in at once when expiration time is announced by the chief proctor.

D. Sections of the examination shall be in such sequence as may be determined by the Federation Licensure Examination (FLEX) Committee or appropriate testing agency.

E. The order of examination shall be posted or announced at the discretion of the board. If the board has no objections, the examiners may exchange hours or days of monitoring the examination.

F. For the guidance of examiners and examinees, the following rules shall govern the examination.

1. Only members of the board, office staff, proctors, and applicants shall be permitted in the examination room, except by consent of the chief proctor.

2. Applicants shall be seated as far apart as possible at desks or desk chairs and each shall have in plain view an admission card bearing his number and photograph.

3. No examinee shall have any compendium, notes or textbooks in the examination room.

4. Any conversation between applicants will be considered prima facie evidence of an attempt to give or receive assistance.

5. Applicants are not permitted to leave the room except by permission of and when accompanied by an examiner or monitor.

6. The use of unfair methods will be grounds to disqualify an applicant from further examination at that meeting.

7. No examiner shall tell an applicant his grade until the executive director has notified the applicant that he has passed or failed.

8. No examination will be given in absentia or at any time other than the regularly scheduled examination.

9. The chief proctor shall follow the rules and regulations recommended by the FLEX Test Committee or other testing agencies.

§ 3.4. Scoring of examination.

Scores forwarded to the executive director shall be

provided to the candidate within 30 days or receipt of the scores provided by the testing service.

PART IV. LICENSURE BY ENDORSEMENT.

§ 4.1. Licensure by endorsement.

A. An applicant for licensure by endorsement will be considered on his merits and in no case shall be licensed unless the Credentials Committee is satisfied that he has passed an examination equivalent to the Virginia Board of Medicine examination at the time he was examined and meets all requirements of Part II of these regulations.

B. A Doctor of Medicine who meets the requirements of Part II of these regulations and has passed the examination of the National Board of Medical Examiners, FLEX, United States Medical Licensing Examination, or the examination of the Licensing Medical Council of Canada may be accepted for licensure by endorsement without further examination.

No applicant for licensure to practice medicine and surgery by endorsement will be considered for licensure unless the applicant has met all the following requirements for pre or postgraduate training as follows:

1. Graduates of schools of medicine approved by an accrediting agency recognized by the board shall have completed one year of satisfactory postgraduate training as an intern or resident in a hospital approved by the Accreditation Council for Graduate Medical Education, Licensing Medical Council of Canada or other official accrediting body recognized by the American Medical Association for intern or residency training.
2. Graduates of schools of medicine not approved by an accrediting agency recognized by the board who serve supervised clinical training in the United States as part of the curriculum of a foreign medical school, shall serve the clerkships in an approved hospital, institution or school of medicine offering an approved residency program in the specialty area for the clinical training received.
3. Graduates of schools of medicine not approved by an accrediting agency recognized by the board shall have completed three years of satisfactory postgraduate training as an intern or resident in a hospital approved by the Accreditation Council for Graduate Medical Education, Licensing Medical Council of Canada or other official accrediting body recognized by the American Medical Association for intern or residency training. The board may substitute other postgraduate training or study for up to two years of the three year requirement when such training or study has occurred in the United States or Canada and is:

a. An approved fellowship program; or

b. A position teaching medical students, interns, or residents in a medical school program approved by an accrediting agency recognized by the board for internship and residency training.

4. An applicant for licensure by the FLEX examination or the United States Medical Licensing Examination who has experienced more than three unsuccessful attempts, shall submit proof of one additional year of approved postgraduate studies in the United States following each series of three attempts to pass the FLEX or the United States Medical Licensing Examination to be eligible for licensure to practice medicine and surgery in Virginia.

5. Applicants who have sat for the United States Medical Licensing Examination shall provide evidence of passing Steps 1, 2, and 3 within a seven-year period.

C. A Doctor of Osteopathy who meets the requirements of Part II of these regulations and has passed the examination of the National Board of Osteopathic Examiners may be accepted for licensure by endorsement without further examination.

No applicant for licensure to practice osteopathy by endorsement will be considered for licensure unless the applicant has met all the following requirements for pre or postgraduate training as follows:

1. Graduates of schools of osteopathy approved by an accrediting agency recognized by the board shall have completed one year of satisfactory postgraduate training as an intern or resident in a hospital approved by the American Osteopathic Association, the American Medical Association, Licensing Medical Council of Canada or other official accrediting body recognized by the American Osteopathic Association, or the American Medical Association for intern or residency training.
2. Graduates of schools of osteopathy not approved by an accrediting agency recognized by the board who serve supervised clinical training in the United States as part of curriculum of a foreign osteopathic school, shall serve the clerkships in an approved hospital, institution or school of osteopathy or medicine offering an approved residency program in the specialty area for the clinical training received.
3. Graduates of schools of osteopathy not approved by an accrediting agency recognized by the board shall have completed three years of satisfactory postgraduate training as an intern or resident in a hospital approved by the American Osteopathic Association, the Accreditation Council for Graduate Medical Education, Licensing Medical Council of Canada or other official accrediting body recognized

Final Regulations

by the American Osteopathic Association, or the American Medical Association for intern or residency training. The board may substitute other postgraduate training or study for up to two years of the three year requirement when such training or study has occurred in the United States or Canada and is:

- a. An approved fellowship program; or
- b. A position teaching osteopathic or medical students, interns, or residents in an osteopathic or medical school program approved by an accrediting agency recognized by the board for internship and residency training.

4. An applicant for licensure by the FLEX examination or the *United States Medical Licensing Examination* who has experienced more than three unsuccessful attempts, shall submit proof of one additional year of approved postgraduate studies in the United States following each series of three attempts to pass the FLEX or the *United States Medical Licensing Examination* to be eligible for licensure to practice osteopathy and surgery in Virginia.

5. Applicants who have sat for the *United States Medical Licensing Examination* shall provide evidence of passing Steps 1, 2, and 3 within a seven-year period.

D. A Doctor of Podiatry who meets the requirements of Part II of these regulations, and has passed the National Board of Podiatry Examiners examination and has passed a clinical competence examination equivalent to the Virginia Board of Medicine examination may be accepted for licensure by endorsement without further examination.

E. A Doctor of Chiropractic who meets the requirements of Part II of these regulations, who has passed the National Board of Chiropractic Examiners examination, and has passed an examination equivalent to the Virginia Board of Medicine Part III examination, may be accepted for licensure without further examination.

§ 4.2. Licensure to practice acupuncture.

Acupuncture is an experimental therapeutic procedure, used primarily for the relief of pain, which involves the insertion of needles at various points in the human body. There are many acupuncture points, and these points are located on most portions of the human body. Insufficient information is available regarding the general usefulness of acupuncture and the risks attendant. Among the risks that attend upon it are the possibilities of prolonged and inappropriate therapy. It is clear that the administration of acupuncture is accompanied by the possibility of serious side effects and injuries, and there are reported cases of such injuries. Possible complications and injuries include peritonitis, damage from broken needles, infections, serum hepatitis, acquired immunity deficiency syndrome, pneumothorax, cerebral vascular accident (stroke), damage

to the eye or the external or middle ear, and the inducement of cardiac arrhythmia.

In the judgment of the board, acupuncture shall be performed only by those practitioners of the healing arts who are trained and experienced in medicine, as only such a practitioner has (i) skill and equipment to determine the underlying cause of the pain; (ii) the capability of administering acupuncture in the context of a complete patient medical program in which other methods of therapeutics and relief of pain, including the use of drugs and other medicines, are considered and coordinated with the acupuncture treatment; and (iii) skill and training which will minimize the risks attendant with its use.

Based on the foregoing considerations, the board will license as acupuncturists only doctors of medicine, osteopathy, and podiatry, as only these practitioners have demonstrated a competence in medicine by passing the medicine/osteopathy licensure examination or podiatry licensure examination.

A. No person shall practice acupuncture in the Commonwealth of Virginia without being licensed by the board to do so.

B. The board shall license as acupuncturists only licensed doctors of medicine, osteopathy, and podiatry. Such licensure shall be subject to the following condition: The applicant shall first have obtained at least 200 hours of instruction in general and basic aspects, specific uses and techniques of acupuncture and indications and contraindications for acupuncture administration.

C. A podiatrist may use acupuncture only for treatment of pain syndromes originating in the human foot.

D. The licensee shall maintain records of the diagnosis, treatment and patient response to acupuncture and shall submit records to the board upon request.

E. Failure to maintain patient records of those patients treated with acupuncture or failure to respond to the board's request for patient records within 30 days shall be grounds for suspension or revocation of a license to practice acupuncture.

§ 4.3. Exemption for temporary consultant.

A. A practitioner may be exempted from licensure in Virginia if:

1. He is authorized by another state or foreign country to practice the healing arts;
2. Authorization for such exemption is granted by the executive director of the board; and
3. The practitioner is called in for consultation by a licensee of the Virginia State Board of Medicine.

B. Such practitioner shall not open an office or designate a place to meet patients or receive calls from his patient within this Commonwealth, nor shall he be exempted from licensure for more than two weeks unless such continued exemption is expressly approved by the board upon a showing of good cause.

PART V. RENEWAL OF LICENSE; REINSTATEMENT.

§ 5.1. Renewal of license.

Every licensee who intends to continue his practice shall renew his license biennially during his birth month and pay to the board the renewal fee prescribed in § 7.1, Fees, of these regulations.

A. A practitioner who has not renewed his license by the first day of the month following the month in which renewal is required shall be dropped from the registration roll.

B. An additional fee to cover administrative costs for processing a late application shall be imposed by the board. The additional fee for late renewal of licensure shall be \$25 for each renewal cycle.

§ 5.2. Reinstatement of lapsed license.

A practitioner who has not renewed his certificate in accordance with § 54.1-2904 of the Code of Virginia for two successive years or more and who requests reinstatement of licensure shall:

A. 1. Submit to the board a chronological account of his professional activities since the last renewal of his license; and

B. 2. Pay the reinstatement fee prescribed in § 7.1 of these regulations.

PART VI. ADVISORY COMMITTEES AND PROFESSIONAL BOARDS.

§ 6.1. Advisory committees to the board.

A. Advisory Committee on Acupuncture.

The board may appoint an Advisory Committee on Acupuncture from licensed practitioners in this Commonwealth to advise and assist the board on all matters relating to acupuncture. The committee shall consist of three members from the state-at-large and two members from the board. Nothing herein is to be construed to make any recommendation by the Advisory Committee on Acupuncture binding upon the board. The term of office of each member of the committee shall be for one year or until his successor is appointed.

B. Psychiatric Advisory Committee.

1. The board may appoint a Psychiatric Advisory Committee from licensed practitioners in this Commonwealth to examine persons licensed under these regulations and advise the board concerning the mental or emotional condition of such person when his mental or emotional condition is an issue before the board. Nothing herein is to be construed to make any recommendations by the Psychiatric Advisory Committee binding upon the Board of Medicine.

2. The term of office for each member of the Psychiatric Advisory Committee shall be one year or until his successor is appointed.

PART VII. FEES REQUIRED BY THE BOARD.

§ 7.1. Fees required by the board are:

A. Examination fee for medicine or osteopathy: The fee for the Federation Licensing Examination (FLEX) for Component I shall be \$275 and Component II shall be \$325. Upon successfully passing both components of the Federation Licensing Examination (FLEX) in Virginia, the applicant shall be eligible for licensure upon payment of a licensure fee of \$125 to the board. *The fee for the United States Medical Licensing Examination (USMLE) shall be \$550.*

B. Examination fee for podiatry: The fee for the Podiatry Licensure Examination shall be \$325.

C. Examination fee for chiropractic: The fee for the Virginia Chiropractic Examination shall be \$250.

D. The fees for taking the FLEX, podiatry, and chiropractic examination are nonrefundable. An applicant may, upon request 21 days prior to the scheduled exam, and payment of a \$100 fee, reschedule for the next time such examination is given.

E. The fee for rescoring the Virginia Chiropractic Examination or the Virginia Podiatry Examination shall be \$75.

F. Certification of licensure: The fee for certification of licensure/grades to another state or the District of Columbia by the board shall be \$25. The fee shall be due and payable upon submitting the form to the board.

G. The fee for a limited license issued pursuant to § 54.1-2936 of the Code of Virginia shall be \$125. The annual renewal is \$25.

H. The fee for a duplicate certificate shall be \$25.

I. Biennial renewal of license: The fee for renewal shall be \$125, due in the licensee's birth month. An additional fee to cover administrative costs for processing a late application may be imposed by the board. The additional fee for late renewal of licensure shall be \$25 for each

Final Regulations

renewal cycle.

J. The fee for requesting reinstatement of licensure pursuant to § 54.1-2921 of the Code of Virginia shall be \$750.

K. The fee for a temporary permit to practice medicine pursuant to § 54.1-2927 B of the Code of Virginia shall be \$25.

L. The fee for licensure by endorsement for medicine, osteopathy, chiropractic, and podiatry shall be \$300. A fee of \$150 shall be retained by the board for a processing fee upon written request from the applicant to withdraw his application for licensure.

M. The fee for licensure to practice acupuncture shall be \$100. The biennial renewal fee shall be \$80, due and payable by June 30 of each even-numbered year.

N. Lapsed license: The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904, which has expired for a period of two years or more, shall be \$250 and shall be submitted with an application for licensure reinstatement.

O. The fee for a limited license issued pursuant to § 54.1-2937 shall be \$10 a year. An additional fee for late renewal of licensure shall be \$10.

P. The fee for a letter of good standing/verification to another state for a license shall be \$10.

Q. The fee for taking the Special Purpose Examination (SPEX) shall be \$350. The fee shall be nonrefundable.

R. Any applicant having passed one component of the FLEX examination in another state shall pay \$325 to take the other component in the Commonwealth of Virginia.

NOTICE: The forms used in administering the Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture 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 Board of Medicine, 6606 W. Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Instructions for Completing National Boards Endorsement Application (HRB-30-034) Revised 10/91
Request for Endorsement of Certification by the National Board of Medical Examiners, Revised 1/93
Claims History Sheet
Request for Physician Profile
Clearance from other State Boards
Disciplinary Inquiries
Instructions Regarding the Chiropractic Examination
Application for a Certificate to Practice Chiropractic (HRB-30-058) Revised 9/3/87

General Information Regarding the Examination, Revised 11/23/92

Exam: Chiropractic Employment/Professional Activity Questionnaire

Instructions for Completing National Boards of Osteopathic Examiners Endorsement Application (HRB-30-034) Revised 10/91

Application for a License to Practice Medicine/Osteopathy (DHP-30-056) Revised 7/24/89

Instructions for Completing Podiatry Endorsement Application (HRB-30-034) Revised 2/92

Application for a Certificate to Practice Podiatry (HRB-30-057) Revised 10/15/84

National Board of Podiatric Medical Examiners Request for Scores on Part I and II

Request for Podiatry Disciplinary Action

Licensure Registration

V.A.R. Doc. No. R94-440; Filed January 3, 1994, 2:31 p.m.

* * * * *

Title of Regulation: VR 465-03-01. Regulations Governing the Practice of Physical Therapy.

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

Effective Date: February 23, 1994.

Summary:

The amendments establish requirements governing the practice of physical therapy in the Commonwealth. They include specifications of traineeships and examinations required after inactive practice, and a processing fee for a withdrawn application.

The amendments respond to continuing review of the regulations by the board and staff concerning (i) specification of traineeship and examination requirements after inactive practice when seeking licensure by endorsement; (ii) specification of traineeship and examination required after inactive practice when seeking relicensure; and (iii) establishment of a processing fee for a withdrawn application.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Richard D. Morrison, Ph.D., Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918. There may be a charge for copies.

VR 465-03-01. Regulations Governing the Practice of Physical Therapy.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

["Board" means the Virginia Board of Medicine.]

"Advisory board" means the Advisory Board on Physical Therapy.

["Board" means the Virginia Board of Medicine.]

"Direct supervision" means a physical therapist is present and is fully responsible for the activities assigned to the trainee.]

"Evaluation" means the carrying out by a physical therapist of the sequential process of assessing a patient, planning the patient's physical therapy treatment program, and appropriate documentation.

"Examination" means an examination approved and prescribed by the board for licensure as a physical therapist or physical therapist assistant.

"Physical therapist" means a person qualified by education and training to administer a physical therapy program under the direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery.

"Physical therapist assistant" means a person qualified by education and training to perform physical therapy functions under the supervision of and as directed by a physical therapist.

"Physical therapy aide" means any nonlicensed personnel performing patient care functions at the direction of a physical therapist or physical therapist assistant within the scope of these regulations.

"Referral and direction" means the referral of a patient by a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery to a physical therapist for a specific purpose and for consequent treatment that will be performed under the direction of and in continuing communication with the referring doctor or dentist.

"Trainee" means a person undergoing a traineeship.

1. "Relicensure trainee" means a physical therapist or physical therapist assistant who has been inactive for two years or more and who wishes to return to the practice of physical therapy.

2. "Unlicensed graduate trainee" means a graduate of an approved physical therapy or physical therapist assistant program who has not taken the state licensure examination or who has taken the examination but not yet received a license from the

board or who has failed the examination three times as specified in § 3.3 A.

3. "Foreign trained trainee" means a physical therapist or physical therapist assistant who graduated from a school outside the United States, its territories, or the District of Columbia and who is seeking licensure to practice in Virginia.

"Traineeship" means a period of activity during which an unlicensed physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

["Direct supervision" means a physical therapist is present and is fully responsible for the activities assigned to the trainee.]

§ 1.2. A separate board regulation entitled VR 465-01-01, Public Participation Guidelines, which provides for involvement of the public in the development of all regulations of the Virginia State Board of Medicine, is incorporated by reference in these regulations.

PART II. LICENSURE: GENERAL REQUIREMENTS AND LICENSURE BY EXAMINATION.

§ 2.1. Requirements, general.

A. No person shall practice as a physical therapist or physical therapist assistant in the Commonwealth of Virginia except as provided in these regulations.

B. Licensure by this board to practice as a physical therapist or physical therapist assistant shall be by examination or by endorsement, whichever is appropriate.

§ 2.2. Licensure by examination: Prerequisites to examination.

A. Every applicant for initial board licensure by examination shall:

1. Meet the age and character requirements of §§ 54.1-2947 and 54.1-2948 of the Code of Virginia;

2. Meet the educational requirements prescribed in § 2.3 or § 2.4 of these regulations;

3. Submit the required application and credentials to the board not less than 30 days prior to the date of examination; and

4. Submit, along with his application, the examination fee prescribed in § 9.1, Fees, of these regulations.

B. Every applicant shall take the examination at the time prescribed by the board.

§ 2.3. Education requirements: Graduates of American

Final Regulations

institutions or programs.

A. A graduate of an American institution who applies for licensure as a physical therapist shall be a graduate of a school of physical therapy approved by the American Physical Therapy Association and shall submit to the board documented evidence of his graduation from such a school.

B. An applicant for licensure as a physical therapist assistant who attended an American institution shall be a graduate of a two-year college-level educational program for physical therapist assistants approved by the board and shall submit to the board documented evidence of his graduation from such a program.

§ 2.4. Educational requirement: Graduates of foreign institutions.

A. An applicant for licensure as a physical therapist or physical therapist assistant who graduated from a school outside the United States or Canada shall be a graduate of such a school which offers and requires courses in physical therapy acceptable to the board on the advice of the advisory board.

B. An applicant under this section for licensure as a physical therapist or physical therapist assistant, when filing his application and examination fee with the board, shall also:

1. Submit proof of proficiency in the English language by passing with a grade of not less than 560, the Test of English as a Foreign Language (TOEFL); or an equivalent examination approved by the board. TOEFL may be waived upon evidence of English proficiency.

2. Submit a photostatic copy of the original certificate or diploma verifying his graduation from a physical therapy curriculum which has been certified as a true copy of the original by a notary public.

3. If such certificate or diploma is not in the English language, submit either:

a. A translation of such certificate or diploma by a qualified translator other than the applicant; or

b. An official certification from the school attesting to the applicant's attendance and graduation date.

4. Submit verification of the equivalency of the applicant's education to the following standards from a scholastic credentials service approved by the advisory board.

a. The minimum educational requirements in general and professional education for licensure as a physical therapist shall be 120 semester hours as follows:

(1) General education requirements. 40 or more semester hours in the following subjects: humanities, social sciences, natural sciences, biological sciences and electives.

(2) Professional education requirements. 60 or more semester hours; the course of professional study shall include: basic health sciences, clinical sciences, clinical education, and other electives.

b. The minimum requirements in general and professional education for licensure as a physical therapist assistant shall be 68 semester hours as follows:

(1) General education requirements: 24 or more semester hours in the following subjects: humanities, social sciences, natural sciences, biological sciences, and electives.

(2) Professional educational requirements: 44 or more semester hours in the following course of professional study: basic health sciences, clinical sciences, clinical education, and electives.

c. Education requirements of foreign trained physical therapists or physical therapist assistants shall be equivalent to the entry level degree of U.S. trained physical therapists or physical therapist assistants as established by the American Physical Therapy Association.

5. An applicant for licensure as a physical therapist shall submit verification of having successfully completed a full-time 1000 hour traineeship (approximately six months) under the direct supervision of a physical therapist licensed under § 54.1-2946 of the Code of Virginia. The initial 500 hours must be in an acute care facility treating both in and out patients and 500 hours may be in another type of physical therapy facility which is on the list approved by the advisory board.

6. An applicant for licensure as a physical therapist assistant shall submit verification of having successfully completed a full-time 500 hour traineeship in an acute care facility under the direct supervision of a physical therapist licensed under § 54.1-2946 of the Code of Virginia treating both inpatients and outpatients in a facility which meets the requirements of subdivision 7 below.

7. The traineeship must be completed in Virginia:

a. At a JCAH accredited hospital or other facility approved by the advisory board; and

b. At a facility that serves as a clinical education facility for students enrolled in an accredited program educating physical therapists or physical therapist assistants in Virginia.

8. It will be the responsibility of the trainee to make the necessary arrangements for his training with the Director of Physical Therapy, or the director's designee at the facility selected by the trainee.

9. The physical therapist supervising the trainee shall submit a progress report to the chairman of the advisory board at the end of 500 hours of training. A final report will be submitted at the end of the second 500 hours. These reports will be submitted on forms supplied by the advisory board.

10. If the trainee's performance is unsatisfactory, during the training period, the supervising therapist will notify, in writing, the chairman of the advisory board.

11. If the traineeship is not successfully completed at the end of the six-month period, the advisory board shall determine if the traineeship will be continued for a period not to exceed six months.

12. The traineeship requirements of this part may be waived, at the discretion of the advisory board, if the applicant for licensure can verify, in writing, the successful completion of one year of clinical practice in the United States, its territories or the District of Columbia.

13. A foreign trained physical therapist or physical therapist assistant licensed in another state who has less than one year of clinical practice in the United States, its territories or the District of Columbia must comply with the traineeship requirement for licensure by endorsement.

PART III. EXAMINATION.

§ 3.1. Conditions of examinations.

A. The licensure examinations for both physical therapists and physical therapist assistants shall be prepared and graded as prescribed and approved by the board.

B. The advisory board shall schedule and conduct the examinations at least once each fiscal year, the time and place to be determined by the advisory board.

C. The physical therapy examination shall be a one-part comprehensive examination approved by the board as prescribed in § 54.1-2947 of the Code of Virginia.

D. The physical therapy assistant examination shall be an examination approved by the board as prescribed in § 54.1-2948.

§ 3.2. Examination scores.

A. The minimum passing scores shall be:

1. For the physical therapy examination: the grade shall be established by the board.

2. For the physical therapist assistant examination: the grade shall be established by the board.

B. The scores shall be filed with the appropriate reporting service.

§ 3.3. Failure to pass.

An applicant who fails the examination after three attempts shall be required to satisfactorily complete a full time supervised traineeship approved by the chairman of the Advisory Board on Physical Therapy as prescribed in § 8.4, Traineeship, prior to being eligible for three additional attempts.

PART IV. LICENSURE BY ENDORSEMENT.

§ 4.1. Endorsement.

A. A physical therapist or physical therapist assistant who has been licensed by another state or territory or the District of Columbia by examination equivalent to the Virginia examination at the time of licensure and who has met all other requirements of the board may, upon recommendation of the advisory board to the board, be licensed in Virginia by endorsement.

B. Any physical therapist or physical therapist assistant seeking *licensure by endorsement* or as described in § 7.2 B who has been inactive for a period of two years or more and who wishes to resume practice shall first successfully complete a traineeship and other requirements specified below. The requirements are:

1. For any physical therapist or physical therapist assistant who has had an inactive practice for a period of two to six years, a traineeship of a minimum of one month of full-time practice.

2. For any physical therapist or physical therapist assistant who has had an inactive practice for a period of seven to 10 years, a traineeship of a minimum of two months full-time practice, taking and passing the current licensure examination approved by the board and payment of fees prescribed in § 9.1 of these regulations.

3. For any physical therapist or physical therapist assistant who has an inactive practice exceeding a period of 10 years, a traineeship of a minimum of three months of full-time practice, and taking and passing the current licensure examination approved by the board and payment of fees prescribed in § 9.1 of these regulations.

PART V. PRACTICE OF PHYSICAL THERAPY.

Final Regulations

§ 5.1. General requirements.

All services rendered by a physical therapist shall be performed only upon medical referral by and under the direction of a doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery.

§ 5.2. Individual responsibilities to patients and to referring doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery.

A. The physical therapists' responsibilities are to evaluate a patient, plan the treatment program and administer and document treatment within the limit of his professional knowledge, judgment, and skills.

B. A physical therapist shall maintain continuing communication with and shall report the results of periodic evaluation of patients to the referring practitioner.

§ 5.3. Supervisory responsibilities.

A. A physical therapist shall supervise no more than three physical therapist assistants at any one time per practice setting, but not to exceed a total of two practice settings.

B. A physical therapist shall be responsible for any action of persons performing physical therapy functions under the physical therapist's supervision or direction.

C. A physical therapist may not delegate physical therapy treatments to physical therapy aides except those activities that are available without prescription in the public domain to include but not limited to hot packs, ice packs, massage and bandaging.

D. Supervision of a physical therapy aide means that a licensed physical therapist or licensed physical therapist assistant must be within the facility to give direction and instruction when procedures or activities are performed. Such nonlicensed personnel shall not perform those patient care functions that require professional judgment or discretion.

E. For patients assigned to a physical therapist assistant, the physical therapist shall make on-site visits to such patients jointly with the assistant at the frequency prescribed in § 6.1 of these regulations.

F. The advisory board may at its discretion approve the utilization of more than three physical therapist assistants supervised by a single physical therapist in institutions under the supervision of the Department of Mental Health, Mental Retardation and Substance Abuse Services where the absence of physical therapy care would be detrimental to the welfare of the residents of the institution.

G. A physical therapist shall supervise no more than two trainees at any one time as established in § 2.4 and Part VIII of these regulations.

PART VI.

PRACTICE OF PHYSICAL THERAPIST ASSISTANTS.

§ 6.1. Scope of responsibility.

A. A physical therapist assistant is permitted to perform all physical therapy functions within his capabilities and training as directed by a physical therapist. The scope of such functions excludes initial evaluation of the patient, initiation of new treatments, and alteration of the plan of care of the patient.

B. Direction by the physical therapist shall be interpreted as follows:

1. The initial patient visit shall be made by the physical therapist for evaluation of the patient and establishment of a plan of care.

2. The physical therapist assistant's first visit to the patient shall be made jointly with the physical therapist.

3. The physical therapist shall provide on-site supervision according to the following schedules:

a. For inpatients in hospitals, not less than once a week.

b. For all other patients, one of 12 visits made to the patient during a 30-day period, or once every 30 days, whichever comes first.

4. Failure to abide by this regulation due to absence of the physical therapist in case of illness, vacation, or professional meeting, for a period not to exceed five consecutive days, will not constitute violation of the foregoing provisions.

PART VII.

RENEWAL OF LICENSURE; UPDATE FOR QUALIFICATIONS.

§ 7.1. Biennial renewal of license.

Every physical therapist and physical therapist assistant who intends to continue practice shall renew his license biennially during his birth month in each even numbered year and pay to the board the renewal fee prescribed in § 9.1 of these regulations.

A. A licensee whose license has not been renewed by the first day of the month following the month in which renewal is required shall be dropped from the registration roll.

B. An additional fee to cover administrative costs for processing a late application shall be imposed by the board. The additional fee for late renewal of licensure shall be \$25 for each renewal cycle.

§ 7.2. Updates on professional activities.

A. The board shall require from physical therapists and physical therapist assistants licensed or applying for licensure in Virginia reports concerning their professional activities as shall be necessary to implement the provisions of these regulations.

B. A minimum of 320 hours of practice shall be required for licensure renewal for each biennium.

C. Any physical therapist or physical therapist assistant who fails to meet the requirements of subsection B of this section shall be considered to have been inactive since the professional activity requirement was last satisfied and the license shall be deemed to have expired and become invalid.

PART VIII. TRAINEESHIP REQUIREMENTS.

§ 8.1. Traineeship required for relicensure.

A. Any physical therapist or physical therapist assistant who has been inactive as described in § 7.1 for a period of two years or more and who wishes to resume practice shall first successfully complete a traineeship.

B. The period of traineeship to be served by such person shall be:

1. A minimum of one month full time for those inactive for a period of two to six years.
2. A minimum of two months full time for those inactive for a period of seven to 10 years. *The applicant shall take and pass the physical therapy licensure examination as established in § 8.2 of the regulations.*
3. A minimum of three months full time for those inactive for a period exceeding 10 years. *The applicant shall take and pass the physical therapy licensure examination as established in § 8.2 of the regulations.*

C. The physical therapist who serves as the supervisor of a trainee under this section shall certify to the advisory board upon completion of the traineeship that the trainee's knowledge and skills meet current standards of the practice of physical therapy.

D. Upon receipt of a petition from a person seeking relicensure and declaring hardship, the advisory board may, at its discretion, recommend to the board that the traineeship provision be waived.

§ 8.2. Additional requirement for physical therapist examination.

In addition to the traineeship required in § 8.1, any

physical therapist seeking relicensure who has been inactive for seven years or more shall take and pass the examination approved by the board and pay a fee as prescribed in § 9.1. If a trainee fails the examination three times, the trainee must appear before the advisory board prior to additional attempts.

§ 8.3. Exemption for physical therapist assistant.

A physical therapist assistant seeking relicensure who has been inactive shall be exempt from reexamination requirements but not from traineeship requirements.

§ 8.4. Traineeship required for unlicensed graduate scheduled to sit for the board's licensure examination as required by regulation in § 2.1.

A. Upon approval of the chairman of the advisory board, an unlicensed graduate trainee may be employed under the direct supervision of a physical therapist while awaiting the results of the next licensure examination.

B. The traineeship shall terminate upon receipt by the candidate of the licensure examination results.

C. A person not taking the licensure examination within three years after graduation shall successfully complete a full-time three-month traineeship before taking the licensure examination.

PART IX. FEES.

§ 9.1. The following fees have been established by the board:

1. The fee for physical therapist examination shall be \$200.
2. The fee for the physical therapist assistant examination shall be \$200.
3. The fee for licensure by endorsement for the physical therapist shall be \$225.
4. The fee for licensure by endorsement for the physical therapist assistant shall be \$225.
5. The fees for taking the physical therapy or physical therapist assistant examination are nonrefundable. An applicant may, upon request 21 days prior to the scheduled exam, and payment of the \$100 fee, reschedule for the next time such examination is given.
6. The fee for license renewal for a physical therapist assistant's license is \$80 and shall be due in the licensee's birth month, in each even numbered year. An additional fee to cover administrative costs for processing a late application may be imposed by the board. The additional fee for late renewal of licensure

Final Regulations

shall be \$25 for each renewal cycle.

7. The fee for license renewal for a physical therapy license is \$125 and shall be due in the licensee's birth month, in each even numbered year. An additional fee to cover administrative costs for processing a late application may be imposed by the board. The additional fee for late renewal of licensure shall be \$25 for each renewal cycle.

8. The examination fee for reinstatement of an inactive license as prescribed in § 8.2 shall be 200.

9. Lapsed license. The fee for reinstatement of a physical therapist or a physical therapist assistant license issued by the Board of Medicine pursuant to § 54.1-2904, which has expired for a period of two years or more, shall be \$225 and must be submitted with an application for licensure reinstatement.

10. Upon written request from an applicant to withdraw his application for licensure a fee of \$100 shall be retained by the Board of Medicine as a processing fee.

NOTICE: The forms used in administering the Regulations Governing the Practice of Physical Therapy 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 Board of Medicine, 6606 W. Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Instructions for Licensure by Endorsement to Practice as a Physical Therapist/Physical Therapist Assistant (DHP-30-059), Revised 2/23/93

Instructions for Licensure by Endorsement to Practice as a Physical Therapist/Physical Therapist Assistant - Foreign Graduates (DHP-30-059), Revised 2/23/93

Application for a License to Practice Physical Therapy

Quiz on the Code and Regulations, Revised 7/13/92

Physical Therapist Licensing, Physical Therapist Assistant Licensing: The Interstate Reporting Service of Professional Examination Service, Revised 6/90

Verification of Physical Therapy Practice (DHP-30-059), Revised 10/26/92

Verification of State Licensure (DHP-30-059), Revised 10/26/92

Licensure Registration

VA.R. Doc. No. R94-438; Filed January 3, 1994, 2:34 p.m.

* * * * *

Title of Regulation: VR 465-05-1. Regulations Governing the Practice of Physicians' Assistants.

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

Effective Date: February 23, 1994.

Summary:

The final amendments establish requirements for prescriptive authority for physicians' assistants pursuant to § 54.1-2952.1 of the Code of Virginia. The amendments set minimal requirements for pharmacology education and establish the examination requirement for prescriptive authority.

Amendments also set requirements for a written protocol and formulary of drugs and devices which may be prescribed. Requirements for disclosure to the patient and responsibilities of the supervising physician are established.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Richard D. Morrison, Ph.D., Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918. There may be a charge for copies.

VR 465-05-1. Regulations Governing the Practice of Physicians' Assistants.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Assistant to a Doctor of Medicine, Osteopathy, or Podiatry," or "Physician's Assistant," means an individual who is qualified as an auxiliary paramedical person by academic and clinical training and is functioning in a dependent-employee relationship with a doctor of medicine, osteopathy, or podiatry licensed by the board.

"Board" means the Virginia Board of Medicine.

"Committee" means the Advisory Committee on Physician's Assistants appointed by the president of the board to advise the board on matters relating to physician's assistants. The committee is composed of four members of the board, one supervising physician, and two physician's assistants.

"Formulary" means the listing of categories of drugs which may be prescribed by the physician's assistant according to these regulations.

"Group practice" means the practice of a group of two or more doctors of medicine, osteopathy, or podiatry

licensed by the board who practice as a partnership or professional corporation.

"Institution" means a hospital, nursing home or other health care facility, community health center, public health center, industrial medicine or corporation clinic, a medical service facility, student health center, or other setting approved by the board.

"NCCPA" means the National Commission on Certification of Physician Assistants.

"Protocol" means a set of directions developed by the supervising physician that defines the supervisory relationship between the physician assistant and the physician and the circumstances under which the physician will see and evaluate the patient.

"Supervision" means:

1. *"Alternate supervising physician"* means a member of the same group or professional corporation or partnership of any licensee, any hospital or any commercial enterprise with the supervising physician. Such alternating supervising physician shall be a physician licensed in the Commonwealth of Virginia who has registered with the board and who has accepted responsibility for the supervision of the service that a physician's assistant renders.

2. *"Direct supervision"* means the physician is in the room in which a procedure is being performed.

3. *"General supervision"* means the supervising physician is easily available and can be physically present within one hour.

4. *"Personal supervision"* means the supervising physician is within the facility in which the physician's assistant is functioning.

5. *"Supervising physician"* means the supervising physician who makes application to the board for licensure of the assistant.

6. *"Substitute supervising physician"* means a doctor of medicine, osteopathy, or podiatry licensed in the Commonwealth of Virginia who has accepted responsibility for the supervision of the service that a physician's assistant renders in the absence of such assistant's supervising physician.

§ 1.2. Applicability.

These regulations apply to physician's assistants ~~only~~, and the supervising physicians as defined in § 1.1.

§ 1.3. A separate board regulation, VR 465-01-01, entitled Public Participation Guidelines, which provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine, is

incorporated by reference in these regulations.

PART II. REQUIREMENTS FOR PRACTICE AS A PHYSICIAN'S ASSISTANT.

§ 2.1. Requirements, general.

A. No person shall practice as a physician's assistant in the Commonwealth of Virginia except as provided in these regulations.

B. All services rendered by a physician's assistant shall be performed only under the supervision of a doctor of medicine, osteopathy, or podiatry licensed by this board to practice in the Commonwealth of Virginia.

§ 2.2. Licensure: Entry requirements and application.

A. A license to practice as a physician's assistant shall be obtained from the board before such assistant begins to practice with a supervising doctor of medicine, osteopathy, or podiatry.

B. Entry requirements.

An applicant for licensure shall:

1. Possess the educational qualifications prescribed in § 2.3 of these regulations; and
2. Meet the requirements for examination prescribed in §§ 3.1 through 3.3 of these regulations.

C. Application for board approval of a physician's assistant shall be submitted to the board by the supervising physician under whom the assistant will work, and who will assume the responsibility for the assistant's performance. By submitting the application, the supervising physician attests to the general competence of the assistant. In a group or institutional practice setting, the supervising physician shall be the contact for the board regardless of whether the supervision has been delegated to an alternate or substitute supervising physician.

D. The application shall:

1. Be made on forms supplied by the board and completed in every detail.
2. Spell out the roles and functions of the assistant with a protocol acceptable to the board and any such protocols shall take into account such factors as the number of patients, the types of illness treated by the physician, the nature of the treatment, special procedures, and the nature of the physician's availability in ensuring direct physician involvement at an early stage and regularly thereafter.
 - a. The board may require, at its discretion, in a supplement to the application, information regarding

Final Regulations

the level of supervision, "direct," "personal" or "general," with which the supervising physician plans to supervise the physician's assistant for selected tasks. The board may also require the supervising physician to document the assistant's competence in performing such tasks.

b. The supervising physician shall maintain records of all approved invasive procedures performed by the physician's assistant.

c. The supervising physician shall report to the board the number of invasive procedures performed by the physician's assistant and complications resulting from the procedures, on forms provided by the board.

d. Failure to maintain records of invasive procedures performed by the physician's assistant, or provide a report to the board, shall be considered unprofessional conduct.

3. Provide that if, for any reason, the assistant discontinues working in the employment and under the supervision of the licensed practitioner who submitted the application:

a. Such assistant and the employing practitioner shall so inform the board and the assistant's approval shall terminate.

b. A new application shall be submitted to the board and approved by the board in order for the assistant either to be reemployed by the same practitioner or to accept new employment with another supervising physician.

4. *If the role of the assistant includes prescribing for Schedule VI drugs and devices, the written protocol shall include those categories of drugs and devices within the approved formulary as found in § 6.1 of these regulations and that are within the scope of practice and proficiency of the supervising physician.*

E. The application fee prescribed in § 5-1 § 7.1 of these regulations shall be paid at the time the application is filed.

§ 2.3. Educational requirements.

An applicant for licensure shall:

1. Have successfully completed a prescribed curriculum of academic study for physicians' assistants in a school or institution accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association and accredited by the American Academy of Physician Assistants; and

2. Present documented evidence of eligibility for the NCCPA examination or completed licensure

requirements.

PART III. EXAMINATION.

§ 3.1. The proficiency examination of the NCCPA constitutes the board examination required of all applicants for licensure.

§ 3.2. Provisional registration.

An applicant who has met the requirements of the board at the time his initial application is submitted may be granted provisional registration by the board if he meets the provisions of § 54.1-2950 of the Code of Virginia and § 2.3 of these regulations. Such provisional licensure shall be subject to the following conditions:

1. The provisional licensure shall be valid until the applicant takes the next subsequent NCCPA examination and its results are reported, but this period of validity shall not exceed 30 days following the reporting of the examination scores.

2. An applicant who fails the examination may be granted individual consideration by the board and granted an extension of the provisional licensure upon evidence that he is eligible for admission to the next scheduled board examination.

§ 3.3. Examination.

A. Every applicant shall take the NCCPA examination at the time scheduled by the NCCPA.

B. An applicant who fails the examination three consecutive times shall surrender his license to practice until proof has been provided to the board that the standards of NCCPA have been met.

§ 3.4. Renewal of license.

A. Every licensed physician's assistant intending to continue to practice shall biennially renew the license in each odd numbered year in the licensee's birth month:

1. Register with the board for renewal of his license;

2. Present documented evidence of compliance with continuing medical education standards established by the NCCPA; and

3. Pay the renewal fee as prescribed in § 5-1 B subsection B of § 7.1 at the time of filing the license renewal.

B. Any physician's assistant who allows his NCCPA certification to lapse shall be considered not licensed by the board. Any such assistant who proposes to resume his practice shall make a new application for licensure.

PART IV. INDIVIDUAL RESPONSIBILITIES.

§ 4.1. Individual responsibilities.

A supervising physician and the physician's assistants working with him shall observe the following division of responsibilities in the care of patients:

A. The supervising physician shall:

1. See and evaluate any patient who presents the same complaint twice in a single episode of care and has failed to improve significantly. Such physician involvement shall occur not less frequently than every fourth visit for a continuing illness.

2. Review the record of services rendered the patient by the physician's assistant and sign such records within 24 hours after any such care was rendered by the assistant.

3. Be responsible for all invasive procedures. Under general supervision, a physician's assistant may insert a nasogastric tube, bladder catheter, needle, or peripheral intravenous catheter, but not a flow-directed catheter, and may perform minor suturing, venipuncture, and subcutaneous intramuscular or intravenous injection.

All other invasive procedures not listed above must be performed under direct supervision unless, after directly supervising the performance of a specific invasive procedure three times or more, the supervising physician attests to the competence of the physician's assistant to perform the specific procedure without direct supervision by certifying to the board in writing the number of times the specific procedure has been performed and that the physician's assistant is competent to perform the specific procedure. After such certification has been accepted and approved by the board, the physician's assistant may perform the procedure under general supervision.

4. Be responsible for all prescriptions issued by the assistant. He shall:

a. Attest to the competence of the assistant to prescribe drugs and devices; and

b. Attest that the assistant understands the indications, dosages and side effects of such treatment.

B. The physician's assistant shall not render independent health care. Such assistant:

1. Shall perform only those medical care services that are within the scope of the practice and proficiency of the supervising physician as prescribed in the physician's assistants protocol. When a physician's

assistant is to be supervised by an alternate supervising physician outside the scope of specialty of the supervising physician, then the physician's assistant's functions shall be limited to those areas not requiring specialized clinical judgment, unless a separate protocol for that alternate supervising physician is approved and on file with the board.

2. ~~Shall not sign prescriptions.~~ Shall prescribe only those drugs and devices as allowed in Parts V and VI of these regulations.

3. Shall, during the course of performing his duties, wear identification showing clearly that he is a physician's assistant.

C. If the assistant is to perform duties away from the supervising physician, such supervising physician shall obtain board approval in advance for any such arrangement and shall establish written policies to protect the patient.

D. If, due to illness, vacation, or unexpected absence, the supervising physician is unable to supervise personally the activities of his assistant, such supervising physician may temporarily delegate the responsibility to another doctor of medicine, osteopathy, or podiatry. The employing supervising physician so delegating his responsibility shall report such arrangement for coverage, with the reason therefor, to the board office in writing, subject to the following provisions:

1. For planned absence, such notification shall be received at the board office at least one month prior to the supervising physician's absence;

2. For sudden illness or other unexpected absence, the board office shall be notified as promptly as possible, but in no event later than one week;

3. Temporary coverage may not exceed four weeks unless special permission is granted by the board.

E. With respect to assistants employed by institutions, the following additional regulations shall apply:

1. No assistant may render care to a patient unless the physician responsible for that patient has signed an application to act as supervising physician for that assistant. The board shall make available appropriate forms for physicians to join the application for an assistant employed by an institution.

2. Any such application as described in subdivision 1 above shall delineate the duties which said physician authorizes the assistant to perform.

3. The assistant shall as soon as circumstances may dictate but, within an hour, with an acute or significant finding or change in clinical status, report to the supervising physician concerning the

Final Regulations

examination of the patient. The assistant shall also record his findings in appropriate institutional records.

4. No physician assistant shall perform the initial evaluation, or institute treatment of a patient who presents to the emergency room or is admitted to the hospital for a life threatening illness or injury. In noncritical care areas, the physician assistant may perform the initial evaluation in an inpatient setting provided the supervising physician evaluates the patient within eight hours of the physician assistant's initial evaluation.

PART V.

APPROVAL FOR PRESCRIPTIVE AUTHORITY.

§ 5.1. Authority to prescribe; general.

A. The licensed physician's assistant shall have the authority to prescribe certain controlled substances and devices in the Commonwealth of Virginia in accordance with these regulations and as authorized by the Board of Medicine.

B. The board shall approve prescriptive authority for applicants who meet the qualifications set forth in § 5.2 of these regulations.

§ 5.2. Qualifications for approval of prescriptive authority.

[A.] An applicant for prescriptive authority shall meet the following requirements:

1. Hold a current, unrestricted license as a physician's assistant in the Commonwealth of Virginia;
2. Submit a protocol acceptable to the board as defined in § 2.2 D 2. This protocol must be approved by the board prior to issuance of prescriptive authority;
3. Submit evidence of successful passing of the NCCPA exam; and
4. Submit evidence of successful completion of a minimum of 35 hours of acceptable training to the board in pharmacology.

PART VI.

PRACTICE REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY.

§ 6.1. Approved formulary.

A. The approved formulary of drugs which the physician's assistant with prescriptive authority may prescribe, administer, or dispense shall include:

1. Schedule VI drugs and devices with exception of the following:

Radioactive drugs

Ophthalmic aminoglycosides

Ophthalmic steroids

Any compound containing barbiturates

2. No controlled substances defined by the state and federal Controlled Substances Acts as Schedule I through V.

B. The physician's assistant may prescribe only those categories of drugs and devices included in the approved formulary and in the practice agreement as submitted for authorization. The supervising physician retains the authority to restrict certain drugs within these approved categories.

C. The physician's assistant, pursuant to § 54.1-2952.1 of the Code of Virginia, shall only dispense or administer controlled substances in good faith for medical or therapeutic purposes within the course of his professional practice.

§ 6.2. Protocol regarding prescriptive authority.

A. A physician's assistant with prescriptive authority may prescribe only within the scope of the written protocol as specified in § 2.2 D 2.

B. A new protocol must be submitted with the:

1. Initial application for prescriptive authority.
2. Application for each biennial renewal, if there have been any changes in supervision, authorization or scope of practice.

§ 6.3. Disclosure.

A. Each prescription shall bear the name of the supervising physician and of the physician's assistant.

B. The physician's assistant shall disclose to the patient that he is a licensed physician's assistant, and also the name, address and telephone number of the supervising physician. Such disclosure may be included on the prescription pad or may be given in writing to the patient.

PART VII.

FEES.

§ ~~5.1~~ § 7.1. The following fees are required:

A. The application fee, payable at the time application is filed, shall be \$100.

B. The biennial fee for renewal of license shall be \$80 payable in each odd numbered year in the birth month of the licensee.

C. An additional fee to cover administrative costs for processing a late application may be imposed by the board. The additional fee for late renewal of licensure shall be \$10 for each renewal cycle.

NOTICE: The forms used in administering the Regulations Governing the Practice of Physicians' Assistants 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 Board of Medicine, 6606 W. Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Instructions for Completing Physician Assistant Application
Application for Certification as a Physician's Assistant (DHP-30-056), Revised 8/91
Protocol of Physician's Assistant's Duties
Physician's Assistant Invasive Procedures Protocol
Employment Form (HRB-30-056 B)
State Questionnaire (HRB-30-056 C), Revised 7/83
Licensure Registration

V.A.R. Doc. No. R94-439; Filed January 3, 1994, 2:30 p.m.

* * * * *

Title of Regulations: VR 465-08-1. Regulations for Certification of Occupational Therapists.

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

Effective Date: February 23, 1994.

Summary:

The amendments establish requirements governing the practice of Occupational Therapy. They include requirements for English proficiency and the reduction of redundant entry requirements for certification as an occupational therapist. These regulations are promulgated to assure safe delivery of occupational therapy to the citizens of the Commonwealth.

The amendments respond to continuing review of the regulations by the board and staff concerning: specification of requirements concerning English as a foreign language, and specification of certification requirements as suggested by the American Occupational Therapy Certification Board and Board of Medicine.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Richard D. Morrison, Ph.D., Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918. There may be a charge for copies.

VR 465-08-01. Regulations for Certification of Occupational Therapists.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Advisory board" means the Advisory Board of Occupational Therapy.

"AOTA" means the American Occupational Therapy Association, Inc.

"AOTCB" means the American Occupational Therapy Certification Board, Inc., under which the national examination for certification is developed and implemented.

"AMA" means the American Medical Association.

"Board" means the Virginia Board of Medicine.

"Certification examination" means the national examination approved and prescribed by AOTCB for certification as an occupational therapist.

"Occupational therapist" means a person who is qualified by education and training to administer an occupational therapy program current and valid certification by the board.

"Occupational therapy personnel" means a person who provides occupational therapy services under the supervision of a certified occupational therapist.

"TOEFL" means the Test of English as a Foreign Language.

"World Federation of Occupational Therapists" means the association of member nations outside of the United States, its possessions or territories whose academic and clinical fieldwork requirements are in accordance with the American Occupational Therapy Association Essentials of an accredited educational program for an occupational therapist.

§ 1.2. A separate regulation, VR 465-01-01, Public Participation Guidelines, which provides for involvement of the public in the development of all regulations of the

Final Regulations

Virginia Board of Medicine, is incorporated by reference in these regulations.

PART II. REQUIREMENTS OF CERTIFICATION AS AN OCCUPATIONAL THERAPIST.

§ 2.1. Requirements, general.

A. No person shall practice as an occupational therapist in the Commonwealth of Virginia except as provided in these regulations.

B. Certification by the board to practice as an occupational therapist shall be by examination as prescribed in these regulations.

§ 2.2. Educational requirements.

A. An applicant for certification who has received his professional education in the United States, its possessions or territories, must successfully complete all academic and fieldwork requirements of an AMA/AOTA accredited educational program as verified by the candidate's program director.

B. An applicant who does not meet the educational requirements as prescribed in subsection A of this section but who holds certification by the AOTCB as an occupational therapist shall provide verification of his education, training and work experience acceptable to the board.

B. C. An applicant who has received his professional education outside the United States, its possessions or territories, must successfully complete all academic and clinical fieldwork requirements of a program approved by a member association of the World Federation of Occupational Therapists as verified by the candidate's occupational therapy program director and approved by the AOTCB and submit proof of proficiency in the English language by passing with a grade of not less than 560, the Test of English as a Foreign Language (TOEFL); or an equivalent examination approved by the board. TOEFL may be waived upon evidence of English proficiency .

C. An applicant who does not meet the educational requirements as prescribed in subsection B of this section but who holds certification by the AOTCB as an occupational therapist shall provide verification of his education, training and work experience acceptable to the board.

D. An applicant who does not meet the educational requirements as prescribed in subsection C of this section but who holds certification by the AOTCB as an occupational therapist shall be eligible for certification in Virginia.

§ 2.3. Certification by examination.

A. An applicant for certification to practice as an occupational therapist must submit *evidence* to the board a score report from the certification examination indicating a minimum passing score as established and verified by the AOTCB that he holds current and valid certification from the AOTCB .

~~B. Persons who hold current and valid certification from the AOTCB may submit with their application to the board verification of that AOTCB Certification in lieu of the score report of the certification examination as required in § 2.3 A of these regulations.~~

C. B. An applicant must submit the application, credentials and prescribed fees as required by the board for certification.

D. C. An applicant who has graduated from a duly accredited educational program in occupational therapy shall be allowed to practice as an occupational therapist for one year from the date of graduation or until he has taken and received a passing grade of the certification examination, whichever occurs sooner.

~~E. D. An applicant who fails to successfully pass the examination within one year after graduation may practice occupational therapy under the supervision of a certified occupational therapist until successful completion of the certification examination and the filing of the required application, credentials, and fee.~~

F. E. An applicant who does not qualify by education for the AOTCB Certification Examination and who does not hold a valid ~~certification certificate~~ from the AOTCB but who is currently practicing occupational therapy may submit , for review and recommendation of the advisory board and the approval by the board , evidence of his education, training, and experience along with a request to take the ~~certification~~ examination for certification as an occupational therapist in Virginia. A person who does not take the certification examination may continue to practice occupational therapy under the supervision of an occupational therapist.

§ 2.4. Practice requirements.

An applicant who has met education and examination requirements but who has not practiced occupational therapy for a period of six years shall serve a board approved supervised practice of 160 hours which is to be completed in two consecutive months.

PART III. RENEWAL OF CERTIFICATION: REINSTATEMENT.

§ 3.1. Biennial renewal of certification.

A. An occupational therapist shall renew his certification biennially during his birth month in each even numbered year by:

1. Paying to the board the renewal fee prescribed in § 5.1 of these regulations; and

2. Indicating whether or not he has been professionally active during each biennial renewal cycle.

B. An occupational therapist whose certification has not been renewed by the first day of the month following the month in which renewal is required shall be dropped from the certification roll.

C. An additional fee to cover administrative costs for processing a late application shall be imposed by the board as prescribed in § 5.1.

§ 3.2. Reinstatement.

A. An occupational therapist who allows his certification to lapse for a period of two years or more and chooses to resume his practice shall make a new application to the board and payment of the fee for reinstatement of his certification as prescribed in § 5.1 B of these regulations.

B. An occupational therapist who has allowed his certification to lapse for six years or more, must serve a board approved, supervised practice of 160 hours to be completed in two consecutive months.

C. An occupational therapist whose certification has been revoked by the board and who wishes to be reinstated must make a new application to the board and payment of the fee for reinstatement of his certification as prescribed in § 5.1 F of these regulations.

PART IV.

PRACTICE OF OCCUPATIONAL THERAPY.

§ 4.1. General responsibilities.

An occupational therapist renders his services of assessment, program planning, and therapeutic treatment upon request for such service.

§ 4.2. Individual responsibilities.

A. An occupational therapist provides assessment by determining the need for, the appropriate areas of, and the estimated extent and time of treatment. His responsibilities include an initial screening of the patient to determine need for services and the collection, evaluation and interpretation of data necessary for treatment.

B. An occupational therapist provides program planning by identifying the goals and the methods necessary to achieve those goals for the patient. The therapist analyzes the tasks and activities of the program, documents the progress, and coordinates the plan with other health, community or educational services, the family and the patient. The services may include but are not limited to

education and training in activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for the handicapped.

C. An occupational therapist provides the specific activities or therapeutic methods to improve or restore optimum functioning, to compensate for dysfunction, or to minimize disability of patients impaired by physical illness or injury, emotional, congenital or developmental disorders, or by the aging process.

§ 4.3. Supervisory responsibilities.

A. An occupational therapist shall be responsible for supervision of occupational therapy personnel who work under his direction.

B. The supervising occupational therapist shall meet with the occupational therapy personnel to review and evaluate treatment and progress of the individual patients at least once every fifth treatment session or 21 calendar days, whichever occurs first.

C. An occupational therapist shall not supervise more than six occupational therapy personnel.

D. An occupational therapist shall be responsible for any action of persons providing occupational therapy under his supervision.

PART V. FEES.

§ 5.1. The following fees have been established by the board:

1. The initial fee for the occupational therapist certification shall be \$150.

2. The fee for reinstatement of the occupational therapist certification shall be \$150.

3. The fee for certification renewal shall be \$85 and shall be due in the birth month of the certified therapist in each even numbered year.

4. The additional fee to cover administrative costs for processing a late application shall be \$25 for each renewal cycle.

5. The fee for a letter of good standing/verification to another state for a license or certification shall be \$10.

6. The fee for reinstatement of revoked certification shall be \$500.

Final Regulations

NOTICE: The forms used in administering the Regulations for Certification of Occupational Therapists 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 Board of Medicine, 6606 West Broad Street, Richmond, Virginia, 23230, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Instructions for Completing an Application for Certification as an Occupational Therapist

Application for Certification to Practice Occupational Therapy (DHP-030-080, rev. 1/93)

V.A.R. Doc. No. R94-437; Filed January 3, 1994, 2:32 p.m.

* * * * *

Title of Regulation: VR 465-11-1. Licensed Acupuncturists.

Statutory Authority: §§ 54.1-100 through 54.1-114, 54.1-2400, and 54.1-2956.9 through 54.1-2956.11 of the Code of Virginia.

Effective Date: February 23, 1994.

Summary:

The regulations establish requirements governing the practice of acupuncturists. They include general provisions for acupuncture and nonrestriction of physician acupuncturists, requirements for licensure, scope of practice, renewal and reinstatement of licensure, and fees.

The regulations respond to the reenactment of §§ 54.1-2956.9 through 54.1-2956.11 of the Code of Virginia by the 1993 General Assembly. A technical change was made to the proposed regulations for final promulgation. Section 2.1 D was corrected to concur with § 2.2 C.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Richard D. Morrison, Ph.D., Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918. There may be a charge for copies.

VR 465-11-1. Licensed Acupuncturists.

**PART I.
GENERAL PROVISIONS.**

§ 1.1. Definitions.

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

"Acupuncture" means the practice of stimulating certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain ailments or conditions of the body. The practice of acupuncture does not include the use of physical therapy, chiropractic, osteopathic manipulative techniques, surgery, the use or prescribing of any drugs, medications, herbal preparations, nutritional supplements, serums, or vaccines.

"Acupuncture training" means training in a school or program accredited by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine which confers a diploma, certificate, or a graduate degree in acupuncture or other board approved credentialing organizations.

"Advisory committee" means the Advisory Committee on Acupuncture appointed by the board to assist it in the regulation and licensure of licensed acupuncturists.

"Affidavit" means a sworn statement in writing made under oath before an authorized magistrate or officer.

"Authenticated translation" means a translation prepared by a translation bureau or a language instructor in a university within the United States or a translation whose accuracy is verified by a Consulate Official.

"Board" means the Virginia Board of Medicine.

"Certified copy" means a written statement verifying a document to be a true copy of the original by a legally registered notary public.

"Certification examination" means the national examination of competency in acupuncture theory and practice approved and prescribed by the National Commission for the Certification of Acupuncturists.

"CCAOM" means the Council of Colleges of Acupuncture and Oriental Medicine, and replaces the "NCASC" designation for the National Council of Acupuncture Schools and Colleges.

"COPA" means the Council on Postsecondary Accreditation which recognizes those agencies or commissions responsible for the accreditation of postsecondary educational programs in the United States.

"CNT course" means a Clean Needle Technique Course as administered by the National Council of Acupuncture Schools and Colleges.

"Lic.Ac." or "L.Ac." means the titles approved for use by licensed acupuncturists.

"Licensed acupuncturist" means an individual other than a doctor of medicine, osteopathy or podiatry, who has completed the requirements for licensure and has been approved by the board to practice acupuncture.

"NACSCAOM" means the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

"NCCA" means the National Commission for the Certification of Acupuncturists.

"PEPLS" means the Practical Examination of Point Location Skills which is a required portion of the certification examination.

"Physician" means a person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

"Physician acupuncturist" means an individual who is a doctor of medicine, osteopathy, or podiatry who has met the requirements for licensure in acupuncture.

"Referral" means referral by a physician as that term is defined in this section.

"TOEFL" means the Test of English as a Foreign Language, administered by the Educational Testing Service.

"TSE" means the Test of Spoken English administered by the Educational Testing Service.

§ 1.2. Public participation.

A separate board document, VR 465-01-1, Public Participation Guidelines, which provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine, is incorporated by reference in these regulations.

§ 1.3. Nonrestriction of licensed acupuncturists.

Nothing in these regulations shall be construed to prohibit or restrict the licensure and practice of doctors of medicine, osteopathy, or podiatry who are also licensed as physician acupuncturists.

PART II. REQUIREMENTS FOR LICENSURE.

§ 2.1. General requirements.

A. No person shall practice as a licensed acupuncturist in the Commonwealth of Virginia except as provided in these regulations.

B. Licensure by the board to practice as a licensed acupuncturist shall be by examination as prescribed in these regulations.

C. Every applicant for initial licensure by the board shall:

1. Submit evidence of being 18 years of age or more.
2. Submit evidence of good moral character.
3. Meet the educational requirements as prescribed in §§ 2.2, 2.3, and 2.4 of these regulations.
4. Meet the examination requirements as prescribed in §§ 2.5 and 2.6 of these regulations.
5. Submit the required application and credentials to the board along with the licensure fee required in subdivision 1 of § 5.1.

D. An applicant for initial licensure by the board shall submit evidence of successful completion of an acupuncture course of study equal to not less than 1,000 hours of schooling. The course of study shall be equal to not less than 700 didactic hours and [300 clinical hours not less than 250 clinical hours with the remaining hours as didactic or clinical] .

§ 2.2. Educational requirements: graduates of approved institutions or programs in the United States.

A. Undergraduate education requirements are as follows:

1. An applicant applying for licensure to practice as a licensed acupuncturist shall present evidence of successful completion of two full academic years of not less than 60 semester credit hours or 90 quarter accredited hours of undergraduate education at an accredited college or university in the United States that is recognized by the board.
2. An applicant's undergraduate education shall include not less than 18 semester or 24 quarter hours in biological sciences, to include not less than three hours each in anatomy and physiology. Home study courses do not meet the requirements of this section.

B. Acupuncture education prior to July 1, 1990, requirements in the United States are as follows:

1. An applicant applying for licensure to practice as an acupuncturist on the basis of successful completion of education in a school or college of acupuncture accredited by the NACSCAOM or other accrediting agencies approved by the Board of Medicine, which confers a degree in acupuncture in the United States, shall submit evidence of successful completion of an acupuncture course of study in an accredited school or college for acupuncture, providing evidence of not less than 1,000 hours of schooling in not less than a continuous 18-month period.

2. The studies shall include not less than 700 didactic hours and not less than 250 clinical hours. Additional

Final Regulations

hours may be in either didactic or clinical hours based upon the school or college curriculum.

Part-time study of more than five years or correspondence courses in acupuncture are excluded and do not meet the requirements of this section as acceptable for the acupuncture study curriculum.

C. Acupuncture education after July 1, 1990, requirements in the United States are described in this subsection.

An applicant applying for licensure to practice as a licensed acupuncturist on the basis of successful completion of education in a school or college for acupuncture accredited by NACSCAOM or any other accrediting agency approved by the Board of Medicine, which confers a degree in acupuncture in the United States, shall submit evidence of having a minimum of three academic years in length equivalent to 90 semester credit hours or 135 quarter credit hours that consist of full-time study in an acupuncture program accredited by NACSCAOM or any other accrediting agency approved by the Board of Medicine.

One academic year means full-time study completed in three quarters, two semesters, or three trimesters. A full-time continuous study program shall be a concentrated educational process in acupuncture which requires individual study with assigned materials in a classroom or clinical setting.

Part-time study of more than five years or correspondence courses in acupuncture are excluded and do not meet the requirements of this section as acceptable for the acupuncture study curriculum.

§ 2.3. Supplemental training prior to July 1, 1990, or study required of certain graduates of nonapproved educational programs in acupuncture in the United States.

An applicant who has completed an educational course of study in a school or college that is not approved or accredited by NACSCAOM or any other board approved accrediting agency shall:

1. Submit evidence of successful completion of not less than two years of acupuncture study in a school or college which confers a degree in acupuncture in the United States recognized by the board.
2. Have not less than five years of practice as a licensed acupuncturist in another state.

Part-time study of more than five years or correspondence courses in acupuncture are excluded and do not meet the requirements of this section as acceptable for the acupuncture study curriculum.

§ 2.4. Graduates of foreign colleges or schools of acupuncture.

A. All foreign documents submitted to the board for consideration must be translated into English and be certified by the embassy of the issuing government.

B. Applicants shall:

1. Submit evidence of completing an approved tutorial or internship program in another state of not less than one year;
2. Submit proof of licensure and practice of acupuncture in another state of not less than four years; and
3. Meet the examination requirements as prescribed in §§ 2.5 and 2.6 of these regulations.

Part-time study of more than five years or correspondence courses in acupuncture are excluded and do not meet the requirements of this section as acceptable for the acupuncture study curriculum.

§ 2.5. Examination requirements for licensure.

The examination requirements for licensure shall consist of:

1. Passing of the NCCA comprehensive written examination.
2. Passing the Practical Examination of Point Location Skills (PEPLS) test.
3. Completing the CNT course as administered by the CCAOM.

§ 2.6. Test of spoken English requirements.

A. An applicant applying for licensure to practice as an acupuncturist whose native language is not English shall submit:

1. Evidence of having achieved 240 on the Test of Spoken English (TSE); or
2. Evidence of having achieved 560 on the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Services.

PART III. SCOPE OF PRACTICE.

Article 1. General Requirements.

§ 3.1. General requirements.

A. A request for acupuncture services shall be accompanied by a written referral and diagnosis of the ailment or condition to be treated by the licensed acupuncturist from a physician based on his examination

of the patient within the past six months.

B. Treatment provided by the acupuncturist shall be periodically reviewed as determined by the referring physician.

C. The licensed acupuncturist shall report the patient's condition back to the referring physician after three months or 10 treatments, whichever occurs first.

Article 2. Individual Requirements.

§ 3.2. Limitation of titles.

A person practicing as a licensed acupuncturist is restricted to the use of the titles "Lic.Ac." or "L.Ac." and shall not use the terms "physician" or "doctor" in his name or practice.

§ 3.3. Limitation of practice.

The practice of acupuncture by a licensed acupuncturist does not include the use of physical therapy, chiropractic, osteopathic manipulative techniques, surgery, nor the use or prescribing of any drugs, medications, herbal preparations, nutritional supplements, serums or vaccines.

§ 3.4. Maintenance of patient records.

A licensed acupuncturist shall maintain records of the referral, diagnosis, treatment, and patient response to acupuncture and shall submit records to the board upon request, unless release of subject records is otherwise prohibited by law. Failure to maintain patient records of those patients treated with acupuncture or failure to respond to the board's request for patient records within 30 days shall be grounds for suspension or revocation of a license to practice acupuncture.

§ 3.5. Sterilization practices and infection control.

Acupuncture needles shall be presterilized, prewrapped, disposable needles, for the prevention of infection, to protect the health, safety, and welfare of the patient. Such needles shall be discarded after each patient treatment.

PART IV. RENEWAL AND REINSTATEMENT OF LICENSURE.

§ 4.1. Biennial renewal of certification.

A. A licensed acupuncturist shall renew his certification biennially during his birth month in each odd-numbered year by:

1. Paying to the board the renewal fee as prescribed in subdivision 2 of § 5.1 of these regulations; and
2. Providing proof of recertification by the NCCA.

B. A licensed acupuncturist whose license has not been renewed by the first day of the month following the month in which renewal is required shall be dropped from registration roll.

C. An additional fee to cover administrative costs for processing a late application shall be imposed by the board as prescribed by subdivision 4 of § 5.1.

§ 4.2. Reinstatement.

A. A licensed acupuncturist who allows his license to lapse for a period of two years or more and chooses to resume his practice shall submit to the board a new application, proof of recertification by the NCCA, and the fee for reinstatement of his license as prescribed in subdivision 3 of § 5.1.

B. A licensed acupuncturist whose license has been revoked by the board and who wishes to be reinstated must make a new application to the board, be recertified by the NCCA, and pay the fee for reinstatement of his license as prescribed in subdivision 6 of § 5.1.

PART V. FEES.

§ 5.1. Fees.

The following fees for licensed acupuncturists have been established by the board:

1. The initial fee for a license to practice as an acupuncturist shall be \$200.
2. The fee for biennial license renewal shall be \$85 and shall be due in the birth month of the licensed acupuncturist in each odd-numbered year.
3. The fee for reinstatement of a lapsed license shall be \$200.
4. The additional fee to cover administrative costs for processing a late application shall be \$25 for each renewal cycle.
5. The fee for a letter of good standing or verification of a license to another state shall be \$10.
6. The fee for reinstatement of a revoked license shall be \$500.

VAR. Doc. No. R94-426; Filed January 3, 1994, 2:34 p.m.

DEPARTMENT OF PERSONNEL AND TRAINING

Title of Regulation: VR 525-01-1. Public Participation Guidelines.

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

Final Regulations

Effective Date: February 23, 1994.

Summary:

Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines not only shall be utilized prior to the formation and drafting of the proposed regulation, but also shall be utilized during the formation, promulgation and final adoption of all regulations.

The purpose of these regulations is to ensure that interested persons are able to comment on regulatory actions in a meaningful fashion during all phases of the regulatory process.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Gina Irby, Department of Personnel and Training, Monroe Building, 101 North 14th Street, 12th Floor, Richmond, VA 23219, telephone (804) 371-6212. There may be a charge for copies.

VR 525-01-1. Public Participation Guidelines.

§ 1. Purpose and authority.

This regulation establishes public participation guidelines for soliciting input from interested parties in the formation, development and revision of regulations by the Department of Personnel and Training. These guidelines are required under § 9-6.14:7.1 of the Code of Virginia (Administrative Process Act). The guidelines do not apply to any regulation adopted on an emergency basis or to other regulations excluded from the operation of Article 2 of the Administrative Process Act under § 9-6.14:4.1 C of the Code of Virginia.

§ 2. Definitions.

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

"Department" means the Department of Personnel and Training.

"Director" means the Director of the Department of Personnel and Training.

"Person" means [one or more individuals, or any association, organization, advisory council, or committee an individual, a corporation, a partnership, an association, a government body, a municipal corporation, or any other legal entity] .

§ 3. Initiation of regulation development procedures.

A. Regulation development may be initiated at any time by the department.

B. Any person may petition the department to promulgate new regulations, or to amend, add to, or repeal existing regulations. All petitions shall be considered and responded to within 90 days. The petition shall, at a minimum, contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. The recommended new regulation or addition, deletion or amendment to an existing regulation;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

§ 4. Information dissemination.

A. The department shall prepare and maintain a general information mailing list to include members of its advisory committees, those persons who have indicated an interest in its activities, and those persons who the department believes are interested in its activities.

B. The department shall prepare a regulation development mailing list for each specific regulatory proceeding. The list will be comprised of members of advisory committees, persons from the general information mailing list who express an interest in the proceeding, and such other persons as the department believes to have an interest in the proceeding. This list will be maintained until the conclusion of each proceeding.

C. Persons will be added to the regulation development mailing list as requested, or at the request of the director.

D. The department shall brief all department advisory councils and committees on the proposed regulatory proceeding to determine if they or the various groups and interests they represent want to participate in the regulation development process.

E. At its discretion, the department may schedule public information meetings. If meetings are scheduled, [notice shall be published in The Virginia Register as well as in a newspaper of general circulation] . The department shall mail notices of the meetings to persons on the regulation development mailing list and other persons the department determines appropriate. Notices shall include:

1. The subject of the proposed regulation;
2. A request for comments [; including information regarding whether or not comments must be in writing;] and information regarding the deadline for receiving comments; [and]
3. The name, address and telephone number of staff persons to contact for further information [- ; and
4. The date, time and place of the meeting.]

§ 5. Public participation procedures.

A. The department shall issue a Notice of Intended Regulatory Action whenever it considers the adoption, amendment or repeal of any regulation. The notice shall include:

1. A brief statement as to the intent and need of the planned regulation.
2. A brief description of alternatives available, if any, to meet the need.
3. A request for comments on the intended regulatory action including any ideas to assist the department in the drafting and formation of any proposed regulation developed pursuant to the Notice of Intended Regulatory Action.

B. After identifying the need to change or adopt regulations, the department shall notify persons on the general information mailing list of the subject matter of the proposed regulation, and invite them to respond to the proposal. Persons indicating an interest in the proposed regulation shall be placed on the regulation development mailing list for that regulation.

C. Based on the level of interest shown, the department may request interested parties to submit written comments, concerns and suggestions relative to the proposed regulations. It may choose to schedule one or more public information meetings to provide opportunities for interested persons to submit data, views and comments. Notices of such meetings shall be mailed to persons on the regulation development mailing list and to any other persons the department determines appropriate. [The degree to which the department consults with advisory committees and other interested groups and individuals will depend upon whether the proposed action is required by state or federal mandates, and the proposed regulation's:

1. Complexity;
2. Controversy;
3. Degree of substantive change; and
4. Impact on the department, other agencies, and

employees.

The notices will indicate the date, time and place of the meetings.]

D. After consideration of input from interested parties, the department shall prepare and submit a final draft of the proposed regulation to the Virginia Registrar of Regulations who will publish the proposed regulation and a "Notice of Comment Period" of at least 60 days in accordance with the Administrative Process Act.

E. The department shall send copies of the final draft proposed regulation to persons on its regulation development mailing list and to other persons who request it along with the following information:

1. A cover letter explaining deadlines for submitting formal public comments;
2. Indication as to whether public comment must be written;
3. The date by which comments must be submitted and the person to which comments must be submitted; and
4. When public proceedings are to be held, including information regarding how persons can participate in the proceeding, and information regarding the deadline for submitting written comments before the proceedings.

F. Upon expiration of the public comment period, the remaining steps in the adoption process shall be carried out in accordance with provisions of the Administrative Process Act.

G. Upon issuing an order adopting a regulation, the department shall summarize its response to comments made by interested parties during the public comment period.

H. When any regulation is published, the department shall print and distribute it.

I. The failure of any person to receive notice or copies of documents shall not affect the validity of any regulation otherwise properly adopted under the provisions of the Administrative Process Act.

VAR. Doc. No. R94-447; Filed January 5, 1994, 11:10 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which

Final Regulations

excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved, and in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 615-01-21. Deeming of Stepparent Income in the Aid to Families with Dependent Children (ADC) (AFDC) Program.

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

Effective Date: February 23, 1994.

Summary:

The amendments to this regulation change the method of determining eligibility for Aid to Families with Dependent Children (AFDC) when the AFDC parent's spouse, who is the stepparent of the AFDC children, resides in the home but is ineligible to receive assistance himself. It establishes a state stepparent deeming procedure which supersedes the federal requirement in most cases, with the result that a smaller amount of the stepparent's income is required to be counted toward meeting the AFDC family's needs. The more stringent federal deeming procedure continues to be used, however, when an AFDC child's parent fails to cooperate with the Division of Child Support Enforcement in the pursuit of child support. Also, this regulation reflects an increased amount to be subtracted from monthly earnings of the stepparent in calculating his income available to be deemed.

The regulation is also revised to reflect a change in the program name to Aid to Families with Dependent Children (AFDC). The change was made by the State Board of Social Services to emphasize the department's commitment to families.

The Department of Social Services will receive and consider comments from interested parties at any time.

VR 615-01-21. Deeming of Stepparent Income in the Aid to Families with Dependent Children (AFDC) Program.

PART I. DEFINITIONS.

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

"Aid to Families with Dependent Children (AFDC) Program" means the program administered by the Virginia

Department of Social Services through which a relative can receive a monthly assistance payment for the support of his children.

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

"Federal deeming calculation" means the mandated procedure contained in federal regulations which is used to determine the amount of a stepparent's monthly income to be considered available to an AFDC assistance unit.

"Income deemed available" means income that must be counted as if available to the assistance unit even if it is not actually paid to the assistance unit.

"Standard of need" means the dollar amount, based on the family size, which has been established to cover predetermined monthly maintenance needs.

"State eligibility standard" means the dollar amount, based on the family size, which an AFDC assistance unit with no income is entitled to receive. The state eligibility standard is also known as the standard of assistance which is 90% of the standard of need.

PART II. STEPPARENT DEEMING CALCULATION.

§ 2.1. The parent of an eligible child or children who is married to a person not the parent of the child or children, shall not be eligible for Aid to Families with Dependent Children if the parent's spouse's income, when deemed available to the family unit according to federal regulations, in and of itself, exceeds the state eligibility standard for such aid. However, eligibility for said child or children shall be considered by counting the income of such parent and child or children, and any portion of the parent's spouse's income which exceeds 150% of the federal poverty level for the spouse and parent. If the income of the parent's spouse which is deemed available does not, in and of itself, exceed the state eligibility standard for AFDC, none of the spouse's income will be counted as available to the family unit, and eligibility will be determined considering only the income, if any, of the parent and said child or children.

§ 2.2. If the said parent fails or refuses to cooperate with the department's Division of Child Support Enforcement in the pursuit of child support, the income of the parent's current spouse will be counted in accordance with federal regulations in determining eligibility for AFDC for the parent's child or children.

PART II. III. CALCULATING DEEMED INCOME FEDERAL DEEMING CALCULATION.

§ 2-1. 3.1. When the stepparent of a child receiving Aid to Families with Dependent Children (ADC) (AFDC) resides

with the assistance unit but is not a member of that or any other unit, a portion of his income must be deemed available to meet the needs of the assistance unit. The amount to be deemed available is determined by applying the following disregards to the stepparent's income: (i) a work expense allowance of \$75 in the amount mandated in Section 402(a)(31) of the Social Security Act; (ii) the standard of need for household members not included in the assistance unit who are or could be claimed as dependents on the stepparent's federal income tax return; (iii) actual support paid to individuals not living in the home who are or could be claimed as tax dependents on the stepparent's federal income tax return; and (iv) payments for child support and alimony paid to individuals not living in the household.

V.A.R. Doc. No. R94-379; Filed December 21, 1993, 2:05 p.m.

VIRGINIA CODE COMMISSION

Title of Regulation: Regulations of the Virginia Code Commission for Implementing the Virginia Register Act.

Statutory Authority: § 9-6.20 of the Code of Virginia.

Effective Date: January 24, 1994.

Summary:

The regulation has been adopted by the Virginia Code Commission to establish the requirements state agencies are to follow in adhering to the Virginia Register Act (§ 9.6-15 et seq. of the Code of Virginia).

Regulations of the Virginia Code Commission for Implementing the Virginia Register Act.

PART I. GENERAL PROVISIONS.

§ 1.1. Purpose.

A. The purpose of this regulation is to assist and guide administrative agencies in complying with the Virginia Register Act. The regulation defines more particularly the scope of certain terms and provisions of the Act as interpreted and modified by the Code Commission. In order to render them more readably complete and usable, the following text includes statements copying or paraphrasing the Act.

B. The purpose of the Act is to satisfy the need for public availability of information respecting administrative regulations, and to encourage agencies in developing informative regulations. To that end, it provides for the compilation, publication, and supplementation of the Virginia Administrative Code and the Administrative Law Appendix. The Appendix serves as a finding guide to the existing regulations of administrative agencies of the Commonwealth and the Virginia Administrative Code is a

complete, full text, official compilation of all regulations of state agencies. The Act provides for general supervision, application of policies, and determination of guidelines by the Virginia Code Commission, and day-to-day operation under a Registrar of Regulations.

§ 1.2. Definitions.

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

"Act" means the Virginia Register Act (§ 9-6.15 et seq.) of the Code of Virginia.

"Administrative Law Appendix" means the published listing of agency regulations with supplemental information as provided by §§ 9-6.18 and 9-6.19 of the Code of Virginia, and referred to in these regulations as the "Appendix."

"Adoption by reference" or "incorporated by reference" means the inclusion in regulations of provisions making applicable in whole or in part any requirements, prohibitions, policies, standards, forms, instructions, or procedures prescribed or established in other documents, except statutes, whether issued by governmental agencies or by private organizations and whether such documents are in express terms "adopted" or "incorporated" in the regulations.

"Agency" means any authority, instrumentality, officer, board or other unit of the government of the Commonwealth with express or implied authority to issue regulations other than the General Assembly, courts, municipal corporations, counties, other local or regional governmental authorities including sanitary or other districts and joint state-federal, interstate or intermunicipal authorities, the Virginia Resources Authority, the Virginia Code Commission with respect to minor changes made under the provisions of § 9-77.10:1 of the Code of Virginia, and educational institutions operated by the Commonwealth with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

"Commission" means the Virginia Code Commission.

"Registrar" means the Registrar of Regulations as provided in § 9-6.17 of the Code of Virginia.

"Regulation" or "operative regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws.

"Style Manual" means the Virginia Register Form, Style, and Procedure Manual issued by the Virginia Code

Final Regulations

Commission.

"To file" means to deliver the entire text of the regulatory document to the Registrar or, upon a determination by the Registrar in accordance with the criteria established in § 2.3, to deliver a description of the regulatory document to the Registrar.

"Virginia Administrative Code" means the codified publication of regulations under the provisions of Chapter 8.1 (§ 9-77.4 et seq.) of Title 9 of the Code of Virginia.

"Virginia Register of Regulations" means the publication issued under the provisions of the Administrative Process Act in Article 7 (§ 9-6.14.22 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia.

§ 1.3. Form and style of regulations.

Every regulation shall be drafted in conformance with the *Virginia Register Form, Style and Procedure Manual*, which has been prepared under the authority of the Virginia Code Commission, and which may be amended from time to time. Every regulation shall also be identified with a number as provided in that publication. A sufficient number of copies of the publication are furnished to all agency regulatory coordinators. Additional copies are available from the office of the Registrar for \$7.50.

§ 1.4. Agency services to the public.

The following requirements apply to all agencies adopting regulations subject to the Act, except that the requirements do not apply to materials adopted by reference to the Code of Federal Regulations or The Federal Register, or by reference to regulations of other Virginia agencies:

1. Each agency shall maintain for public consultation a complete list of all of its currently operative regulations, including, an itemization of materials adopted by reference.
2. Each agency shall make available for public inspection a complete file of the full text of all currently operative regulations, as well as all textual material adopted by reference, and allow public copying or make copies available either without charge, at cost, or on payment of a reasonable fee.
3. Each agency shall maintain as a public record a complete file of its regulations which have been superseded on and after June 1, 1975.

§ 1.5. Place of filings; consultations; inquiries.

Filing shall be made either in person or by mail at the office of the Registrar of Regulations, Second Floor, General Assembly Building, Capitol Square, Richmond, Virginia 23219.

A currently updated copy of the Appendix is available for public consultation at the above address. Upon request, the Registrar will furnish any person with both the date on which a regulation was filed and the date on which the regulation became effective. As stated more fully in § 9-6.18, however, it is the responsibility of each agency to make its regulations, including textual materials adopted by reference, available to the public and to make available for public consultation its own list of regulations.

PART II.

REGULATIONS REQUIRED TO BE FILED.

§ 2.1. Registration of regulations.

All operative regulations, including textual materials adopted by reference, shall be registered with the Registrar, either by filing in full or by filing a description of those regulations as specified in § 2.3.

§ 2.2. Registration by filing in full.

All currently operative materials falling within the term "regulation" as defined in § 1.2, and not exempted from filing in full as set out in § 2.3, are required to be on file in full text with the Registrar together with notations of the dates of their adoption, revision, publication, or amendment. All new regulations and amendments, repeals, or additions to previously filed regulations shall be similarly filed as adopted.

No regulation or amendment or repeal thereof is effective until filed with the Registrar. (See also the filing requirements in the Administrative Process Act § 9-6.14:9 of the Code of Virginia.)

All regulations subject to filing in full shall be filed in duplicate with the Registrar. A signed statement or certification, that they are full, true, and correctly dated shall accompany the regulation. The statement shall be filed in triplicate. One copy will be stamped and returned as a receipt to the agency. The signed statement or certification may be in the form of a cover letter.

Regulations that are required to be filed under the Virginia Register Act and the Administrative Process Act shall comply with the *Virginia Register Form, Style, and Procedure Manual*.

§ 2.3. Registration by filing description.

The Registrar may authorize the filing of a document by description in lieu of filing the entire text of any regulatory document in accordance with the following criteria:

1. Regulations which are expressly addressed to named individuals or organizations;
2. Regulations which are concerned only with any of the following:

- a. Public officers and employees;
- b. Elections;
- c. Students;
- d. Persons in state mental, penal and other institutions;
- e. State property or funds;
- f. Public contracts;
- g. Defense functions;
- h. Police operations of an enforcement, prosecutorial or investigatory character; or
- i. Money grants, benefits, loans, or subsistence or welfare payments;

3. The size of the document's pages differs significantly from the standard page size of the Virginia Register of Regulations or the Virginia Administrative Code;

4. The material is not available in document form; for example, if the material is only available in electronic form or on computer tape or discs; or

5. Regulations which are both of a temporary nature and operative only in limited localities.

Any request for exemption shall be made to the Registrar by the agency in writing.

Any approval granted by the Registrar shall also be made in writing.

In every instance in which the Registrar authorizes an agency to file a regulatory document by description, a current document shall be maintained and, upon request, be made available to the public by the agency. This current document shall be deemed to be filed in its entirety with the Registrar and shall, at any time during business hours, be made available to the Registrar upon request.

All such regulations are otherwise subject to all requirements in these regulations applicable to agency regulations covered by the Act.

§ 2.4. Supplemental information required to be supplied.

The Commission, through the Registrar, from time to time, may make general or special calls for additional information. The Act requires prompt response to all such requests. Unless specifically requested, no particular form is required for statements furnishing such supplemental information except that they must be signed, and filed in duplicate if the agency desires one copy stamped and

returned as a receipt. The following additional information is regularly and generally hereby required to be on file respecting all regulations subject to the Act, whether the regulations are required to be registered by filing in full or by filing by description:

1. Source or sources in the agency and elsewhere from which official copies may be obtained, and any fee or other requirement therefor. Information shall be filed detailing where and how private persons may obtain official (not certified), copies of all regulations. Unless otherwise stated, it is assumed that there is no charge for such copies.

2. Place of custody of original regulations, and place or places where regulations may be inspected or copied. Unless the agency otherwise informs the Registrar, it will be assumed that its original regulations are maintained, and copies of the regulations may be reviewed or copied, in the same office or offices of the agency as those listed under subdivision 1 of this section. As stated in the preface to the Administrative Law Appendix, the statement "Regulations are available at" unless otherwise indicated, applies to both availability for inspection and availability of copies, as well as to the place of custody of the original regulations. If some or all of the agency's regulations are regularly distributed to, or posted for public inspection at, places other than agency offices, information to that effect should also be furnished.

3. Existing official publication of regulations. When an agency's regulations are regularly published in official publications (e.g., annual reports, etc.), or if the agency regularly makes newspaper publication of regulations, the agency shall coordinate with the Registrar, the publication, of published regulations as they appeared in The Virginia Register of Regulations. If, due to the length of the regulation, only a summary of the regulation was published in the Register, the agency shall advise the Registrar of its need to proceed with publication in other sources, in order that the Registrar can process the document in a timely manner.

4. Subsequent information or corrections. Agencies shall promptly file new or additional statements as necessary to correct or bring up to date previously filed public availability information of the foregoing nature.

§ 2.5. Data required to be included in filed regulations.

The date of adoption, revision, or effective date, and terminal date, if any, shall appear on the face of all new regulations, not merely on the certification filed with the Registrar. New forms shall indicate date of issuance or revision.

Regulations shall indicate statutory authority. Statutory

Final Regulations

authority shall be cited by referring to the appropriate title and sections or chapters of the Code of Virginia or, for uncodified statutes, the appropriate chapter of the designated Act of Assembly.

PART III. ADOPTION BY REFERENCE.

§ 3.1. Filing requirements for material adopted by reference.

A. Where regulations, which are filed in full, adopt textual matter by reference to other publications as defined in § 1.2, such incorporated publications, in their entirety, shall also be filed with the Registrar. Whether the referenced material is required to be filed in full or by descriptive statement, the agency shall make copies of all referenced publications available for public inspection and copying along with its other regulations.

B. Whenever a regulation incorporates other textual material by reference, it should specify the date of adoption, revision, or publication, or the effective date, of the adopted material.

In addition, regulations so adopting other materials are required to have the following information on the cover of the incorporated material and the places where copies of the referenced publications may be procured:

1. Reference to the specific regulation adopting the outside material;
2. The filing date and effective date of the regulation; and
3. A notation containing the name of the agency.

§ 3.2. Statement of availability.

Where numerous adoptions by reference are made in a regulation, notations of sources and places of availability may be set forth in a separate section of the regulation.

§ 3.3. Exemptions to filing of documents adopted or incorporated by reference.

A. The requirements established in §§ 3.1 and 3.2 do not apply to incorporation of textual matter by reference to the Federal Register or the Code of Federal Regulations, or by reference to regulations of other Virginia agencies. Where such references are made, however, the citation shall be sufficient for accurate identification of the referenced material. Where the material has been published in the Code of Federal Regulations, the title, part of sections, and the date of publication shall be given. Example: 1 C.F.R. Part 1 (rev. Jan. 1, 1975) or 1 C.F.R. §§ 1.1 to 1.30 (rev. Jan. 1, 1975). Where the referenced material has not been published in the Code of Federal Regulations but appears in the Federal Register, the volume, page, and date of that publication shall be given

and, if the material is in codified form, the C.F.R. citation should be given. Example: 16 C.F.R. § 19.1, 39 F.R. 23605 (Nov. 4, 1974). Some agency regulations previously filed with the Registrar adopt materials issued by federal agencies without reference to the Code of Federal Regulations or the Federal Register; to the extent that such materials appear in either of those publications, filing may be avoided and public access made easier by use of the appropriate citations.

B. In certain limited instances, on a case-by-case basis, the Registrar may exempt an agency from the requirements of filing in full textual material adopted by reference where such filing would be impractical due to:

1. The document exceeds 500 pages and is generally available to the public;
2. The size of the document's pages differs significantly from the standard page size of the Virginia Register of Regulations or the Virginia Administrative Code;
3. The material is not available in document form; for example, if the material is only available in electronic form or on computer tape or discs;
4. The material is updated more than twice yearly; or
5. The material is copyrighted or is otherwise the property of an individual or an organization other than the state government.

C. Any request for exemption to these filing requirements shall be made by the agency in writing, to the Registrar. Any approval granted by the Registrar shall also be made in writing.

D. The granting of an exemption under this section does not relieve an agency from the requirement of maintaining on file, and making available to the public, the full text of all materials adopted by reference.

PART IV. ADMINISTRATIVE LAW APPENDIX.

§ 4.1. Contents of Appendix; supplementation.

A. The Appendix contains, for each agency subject to the Act, (i) a summary statement of its regulatory powers with citation to the Virginia Code or other authority; (ii) information as to where its regulations may be inspected or copied; (iii) where and how copies may be obtained; (iv) the place of custody of the originals if not at the same location; (v) references to any official publications of the regulations; (vi) a list of the agency's currently effective regulations, including forms, delegations of authority, and textual material adopted by reference, subject to filing in full under the Act and filed with the Registrar; and (vii) the notation of its regulations exempt from filing in full but otherwise covered by the Act, and

which the agency has submitted descriptive statements as required by § 3.3.

B. The Appendix will be published at least annually, and a currently updated copy maintained in the office of the Registrar.

§ 4.2. Omissions and errors.

Agencies should promptly call to the attention of the Registrar any omissions or errors they discover in the Appendix.

PART V.
VIRGINIA CODE OF ADMINISTRATIVE
REGULATIONS

[Reserved]

STATE CORPORATION COMMISSION

..... AT RICHMOND, DECEMBER 22, 1993

OF VIRGINIA TELEPHONE COMPANIES

COMMONWEALTH OF VIRGINIA

CASE NO. PUC930036

At the relation of the

On December 22, 1993, the following order was entered by the State Corporation Commission:"

STATE CORPORATION COMMISSION

CASE NO. PUC930036

(4) That all issues related to methods of regulating Virginia telephone companies, including, but not limited to, the following, will be considered in this proceeding:

Ex Parte: In the matter of investigating telephone regulatory methods pursuant to Virginia Code § 56-235.5, etc.

A. How should the "basic local exchange telephone service" of Virginia telephone companies be defined by the Commission for the purposes of Virginia Code § 56-235.5? Should such service be defined identically for all telephone companies, or should such definition differ by company?

ORDER FOR NOTICE AND HEARING

The Commission has concluded its evaluation of the Experimental Plan for Alternative Regulation of Virginia Telephone Companies in Case No. PUC920029 ("Experimental Plan"), by order entered December 17, 1993. In that order, the Commission implemented a modified version of the Experimental Plan to take effect January 1, 1994, ("Modified Plan") and to continue in effect until we can conclude the present proceeding which is instituted by this order.

B. As a result of this proceeding, should the Modified Plan, which constitutes Attachment A to this order:

1. Be adopted and continued in effect in its present posture as an alternative form of regulating Virginia telephone companies?

2. Be altered or amended and then adopted as an alternative form of regulating Virginia telephone companies?

3. Be eliminated and revoked as an alternative form of regulating Virginia telephone companies?

As used in this order, the phrase "telephone company" shall have the meaning assigned to it in Virginia Code § 56-235.5(A). In addition, when reference is made herein to "telephone companies," it is to be understood that the issue posed, or subject discussed, may be handled differently for each Virginia telephone company, on an independent basis, and that the Commission is not bound to formulate a single method of regulation for all Virginia telephone companies as a group.

C. Are there alternatives other than the Modified Plan which should be adopted as alternative forms of regulation of Virginia telephone companies?

D. Should the Commission find that neither the Modified Plan, with or without alterations or amendments, nor any other alternative form of regulation, should be adopted or continued as a result of this proceeding and, accordingly, that Virginia telephone companies should be regulated in the future pursuant to the type of rate base, rate of return regulation described in Virginia Code § 56-235.2, which was in use by this Commission prior to the adoption and implementation of the Experimental Plan in Case No. PUC880035, by order dated December 15, 1988?

E. Virginia Code § 56-235.5(E) and (F) provide that the Commission may determine whether any telephone service of a telephone company is competitive, based on certain criteria specified in said subsections. Virginia Code § 56-235.5(F) further provides that, notwithstanding any other provisions of that subsection, all services classified as actually competitive services under the provisions of the Experimental Plan adopted by the Commission in Case No. PUC880035 in its final order of December 15, 1988, and remaining so classified as of the effective date of the above statute, shall be considered to be competitive services.

Accordingly,

IT IS THEREFORE ORDERED:

(1) That this matter is docketed and assigned Case No. PUC930036;

(2) That a public hearing is scheduled to begin April 27, 1994, at 10:00 a.m. in a Commission Courtroom on the Second Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving evidence relevant to the subjects specified herein;

(3) That the Commission's Division of Communications shall forthwith cause a copy of this order, without attachments, appendices or service list, to be published once in the Virginia Register and once as classified advertising in major newspapers having general circulation in the Commonwealth, under the following caption:

"NOTICE BY THE
STATE CORPORATION COMMISSION
OF ITS CONSIDERATION OF
METHODS FOR THE APPROPRIATE REGULATION

Virginia Code § 56-235.5(G) also provides, however, that the Commission shall monitor the competitiveness of any telephone service previously found by it to be competitive under any provisions of Virginia Code § 56-235.5(F), above, and may change that conclusion, if, after notice and an opportunity for hearing, it finds that competition no longer effectively regulates the price of that service.

1. Certain services of Virginia telephone companies were classified as Actually Competitive under the provisions of the Experimental Plan adopted on December 15, 1988. Did all these services remain classified as Actually Competitive on the effective date of Virginia Code § 56-235.5?

2. Does competition still effectively regulate the price of each such service classified as Actually Competitive on the effective date of the Experimental Plan, and remaining so classified on the effective date of the said statute? If not, what regulatory methods may the Commission adopt for these services, and which such method should the Commission adopt?

3. Which, if any, services were classified as Actually Competitive under the Experimental Plan on the effective date of the said statute, but were not so classified as of the effective date of the Experimental Plan itself? What is the status of any such services with regard to the "grandfather" provisions of Virginia Code § 56-235.5(F)? Does competition effectively regulate the price of these services?

4. Are there any other services of Virginia telephone companies which are subject to competition under the standards set forth in Virginia Code § 56-235.5(E) and (F)?

5. What treatment should be afforded competitive services pursuant to Virginia Code § 56-235.5(E)? Specifically, should such services be deregulated, detariffed, or regulated in some other modified fashion determined by the Commission to be in the public interest for such services? Should the treatment of these services be decided by rule, or by case-by-case determination?

6. What safeguards to protect consumers and competitive markets should be adopted by the Commission, with respect to all such competitive services, pursuant to Virginia Code § 56-235.5(H)?

F. If the Commission adopts the Modified Plan, with or without alterations or amendments, or another alternative, as an alternative form of regulation as a result of this proceeding, what safeguards to protect consumers and competitive markets should be adopted by the Commission, with respect to such alternative form of regulation, pursuant to Virginia Code §

56-235.5(H)?

G. What revisions, if any, should the Commission make to the cost allocation principles and guidelines announced by the Commission's July 21, 1989, order in Case No. PUC890014?

H. Any and all other issues related to the regulation of Virginia telephone companies.

(5) That the following five local exchange telephone companies, Central Telephone Company of Virginia, Chesapeake and Potomac Telephone Company of Virginia, Contel of Virginia, d/b/a GTE Virginia, GTE South, Inc. and United Telephone-Southeast, are hereby made Participants in this proceeding, as of the date of this order.

(6) That any other person wishing to participate in the hearing of this matter and present evidence herein, shall file a notice to that effect no later than January 20, 1994. Such persons shall thereafter be considered Participants in this proceeding.

(7) That, on or before January 25, 1994, the Clerk shall mail a list of all Participants to each such Participant. Said list shall thereafter constitute the service list for this proceeding.

(8) That Participants shall file testimony and supporting exhibits analyzing and addressing the issues specified in this order, and any other issues Participants deem relevant to this proceeding, including any proposed alternative forms of regulation, ("Initial Testimony"), on or before February 1, 1994, serving a copy on every other Participant.

(9) That Participants may file rebuttal testimony and exhibits ("Rebuttal Testimony") in reply to Initial Testimony filed by any other Participants, on or before March 15, 1994, serving a copy on every other Participant.

(10) That on or before April 5, 1994, the Commission Staff shall file testimony and exhibits in this proceeding ("Staff Testimony"), serving a copy on every Participant, analyzing and addressing the issues identified in this order, as well as any Initial Testimony and Rebuttal Testimony filed in this proceeding.

(11) That on or before April 20, 1994, Participants may file testimony and exhibits in reply to Staff Testimony ("Reply to Staff Testimony") or in reply to any Rebuttal Testimony ("Surrebuttal Testimony"), serving a copy on every other Participant.

(12) That documents required to be filed by paragraphs (8) through (11) of this order shall be filed with the Clerk in an original and 15 copies.

(13) That Participants shall, as of the date they become Participants, be subject to, and permitted to utilize,

State Corporation Commission

discovery, as provided by the Commission's Rules of Practice and Procedure, except that Participants shall answer written interrogatories within ten (10) days of receipt of same, and shall likewise file any objections to interrogatories within ten (10) days of receipt of same. Objections to interrogatories not timely raised will be deemed to have been waived, except for good cause shown.

(14) That persons wishing to file comments in this proceeding without participating in the hearing of this matter may do so on or before April 20, 1994. Only the original of said comments need be filed with the Clerk, and copies need not be supplied to Participants and Staff. Any person desiring only to make a statement at the public hearing herein need only appear in the Commission's Second Floor Courtroom assigned to this hearing at 9:30 a.m. on April 27, 1994, and identify himself or herself to the Bailiff as a public witness.

(15) That any corporate entity wishing to participate in this proceeding in any fashion must be represented by legal counsel as required by Commission Rule of Practice and Procedure 4:8.

(16) That a copy of this order, with all attachments, appendices and service list, is available in the Commission's Document Control Center located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, open 8:00 a.m. to 5:00 p.m., Monday through Friday. A copy can also be obtained from the Commission's Division of Communications, P.O. Box 1197, Richmond, Virginia 23209.

(17) That any documents filed in this proceeding, as specified in this order, should be addressed to William J. Bridge, Clerk, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216, and should refer to Case No. PUC930036.

ATTESTED COPIES of this Order shall be sent by the Clerk of the Commission to each of Virginia's local exchange telephone companies as set out in Appendix A attached hereto; Virginia's certificated interexchange carriers as set out in Appendix B attached hereto; Warner F. Brundage, Jr., Esquire, C&P Telephone Company of Virginia, P.O. Box 27241, Richmond, Virginia 23261; Office of the Attorney General, Division of Consumer Counsel, 101 North Eighth Street, 6th Floor, Richmond, Virginia 23219; Cecil O. Simpson, Jr., Esquire, Department of the Army, Office of the Judge Advocate General, Regulatory Law Office U3784, 901 North Stuart Street, Arlington, Virginia 22203-1837; Laura Burley, Cable & Wireless Communications, Inc., 1919 Gallows Road, Vienna, Virginia 22180; Jean Ann Fox, President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Ronald B. Mallard, Director, County of Fairfax, 12000 Government Center Parkway, Fairfax, Virginia 22035; Charles R. Smith, HELLO, Inc., 2315 West Broad Street, Richmond, Virginia 23220; Andrew D. Lipman, Esquire and Russell M. Blau, Esquire, David Systems, Inc., 3000 K.

Street, N.W., 3rd Floor, Washington, D.C. 20007; James W. Spradlin, III, Director-External Affairs, United Telephone Company, 1108 East Main Street, Richmond, Virginia 23219; Stephen C. Spencer, Regional Director-External Affairs, GTE Virginia, Suite 1108, 1108 East Main Street, Richmond, Virginia 23219; Richard Gabel, Virginia Citizens Consumer Council, 3401 South Utah Street, Arlington, Virginia 22206; Jerome D. Scheer, President, Middle Atlantic Payphone Association, 10780-G Hanna Street, Beltsville, Maryland 20705; Gerald T. Kowasic, P.O. Box 642, Locust Grove, Virginia 22508; Edward L. Flippen, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23208; Kenworth E. Lion, Jr., Esquire, 1306 Turnmill Drive, Richmond, Virginia 23235-5565; William S. Bilenky, Esquire, 8133 Forest Hill Avenue, Richmond, Virginia 23235; James C. Roberts, Esquire, Donald G. Owens, Esquire and Charles H. Tenser, Esquire, May & Valentine, P.O. Box 1122, Richmond, Virginia 23208-1122; Leonard J. Kennedy, Esquire and Stephen C. Crampton, Esquire, Dow, Lohnes & Albertson, 1255 23rd Street, Washington, D.C. 20037-1194; the Commission's Office of General Counsel; and the Commission's Divisions of Communications, Public Utility Accounting, and Economics and Finance.

..... Appendix A

TELEPHONE COMPANIES IN VIRGINIA

Amelia Telephone Corporation
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

Amelia Telephone Corporation
Mr. Raymond L. Eckels, Manager
P.O. Box 76
Amelia, Virginia 23002

Buggs Island Telephone Cooperative
Mr. M. Dale Tetterton, Jr., Manager
P.O. Box 129
Bracey, Virginia 23919

Burke's Garden Telephone Exchange
Ms. Sue B. Moss, President
P. O. Box 428
Burke's Garden, Virginia 24608

Central Telephone Company of Virginia
Mr. Martin H. Bocock
Vice President and General Manager
P.O. Box 6788
Charlottesville, Virginia 22906

Chesapeake & Potomac Telephone Company
Mr. Hugh R. Stallard, President
and Chief Executive Officer
600 East Main Street
P.O. Box 27241

State Corporation Commission

Richmond, Virginia 23261

Citizens Telephone Cooperative
Mr. James R. Newell, Manager
Oxford Street
P.O. Box 137
Floyd, Virginia 24091

Clifton Forge-Waynesboro Telephone Company
Mr. James S. Quarforth, President
P.O. Box 1990
Waynesboro, Virginia 22980-1990

Contel of Virginia, Inc.
Mr. Edward J. Weise, President
9380 Walnut Grove Road
P.O. Box 900
Mechanicsville, Virginia 23111-0900

GTE South
Mr. Thomas R. Parker
Associate General Counsel
Law Department
P.O. Box 110 - Mail Code: 7
Tampa, Florida 33601-0110

Highland Telephone Cooperative
Mr. Elmer E. Halterman, General Manager
P.O. Box 340
Monterey, Virginia 24465

Mountain Grove-Williamsville
Telephone Company
Mr. L. Ronald Smith
President/General Manager
P. O. Box 105
Williamsville, Virginia 24487

New Castle Telephone Company
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

New Hope Telephone Company
Mr. K. L. Chapman, Jr., President
P.O. Box 38
New Hope, Virginia 24469

North River Telephone Cooperative
Mr. W. Richard Fleming, Manager
P.O. Box 236, Route 257
Mt. Crawford, Virginia 22841-0236

Pembroke Telephone Cooperative
Mr. Stanley G. Cumbee, General Manager
P.O. Box 549
Pembroke, Virginia 24136-0549

Peoples Mutual Telephone Company, Inc.
Mr. E. B. Fitzgerald, Jr.

President & General Manager
P.O. Box 367
Gretna, Virginia 24557

Roanoke & Botetourt Telephone Company
Mr. Allen Layman, President
Daleville, Virginia 24083

Scott County Telephone Cooperative
Mr. James W. McConnell, Manager
P.O. Box 487
Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President
P.O. Box 459
Edinburg, Virginia 22824

United Telephone-Southeast, Inc.
Mr. H. John Brooks
Vice President & General Manager
112 Sixth Street, P.O. Box 699
Bristol, Tennessee 37620

Virginia Telephone Company
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

.....Appendix B

INTER-EXCHANGE CARRIERS

AT&T Communications of Virginia
Ms. Wilma R. McCarey, General Attorney
3033 Chain Bridge Road, Room 3D
Oakton, Virginia 22185-0001

CF-W Network Inc.
Mr. James S. Quarforth, President
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Central Telephone Company of Virginia
Mr. James W. Spradlin, III
Government & Industry Relations
P.O. Box 6788
Charlottesville, Virginia 22903

Citizens Telephone Cooperative
Mr. James R. Newell, Manager
Oxford Street
P.O. Box 137
Floyd, Virginia 24091

Metromedia Communications Corporation
d/b/a LDDSMetromedia Communications
Mr. Joseph Kahl, Manager
Regulatory Affairs

State Corporation Commission

One Meadowlands Plaza
East Rutherford, New Jersey 07073

Contel of Virginia, Inc.
Mr. Stephen Spencer
1108 East Main Street, Suite 1108
Richmond, Virginia 23219

Institutional Communications Company - Virginia
Ms. Dee Kindel
8100 Boone Boulevard, Suite 500
Vienna, Virginia 22182

MCI Telecommunications Corp. of Virginia
Robert C. Lopardo
Senior Attorney
1133 19th Street, N.W., 11th Floor
Washington, D.C. 20036

R&B Network, Inc.
Mr. Allen Layman, Executive Vice President
P.O. Box 174
Daleville, Virginia 24083

Scott County Telephone Cooperative
Mr. James W. McConnell, Manager
P.O. Box 487
Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President & General Manager
P.O. Box 459
Edinburg, Virginia 22824

SouthernNet of Va., Inc.
Peter H. Reynolds, Director
780 Douglas Road, Suite 800
Atlanta, Georgia 30342

TDX Systems, Inc.
Mr. Charles A. Tievsky, Manager
Legal and Regulatory Affairs
1919 Gallows Road
Vienna, Virginia 22180

Sprint Communications of Virginia, Inc.
Mr. Kenneth Prohoniak
Staff Director, Regulatory Affairs
1850 "M" Street, N.W. Suite 110
Washington, DC 20036

Wiltel of Virginia
Brad E. Mutschelknaus, Esquire
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, DC 20006

Mr. Richard D. Gary
Hunton & Williams
Virginia MetroTel, Inc.

Riverfront Plaza
East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

ATTACHMENT A

MODIFIED PLAN FOR ALTERNATIVE REGULATION OF VIRGINIA LOCAL EXCHANGE TELEPHONE COMPANIES

Paragraph 1

The Experimental Plan, originally effective January 1, 1989, will be modified as set forth herein, will be effective January 1, 1994, as the modified Plan, and will constitute an alternative to regulation under Chapter 10 of Title 56 of the Code of Virginia for those Virginia telephone companies not regulated pursuant to Chapter 16 or 19 of Title 56.

Paragraph 2 - deleted

Paragraph 3

A local exchange company ("LEC" or "company") participating in the Experimental Plan on December 31, 1993, shall be deemed to be continuing to participate in this modified Plan (hereinafter "Plan") effective January 1, 1994. Should a company later desire to end its participation, it may do so with leave of the Commission upon a showing of good cause. Any company granted permission to exit the Plan will thereafter be subject to traditional regulation pursuant to Chapter 10 of Title 56 of the Code of Virginia on a prospective basis or to another alternative form of regulation as approved pursuant to Virginia Code § 56-235.5. The Commission retains the right to terminate a company's participation in the Plan on its own motion, or upon complaint, if it finds good cause to do so, such as a finding that a practice under the Plan is abusive or detrimental to the public interest.

Paragraph 4 - deleted

Paragraph 5

While this Plan is in effect, any changes found to be necessary will be given prospective effect only.

Paragraph 6

Services will be classified into categories as shown on Appendix A according to the following definitions:

Competitive: At a minimum, services for which there are readily available substitutes which reasonably meet customer needs and for which competition in the marketplace effectively regulates the price for such services.

Discretionary: Services which can be provided only by

the LECs, but which are optional, nonessential enhancements to basic communications, or services which others are capable of providing but which do not conform to the Competitive services definition.

Basic: Services which are not Discretionary and, due to their nature or legal/regulatory restraints, only the LECs can provide.

Yellow Pages advertising will continue to be treated as competitive for all purposes of this Plan, but 25 percent of Yellow Pages' advertising income available for common equity will be attributed to noncompetitive services.

Paragraph 7

Services listed on Appendix A as Discretionary or Basic, together with all other existing services of a company not identified on Appendix A as Competitive, will remain subject to current regulatory oversight, modified, however, by Paragraph 9, below.

Paragraph 8

The rate base, costs, and revenues from Competitive services will be transferred below the line for AIF purposes and will be not subject to price regulation.

Paragraph 9

Individual Case Basis (ICB) or custom service package contract pricing is allowed for services other than Basic when the LEC demonstrates that a competitive alternative, as defined in Paragraph 6, exists for an individual customer, but where the service does not otherwise fully satisfy the requirements of Paragraph 6.

- a. Conditions of Paragraph 11 must be met,
- b. A copy of any ICB or custom service package contract must be timely filed under proprietary protection with the Commission's Division of Communications, and
- c. Any such filing must include supporting data demonstrating that the rate is above long-run incremental cost.

Paragraph 10

Tariffs shall continue to be filed for all Discretionary and Basic services and for any Competitive service that is also offered, pursuant to a Virginia intrastate tariff, by another company that is certificated by this Commission.

Paragraph 11

Services and/or capabilities of a monopoly nature that are components of Competitive services must be offered on an unbundled basis in the tariffs. When these services and/or capabilities are used by Competitive services,

revenues shall be attributed to noncompetitive operations based on the tariff rates and quantities used. The requirements of this paragraph must be satisfied at the time a service is determined to be Competitive.

Paragraph 12

Any service that is lawfully, preemptively deregulated by the Federal Communications Commission (FCC) will not be subject to regulation. Services in this category as of January 1, 1994, are Customer Premises Equipment and Complex Inside Wire. This Commission retains full regulatory authority over any service that is not lawfully, preemptively deregulated, including Competitive services that fall under the FCC's Part 64 rules.

Paragraph 13 - deleted

Paragraph 14

Rate regrouping due to growth in access lines will continue in order to avoid rate discrimination between similarly sized exchanges.

Paragraph 15

For purposes of assuring that competition is an effective regulator of the price of Competitive services, the Staff shall monitor these services on a periodic basis, at a minimum, annually.

Solely for annual monitoring purposes, each company shall file a per books rate-of-return statement, under proprietary protection, for the aggregate of all of its services, except for any service that is lawfully, preemptively deregulated by the FCC consistent with Paragraph 16, below. Annually, total company, total service results will be monitored in order to provide the Commission with a complete picture of each company's operating results.

Paragraph 16

Annually, each company shall file a nonproprietary AIF based upon the rate base, revenues, and expenses of all services, excluding those which are competitive except Part 64 services that have not been lawfully, preemptively deregulated by the FCC. Return on rate base and return on common equity will be calculated by using a 13-month average rate base and a 13-month average common equity amount. For AIF purposes, a company should not include a cash allowance for working capital unless the Commission has ordered the company to use the results of a comprehensive lead lag study. The AIF shall include a capital structure and cost of capital statement, a rate-of-return statement, and a rate base statement, together with other information as required by the Staff or the Commission. The capital structure shall be determined in accordance with Paragraph 18, below, on a per-books basis. The rate-of-return statement will also reflect per-books results, making adjustments for:

State Corporation Commission

- a. Investment Tax Credits (ITC) capital expense and its associated tax savings;
- b. Restatements from Generally Accepted Accounting Principles (GAAP) to regulatory accounting;
- c. Removal of out-of-period revenue and expense amounts that relate to occurrences prior to January 1, 1989, the implementation of the Experimental Plan;
- d. Removal of out-of-period amounts that are a direct result of the Plan.

Paragraph 17

In the event a company seeks an increase in the price of any Basic service, or any Basic service combined with price changes for Discretionary or other Basic services, that results in an increase in overall regulated operating revenues, the company must file a rate application conforming to the rules governing general rate case applications for telephone companies. The revenue limitation provisions of § 56-235.4 would apply.

- a. The financial results in this filing will include rate base, expenses, and revenues from all services, excluding any service lawfully, preemptively deregulated by the FCC.
- b. In the event a cash working capital allowance is sought, a comprehensive lead lag study is required. This study should include a balance sheet analysis.
- c. The circumstances surrounding the need for an increase may affect continuing participation in the Plan; however, a requested rate increase would not necessarily preclude ongoing participation. However, a company may not participate in the Plan and receive a rate increase if the return on equity as determined in Paragraph 17a is above the bottom of the allowed return-on-equity range.

In the event a company seeks a change in the price of Basic and/or Discretionary services that does not result in an increase in overall regulated operating revenues, it must proceed pursuant to the Commission approval and customer notification provisions of Code §§ 56-237.1 and 56-237.2. Any hearing resulting from § 56-237.2 must conform to the rules governing general rate case applications for telephone companies, including subparagraphs a, b, and c above.

In the event a company seeks an increase in any Discretionary service that results in an increase in overall operating revenues, it must proceed pursuant to the Commission approval and customer notification provisions of Code §§ 56-237.1 and 56-237.2. Any hearing resulting from § 56-237.2 must conform to the rules governing general rate case applications for telephone companies, including subparagraphs a, b, and c above. In addition, the revenue limitation provisions of § 56-235.4 would apply.

Paragraph 18

The allowed return on equity will be determined annually for the upcoming calendar year based on an average (rounded to the nearest one hundredth) of the 30-Year Treasury bond yield, adjusted to constant maturity, for the months of September, October, and November, as reported in the Federal Reserve Statistical Release H.15 (519) (or by its successor, should it be changed), plus a risk premium range as set forth in the table below.

TREASURY BOND RATE	RISK PREMIUM
0 - 2.49%	6.5 - 8.5%
2.50 - 3.49%	6.0 - 8.0%
3.50 - 4.49%	5.5 - 7.5%
4.50 - 5.49%	5.0 - 7.0%
5.50 - 6.49%	4.5 - 6.5%
6.50 - 7.49%	4.0 - 6.0%
7.50 - 8.49%	3.5 - 5.5%
8.50 - 9.49%	3.0 - 5.0%
9.50 - 10.49%	2.5 - 4.5%
10.50 - 11.49%	2.0 - 4.0%
11.50 - 12.49%	1.5 - 3.5%
12.50 - 13.49%	1.0 - 3.0%
13.50 - 14.49%	.5 - 2.5%
14.50 - AND ABOVE	0 - 2.0%

The overall cost of capital will be based upon the local exchange company's 13-month average capital structure and cost of senior capital, together with the allowed return-on-equity range.

Paragraph 19 - omitted (combined with paragraph 20)

Paragraph 20

All rates, except those for Competitive services, are interim rates until the Commission declares that they are no longer subject to refund. If a company is found to have earned in excess of the authorized range of return on Basic and Discretionary services in the year preceding, an appropriate refund will be made with interest consistent with the top of the return-on-equity range. Under appropriate circumstances, and upon motion by the company, the Commission will order that the interim rates for the previous year are no longer subject to refund. All actions in this paragraph will be taken only after notice and opportunity for hearing.

Paragraph 21

Reports of service quality results shall be filed by the local exchange companies on a quarterly or monthly basis as directed by the Staff.

(a) These reports shall conform to service rules adopted by the Commission by Final Order of June 10, 1993, in Case No. PUC930009, Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte: In the matter of Adopting Rules Governing Service Standards for Local Exchange Telephone Companies;

(b) These reports may be expanded to include results

not contained in the present service reports.

(c) Companies will also file reports showing results related to service provided to interexchange carriers as follows:

- On-time performance
- Outage duration
- Blocking below the tandem

(d) The Staff will analyze all such service results and take immediate action to resolve any service quality problems.

Paragraph 22

The Commission's cost allocation principles and guidelines (Exhibits A and B of the Order in Case No. PUC890014, dated July 21, 1989) and the Orders of April 17, 1990; June 26, 1990; and June 19, 1991; in Case No. PUC890014, are incorporated herein by reference. Costs and revenues associated with Competitive services, except Part 64 services, must be determined by detailed allocation methods that conform to these principles and guidelines. These detailed allocation methods will be monitored and revised when necessary as an administrative function of the Staff of the Division of Communications. Part 64 services should have their costs and revenues determined by the FCC's Part 64 procedures as long as the results are accurate and reasonable.

Paragraph 23

Upon the request of the Staff, a company will file such other information with respect to any services or practices of the company that may be required of public service companies under current Virginia law, or any amendments thereto.

Any company that fails to provide, timely and accurately, data required by the Plan, including answers to any Staff request for data or information necessary for the execution of this Plan, shall be subject to a Rule to Show Cause hearing for such failure. The Commission will monitor closely all aspects of each company's performance under the Plan.

Paragraph 24

Thirty days prior to offering a new service or reclassifying an existing service, a company shall notify in writing the Staff, the Attorney General, and all certificated interexchange carriers of the new or reclassified offering and shall provide appropriate documentation to the Staff. The Commission may suspend the proposed effective date if the documentation supporting the classification is insufficient.

a. Simultaneous with such notification, the company

shall designate the service category into which the service is classified.

b. If the proposed service category is Competitive, notice must be given to all affected parties, and a hearing must be conducted.

c. Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the service be classified in a different category; however, the filing of such petition shall not result in the postponement of any new service offering.

d. Any such proceeding to determine the proper classification of a service offering shall be completed within 90 days following the effective date of the service offering, except that if the proposed classification is Competitive, the proceeding must be completed within 120 days.

Paragraph 25

Interexchange Carriers' access charges are not included in the categories of services set out in this Plan for pricing purposes. Pricing for such services will be considered separately in accordance with procedures adopted in Case No. PUC870012, In re: Investigation of the appropriate methodology to determine intrastate access service costs and as implemented in Case No. PUC880042, Ex Parte: In re, investigation of pricing methodologies for intrastate access service. For all other purposes, access services will be included in the categories as shown on Appendix A.

Paragraph 26 - deleted

Appendix A

MARKET CLASSIFICATIONS OF LEC SERVICES

Competitive

1. Yellow Pages Advertising
2. Non-preemptively deregulated Customer Premises Equipment
3. Simple Inside Wiring
4. CENTREX Intercom & Features (CENTREX INTELLILINQ - BRI)⁶
5. Billing & Collection (Processing, Rendering, Inquiry)
6. Paging Services
7. Speed Calling
8. Apartment Door Answering¹

State Corporation Commission

9. C.O. LANs⁴
 10. Home Intercom¹
 11. Uniform Call Distribution¹
 12. Business Market Hotline¹
 13. Data Path²
 14. T1 Access⁴
 15. Switched Data Service⁴
 16. Part 64 Services
- Discretionary
1. Non-list & Non-pub Numbers
 2. Preferred (Vanity) Numbers
 3. Additional Listings & Bold Type
 4. Verification With Call Interrupt
 5. Call Waiting
 6. Remote Call Forwarding
 7. DTMF Signalling⁶
 8. B&C Security Functions
 9. Special Billing Numbers
 10. Referral Service
 11. Transfer Arrangements
 12. Exclusion
 13. Toll/Call Blocking (All Types)⁶
 14. Make Busy Arrangements
 15. Break Rotary Hunt
 16. Return Call⁶
 17. Priority Call⁶
 18. Select Forward⁶
 19. Call Block⁶
 20. Caller ID⁶
 21. Call Trace⁶
 22. IDENTIA RING⁶
 23. Connect Request sm¹
 24. High Capacity Digital Hand-off Service⁶
 25. Appointment Request¹
 26. Anonymous Call Rejection⁶
 27. INTELLILINQ - PRI¹
 28. Centrex/DID Intercept Service¹
 29. Bulk Private Line
 30. Bulk Special Access
 31. Operator Call Completion Services
 32. Three-Way Calling
 33. Time-of-Day Service
 34. Weather Forecast Service
 35. C.O. Data Sets
 36. Pay-Per-View^{1,4}
 37. Repeat Call⁶
 38. Intercom Extra¹
 39. Digital Data Service¹
 40. ULTRA FORWARD⁶
 41. Switched Multi-Megabit Data Service¹
 42. Switched Redirect Service¹
 43. CENTREX Extend Service¹
 44. FDDI/FNS¹
 45. Frame Relay Service¹
 46. 10 Mbps Ethernet²
 47. Cancel Call Waiting⁶
 48. United SwitchLink sm³
 49. United SwitchLink smPlus²
 50. Call Forwarding - (Busy, No Answer, Fixed, Automatic)⁶
 51. Digital Cross Connect²
 52. Busy Study/Traffic Assessment²

- 53. Telecommunications Service Priority
- 54. Message Waiting Indicator⁶
- 55. Detail Message Billing^{4,5}
- 56. Enhanced Service Provider⁴
- 57. GTE Datalink Service⁵
- 58. ControlLink Digital Channel Service⁴
- 59. Automatic Meter Reading⁴

Basic

- 1. Access to Switched Network (DTLs)
- 2. Exchange Usage
- 3. Switched Access
- 4. MTS/WATS/800
- 5. Basic Service Charges
- 6. Optional Calling Plans
- 7. CENTREX Exchange Access & Usage
- 8. Billing & Collecting (DNP, ANI, & Recording)
- 9. Directory Assistance
- 10. Maintenance Visit (Trouble Isolation)
- 11. "Single" Private Line & Special Access (Excluding Digital Data Service)¹
- 12. Operator Service - Emergency & Troubles
- 13. Intercept (Standard)
- 14. White Pages Listing
- 15. List Service
- 16. Number Screening
- 17. FX Service
- 18. Public and Semi-Public Telephone Service
- 19. IXC Coinless Telephone Service
- 20. Four-Wire Service Terminating Arrangements
- 21. Concentrator - Identifier Equipment
- 22. Emergency Number "911" Service

- 23. Public Data Network
- 24. Direct Inward Dialing
- 25. Extended Area Calling
- 26. Hunting Arrangements
- 27. PBX Night, Sunday, Etc. Arrangements
- 28. Split Supervisor Drops
- 29. Identified Outward Dialing
- 30. Dial Tone Line 800 Service⁶
- 31. Switched 56 Kilobit Service
- 32. Line Status Verification
- 33. Shared Tenant Service
- 34. Enhanced Business Service Access^{3,4}
- 35. Enhanced Business Service - Features⁴
- 36. Service Performance Guarantee⁶
- 37. Directory Connect Plus⁵
- 38. Automatic Line Service⁴
- 39. Home Business Service¹

¹C&P

²Centel

³United

⁴GTE-VA

⁵GTE-South

⁶May be offered by an LEC under a different name

V.A.R. Doc. No. R94-443; Filed January 4, 1994, 11:41 a.m.

.....AT RICHMOND, December 17, 1993

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

.....CASE NO. PUC920029

EX Parte: In the matter of
evaluating the Experimental Plan
for Alternative Regulation of
Virginia Telephone Companies

State Corporation Commission

FINAL ORDER

I.

PROCEDURAL HISTORY

This case was established June 23, 1992, to evaluate the Commission's Experimental Plan for Alternative Regulation of Virginia Telephone Companies ("Plan") as contemplated by Paragraphs 4 and 26 of the Plan, 1988 SCC Ann. Rept. 249 (Final Order, Case No. PUC880035, Dec. 15, 1988). On June 30, 1992, the five participating local exchange telephone companies ("LECs") filed their Review Report critiquing the Plan and offering suggestions for improvements in the future. By Order of August 14, 1992, the Commission extended the Plan for an additional six months, until June 30, 1993, in order to allow the evaluation of financial earnings pursuant to Paragraph 16 of the Plan.

By Order of October 27, 1992, the Commission invited comments from interested parties concerning the Review Report. Comments were received from the Fairfax County Board of Supervisors, the Public Interest Coalition, Sprint Communications Company L.P., the American Association of Retired Persons, the Virginia Citizens Consumer Council, AT&T Communications of Virginia, Inc., MCI Telecommunications Corporation, the Division of Consumer Counsel, Office of the Attorney General ("Attorney General"), the Virginia Burglar and Fire Alarm Association, and the Chesapeake and Potomac Telephone Company of Virginia ("C&P").

On June 18, 1993, the Commission entered an order extending the Plan for an additional six months, until December 31, 1993.

By Order of July 2, 1993, the Commission prescribed notice and set an evidentiary hearing for November 3, 1993. That same order called for the filing of a Staff Report evaluating the Plan, permitted interested parties to raise issues to be addressed at the hearing, and permitted participants to prefile direct testimony to be submitted at the hearing. The hearing commenced November 3, 1993, and continued through November 8, 1993.

At the conclusion of the hearing, the Commission directed the filing of post-hearing briefs. By Order of November 14, the deadline for briefs was extended to November 22, 1993.

On December 2, 1993, a late-filed Motion for Leave to Intervene as a Protestant and for New Hearing was filed by the Virginia Cable Television Association, Adelphia Communications, Continental Cablevision, Inc., Cox Cable Hampton Roads, Inc., and Media General Cable of Fairfax County (collectively referred to as "Cable Companies"). That motion was followed by a Petition in Support of Motion for New Hearing filed by AlterNet of Virginia on December 9, 1993. Both Motions alleged that, from the terms of the notice of this proceeding, the only purpose of

this docket was to evaluate the Experimental Plan and not to implement a new permanent alternative regulatory plan.

Prior to these filings, the Attorney General, both in opening statements and in brief, had also urged that the public notice in this case was not adequate for implementation of a new plan pursuant to Va. Code § 56-235.5 of the Code.

II.

THE PLAN AND CHANGES IN THE TELECOMMUNICATIONS INDUSTRY

When the Plan was implemented January 1, 1989, it was already clear that the telecommunications industry was undergoing significant change. Indeed, Paragraph 26 of the Experimental Plan stated that the purpose for evaluating the Plan was:

to provide an informed basis upon which the Commission can design and execute subsequent policy and predicate future action in appropriate response to the competitive and technological forces which are then identified as impacting the field of communications and information transfer.

Changes have occurred at an even more rapid pace, however, than could have been anticipated in 1988. Recent examples include the accelerating pace of mergers occurring between the cable television and telephone industries, as well as the emergence of competitive access providers for long distance services.

Even in the face of rapid changes such as these, it is clear from this record that the Plan has been a success. At its inception, the Plan resulted in a significant rate reduction, and rate stability has been maintained at these levels, even in the face of continued inflation, throughout the Plan's history. The Plan has helped the LECs adapt to emerging competition for more and more services during the past five years. Industry witnesses testified that the Plan had encouraged their companies to invest in infrastructure, see Ex. HRS-5 and Ex. DWM-25. Ratepayers have benefited from the stability of basic rates and the introduction of innovative new services. Even though a recession has existed during much of the time the Plan has been in effect, telephone subscribership is at a record level among Virginia citizens. While the companies have reduced their operating expenses, service quality has not deteriorated.

Indisputably, the Plan has been successful, and it is now time to conclude the experiment and move forward. While the Plan has met the needs of telecommunication regulation to the present, the new day dawning in this industry warrants consideration of other possible responses in the future.

III.

MOVING FORWARD

The question at this point is what the next step should be, given the record developed in this case, the fact that the current Plan is slated to expire two weeks from now, and the allegations raised concerning the adequacy of the notice given of these proceedings, as described above.

Our Order for Notice and Hearing, entered in this case on July 2, 1993, specified that the notice was to read, in pertinent part, as follows:

NOTICE BY THE STATE CORPORATION
COMMISSION OF ITS EVALUATION
OF ITS EXPERIMENTAL PLAN
FOR ALTERNATIVE REGULATION
OF VIRGINIA TELEPHONE COMPANIES

CASE NO. PUC920029

On January 1, 1989, the State Corporation Commission adopted its Experimental Plan For Alternative Regulation of Virginia Telephone Companies. Pursuant to paragraph 26 of the Plan, the participating telephone companies have filed a report evaluating the Plan and seeking changes in it. The Commission Staff will prepare an analysis of the Plan.

As our order of October 6, 1993, in this case said, that notice was adequate to apprise interested persons that this proceeding would be "considering suggested changes for implementation January 1, 1994, to the current Experimental Plan," and that "this docket would not only evaluate the Experimental Plan but also consider modifications" to it. Order Denying Motion for Clarification, at 1-2, (Oct. 6, 1993).

Supporting this conclusion is the fact that the notice quoted above states that participating companies have filed a report evaluating the Plan, pursuant to its Paragraph 26. As previously noted, that paragraph says that the purpose of such reports is:

to provide an informed basis upon which the Commission can design and execute subsequent policy and predicate future action in appropriate response to the competitive and technological forces which are then identified as impacting the field of communications and information transfer.

Thus, persons reading this notice and, by reference, Paragraph 26, must be charged with the knowledge that this proceeding was for the purpose of taking action in the future with regard to the appropriate regulatory methods to be applied to this industry. This conclusion would have been reinforced by the other passages in the notice, that the companies reporting on the Plan were also "seeking changes in it," and that "the Staff will prepare an analysis of the Plan," presumably to provide guidance for the future.

We are inclined to agree with C & P, when it says, in its response to the above motions, that to hold that no potential for future action was sufficiently announced by our notice would mean that the Commission had undertaken "this time-consuming, costly, lengthy and contentious proceeding focusing only on the past...with no intent to formulate future policies, refine the Plan, or implement alternatives." Opposition of C&P to Motions, at 5 n. 11 (Dec. 14, 1993). We cannot subscribe to any reading of the notice which would constrain us to such an academic exercise for no useful purpose.

While we are therefore confident that the notice given in this case supports our taking significant and meaningful action with regard to the ongoing regulation of Virginia telephone companies, there remains the more narrow question, raised by these motions, as to what precise future action that notice would justify here.

Those pleadings contend that our notice would not support the implementation of a permanent plan in this proceeding, particularly a permanent plan formulated and developed under the auspices of Va. Code § 56-235.5, which became effective July 1, 1993.

In response to this argument, we could trivialize this proceeding by holding that the only purpose expressed in our notice was to consider implementing changes to the current Plan which would be effective only for its remaining life, through the end of this month. This we will not do. We would not have put this agency and the parties hereto to these extensive efforts for such a minimal and short-term objective.

Neither we will let the Plan expire at the end of this year, thus causing a return to traditional regulatory methods. To do so, given the major changes taking place in this industry, the clear intent expressed by the General Assembly in giving us authority under Va. Code § 56-235.5 to consider and adopt new regulatory measures to respond to these developments, and the need for continuity and consistency in telecommunications regulation, would be counter-productive and irresponsible in our view.

Rather, the Commission will take two steps, one in this case and one in a new docket, which we believe will allow thorough consideration, on a prompt basis, of new regulatory proposals and alternatives, in the manner envisioned by Va. Code § 56-235.5, and, in the meantime, will provide responsible and effective regulation for those telephone companies currently subject to the Plan.

First, early next week we will open a separate docket, Case No. PUC930036, to provide explicit public notice, opportunity for discovery and an evidentiary hearing in April, 1994, under the provisions of Va. Code § 56-235.5. As a result of the extensive record developed in this case, the Commission has been able to develop a proposal for a new regulatory alternative for Virginia telephone companies, which will be appended to that order, and hereto, as Attachment A, and this proposal will be

State Corporation Commission

considered as a part of that new case. However, that case will be open for consideration of much more than our own proposed plan. It will also be the vehicle for examining other regulatory proposals and alternatives, such as price caps, reclassification of competitive services pursuant to Va. Code § 56-235.5(G), and the alteration of cost allocations which were developed in Case No. PUC890014.

Second, the existing Plan, which is currently scheduled to expire December 31, 1993, will be extended and modified in this proceeding to conform to Attachment A, effective January 1, 1994. This modified Plan will continue in effect until the Commission takes final action in Case No. PUC930036. That action, of course, may result in the adoption of Attachment A on a permanent basis, or the implementation of other alternatives, depending on the record developed in that case.

Because we have determined to continue our inquiry into the proper response to changes in the communications industries, we will deny the motions for late intervention filed by the Cable Companies and AlterNet. There is no reason for their intervention in this case because Case No. PUC930036 will permit them an ample and early opportunity to pursue their interests before us. We will not hesitate to alter the modified Plan if the record in that later proceeding justifies changes.

Attachment A preserves the fundamentals of the current Plan, with some significant changes that were developed on the record. It is important to note that rates will remain interim under the extended and modified Plan, subject to refund if an AIF determines noncompetitive earnings were excessive in any prior period. However, AIFs for the calendar years 1989-1993 will be evaluated under the provisions of the original Plan, not by the terms of Attachment A.

Significant changes in the modified Plan are: (1) one fourth of Yellow Pages advertising's income available for common equity will be attributed to noncompetitive services, and (2) the range of allowed return on equity will be based upon the 30-year Treasury bond yield, as increased by an appropriate risk premium.

IV.

SERVICE CLASSIFICATION

Services classified as Actually Competitive as of July 1, 1993, will remain classified as Competitive under the modified Plan pursuant to Va. Code § 56-235.5(F) while Case No. PUC930036, which will afford an opportunity for considering potential reclassification of those services, is underway. Paragraph 6 is essentially that which the Commission Staff proposed in its post-hearing brief. The definition of Competitive services focuses on the presence of other providers reasonably meeting the needs of customers.

We do not now determine whether Yellow Pages is a competitive service. Thus, it presently remains classified as it was on the effective date of the new statute, as the LECs contend it should be.

It is clear, though, that the same statute does not forbid the treatment we afford this issue here. That is because Va. Code § 56-235.5(E) recognizes that, even after a service is classified as competitive, a second question remains as to how that service should be treated for regulatory purposes. As the statute notes, competitive services may be deregulated, detariffed, or regulated in some other modified fashion, as we find appropriate.

As our Staff's report relates (pp. C-7 to C-8), at the inception of the Plan, there was a major competitor attempting to enter the market in Yellow Pages. It sought to produce a volume of Yellow Pages type advertising, as an alternative to the telephone company book, in two of the three major metropolitan areas of the state. The Plan assumed that this form of Yellow Pages competition would develop. It has not, on any effective basis, leaving only smaller, less than complete substitutes. (Staff Report, p. C-7; Tr. 635.)

Nevertheless, there is ample evidence in this record that other media (radio, television and newspapers for example) compete for some of the same advertising dollars as the telephone company Yellow Pages. (See e.g., Exh. GH-31; Tr. 716-19.) We believe, however, that the form of the Yellow Pages book insulates some fraction of those dollars from any possibility that other media can acquire them. Yellow Pages revenues may go up or down due to competition from other media, but are not likely to be so depleted as to make such media a complete substitute for Yellow Pages.

Thus, Yellow Pages is subject to a unique market structure. There is, and has always been, competition for revenues from advertisers among telephone company Yellow Pages and other media. As a result, Yellow Pages advertising rates have never been regulated, and we see no justification in this record to begin dictating these rates.

However, it is apparent that the unique form of the Yellow Pages publication produced by the telephone companies is made possible by a ready availability of information from the regulated side of the business. This relationship insulates a part of the revenues from Yellow Pages advertising from effective inroads by other media. Because this protection is closely related to the regulated activities of the company, we have concluded that regulated customers should receive some of the benefits derived by the telephone companies from Yellow Pages operations.

The modified Plan recognizes that all Yellow Pages advertising derives benefits from its association with the local exchange service provider. We will continue to treat Yellow Pages advertising as competitive for pricing and all

other purposes of the modified Plan, but in order to recognize the benefits derived by the Yellow Pages operation from local exchange services, 25 percent of the Yellow Pages income available for common equity will be attributed to revenues derived from noncompetitive services.

Our treatment of Yellow Pages here gives the LECs full pricing freedom for this highly-profitable service, as before; only the regulatory treatment afforded the resulting revenues will differ from previous practice under our modified Plan.

Paragraph 9 of Attachment A adopts the Staff's proposed language that permits individual case base pricing, with safeguards for services other than Basic. Paragraph 17 similarly adopts the Staff's proposal for revenue neutral price restructuring.

As noted in the modified Plan, rates for discretionary service may be increased, but only under certain safeguards. These provisions will protect customers from unreasonable rate increases, and they will also allow the LECs the opportunity to accomplish needed rate changes without having to exit the Plan.

V.

CAPITAL STRUCTURE AND COST OF EQUITY

The return on equity currently permitted in the Plan is 12-14 percent. We have concluded that the data in the record do not support a need to modify that range retroactively for the period 1989-93. There is little doubt, however, as evidenced by the decline in interest rates recently, that returns under the Plan should be allowed to fluctuate in the future.

Company witness Vander Weide evaluated financial data for 1989-1993 and testified that the cost of equity generally had remained constant during that period. (Exh. JHVW-35, pp. 28-29; Tr. 791-92). We disagree with him somewhat, because there have been recent declines in the cost of capital. However, we do not believe those declines justify changing the Plan retroactively since the declines occurred late in the period.

Our decisions in other utility rate cases reflect the timing of this decline in the cost of equity, as demonstrated by our authorized returns on equity. It was not until well into 1992 that any of our decisions fixed authorized returns on equity below 12-13 percent for other major utilities. See Virginia Electric and Power Co., Case No. PUE910047, 1992 S.C.C. Ann. Rep., 291 at 294 (December 1992). While we recognize a declining cost of equity late in the Plan period, we do not find it so great as to require redress retroactively; nor is it inconsistent with our prior decisions.

In order for the modified Plan's total cost of capital to reflect adequately the capital markets in the future,

however, changes in the cost of equity capital must be taken into account, just as changes in a company's cost of debt are now recognized.

Several options for adjusting the range prospectively were offered during the hearing. Basically, we believe we have two choices. We can either determine the return on equity today and adjust it periodically in a formal proceeding, or we can develop an index to automatically adjust the return to reflect future market conditions. Given the streamlined nature of the Plan, we do not believe that periodic formal proceedings to determine the allowed return on equity are the best option. Rather, the public interest would be best served by developing an index to respond without delay to the realities of the financial markets.

Staff suggested such a formula, based upon the risk premium approach. This theory is founded upon the simple premise that investors require a higher return on investments in common stock than on debt instruments, due to the greater risk inherent in stocks. The Staff recommended calculating the cost of equity for the upcoming calendar year based on market information for the months of September, October, and November. Specifically, the average yield on 30-year Treasury bonds would be calculated for those months, and a risk premium range would be added to that average yield. The resulting range would be used as the allowed return on equity for the next calendar year, and companies participating in the Plan would be notified annually of the applicable range.

We agree that a formula approach such as that suggested by the Staff is a reasonable way in which to determine the allowed return on equity under the Plan. However, modifications are needed to gauge better the allowed return on equity.

As in most such determinations, judgment is needed to arrive at an estimate of the market-required return on an investment. We adopt Staff's recommendation on the calculation of the interest rate component of the risk premium formula. This calculation is straightforward and can be readily observed. Determining the appropriate risk premium range requires more judgment. For the sake of simplicity, Staff suggested a constant range of 2-4 percent, but acknowledged that there appears to be an inverse relationship between the risk premium and the level of interest rates. Although this relationship is difficult to quantify, the observation that such a relationship exists appears accurate. Indeed, a review of our decisions on the cost of equity capital over the past two decades relative to interest rate trends reveals a narrowing of the risk premium in times of high and volatile interest rates, and a widening of the premium as interest rates fall. We believe that it is appropriate to incorporate such a relationship in the index to be used to determine the allowed return on equity for telephone companies operating under the modified Plan.

Numerous views on the risk premium range applicable

State Corporation Commission

to both current and past interest rates were offered at the hearing. In order to develop an index which adjusts the allowed return to changes in interest rate levels, we need a starting point. We believe that a risk premium range of 2.5-4.5 percent applicable to a yield on 30-year Treasuries of approximately 10 percent is a reasonable starting point. Over the past twenty years, these yields have reached levels well above that figure and, of course, well below, but have, on the average, approximated 10 percent. The next step is to adjust the 2.5-4.5 percent range to current market conditions. To do this, we will apply an inverse relationship between the Treasury yield and the risk premium, consistent with the view that the risk premium changes 50 basis points for each one percentage point change in the Treasury yield in the opposite direction. This relationship is debatable, with estimates ranging above and below it. On balance, however, we believe it is reasonable for the purposes of the modified Plan until we conclude newly-instituted Case No. PUC930036. A table calculated in accordance with these principles would yield the following results:

<u>TREASURY BOND RATE</u>	<u>RISK PREMIUM</u>
0 - 2.49%	6.5 - 8.5%
2.50 - 3.49%	6.0 - 8.0%
3.50 - 4.49%	5.5 - 7.5%
4.50 - 5.49%	5.0 - 7.0%
5.50 - 6.49%	4.5 - 6.5%
6.50 - 7.49%	4.0 - 6.0%
7.50 - 8.49%	3.5 - 5.5%
8.50 - 9.49%	3.0 - 5.0%
9.50 - 10.49%	2.5 - 4.5%
10.50 - 11.49%	2.0 - 4.0%
11.50 - 12.49%	1.5 - 3.5%
12.50 - 13.49%	1.0 - 3.0%
13.50 - 14.49%	.5 - 2.5%
14.50 - AND ABOVE	0 - 2.0%

Based on the average 30-year Treasury constant maturity bond yield of 6.05 percent for the months of September, October, and November of 1993, the currently applicable risk premium range is 4.5-6.5 percent. Therefore, beginning January 1, 1994, the allowed return-on-equity range will be 10.55 to 12.55 percent. This risk premium spread and allowed return-on-equity range incorporate our recognition that the telecommunications industry is in a period of transition that has increased its level of risk. We read daily about new entrants and new partnerships intending to provide traditional and futuristic telecommunications services. This industry has deviated far from what was once a traditional monopoly, and our regulation must reflect that change. The General Assembly implicitly recognized these same developments, in our view, when it enacted Va. Code § 56-235.5.

The allowed return-on-equity range, calculated in accordance with the table above, will be used in conjunction with a LEC's actual capital structure and cost of senior capital to determine the overall cost of capital. Some parties in the case suggested it is necessary to adjust the capital structure in order to recognize differences in business or financial risk between various LEC lines of business or between the risk of a LEC and its parent. We do not adopt that view here. However, we

are prepared to revisit this issue in Case No. PUC930036.

The allowed return-on-equity range from the table above will also be used to evaluate earnings if a company requests a rate increase while remaining in the Plan, in accordance with paragraph 17.

Should this principle be adopted on a permanent basis as a result of Case No. PUC930036, the allowed return on equity would be adjusted annually, as described above. Thus, the companies' concerns about their inability to make proper planning decisions would be satisfied.

VI.

CONCLUSIONS

The Commission commends the efforts of all parties who participated in the November hearings. The extensive record that was developed has made it possible to implement the modified Plan shown in Attachment A on January 1, 1994. We invite all parties to participate fully in the new proceeding under Va. Code § 56-235.5, so that further changes can be considered and a fair and effective permanent regulatory program can be developed from the combined efforts of all affected parties. Accordingly,

IT IS THEREFORE ORDERED:

(1) That the Plan previously scheduled to expire on December 31, 1993, is hereby modified as set forth on Attachment A hereto, effective January 1, 1994, and it shall continue in effect until the Commission completes its consideration in Case No. PUC930036.

(2) That there being nothing further to come before the Commission in this case, this proceeding is closed and the record developed herein shall be placed in the file for ended causes.

Commissioner Moore did not participate in this matter.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to each of Virginia's local exchange telephone companies as set out in Appendix A attached hereto; Virginia's certificated interexchange carriers as set out in Appendix B attached hereto; Warner F. Brundage, Jr., Esquire, C&P Telephone Company of Virginia, P.O. Box 27241, Richmond, Virginia 23261; Office of the Attorney General, Division of Consumer Counsel, 101 North Eighth Street, 6th Floor, Richmond, Virginia 23219; Cecil O. Simpson, Jr., Esquire, Department of the Army, Office of the Judge Advocate General, Regulatory Law Office U3784, 901 North Stuart Street, Arlington, Virginia 22203-1837; Laura Burley, Cable & Wireless Communications, Inc., 1919 Gallows Road, Vienna, Virginia 22180; Jean Ann Fox, President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Ronald B. Mallard, Director, County of Fairfax, 12000 Government Center Parkway, Fairfax, Virginia 22035; Charles R. Smith, HELLO, Inc., 2315 West Broad Street,

Richmond, Virginia 23220; Andrew D. Lipman, Esquire and Russell M. Biau, Esquire, David Systems, Inc., 3000 K. Street, N.W., 3rd Floor, Washington, D.C. 20007; James W. Spradlin, III, Director-External Affairs, United Telephone Company, 1108 East Main Street, Richmond, Virginia 23219; Stephen C. Spencer, Regional Director-External Affairs, GTE Virginia, Suite 1108, 1108 East Main Street, Richmond, Virginia 23219; Richard Gabel, Virginia Citizens Consumer Council, 3401 South Utah Street, Arlington, Virginia 22206; Jerome D. Scheer, President, Middle Atlantic Payphone Association, 10780-G Hanna Street, Beltsville, Maryland 20705; Gerald T. Kowasic, P.O. Box 642, Locust Grove, Virginia 22508; Edward L. Flippen, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23208; James C. Dimitri, Esquire, Christian, Barton, Epps, Brent & Chappell, 1200 Mutual Building, Richmond, Virginia 23219-3095; Kenworth E. Lion, Jr., Esquire, 1306 Turnmill Drive, Richmond, Virginia 23235-5565; William S. Bilenky, Esquire, 8133 Forest Hill Avenue, Richmond, Virginia 23235; James C. Roberts, Esquire, Donald G. Owens, Esquire and Stephen C. Crampton, Esquire, Dow, Lohnes & Albertson, 1255 23rd Street, Washington, D.C. 20037-1194; the Commission's Office of General Counsel; and the Commission's Divisions of Communications, Public Utility Accounting, and Economics and Finance.

600 East Main Street
P.O. Box 27241
Richmond, Virginia 23261

Citizens Telephone Cooperative
Mr. James R. Newell, Manager
Oxford Street
P.O. Box 137
Floyd, Virginia 24091

Clifton Forge-Waynesboro Telephone Company
Mr. James S. Quarforth, President
P.O. Box 1990
Waynesboro, Virginia 22980-1990

Contel of Virginia, Inc.
Mr. Edward J. Weise, President
9380 Walnut Grove Road
P.O. Box 900
Mechanicsville, Virginia 23111-0900

GTE South
Mr. Thomas R. Parker
Associate General Counsel
Law Department
P.O. Box 110 - Mail Code: 7
Tampa, Florida 33601-0110

Highland Telephone Cooperative
Mr. Elmer E. Halterman, General Manager
P.O. Box 340
Monterey, Virginia 24465

Mountain Grove-Williamsville
Telephone Company
Mr. L. Ronald Smith
President/General Manager
P. O. Box 105
Williamsville, Virginia 24487

New Castle Telephone Company
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

New Hope Telephone Company
Mr. K. L. Chapman, Jr., President
P.O. Box 38
New Hope, Virginia 24469

North River Telephone Cooperative
Mr. W. Richard Fleming, Manager
P.O. Box 236, Route 257
Mt. Crawford, Virginia 22841-0236

Pembroke Telephone Cooperative
Mr. Stanley G. Cumbee, General Manager
P.O. Box 549
Pembroke, Virginia 24136-0549

.....Appendix A

TELEPHONE COMPANIES IN VIRGINIA

Amelia Telephone Corporation
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

Amelia Telephone Corporation
Mr. Raymond L. Eckels, Manager
P.O. Box 76
Amelia, Virginia 23002

Buggs Island Telephone Cooperative
Mr. M. Dale Tetterton, Jr., Manager
P.O. Box 129
Bracey, Virginia 23919

Burke's Garden Telephone Exchange
Ms. Sue B. Moss, President
P. O. Box 428
Burke's Garden, Virginia 24608

Central Telephone Company of Virginia
Mr. Martin H. Bocock
Vice President and General Manager
P.O. Box 6788
Charlottesville, Virginia 22906

Chesapeake & Potomac Telephone Company
Mr. Hugh R. Stallard, President
and Chief Executive Officer

State Corporation Commission

Peoples Mutual Telephone Company, Inc.
Mr. E. B. Fitzgerald, Jr.
President & General Manager
P.O. Box 367
Gretna, Virginia 24557

Roanoke & Botetourt Telephone Company
Mr. Allen Layman, President
Daleville, Virginia 24083

Scott County Telephone Cooperative
Mr. James W. McConnell, Manager
P.O. Box 487
Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President
P.O. Box 459
Edinburg, Virginia 22824

United Telephone-Southeast, Inc.
Mr. H. John Brooks
Vice President & General Manager
112 Sixth Street, P.O. Box 699
Bristol, Tennessee 37620

Virginia Telephone Company
Mr. Bruce H. Mottorn, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

Mr. Joseph Kahl, Manager
Regulatory Affairs
One Meadowlands Plaza
East Rutherford, New Jersey 07073

Contel of Virginia, Inc.
Mr. Stephen Spencer
1108 East Main Street, Suite 1108
Richmond, Virginia 23219

Institutional Communications Company - Virginia
Ms. Dee Kindel
8100 Boone Boulevard, Suite 500
Vienna, Virginia 22182

MCI Telecommunications Corp. of Virginia
Robert C. Lopardo
Senior Attorney
1133 19th Street, N.W., 11th Floor
Washington, D.C. 20036

R&B Network, Inc.
Mr. Allen Layman, Executive Vice President
P.O. Box 174
Daleville, Virginia 24083

Scott County Telephone Cooperative
Mr. James W. McConnell, Manager
P.O. Box 487
Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President & General Manager
P.O. Box 459
Edinburg, Virginia 22824

SouthernNet of Va., Inc.
Peter H. Reynolds, Director
780 Douglas Road, Suite 800
Atlanta, Georgia 30342

TDX Systems, Inc.
Mr. Charles A. Tievsky, Manager
Legal and Regulatory Affairs
1919 Gallows Road
Vienna, Virginia 22180

Sprint Communications of Virginia, Inc.
Mr. Kenneth Prohoniak
Staff Director, Regulatory Affairs
1850 "M" Street, N.W. Suite 110
Washington, DC 20036

Wiltel of Virginia
Brad E. Mutschelknaus, Esquire
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, DC 20006

Mr. Richard D. Gary

.....Appendix B

INTER-EXCHANGE CARRIERS

AT&T Communications of Virginia
Ms. Wilma R. McCarey, General Attorney
3033 Chain Bridge Road, Room 3D
Oakton, Virginia 22185-0001

CF-W Network Inc.
Mr. James S. Quarforth, President
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Central Telephone Company of Virginia
Mr. James W. Spradlin, III
Government & Industry Relations
P.O. Box 6788
Charlottesville, Virginia 22903

Citizens Telephone Cooperative
Mr. James R. Newell, Manager
Oxford Street
P.O. Box 137
Floyd, Virginia 24091

Metromedia Communications Corporation.
d/b/a LDDSMetromedia Communications

Hunton & Williams
Virginia MetroTel, Inc.
Riverfront Plaza
East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

ATTACHMENT A

MODIFIED PLAN FOR ALTERNATIVE REGULATION OF VIRGINIA LOCAL EXCHANGE TELEPHONE COMPANIES

Paragraph 1

The Experimental Plan, originally effective January 1, 1989, will be modified as set forth herein, will be effective January 1, 1994, as the modified Plan, and will constitute an alternative to regulation under Chapter 10 of Title 56 of the Code of Virginia for those Virginia telephone companies not regulated pursuant to Chapter 16 or 19 of Title 56.

Paragraph 2 - deleted

Paragraph 3

A local exchange company ("LEC" or "company") participating in the Experimental Plan on December 31, 1993, shall be deemed to be continuing to participate in this modified Plan (hereinafter "Plan") effective January 1, 1994. Should a company later desire to end its participation, it may do so with leave of the Commission upon a showing of good cause. Any company granted permission to exit the Plan will thereafter be subject to traditional regulation pursuant to Chapter 10 of Title 56 of the Code of Virginia on a prospective basis or to another alternative form of regulation as approved pursuant to Virginia Code § 56-235.5. The Commission retains the right to terminate a company's participation in the Plan on its own motion, or upon complaint, if it finds good cause to do so, such as a finding that a practice under the Plan is abusive or detrimental to the public interest.

Paragraph 4 - deleted

Paragraph 5

While this Plan is in effect, any changes found to be necessary will be given prospective effect only.

Paragraph 6

Services will be classified into categories as shown on Appendix A according to the following definitions:

Competitive: At a minimum, services for which there are readily available substitutes which reasonably meet customer needs and for which competition in the marketplace effectively regulates the price for such services.

Discretionary: Services which can be provided only by the LECs, but which are optional, nonessential enhancements to basic communications, or services which others are capable of providing but which do not conform to the Competitive services definition.

Basic: Services which are not Discretionary and, due to their nature or legal/regulatory restraints, only the LECs can provide.

Yellow Pages advertising will continue to be treated as competitive for all purposes of this Plan, but 25 percent of Yellow Pages' advertising income available for common equity will be attributed to noncompetitive services.

Paragraph 7

Services listed on Appendix A as Discretionary or Basic, together with all other existing services of a company not identified on Appendix A as Competitive, will remain subject to current regulatory oversight, modified, however, by Paragraph 9, below.

Paragraph 8

The rate base, costs, and revenues from Competitive services will be transferred below the line for AIF purposes and will be not subject to price regulation.

Paragraph 9

Individual Case Basis (ICB) or custom service package contract pricing is allowed for services other than Basic when the LEC demonstrates that a competitive alternative, as defined in Paragraph 6, exists for an individual customer, but where the service does not otherwise fully satisfy the requirements of Paragraph 6.

a. Conditions of Paragraph 11 must be met,

b. A copy of any ICB or custom service package contract must be timely filed under proprietary protection with the Commission's Division of Communications, and

c. Any such filing must include supporting data demonstrating that the rate is above long-run incremental cost.

Paragraph 10

Tariffs shall continue to be filed for all Discretionary and Basic services and for any Competitive service that is also offered, pursuant to a Virginia intrastate tariff, by another company that is certificated by this Commission.

Paragraph 11

Services and/or capabilities of a monopoly nature that are components of Competitive services must be offered on an unbundled basis in the tariffs. When these services

State Corporation Commission

and/or capabilities are used by Competitive services, revenues shall be attributed to noncompetitive operations based on the tariff rates and quantities used. The requirements of this paragraph must be satisfied at the time a service is determined to be Competitive.

Paragraph 12

Any service that is lawfully, preemptively deregulated by the Federal Communications Commission (FCC) will not be subject to regulation. Services in this category as of January 1, 1994, are Customer Premises Equipment and Complex Inside Wire. This Commission retains full regulatory authority over any service that is not lawfully, preemptively deregulated, including Competitive services that fall under the FCC's Part 64 rules.

Paragraph 13 - deleted

Paragraph 14

Rate regrouping due to growth in access lines will continue in order to avoid rate discrimination between similarly sized exchanges.

Paragraph 15

For purposes of assuring that competition is an effective regulator of the price of Competitive services, the Staff shall monitor these services on a periodic basis, at a minimum, annually.

Solely for annual monitoring purposes, each company shall file a per books rate-of-return statement, under proprietary protection, for the aggregate of all of its services, except for any service that is lawfully, preemptively deregulated by the FCC consistent with Paragraph 16, below. Annually, total company, total service results will be monitored in order to provide the Commission with a complete picture of each company's operating results.

Paragraph 16

Annually, each company shall file a nonproprietary AIF based upon the rate base, revenues, and expenses of all services, excluding those which are competitive except Part 64 services that have not been lawfully, preemptively deregulated by the FCC. Return on rate base and return on common equity will be calculated by using a 13-month average rate base and a 13-month average common equity amount. For AIF purposes, a company should not include a cash allowance for working capital unless the Commission has ordered the company to use the results of a comprehensive lead lag study. The AIF shall include a capital structure and cost of capital statement, a rate-of-return statement, and a rate base statement, together with other information as required by the Staff or the Commission. The capital structure shall be determined in accordance with Paragraph 18, below, on a per-books basis. The rate-of-return statement will also reflect

per-books results, making adjustments for:

- a. Investment Tax Credits (ITC) capital expense and its associated tax savings;
- b. Restatements from Generally Accepted Accounting Principles (GAAP) to regulatory accounting;
- c. Removal of out-of-period revenue and expense amounts that relate to occurrences prior to January 1, 1989, the implementation of the Experimental Plan;
- d. Removal of out-of-period amounts that are a direct result of the Plan.

Paragraph 17

In the event a company seeks an increase in the price of any Basic service, or any Basic service combined with price changes for Discretionary or other Basic services, that results in an increase in overall regulated operating revenues, the company must file a rate application conforming to the rules governing general rate case applications for telephone companies. The revenue limitation provisions of § 56-235.4 would apply.

- a. The financial results in this filing will include rate base, expenses, and revenues from all services, excluding any service lawfully, preemptively deregulated by the FCC.
- b. In the event a cash working capital allowance is sought, a comprehensive lead lag study is required. This study should include a balance sheet analysis.
- c. The circumstances surrounding the need for an increase may affect continuing participation in the Plan; however, a requested rate increase would not necessarily preclude ongoing participation. However, a company may not participate in the Plan and receive a rate increase if the return on equity as determined in Paragraph 17a is above the bottom of the allowed return-on-equity range.

In the event a company seeks a change in the price of Basic and/or Discretionary services that does not result in an increase in overall regulated operating revenues, it must proceed pursuant to the Commission approval and customer notification provisions of Code §§ 56-237.1 and 56-237.2. Any hearing resulting from § 56-237.2 must conform to the rules governing general rate case applications for telephone companies, including subparagraphs a, b, and c above.

In the event a company seeks an increase in any Discretionary service that results in an increase in overall operating revenues, it must proceed pursuant to the Commission approval and customer notification provisions of Code §§ 56-237.1 and 56-237.2. Any hearing resulting from § 56-237.2 must conform to the rules governing general rate case applications for telephone companies,

State Corporation Commission

including subparagraphs a, b, and c above. In addition, the revenue limitation provisions of § 56-235.4 would apply.

Paragraph 18

The allowed return on equity will be determined annually for the upcoming calendar year based on an average (rounded to the nearest one hundredth) of the 30-Year Treasury bond yield, adjusted to constant maturity, for the months of September, October, and November, as reported in the Federal Reserve Statistical Release H.15 (519) (or by its successor, should it be changed), plus a risk premium range as set forth in the table below.

TREASURY BOND RATE	RISK PREMIUM
0 - 2.49%	6.5 - 8.5%
2.50 - 3.49%	6.0 - 8.0%
3.50 - 4.49%	5.5 - 7.5%
4.50 - 5.49%	5.0 - 7.0%
5.50 - 6.49%	4.5 - 6.5%
6.50 - 7.49%	4.0 - 6.0%
7.50 - 8.49%	3.5 - 5.5%
8.50 - 9.49%	3.0 - 5.0%
9.50 - 10.49%	2.5 - 4.5%
10.50 - 11.49%	2.0 - 4.0%
11.50 - 12.49%	1.5 - 3.5%
12.50 - 13.49%	1.0 - 3.0%
13.50 - 14.49%	.5 - 2.5%
14.50 - AND ABOVE	0 - 2.0%

The overall cost of capital will be based upon the local exchange company's 13-month average capital structure and cost of senior capital, together with the allowed return-on-equity range.

Paragraph 19 - omitted (combined with paragraph 20)

Paragraph 20

All rates, except those for Competitive services, are interim rates until the Commission declares that they are no longer subject to refund. If a company is found to have earned in excess of the authorized range of return on Basic and Discretionary services in the year preceding, an appropriate refund will be made with interest consistent with the top of the return-on-equity range. Under appropriate circumstances, and upon motion by the company, the Commission will order that the interim rates for the previous year are no longer subject to refund. All actions in this paragraph will be taken only after notice and opportunity for hearing.

Paragraph 21

Reports of service quality results shall be filed by the local exchange companies on a quarterly or monthly basis as directed by the Staff.

(a) These reports shall conform to service rules adopted by the Commission by Final Order of June 10, 1993, in Case No. PUC930009, Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte: In the matter of Adopting Rules Governing Service Standards for Local Exchange Telephone

Companies ;

(b) These reports may be expanded to include results not contained in the present service reports.

(c) Companies will also file reports showing results related to service provided to interexchange carriers as follows:

- On-time performance
- Outage duration
- Blocking below the tandem

(d) The Staff will analyze all such service results and take immediate action to resolve any service quality problems.

Paragraph 22

The Commission's cost allocation principles and guidelines (Exhibits A and B of the Order in Case No. PUC890014, dated July 21, 1989) and the Orders of April 17, 1990; June 26, 1990; and June 19, 1991; in Case No. PUC890014, are incorporated herein by reference. Costs and revenues associated with Competitive services, except Part 64 services, must be determined by detailed allocation methods that conform to these principles and guidelines. These detailed allocation methods will be monitored and revised when necessary as an administrative function of the Staff of the Division of Communications. Part 64 services should have their costs and revenues determined by the FCC's Part 64 procedures as long as the results are accurate and reasonable.

Paragraph 23

Upon the request of the Staff, a company will file such other information with respect to any services or practices of the company that may be required of public service companies under current Virginia law, or any amendments thereto.

Any company that fails to provide, timely and accurately, data required by the Plan, including answers to any Staff request for data or information necessary for the execution of this Plan, shall be subject to a Rule to Show Cause hearing for such failure. The Commission will monitor closely all aspects of each company's performance under the Plan.

Paragraph 24

Thirty days prior to offering a new service or reclassifying an existing service, a company shall notify in writing the Staff, the Attorney General, and all certificated interexchange carriers of the new or reclassified offering and shall provide appropriate documentation to the Staff. The Commission may suspend the proposed effective date if the documentation supporting the classification is

State Corporation Commission

insufficient.

a. Simultaneous with such notification, the company shall designate the service category into which the service is classified.

b. If the proposed service category is Competitive, notice must be given to all affected parties, and a hearing must be conducted.

c. Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the service be classified in a different category; however, the filing of such petition shall not result in the postponement of any new service offering.

d. Any such proceeding to determine the proper classification of a service offering shall be completed within 90 days following the effective date of the service offering, except that if the proposed classification is Competitive, the proceeding must be completed within 120 days.

Paragraph 25

Interexchange Carriers' access charges are not included in the categories of services set out in this Plan for pricing purposes. Pricing for such services will be considered separately in accordance with procedures adopted in Case No. PUC870012, In re: Investigation of the appropriate methodology to determine intrastate access service costs and as implemented in Case No. PUC880042, Ex Parte: In re, investigation of pricing methodologies for intrastate access service. For all other purposes, access services will be included in the categories as shown on Appendix A.

Paragraph 26 - deleted

Appendix A

MARKET CLASSIFICATIONS OF LEC SERVICES

Competitive

1. Yellow Pages Advertising
2. Non-preemptively deregulated Customer Premises Equipment
3. Simple Inside Wiring
4. CENTREX Intercom & Features (CENTREX INTELLILINQ - BRI)⁶
5. Billing & Collection (Processing, Rendering, Inquiry)
6. Paging Services
7. Speed Calling

8. Apartment Door Answering¹

9. C.O. LANs⁶

10. Home Intercom¹

11. Uniform Call Distribution¹

12. Business Market Hotline¹

13. Data Path²

14. T1 Access⁴

15. Switched Data Service⁴

16. Part 64 Services

Discretionary

1. Non-list & Non-pub Numbers

2. Preferred (Vanity) Numbers

3. Additional Listings & Bold Type

4. Verification With Call Interrupt

5. Call Waiting

6. Remote Call Forwarding

7. DTMF Signalling⁶

8. B&C Security Functions

9. Special Billing Numbers

10. Referral Service

11. Transfer Arrangements

12. Exclusion

13. Toll/Call Blocking (All Types)⁶

14. Make Busy Arrangements

15. Break Rotary Hunt

16. Return Call⁶

17. Priority Call⁶

18. Select Forward⁶

19. Call Block⁶

20. Caller ID⁶

21. Call Trace⁶

- | | |
|--|---|
| 22. IDENTA RING ⁶ | 52. Busy Study/Traffic Assessment ² |
| 23. Connect Request sm ¹ | 53. Telecommunications Service Priority |
| 24. High Capacity Digital Hand-off Service ⁶ | 54. Message Waiting Indicator ⁶ |
| 25. Appointment Request ¹ | 55. Detail Message Billing ^{4,5} |
| 26. Anonymous Call Rejection ⁶ | 56. Enhanced Service Provider ⁴ |
| 27. INTELLILINQ - PRI ¹ | 57. GTE Datalink Service ⁵ |
| 28. Centrex/DID Intercept Service ¹ | 58. ControlLink Digital Channel Service ⁴ |
| 29. Bulk Private Line | 59. Automatic Meter Reading ⁴ |
| 30. Bulk Special Access | Basic |
| 31. Operator Call Completion Services | 1. Access to Switched Network (DTLs) |
| 32. Three-Way Calling | 2. Exchange Usage |
| 33. Time-of-Day Service | 3. Switched Access |
| 34. Weather Forecast Service | 4. MTS/WATS/800 |
| 35. C.O. Data Sets | 5. Basic Service Charges |
| 36. Pay-Per-View ^{3,4} | 6. Optional Calling Plans |
| 37. Repeat Call ⁶ | 7. CENTREX Exchange Access & Usage |
| 38. Intercom Extra ¹ | 8. Billing & Collecting (DNP, ANI, & Recording) |
| 39. Digital Data Service ¹ | 9. Directory Assistance |
| 40. ULTRA FORWARD ⁶ | 10. Maintenance Visit (Trouble Isolation) |
| 41. Switched Multi-Megabit Data Service ¹ | 11. "Single" Private Line & Special Access (Excluding Digital Data Service) ¹ |
| 42. Switched Redirect Service ¹ | 12. Operator Service - Emergency & Troubles |
| 43. CENTREX Extend Service ¹ | 13. Intercept (Standard) |
| 44. FDDI/FNS ¹ | 14. White Pages Listing |
| 45. Frame Relay Service ¹ | 15. List Service |
| 46. 10 Mbps Ethernet ² | 16. Number Screening |
| 47. Cancel Call Waiting ⁶ | 17. FX Service |
| 48. United SwitchLink sm ³ | 18. Public and Semi-Public Telephone Service |
| 49. United SwitchLink smPlus ² | 19. IXC Coinless Telephone Service |
| 50. Call Forwarding - (Busy, No Answer, Fixed, Automatic) ⁶ | 20. Four-Wire Service Terminating Arrangements |
| 51. Digital Cross Connect ² | 21. Concentrator - Identifier Equipment |

State Corporation Commission

22. Emergency Number "911" Service
23. Public Data Network
24. Direct Inward Dialing
25. Extended Area Calling
26. Hunting Arrangements
27. PBX Night, Sunday, Etc. Arrangements
28. Split Supervisor Drops
29. Identified Outward Dialing
30. Dial Tone Line 800 Service⁶
31. Switched 56 Kilobit Service
32. Line Status Verification
33. Shared Tenant Service
34. Enhanced Business Service Access^{3,4}
35. Enhanced Business Service - Features⁴
36. Service Performance Guarantee⁶
37. Directory Connect Plus⁵
38. Automatic Line Service⁴
39. Home Business Service¹

¹C&P

²Centel

³United

⁴GTE-VA

⁵GTE-South

⁶May be offered by an LEC under a different name

VA.R. Doc. No. R94-442; Filed January 4, 1994, 11:41 a.m.

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER THIRTY-THREE (93)

VIRGINIA'S TWENTY-SIXTH INSTANT GAME LOTTERY, "CASH VAULT," AND VIRGINIA'S TWENTY-EIGHTH INSTANT GAME LOTTERY, "MONEY TREE"; END OF GAME.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby give notice that Virginia's twenty-sixth instant game lottery, "Cash Vault," and Virginia's twenty-eighth instant game lottery, "Money Tree," will officially end at midnight on Thursday, January 6, 1994. The last day for lottery retailers to return for credit unsold tickets from "Cash Vault" and "Money Tree" will be Thursday, January 27, 1994. The last day to redeem winning tickets for "Cash Vault" and "Money Tree" will be Tuesday, July 5, 1994, 180 days from the declared official end of the games. Claims for winning tickets from "Cash Vault" and "Money Tree" will not be accepted after that date. Claims which are mailed and received in an envelope bearing a United States Postal Service postmark of July 5, 1994, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

This order is 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: November 12, 1993

VA.R. Doc. No. R94-432; Filed December 27, 1993, 2:41 p.m.

DIRECTOR'S ORDER NUMBER THIRTY-FOUR (93)

"CASH MATCH"; 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 "Cash Match" promotional game and drawing rules for the Instant Game 39 kickoff events which will be conducted at various lottery retailer locations throughout the Commonwealth on Thursday, December 16, 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: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until December 31, 1993, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson
Director
Date: December 15, 1993

VA.R. Doc. No. R94-433; Filed December 27, 1993, 2:41 p.m.

DIRECTOR'S ORDER NUMBER THIRTY-FIVE (93)

VIRGINIA'S THIRTY-NINTH INSTANT GAME LOTTERY; "\$10,000 CASH MATCH," 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-ninth instant game lottery, "\$10,000 Cash Match." 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: December 15, 1993

VA.R. Doc. No. R94-434; Filed December 27, 1993, 2:42 p.m.

MARINE RESOURCES COMMISSION

MARINE RESOURCES COMMISSION

NOTICE: The Marine Resources Commission is exempt from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

Title of Regulation: VR 450-01-0073. Pertaining to the York River and , Poquoson River and Back River Shellfish Management Area.

Statutory Authority: §§ 28.2-201 and 28.2-503 of the Code of Virginia.

Effective Date: January 1, 1994.

Preamble:

This regulation establishes the York, Poquoson and Back River Shellfish Management Areas and provisions to control the harvest of clams from those areas.

VR 450-01-0073. Pertaining to the York River, Poquoson River and Back River Shellfish Management Area.

§ 1. Authority, effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-503 of the Code of Virginia.

B. This regulation amends VR 450-01-0073, Pertaining to the York and Poquoson River Shellfish Management Area Areas , which was promulgated and made effective on ~~September 9, 1991~~ January 1, 1993 .

C. The effective date of this regulation is January 1, ~~1993~~ 1994 .

§ 2. Purpose.

The purpose of this regulation is to protect and promote the hard clam resource within the designated areas of the York and , Poquoson , and Back Rivers.

§ 3. Shellfish Management Areas defined.

A. The York River Shellfish Management Area shall consist of all public grounds located inshore of a line beginning at the entrance to the Virginia Institute of Marine Science boat basin at Gloucester Point, running northwesterly to Buoy No. 30, thence northwesterly to Buoy No. 32, thence northwesterly to Buoy No. 34, then northwesterly to Pages Rock Buoy, thence northwesterly and ending at Clay Bank Wharf.

B. The Poquoson River Shellfish Management Area shall consist of all public grounds bounded by a line beginning at Hunts Point Survey Taylor and running northwesterly to Survey Station Spit, thence northeasterly to Survey Station Cabin North, thence east to Survey Station Cabin South,

thence southeasterly following the general shoreline (not to include any creeks or canals) to the flag pole near Survey Station 80 at York Point, thence 175 degrees to Day Marker No. 14 and returning to Hunts Point Survey Taylor.

C. The Back River Shellfish Management Area shall consist of all current public clamming grounds bounded by a line from corner 3 on Shell Plant 115 through corner 17, a daymarker, on Shell Plant 115, 237.42 feet to a point being the point of beginning; thence southeasterly to corner number 1 Public Clamming Ground (PCG#12); thence southeasterly to corner number 3A Public Clamming Ground (PCG#12); thence northeasterly to corner number 3 Public Clamming Ground (PCG#12); thence northwesterly to corner number 2 Public Clamming Ground (PCG#12); thence southwesterly to the POB. Also, for a period of one year, throughout 1994, Shell Plant 115 will also be included in the Back River Shellfish Management Area.

§ 4. Permits required.

Each boat or vessel engaged in the harvesting of clams by patent tong from the York River Shellfish Management Area or , the Poquoson River Shellfish Management Area , or the Back River Shellfish Management Area shall first obtain a permit specific to the management area to be worked from any Marine Patrol Officer, and this permit shall be on board the vessel at all times and available for inspection. The permit shall state the name and port of the vessel, the registration or documentation number of the vessel, the name and address of the owner of the vessel and the name of the captain of the vessel. Any change to any of the above information shall require the vessel owner or captain to obtain a new permit. These permits shall be in addition to all other licenses or permits required by law.

§ 5. Patent tong season.

A. The lawful season for the harvest of clams by patent tong from the York and , Poquoson and Back River Shellfish Management Areas shall be January 1 through March 31.

B. It shall be unlawful for any person to harvest clams by patent tong from either the York or , Poquoson River , or Back Shellfish Management Area from April 1 through December 31.

C. Shell planting area 115 in Back River will be closed at the end of the 1994 season for evaluation by the VMRC Fisheries Management Division.

§ 6. Time of day restriction.

A. It shall be unlawful for any person to harvest clams by patent tong from either the York or Poquoson River Shellfish Management Area before sunrise or after 2 p.m.

Marine Resources Commission

B. It shall be unlawful for any person to harvest clams by patent tong from the Back River Shellfish Management Area before sunrise or after 4 p.m.

B. C. It shall be unlawful for any person to harvest clams by patent tong from either the York or , Poquoson or Back River Shellfish Management Area on Saturday or Sunday.

§ 7. Penalty.

A. As set forth in § ~~28.2-503~~ 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor.

B. The Marine Resources Commission may revoke the permit of any person convicted of a violation of this regulation.

/s/ William A. Pruitt
Commissioner

V.A.R. Doc. No. R94-429; Filed December 29, 1993, 2:19 p.m.

* * * * *

Title of Regulation: VR 450-01-0077. Pertaining to the Taking of Hard Clams.

Statutory Authority: §§ 28.2-201 and 28.2-810 of the Code of Virginia.

Effective Date: January 1, 1994.

Preamble:

This regulation establishes the procedure for obtaining authorization to patent tong hard clams in nonrestricted (clean) areas by clambers who possess special permits to harvest clams in restricted (polluted) areas. It restricts permitted clambers to work only polluted bottom, or notify VMRC Operations and work only clean bottom. This regulation further establishes a maximum size limit for clams in restricted areas.

§ 1. Authority, prior regulation, effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ ~~28.1-23~~ 28.2-201 and ~~28.180~~ 28.2-810 of the Code of Virginia.

B. Section ~~28.1-179~~ 28.2-810 of the Code of Virginia specifies that it shall be unlawful for any person, firm, or corporation to take, catch, transport, sell, offer for sale, remove, receive, keep or store shellfish from condemned areas, or relay shellfish taken from such areas, until the Commission Commissioner of Marine Resources or his designee has issued a special permit which . The permittee must shall carry the permit when engaged in such operation.

C. The effective date of this regulation is June 15, 1992 January 1, 1994 .

D. This regulation replaces Emergency Regulation VR 450-01-0077 which was promulgated and made effective May 1, 1992 June 15, 1992 .

§ 2. Purpose.

The purpose of this regulation is to prohibit clambers who possess permits to harvest relay clams from working in clean waters, without first obtaining authorization from VMRC Law Enforcement. The possibility of mixing relay clams with clean clams will therefore be eliminated. In addition, a maximum size limit is established for the conservation of brood stock.

§ 3. Special permit restrictions.

A. During the relay season, it shall be unlawful for any person possessing a permit for relay clam harvest as required by § ~~28.1-179~~ 28.1-810 of the Code of Virginia, to harvest clams from clean waters without first obtaining authorization from the VMRC Law Enforcement Operations Office.

B. Any clammer who has been issued a permit for relay clams, shall notify VMRC Operations before their boat leaves the dock, either by marine radio (channel 17) or by telephone (1-800-541-4646 or 247-2265/2266), of their intent to patent tong clams in a nonrestricted area on that day. Each permitted clammer shall provide Operations with their name, relay permit number, boat name, present location (for possible verification), departure time, destination and buyer to whom the clams will be sold.

C. Each permitted clammer shall also notify VMRC Operations at the time their boat returns to the dock as well as their catch count.

§ 4. Chowder clam defined, allowance for chowder clams , return of containers of clams in violation .

A. "Chowder clam" means any hard clam that cannot pass through a 2-7/8 inch diameter culling ring.

B. It shall be unlawful to possess any amount of hard clams taken from restricted areas which consists of more than 10% chowder clams by number. The 10% allowance shall be measured by the Marine Patrol Officer from each container or pile of clams . If the 10% allowance for chowder clams is exceeded, then the clammer shall only be required to return all chowder clams from the inspected harvest to restricted area waters.

C. Refusal of the harvester to return the clams to the water as ordered by a Marine Patrol Officer shall constitute a violation of this regulation. All clams in any container or pile found in violation of this regulation shall be returned to the water by the clammer as directed by the Marine Patrol Officer.

Marine Resources Commission

§ 5. Penalty.

As set forth in § ~~28.2-23~~ 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 1 misdemeanor, except as described in § 4 B.

/s/ William A. Pruitt
Commissioner

V.A.R. Doc. No. R94-428; Filed December 29, 1993, 2:19 p.m.

* * * * *

Title of Regulation: VR 450-01-0079. Pertaining to Commercial Fishing and Mandatory Harvest Reporting.

Statutory Authority: §§ 28.2-201, 28.2-204, 28.2-242 and 28.2-243 of the Code of Virginia.

Effective Date: January 1, 1994.

Preamble:

This regulation describes the procedure and manner for application for registration as a commercial fisherman, the manner and form of mandatory harvest reports by commercial fishermen and others, and exceptions to the registration process and delay requirements as specified in § 28.2-241 of the Code of Virginia. A commercial hook-and-line license is also established.

§ 1. Authority, prior regulation, effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ ~~28.1-23.1, 28.1-23.2, 28.1-48.4, 28.1-48.7, 28.1-48.8, and 28.1-48.9~~ 28.2-201, 28.2-204, 28.2-242, and 28.2-243 of the Code of Virginia.

B. This regulation replaces previous regulation VR 450-01-0079 which was promulgated and made effective September 15, 1992.

B. C. The effective date of this regulation is ~~September 15, 1992~~ January 1, 1994.

§ 2. Purpose.

The purpose of this regulation is to establish the procedures for the registration of commercial fishermen and the manner and form of mandatory harvest reports from fishermen and others. Further, the purpose is to license commercial fishermen using hook-and-line, rod-and-reel, or hand line.

§ 3. Commercial fisherman registration license; exceptions.

A. In accordance with § ~~28.1-48.2~~ 28.2-241 C of the Code of Virginia, only persons who hold a valid Commercial Fisherman Registration License may sell, trade, or barter

their catch, or give their catch to another, in order that it may be sold, traded, or bartered (hereinafter generally referred to as "sell," "selling," "sale," or "sold" as the context requires). Only these licensees may sell their catches from Virginia tidal waters, regardless of the method or manner in which caught. Exceptions to the requirement to register as a commercial fisherman for selling catch are authorized for the following persons only:

1. Persons taking menhaden under the authority of licenses issued pursuant to § ~~28.1-59~~ 28.2-402 of the Code of Virginia.

2. Persons taking diminutive quantities of minnows, used solely for bait for fishing.

3. One agent, who is not registered as a commercial fisherman, may be authorized to possess the registration license of a commercial fisherman in order to serve as a substitute in his absence for fishing the license holder's gear and selling the catch. No more than one person shall be used as an agent at any time. An agent must possess the registration license of the owner when fishing or selling the catch in his behalf.

B. In accordance with § ~~28.1-48.2~~ 28.2-241 H, of the Code of Virginia, only persons with a valid Commercial Fisherman Registration License may purchase gear licenses. Beginning with licenses for the 1993 calendar year and for all years thereafter, gear licenses will be sold only upon presentation of evidence of a valid Commercial Fisherman Registration License.

Exceptions to the prerequisite requirement are authorized for the following gears only, and under the conditions described below:

1. Menhaden purse seine licenses issued pursuant to § ~~28.1-59~~ 28.2-402 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

2. A noncommercial gill net license issued pursuant to § ~~28.1-48.1~~ of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License. Commercial gear licenses used for recreational purposes and issued pursuant to § 28.2-226.2 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

3. Cast net or dip net licenses, issued pursuant to § 28.1-48 of the Code of Virginia, may be purchased without holding a Commercial Fisherman Registration License, for personal noncommercial use only.

C. As provided in § ~~28.1-48.4~~ 28.2-243 of the Code of Virginia, the commission may grant exceptions to the two-year delayed registration required under § 4 C B of this regulation. Any person requesting an exception shall

Marine Resources Commission

provide said request in writing to the commission 30 days in advance of the meeting at which the commission will hear the request. *Exceptions to the two-year delay may be granted under the following conditions:*

1. *The applicant for an exception can demonstrate a previous history of fishing a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and*
2. *The applicant can demonstrate a significant hardship caused by unforeseen circumstances, such as problems associated with health or a call to active military duty. Applicants seeking an exception on the basis of health problems shall provide to the commission a signed letter from the attending physician verifying the problem.*

Further exceptions may be granted to the purchaser of another commercial fisherman's gear only in instances when the seller of the gear holds a Commercial Fisherman Registration License and surrenders that license to the commission at the time the gear is sold.

Exceptions may be granted to an immediate member of his family desiring to continue the fishing business at the time of retirement or death of the registered license holder.

Under no circumstances will any exception be granted solely on the basis of lack of funds.

§ 4. Registration procedures.

A. During the period December 1, 1992, through February 28, 1993, holders of gear licenses issued January 1, 1992, through December 31, 1992, except those described in § 3 B, may register as commercial fishermen as follows: Applicants holding a valid Commercial Fisherman Registration License may register during the period December 1 through February 28 of each year as commercial fishermen as follows:

1. The applicant shall complete an application for a Commercial Fisherman Registration License by providing a list of the gear licenses held during calendar year 1992, complete name, mailing address, social security number, birth date, weight, height, eye color, hair color, telephone number of residence and his signature .
2. The applicant shall mail the completed application and \$150 to the Virginia Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756.
3. The Commercial Fisherman Registration License will be returned to the applicant by mail upon validation of his application.

B. During the period December 1, 1992, through

December 31, 1992, persons not holding gear licenses issued between January 1, 1992, and December 31, 1992, may register as commercial fishermen as follows: Persons desiring to enter the commercial fishery and those fishermen failing to register as provided in § 4 A may apply only during December, January or February of each year. All such applications shall be for a delayed registration and shall be made as provided below.

1. The applicant shall complete an application for a Commercial Fisherman Registration License by providing his complete name, mailing address, social security number, birth date, weight, height, eye color, hair color, telephone number of residence , and signature.

2. The applicant shall mail the completed application and \$150 to the Virginia Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756 Virginia .

3. The Commercial Fisherman Registration License will be returned to the applicant by mail upon validation of his application two years after the date of receipt of the application by the commission. Notification of any change in the address of the applicant shall be the responsibility of the applicant.

C. Commercial fishermen holding gear licenses issued January 1, 1992, through December 31, 1992, and failing to register as provided in § 4 A may apply only during December 1992, January or February 1993 or January, February or December of any year thereafter. Any person not holding 1992 gear licenses and failing to register as provided in § 4 B may apply only during January, February or December of 1993 or of any year thereafter. All such applications shall be for a delayed registration and shall be made as provided below. No part of the Commercial Fisherman Registration License fee shall be refundable.

1. The applicant shall complete an application for a Commercial Fisherman Registration License by providing his complete name, mailing address, social security number, birth date, weight, height, eye color, hair color, telephone number of residence, and signature.

The applicant shall mail the completed application and \$150 to the Virginia Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756.

The Commercial Fisherman Registration License will be returned to the applicant by mail two years after the date of receipt of the application by the commission. Notification of any change in the address of the applicant shall be the responsibility of the applicant.

D. No part of the Commercial Fisherman Registration License fee shall be refundable.

Marine Resources Commission

~~E.~~ D. The Commercial Fisherman Registration License may be renewed annually. Any person failing to renew his license shall be subject to the delay provision of § 4 C, during the months of December, January or February. Any person failing to renew his license shall be subject to the delay provision of § 4 B.

§ 5. Commercial hook-and-line license.

A. On or after January 1, 1993, any person desiring to take or catch fish in the tidal waters of Virginia with hook-and-line, rod-and-reel, or hand line and selling such catch shall first purchase a Commercial Hook-and-Line License from the commission or its agent.

B. The fee for the Commercial Hook-and-Line License shall be \$25.

C. A Commercial Fisherman Registration License, as described in § ~~28.1-48.2~~ 28.2-241 H of the Code of Virginia, is required prior to the purchase of this license.

§ 6. Mandatory harvest reporting.

~~A. On or after January 1, 1993,~~ It shall be unlawful for any person holding a Commercial Fisherman Registration License to fail to fully report their catches and related information as set forth in this regulation.

B. It shall be unlawful for any recreational fisherman, charter boat captain, head boat captain, commercial fishing pier operator, or owner of a private boat licensed pursuant to §§ ~~28.1-48.1~~ 28.2-302.7 through ~~28.1-48.9~~ 28.2-302.9 of the Code of Virginia to fail to report recreational catches upon request to those authorized by the commission.

C. Registered commercial fishermen shall accurately and legibly complete a daily form describing that day's harvest from Virginia tidal waters. The forms used to record daily harvest shall be those provided by the commission or another approved by the commission. Registered commercial fishermen may use more than one form when selling to more than one buyer.

D. Registered commercial fishermen shall submit a monthly catch report to the commission no later than the fifth day of the following month. This report shall be accompanied by the daily catch records described in subsection C of this section. Completed forms shall be mailed or delivered to the commission or other designated locations.

E. The monthly catch report and daily catch records shall include the name and signature of the registered commercial fisherman and his license registration number, buyer or private sale information, date of sale, city or county of landing, water body fished, gear type and amount used, number of hours fished, species harvested, market category, and live weight or processed weight or species harvested. Any information on the price paid for

the catch may be voluntarily provided.

F. Registered commercial fishermen not fishing during a calendar year shall so notify the commission no later than February 1 of the following year.

G. Any person licensed as a commercial seafood buyer pursuant to § ~~28.1-119.1~~ 28.2-228 of the Code of Virginia shall maintain for a period of one year a copy of each fisherman's daily catch record form for each purchase made. Such records shall be made available upon request to those authorized by the commission.

H. Registered commercial fishermen shall maintain their daily catch records for one year and shall make them available upon request to those authorized by the commission.

I. Registered commercial fishermen and licensed seafood buyers shall allow those authorized by the commission to sample catch and seafood products to obtain biological information for scientific and management purposes only. Such sampling shall be conducted in a manner which does not hinder normal business operations.

J. The reporting of oyster harvest and transactions shall be made in accordance with VR 450-01-0026 and shall be exempted from the procedures described in this section.

§ 7. Penalty.

In addition to the penalties described by law, any person violating any provision of this regulation may be subject to license suspension or revocation.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R94-431; Filed December 29, 1993, 2:21 p.m.

* * * * *

Title of Regulation: VR 450-01-0098. Pertaining to Crab Dredge License Sales.

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: December 1, 1993.

Preamble:

This regulation limits the sale of crab dredge licenses for the 1994/95 crab dredge season to those persons who held licenses and were actively engaged in the dredge fishery as of March 31, 1994. This regulation further limits the sale of crab dredge licenses for the 1995/96 crab dredge season and each season thereafter to those persons who held a crab dredge license and were actively engaged in the crab dredge

Marine Resources Commission

fishery during the previous crab dredge season. No crab dredge license will be issued to any new applicant after March 31, 1994, and no crab dredge license will be issued to any new applicant until the number of crab dredge licenses drops below 225 and that, thereafter, the number of crab dredge licensees allowed in the fishery will be set at 225.

§ 1. Authority, prior regulation, effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

B. Other restrictions on crab dredging can be found in Chapter 7 of Title 28.2 of the Code of Virginia and in VR 450-01-0007, VR 450-01-0012, VR 450-01-0036, VR 450-01-0041 and VR 450-01-0049.

C. The effective date of this regulation is December 1, 1993.

§ 2. Purpose.

The purpose of this regulation is to limit the number of crab dredge licenses issued for the 1994/95 season and each season thereafter, to the number of crab dredge licenses issued for the 1993/94 season. In addition, the number of crab dredge licenses will be reduced each season thereafter, progressively through attrition, until the number of dredge licenses is set and maintained at 225. This regulation is part of recent restrictions adopted by the Marine Resources Commission in response to recommendations concerning control of fishing effort contained in the Chesapeake Bay Blue Crab Management Plan of the Chesapeake Bay Program.

§ 3. Crab dredge permit required.

A. It shall be unlawful for any person to take or catch crabs using a crab dredge without first having obtained a crab dredge permit from the Marine Resources Commission or its agent, as of December 1, 1994. Permits will only be issued to commercial fishermen meeting the following conditions:

1. Applicants shall hold a valid commercial registration license.
2. Applicants shall have held a crab dredge license during the previous season and shall have been actively engaged in the previous season's crab dredge fishery.
3. Applicants shall have fully reported their catches in accordance with VR 450-01-0079.
4. Completed permit applications may be hand delivered or mailed to the Marine Resources Commission, 2600 Washington Avenue, P.O. Box 756, Newport News, Virginia 23607.

§ 4. Limit on sale of licenses.

A. Except as provided in § 5 of this regulation, the total number of crab dredge licenses issued for the 1994/95 season and each season thereafter shall be limited to the number of crab dredge licenses issued for the 1993/94 season (December 1, 1993 - March 31, 1994).

B. Except as provided in § 5 of this regulation, any person who held a 1993 or 1994 crab dredge license and who did not harvest crabs during the 1993/94 crab dredge season shall not be eligible to participate in the 1994/95 crab dredge season or any season thereafter.

C. Except as provided in § 5 of this regulation, no crab dredge licenses will be issued to any new applicant after March 31, 1994, and no crab dredge licenses will be issued to any new applicant until the number of crab dredge licenses drops to 220 or below as of December 10 of any year.

§ 5. Exceptions to limit transfers of crab dredge licenses.

A. The commission may grant exceptions to the limitation of the issuance of crab dredge licenses based on scientific, economic, biological, sociological and hardship factors.

B. A crab dredge licensee may transfer his license to a member of his immediate family, provided that the family member holds a current commercial registration license. A member of the immediate family shall mean a father, mother, daughter, son, brother, sister or spouse. A crab dredge licensee also may transfer his license to the buyer of his boat and crab dredge gear provided that the buyer holds a current commercial registration license. Any transfer of a crab dredge license shall be in writing and shall be validated by a marine patrol officer.

§ 6. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor.

/s/ William Pruitt
Commissioner

VAR. Doc. No. R94-430; Filed December 29, 1993, 2:20 p.m.

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: VR 270-01-0057. Special Education Program Standards.

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: January 11, 1994.

VA.R. Doc. No. R94-452; Filed January 12, 1994, 3:27 p.m.

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-14-16. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing Facilities.

Governor's Comment:

I do not object to the initial draft of these regulations because of its beneficial effects on the quality of the state's waters. However, my final approval will be contingent upon review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor

VA.R. Doc. No. R94-451; Filed January 3, 1994, 2:36 p.m.

Title of Regulation: VR 680-14-17. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activities from Light Manufacturing Facilities.

Governor's Comment:

I do not object to the initial draft of these regulations because of its beneficial effects on the quality of the state's waters. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 21, 1993

VA.R. Doc. No. R94-448; Filed January 3, 1994, 2:36 p.m.

Title of Regulation: VR 680-14-18. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Transportation Facilities, Landfills, Land Application Sites and Open Dumps, Materials Recycling Facilities, and Steam Electric Power Generating Facilities.

Governor's Comment:

I do not object to the initial draft of these regulations because of its beneficial effects on the quality of the state's waters. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 21, 1993

VA.R. Doc. No. R94-449; Filed January 3, 1994, 2:36 p.m.

Title of Regulation: VR 680-14-19. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges from Construction Sites.

Governor's Comment:

I do not object to the initial draft of these regulations because of its beneficial effects on the quality of the state's waters. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: December 21, 1993

VA.R. Doc. No. R94-450; Filed January 3, 1994, 2:36 p.m.

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

Waste Division

† Designation of Regional Solid Waste Management Planning Area

In accordance with the provisions of § 10.1-1411 of the Code of Virginia, and Part V of Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Waste Division of the Department of Environmental Quality intends to designate the City of Radford; Pulaski County; and the Towns of Draper, Dublin, and Pulaski as a solid waste management region. The director has approved a comprehensive solid waste management plan for this area. The New River Resource Authority is the implementing agency for the plan.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on February 15, 1994, to Ms. Anne M. Field, Department of Environmental Quality, 629 East Main Street, P. O. Box 10009, Richmond, Virginia 23240-0009, Fax: 804/762-4346. Questions concerning this notice should be directed to Ms. Field at (804) 762-4365.

Following the closing date for comments, the Director of the Waste Division will notify the affected local governments of his designation of the region or of the need to hold a public hearing on the designation.

* * * * *

† Designation of Regional Solid Waste Management Planning Area

In accordance with the provisions of § 10.1-1411 of the Code of Virginia, and Part V of Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Waste Division of the Department of Environmental Quality intends to designate Caroline County and the Towns of Bowling Green and Port Royal as a solid waste management region. The director has approved a comprehensive solid waste management plan for this area. Caroline County is the designated contact for implementation of the plan and programs for the recycling of solid waste generated within the designated region.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on February 15, 1994, to Ms. Anne M. Field, Department of Environmental Quality, 629 East Main Street, P. O. Box 10009, Richmond, Virginia 23240-0009, Fax: 804/762-4346. Questions concerning this notice should be directed to Ms. Field at (804) 762-4365.

Following the closing date for comments, the Director of the Waste Division will notify the affected local governments of his designation of the region or of the need to hold a public hearing on the designation.

DEPARTMENT OF MOTOR VEHICLES

General Notice

The Virginia Department of Motor Vehicles does not discriminate on the basis of disability in the admission to, access to, or employment in its programs, services, or activities. John M. Gazzola has been designated to coordinate compliance with the nondiscrimination requirements as set forth in the regulations governing the Americans with Disabilities Act of 1990. Information concerning the provisions of the Americans with Disabilities Act and the rights thereunder is available from the ADA Coordinator at:

The Department of Motor Vehicles
P. O. Box 27412
Richmond, Virginia 23269-0001
Telephone (804) 367-9727
TDD/(804) 367-1752.

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

General Notices/Errata

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.

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

GOVERNOR'S ADVISORY BOARD ON AGING

January 24, 1994 - Noon – Open Meeting
The Radisson Hotel, 555 East Canal Street, Richmond, Virginia. Ⓜ (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Topics for discussion will include legislative issues of interest to older Virginians and discussion of the board's committee structure and bylaws.

Contact: Bill Peterson, Department for the Aging, 700 E. Franklin Street, Richmond, VA 23219, telephone (804) 225-2803, toll-free 1-800-552-4464, or (804) 225-2271/TDD ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (STATE BOARD OF)

† **February 22, 1994 - 1 p.m.** – Open Meeting
† **February 23, 1994 - 9 a.m.** – Open Meeting
Washington Building, Room 204, 1100 Bank Street, Richmond, Virginia. Ⓜ

A regular meeting to discuss legislation, regulations and fiscal matters and to receive reports from the staff of the Department of Agriculture and Consumer 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 of the Board, at least five 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 Building, Room 211, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD ☎

Virginia Aquaculture Advisory Board

† **February 11, 1994 - 10:30 a.m.** – Open Meeting
Southern States Cooperative Headquarters, 6606 W. Broad Street, Sixth Floor Conference Room, Richmond, Virginia. Ⓜ

The board will meet in a regular session to discuss issues related to the Virginia aquaculture industry. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the Virginia Aquaculture Advisory Board at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: T. Robins Buck, Secretary, Virginia Aquaculture Advisory Board, P. O. Box 1163, Suite 1003, Richmond, VA 23209, telephone (804) 371-6094.

Virginia Bright Flue-Cured Tobacco Board

† **February 11, 1994 - 10 a.m.** – Open Meeting
Sheldon's Restaurant, Keysville, Virginia. Ⓜ

The board will meet to consider funding proposals for research, promotion and education projects pertaining to Virginia flue-cured tobacco and other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: D. Stanley Duffer, Secretary, P. O. Box 129, Halifax, VA 24558, telephone (804) 572-4568.

Calendar of Events

Virginia Dark-Fired Tobacco Board

† **February 25, 1994 - 10 a.m.** - Sheldon's Restaurant, Keysville, Virginia. ☐

The board will meet to consider funding proposals for research, promotion and education projects pertaining to Virginia dark-fired tobacco and other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: D. Stanley Duffer, Secretary, P. O. Box 129, Halifax, VA 24558, telephone (804) 572-4568.

Pesticide Control Board

EXTENSION OF PUBLIC COMMENT PERIOD:

January 31, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Pesticide Control Board intends to amend regulations entitled: **VR 115-04-21. Public Participation Guidelines**. The purpose of the proposed action is to review regulations for effectiveness and continued need to include allowing the public to request the use of an "advisor" and to ensure that the public may request changes to these regulations and receive consideration and response from the board. Also, provisions by which the board will appoint the "advisor" are established.

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

Contact: Marvin A. Lawson, Ph.D., Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, 1100 Bank St., P.O. Box 1163, Room 401, Richmond, VA 23209, telephone (804) 371-6558.

STATE AIR POLLUTION CONTROL BOARD

January 31, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia and the requirements of § 110(a)(1) of the Federal Clean Air Act that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision NN - Appendix E, Public Participation Guidelines)**. The regulation amendments revise the public participation procedures to: (i) change and expand the information provided in the notice of intended regulatory action and notice of public comment; (ii) clarify the types of meetings and hearings to be held; (iii) set out and specify the methods and policy for gaining public input and participation in the regulatory adoption process; (iv) and update other provisions to

be consistent with the Administrative Process Act.

Statutory Authority: §§ 9-6.14:7-1 and 10.1-1308 of the Code of Virginia.

Written comments may be submitted until close of business January 31, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, 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: Robert Mann, Manager, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 762-4419.

* * * * *

February 1, 1994 - 7 p.m. - Information Session
February 1, 1994 - 8 p.m. - Public Hearing
City Council Chamber, Stryker Building, 412 N. Boundary Street Williamsburg, Virginia.

February 3, 1994 - 7 p.m. - Information Session
February 3, 1994 - 8 p.m. - Public Hearing
City Council Chamber, City Hall Building, 9027 Center Street, Manassas, Virginia.

February 8, 1994 - 7 p.m. - Information Session
February 8, 1994 - 8 p.m. - Public Hearing
Virginia Department of Transportation, District Office Assembly Room, 4219 Campbell Avenue, Lynchburg, Virginia.

February 9, 1994 - 7 p.m. - Information Session
February 9, 1994 - 8 p.m. - Public Hearing
Virginia Western Community College Learning Center, 3095 Colonial Avenue, S.W. Roanoke, Virginia.

February 10, 1994 - 7 p.m. - Information Session
February 10, 1994 - 8 p.m. - Public Hearing
Virginia Highlands Community College, Room 220, State Route 372 and Route 140 at Exit 14 off I-81, Abingdon, Virginia.

February 25, 1994 - 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 adopt regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision JJ - Federal Operating Permits for Stationary Sources)**. The proposed regulation establishes an operating permit program that has as its goal the issuance of comprehensive permits which will specify for the permit holder, the department and the public all applicable state and federal requirements for pertinent emissions units in the facility covered. The result should be a permit

Calendar of Events

that clearly states the air program requirements for the permit holder and provides a mechanism for the department to use in enforcing the regulations.

Comparison with federal requirements: With respect to the duration of a permit, Title V of the Act provides for several time periods. The basic provisions of the Act provide that permits for most sources are to be issued for a term not less than three years nor more than five years. Exceptions to the basic provisions are made for incinerators subject to federal regulations and sources of acid rain producing pollutants (mostly large electrical utilities). For the acid rain permits, the term must be for five years. For the incinerators, the permit term must not exceed 12 years; however, the permits must be reviewed every five years. The proposed regulation sets the permit term at five years for all sources. This was done to provide consistency and simplicity to the program, as well as equity of requirements for all source types.

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 Programs Section (Eighth Floor, 629 East Main Street, Richmond, Virginia) and at any of the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period: Department of Environmental Quality Abingdon Air Regional Office, 121 Russell Road, Abingdon, Virginia 24210, telephone (703) 676-5482; Department of Environmental Quality, Roanoke Air Regional Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia 24019, telephone (703) 561-7000; Department of Environmental Quality, Lynchburg Air Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia 24502, telephone (804) 582-5120; Department of Environmental Quality, Fredericksburg Air Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia 22401, telephone (703) 899-4600; Department of Environmental Quality, Richmond Air Regional Office, Arboretum V, Suite 250, 9210 Arboretum Parkway, Richmond, Virginia 23236, telephone (804) 323-2409; Department of Environmental Quality, Hampton Roads Air Regional Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia 23320-2168, telephone (804) 424-6707; Department of Environmental Quality, Northern Virginia Air Regional Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Springfield, Virginia 22150, telephone (703) 644-0311.

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

Written comments may be submitted until close of business February 25, 1994, to Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, 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: Nancy Saylor, Policy Analyst, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240, telephone (804) 762-4421.

* * * * *

February 1, 1994 - 7 p.m. – Information Session

February 1, 1994 - 8 p.m. – Public Hearing
City Council Chamber, Stryker Building, 412 N. Boundary Street, Williamsburg, Virginia.

February 3, 1994 - 7 p.m. – Information Session

February 3, 1994 - 8 p.m. – Public Hearing
City Council Chamber, City Hall Building, 9027 Center Street, Manassas, Virginia.

February 8, 1994 - 7 p.m. – Information Session

February 8, 1994 - 8 p.m. – Public Hearing
Virginia Department of Transportation, District Office Assembly Room, 4219 Campbell Avenue, Lynchburg, Virginia.

February 9, 1994 - 7 p.m. – Information Session

February 9, 1994 - 8 p.m. – Public Hearing
Virginia Western Community College Learning Center, 3095 Colonial Avenue, S.W., Roanoke, Virginia.

February 10, 1994 - 7 p.m. – Information Session

February 10, 1994 - 8 p.m. – Public Hearing
Virginia Highlands Community College, Room 220, State Route 372 and Route 140 at Exit 14 off I-81, Abingdon, Virginia.

Written comments may be submitted until close of business February 24, 1994.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia and § 110(a)(1) of the Federal Clean Air Act that the State Air Pollution Control Board intends to adopt regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision KK – Permit Program Fees for Stationary Sources)**. The regulation requires owners of stationary sources of air pollution (with some exceptions) to pay annual emission fees in order to generate revenue sufficient to cover all reasonable direct and indirect costs of the permit program and prescribes the timetable and method for assessment and collection.

Comparison with federal requirements: The regulation exceeds the federal mandates for stringency in two provisions. The first provision is in the inclusion of

Calendar of Events

small sources in the list of sources subject to fees. By issuing state operating permits to small sources, the department can help them escape the burden of the Title V permit requirements by limiting their potential to emit. The fees paid by the small sources will defray the cost of issuing these permits. The second provision is in the collection of fees prior to EPA's approval of the program. The operating permit regulation provides for applications to be submitted to the department between September 15 and November 15, 1994. In order to begin processing these applications upon EPA's approval, the department must hire and train additional staff to be in place by that time. The early collection of fees will allow for the timely hiring of the additional staff.

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 Programs Section (Eighth Floor, 629 East Main Street, Richmond, Virginia) and at any of the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period. Department of Environmental Quality, Abingdon Virginia Air Regional Office, 121 Russell Road, Abingdon, Virginia 24210, telephone (703) 676-5482; Department of Environmental Quality, Roanoke Air Regional Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia 24019, telephone (703) 561-7000; Department of Environmental Quality, Lynchburg Air Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia 24502, telephone (804) 582-5120; Department of Environmental Quality, Fredericksburg Air Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia 22401, telephone (703) 899-4600; Department of Environmental Quality, Richmond Air Regional Office, Arboretum V, Suite 250, 9210 Arboretum Parkway, Richmond, Virginia 23236, telephone (804) 323-2409; Department of Environmental Quality, Hampton Roads Air Regional Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia 23320-2168, telephone (804) 424-6707; Department of Environmental Quality, Northern Virginia Air Regional Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Springfield, Virginia 22150, telephone (703) 644-0311.

Statutory Authority: §§ 10.1-1308 and 10.1-1322 of the Code of Virginia.

Written comments may be submitted until close of business February 25, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 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: Dr. Kathleen Sands, Policy Analyst, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 762-4413.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

February 23, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to repeal regulations entitled: **VR 130-01-01. Public Participation Guidelines** and adopt regulations entitled: **VR 130-01-01:1. Public Participation Guidelines**. The purpose of the proposed action is to repeal existing public participation guidelines and promulgate new public participation guidelines as provided for in § 9-6.14:7.1 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure, certification and registration of architects, professional engineers, land surveyors, landscape architects and interior designers in Virginia. The proposed regulation will replace the emergency regulations governing the public process.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201, and 54.1-404 of the Code of Virginia.

Contact: Willie Fobbs, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

* * * * *

January 29, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to amend regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations**. The purpose of the proposed amendments is to adjust fees contained in current regulation, establish registration requirements for limited liability companies, and revise minimum standards for property surveys.

Statutory Authority: §§ 54.1-113 and 54.1-404 of the Code of Virginia.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VIRGINIA ASBESTOS LICENSING BOARD

February 18, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Asbestos Licensing Board intends to repeal regulations entitled: **VR 190-05-01. Asbestos Licensing Regulations and adopt regulations entitled: VR 137-01-02. Asbestos Licensing Regulations.** The asbestos regulations have been revised to implement the acts of the 1993 General Assembly.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Contact: Kent Steinruck, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

February 25, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to adopt regulations entitled: **VR 115-01-3. Regulations Governing Public Participation Guidelines.** The proposed regulations are intended to replace the emergency regulations governing Public Participation Guidelines currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400, and 54.1-2602 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9111.

* * * * *

March 28, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board 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 54.1-2600 et seq. of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9111.

AVIATION BOARD

† February 16, 1994 - 10 a.m. – Open Meeting
Holiday Inn, 5203 Williamsburg Road, Richmond, Virginia. ☐

A meeting to discuss matters of importance to Virginia aviation.

Contact: Nancy C. Brent, 4508 S. Laburnum Avenue, Richmond, VA 23231-2422, telephone (804) 236-3625.

BOARD FOR BARBERS

† February 7, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☐

A meeting to (i) review applications; (ii) review correspondence; (iii) review enforcement cases and decide disposition; (iv) discuss regulatory review; and (v) discuss routine board business.

Contact: Nancy T. Feldman, Assistant Director, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590.

BOARD FOR BRANCH PILOTS

February 23, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Branch Pilots intends to repeal regulations entitled: **VR 535-01-00. Public Participation Guidelines and adopt regulations entitled: VR 535-01-00:1. Public Participation Guidelines.** The purpose of the proposed action is to repeal existing public participation guidelines and promulgate new public participation guidelines as provided for in § 9-6.14:7.1 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of branch pilots in Virginia. The proposed regulation will replace the emergency regulations governing the public process.

Calendar of Events

Statutory Authority: §§ 9-6.14:7.1, 54.1-201 and 54.1-902 of the Code of Virginia.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

* * * * *

March 24, 1994 - 9:30 a.m. - Public Hearing
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia.

March 24, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Branch Pilots intends to amend regulations entitled: **VR 535-01-01. Board for Branch Pilots Rules and Regulations.** The purpose of the proposed amendments is to adjust application and renewal fees and establish Assisted Radar Plotting Aids (ARPA) training for full and limited licensed branch pilots in Virginia.

Statutory Authority: §§ 54.1-902 and 54.1-113 of the Code of Virginia.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **March 3, 1994 - 10 a.m. - Open Meeting**
Science Museum of Virginia Conference Room, 2500 W. Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the meeting. A tentative agenda will be available by February 24.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

* * * * *

January 31, 1994 - 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 Chesapeake Bay Local Assistance Board intends to amend regulations entitled: **VR 173-01-00:1. Public Participation Guidelines.** The

purpose of the proposed amendments is to ensure interested persons information necessary for meaningful, timely input throughout the regulatory process.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2103 of the Code of Virginia.

Contact: C. Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Rm. 701, Richmond, Va 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

Northern Area Review Committee

February 10, 1994 - 10 a.m. - Open Meeting
Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Suite 701, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The review 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 review committee meeting. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

February 9, 1994 - 10 a.m. - Open Meeting
Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Suite 701, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

February 13, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Child Day-Care

Council intends to repeal regulations entitled: **VR 175-01-01. Public Participation Guidelines.** The existing Public Participation Guidelines are being repealed so new guidelines can be promulgated. Oral comments will be accepted at 10 a.m. at the council's regular meeting.

Statutory Authority: §§ 9-6.14:7.1, 63.1-202 and 63.1-202.1 of the Code of Virginia.

Written comments may be submitted until February 13, 1994, to Peg Spangenthal, Child Day-Care Council, 730 East Broad Street, 7th Floor, Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

* * * * *

February 13, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Child Day-Care Council intends to adopt regulations entitled: **VR 175-01-01:1. Public Participation Guidelines.** This regulation explains how the council will obtain public input when developing regulations. This regulation will replace the emergency public participation guidelines effective 7/1/93 to 7/1/94. Oral comments will be accepted at 10 a.m. at the council's regular meeting.

Statutory Authority: §§ 9-6.14:7.1, 63.1-202 and 63.1-202.1 of the Code of Virginia.

Written comments may be submitted until February 13, 1994, to Peg Spangenthal, Child Day-Care Council, 730 East Broad Street, 7th Floor, Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

DEPARTMENT OF CONSERVATION AND RECREATION

January 31, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Conservation and Recreation intends to amend regulations entitled: **VR 217-00-00. Regulatory Public Participation Procedures.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations.

Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-104 of the Code of Virginia authorizes the Department of Conservation and Recreation (department) to prescribe rules and regulations necessary and incidental to the performance of duties or execution of powers conferred by law; and to promulgate regulations pursuant to the Administrative Process Act to carry out the provisions of Subtitle I of Title 10.1 of the Code of Virginia.

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the department's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-104 of the Code of Virginia.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570.

Calendar of Events

Board of Conservation and Recreation

January 31, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Conservation and Recreation intends to amend regulations entitled: **VR 215-00-00. Regulatory Public Participation Procedures.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-107 of the Code of Virginia authorizes the Board of Conservation and Recreation (board) to promulgate regulations necessary for the execution of the Virginia Stormwater Management Act, Article 1.1, (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the

standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-107 of the Code of Virginia.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570.

† **February 4, 1994 - 9:30 a.m.** – Open Meeting
Department of Conservation and Recreation, 203 Governor Street, Suite 200, Richmond, Virginia. ☐

A general business meeting of the board.

Contact: Karen Spencer, Executive Secretary, 203 Governor Street, Richmond, VA 23219, telephone (804) 786-6124.

Soil and Water Conservation Board

January 31, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Soil and Water Conservation Board intends to amend regulations entitled: **VR 625-00-00:1. Regulatory Public Participation Procedures.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-502 of the Code of Virginia authorizes the Virginia Soil and Water Conservation Board (board) to promulgate regulations necessary for the execution of Chapter 5 (§ 10.1-603 et seq.) of Title 10.1 of the Code of Virginia. This authorization covers the Erosion and Sediment Control Law and its attendant regulations. Section 10.1-603.18 of the Code of Virginia authorizes the board to promulgate regulations for the proper administration of the Flood Prevention and Protection Assistance Fund which is to include but not be limited to the establishment of amounts, interest rates, repayment terms, consideration of the financial stability of the particular local public body applying and all other criteria for awarding of grants or loans under the Flood Prevention and Protection Assistance Fund Act (§ 10.1-603.16 et seq.). The Dam Safety Act under § 10.1-605 of the Code of Virginia requires the board to promulgate regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and

operated (§ 10.1-604 et seq.). The Conservation, Small Watersheds Flood Control and Area Development Fund Act (§ 10.1-636 et seq.) authorizes the board to establish guidelines for the proper administration of the fund and provisions of Article 4.

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1, 10.1-502, 10.1-603.18, 10.1-605, and 10.1-637 of the Code of Virginia.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570.

BOARD FOR CONTRACTORS

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Contractors intends to **repeal** regulations entitled: **VR 220-01-00. Public Participation Guidelines** and **adopt** regulations entitled: **VR 220-01-00:01. Public Participation Guidelines**. The proposed guidelines will set procedures for the Board for Contractors to follow to inform the public and incorporate public participation when promulgating regulations.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201, and 54.1-1102 of the Code of Virginia.

Contact: Florence R. Brassier, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-2785.

Recovery Fund Committee

March 23, 1994 - 9 a.m. – Open Meeting

Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia. ☒

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in Executive Session.

Contact: Holly Erickson, Assistant Administrator, Recovery Fund, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23219, telephone (804) 367-8561.

BOARD FOR COSMETOLOGY

February 10, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Cosmetology intends to **repeal** regulations entitled: **VR 235-01-1. Public Participation Guidelines** and **adopt** regulations entitled: **VR 235-01-01:1. Public Participation Guidelines**. The purpose of the proposed guidelines is to set procedures for the Board for Cosmetology to follow to inform and incorporate public participation when promulgating Cosmetology regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1202 of the Code of Virginia.

Contact: Karen W. O'Neal, Assistant Director, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8509.

Calendar of Events

CRIMINAL JUSTICE SERVICES BOARD

April 6, 1994 - 9 a.m. - Public Hearing
General Assembly Building, 910 Capitol Street, Richmond, Virginia.

March 1, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to adopt regulations entitled: **VR 240-03-2. Regulations Relating to Private Security Services.** This regulation sets forth and establishes the private security services regulatory program for the Commonwealth of Virginia.

Statutory Authority: § 9-182 of the Code of Virginia.

Written comments may be submitted until March 1, 1994, to L.T. Eckenrode, Department of Criminal Justice Services, P. O. Box 10110, Richmond, VA 23240-9998.

Contact: Paula Scott Dehetre, Administrative Assistant, Department of Criminal Justice Services, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 786-4000.

BOARD OF DENTISTRY

† **February 17, 1994 - 9 a.m. - Public Hearing**
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

† **March 26, 1994 - Written comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled: **VR 255-01-1. Virginia Board of Dentistry Regulations.** The proposed amendments set forth requirements for continuing education for dentists and dental hygienists, allow licensure by endorsement for dentists, allow specialists to advertise in a board-approved manner, provide for an administrative procedure for reinstatement of license, establish administrative fees for licensure by credentials and licensure reinstatement to cover administrative costs, and amend regulations for clarity and simplicity.

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

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

* * * * *

February 17, 1994 - 9 a.m. - Public Hearing

Department of Health Professions, 6606 W. Broad Street, Richmond, Virginia.

March 26, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Dentistry intends to adopt regulations entitled: **VR 255-01-2. Public Participation Guidelines.** The proposed regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9906.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

January 19, 1994 - 7 p.m. - Public Hearing
Snow date: January 25, 1994
Kenmore Middle School, 200 South Carlin Springs Road, Arlington, Virginia.

January 20, 1994 - 7 p.m. - Public Hearing
Snow date: January 27, 1994
Hermitage High School, 8301 Hungary Spring Road, Richmond, Virginia

January 29, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to adopt regulations entitled: **VR 270-01-0042:1. Regulations Governing the Employment of Professional Personnel.** The purpose of the proposed regulations is to include provisions for contractual agreements and hiring procedures. The regulations provide an overview of the contracting process for local school boards and their professional employees, definitions of relevant contract terms, and descriptions of essential contract elements are included within the appendix of the regulations. The regulations describe the employment of professional personnel as a process that rests with the local school board and the employee and sets forth the prototypes and contract elements as resources that local boards may use at their discretion in meeting the requirements of the employment process.

The proposed regulations are new regulations that are intended to replace VR 270-01-0042, which will be repealed. The proposed regulations reflect substantial changes over the previous section on contractual

agreements. For the first time, all relevant terms are being described and an entirely new section on the uniform hiring of teachers is presented.

The specific provisions of the proposed regulations are in two parts and begin with a preamble describing who the parties are and that the hiring discretion is with the local school board. Part I includes (i) definitions of terms, including types of contracts and the personnel involved, (ii) the contract period and the form of the contract including sample prototypes of each type of contract and a listing of essential contract terms, (iii) the specific provisions of the annual contract, (iv) the specific provisions of the continuing contract, and (v) the specific provisions of the coaching contract. Part II includes (i) a discussion of the purpose of a uniform hiring process, and (ii) a three-phase hiring process with detailed descriptions of the benefits and requirements of each phase. The three-phase process establishes a calendar for hiring that is compatible with the dates budgets are completed by local governing bodies. The calendar dates establish minimum timeframes to accommodate the local hiring process, offer local flexibility in including contract terms to cover unique needs and practices of a locality, and offer professional mobility for teachers.

Statutory Authority: §§ 22.1-16, 22.1-302, and 22.1-304 of the Code of Virginia.

Contact: Brenda F. Briggs or Charles W. Finley, Associate Specialists, Compliance Division, Department of Education, P. O. Box 2120, Richmond, VA, telephone (804) 225-2750, (804) 225-2747 or toll-free 1-800-292-3820.

* * * * *

January 27, 1994 - 8 a.m. – Public Hearing
James Monroe Building, 101 N. 14th Street, Richmond, Virginia.

February 13, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **VR 270-01-0006. Regulations Governing Pupil Transportation including Minimum Standards for School Buses In Virginia.** The purpose of the proposed amendments is to address revisions to federal and state statutes and federal regulations. These regulations are divided into seven major parts: Definitions, General Regulations, Distribution of Pupil Transportation Funds, Requirements for School Bus Drivers, Minimum Standards for School Buses in Virginia (the bus chassis and the bus body), Standards for Lift Gate Buses, and Activity Buses. The proposed revisions provide amendments to reflect automation of accident reporting; changes in distribution of pupil

transportation funds; changes in driver requirements to address the Americans with Disabilities Act, testing for alcohol and controlled substances, and driver training; technological advances in design of school bus chassis and school bus body and to conform to federal motor vehicle safety standards; new standards regarding transporting children with special needs to include infants and toddlers; and changes in regulations regarding use of school activity vehicles.

Statutory Authority: Article VIII, § 4 of the Constitution of Virginia; §§ 22.1-16, 22.1-176, 22.1-177, and 22.1-178 of the Code of Virginia.

Contact: Kathryn S. Kitchen, Division Chief, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2025.

* * * * *

January 27, 1994 - 9 a.m. – Public Hearing
James Monroe Building, Conference Room B, 101 N. 14th Street, Richmond, Virginia.

February 13, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to adopt regulations entitled: **VR 270-01-0059. Regulations for the School Breakfast Program.** Section 22.1-207.3 of the Code of Virginia requires that any public school that has 25% or more of its students eligible for free and reduced price meals provide the federally funded School Breakfast Program or like program. The law also requires the Department of Education to promulgate regulations governing the implementation of a breakfast program and to establish reporting requirements. The Child Nutrition Act of 1966 and succeeding amendments provide for a school breakfast program in any school agreeing to participate and to meet federal requirements. This is a federally funded entitlement program; reimbursement will be paid for all breakfasts served that meet federal requirements.

All schools are eligible to participate in the federally funded School Breakfast Program provided under the Child Nutrition Act of 1966 and succeeding amendments. The purpose is to provide students, who otherwise may not eat, the opportunity to eat breakfast before the school day begins. Consumption of breakfast enhances the health, well-being, educational experiences and performance of students. Federal funds will reimburse school divisions, according to students' meal benefit categories, for all breakfasts served that meet federal requirements. The State Board of Education reserves the right to waive the requirement of a breakfast program after a school has met specified procedures. With the implementation of the federally funded School Breakfast Program increased federal funds will be received by localities and more

Calendar of Events

children will have access to a breakfast meal.

Statutory Authority: § 22.1-207.3 of the Code of Virginia.

Contact: Jane R. Logan, Principal Specialist, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120.

January 27, 1994 - 8:30 a.m. – Open Meeting
February 24, 1994 - 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, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2073 or toll-free 1-800-292-3820.

STATE EDUCATION ASSISTANCE AUTHORITY

February 25, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Education Assistance Authority intends to amend regulations entitled: **VR 275-00-1. Public Participation Guidelines.** The amendments address methods for the identification and notification of interested parties.

Statutory Authority: §§ 9-6.14:7.1 and 23-38.33:1(C)(7) of the Code of Virginia.

Written comments may be submitted through February 25, 1994, to Marvin Ragland, Virginia Student Assistance Authorities, 411 E. Franklin Street, Richmond, VA 23219.

Contact: Sherry A. Scott, Policy Analyst, State Education Assistance Authority, 411 E. Franklin Street, Richmond, VA 23219, telephone (804) 775-4071 or toll-free 1-800-792-5626.

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

January 27, 1994 - 6:30 p.m. – Open Meeting
County Administration Building, Conference Room, Gloucester, Virginia. ☒

The winter quarterly meeting of the LEPC will address an update by the public information committee on the community awareness program, the annual hazmat exercise and election of officers.

Contact: Georgette N. Hurley, Assistant County

Administrator, P. O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042.

LOCAL EMERGENCY PLANNING COMMITTEE - HENRICO

† **April 20, 1994 - 7 p.m. – Open Meeting**
Henrico County Public Safety Building, Division of Fire, 3rd Floor, Parham and Hungary Spring Roads, 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.

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† **February 2, 1994 - 2:30 p.m. – Open Meeting**
Shawnee Fire Company, 2333 Roosevelt Boulevard, Winchester, Virginia.

A regularly scheduled meeting.

Contact: L. A. Miller, Fire Chief, Winchester Fire and Rescue Department, 126 N. Cameron Street, Winchester, VA 22601, telephone (804) 662-2298.

DEPARTMENT OF ENVIRONMENTAL QUALITY

January 31, 1994 – 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 Department of Environmental Quality intends to adopt regulations entitled: **VR 304-01-01. Public Participation Guidelines.** The purpose of the proposed regulation is to replace existing emergency public participation guidelines with permanent guidelines in compliance with the Administrative Process Act. Department of Environmental Quality has conducted analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed amendments. Any persons interested in reviewing these materials should contact Cindy Berndt at the Department of Environmental Quality, Office of Regulatory Service, P. O. Box 11143, Richmond, Virginia 23230. The meeting is being held at a facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, Office of Regulatory Service, P. O. Box 11143, Richmond, VA 23230, (804) 527-5162 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than

December 27, 1993.

Statutory Authority: §§ 9-6.14:7.1 and 62.1-195.1 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 31, 1994, to Ms. Doneva Dalton, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230.

Contact: Cindy M. Berndt, Office of Regulatory Services, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230, telephone (804) 527-5158.

VIRGINIA FIRE SERVICES BOARD

† **February 11, 1994 - 9 a.m.** – Open Meeting
Sheraton Park South, Moorefield Office Park, 9901
Midlothian Turnpike, Richmond, Virginia.

A board meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training Committee

† **February 10, 1994 - 10 a.m.** – Open Meeting
Sheraton Park South, Moorefield Office Park, 9901
Midlothian Turnpike, Richmond, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for input and comments.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

† **February 10, 1994 - 9 a.m.** – Open Meeting
Sheraton Park South, Moorefield Office Park, 9901
Midlothian Turnpike, Richmond, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for input and comments.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

† **February 10, 1994 - 1 p.m.** – Open Meeting
Sheraton Park South, Moorefield Office Park, 9901

Midlothian Turnpike, Richmond, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for input and comments.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

DEPARTMENT OF FORESTRY

February 8, 1994 - 2 p.m. – Public Hearing
Department of Forestry, 2229 E. Nine Mile Road,
Sandston, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Forestry intends to **repeal** regulations entitled: **VR 312-01-1. Public Participation Guidelines** and **adopt** regulations entitled: **VR 312-01-1:1. Public Participation Guidelines**. Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize Public Participation Guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such regulations not only shall be utilized prior to formation and drafting of the proposed regulation, but also shall be utilized during the formation, promulgation and final adoption of all regulations. The purpose of the proposed action is to adopt Public Participation Guidelines which ensure that interested persons are able to comment on regulatory actions in a meaningful fashion during all phases of the regulatory process.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1101 of the Code of Virginia.

Contact: Ron Jenkins, Department of Forestry, P. O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

February 25, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to adopt regulations entitled: **VR 320-01-5. Public Participation Guidelines**. The proposed regulations are intended to replace the emergency regulations governing Public Participation Guidelines currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400, and 54.1-2803 of the Code of Virginia.

Calendar of Events

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-3307.

* * * * *

March 28, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to amend regulations entitled: **VR 320-01-04. Regulations of the Resident Trainee Program for Funeral Service.** The purpose of the proposed amendments is to add a definition, place a maximum time limit for registration, and to establish reporting and supervision requirements.

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 Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9907.

BOARD OF GAME AND INLAND FISHERIES

† **March 18, 1994 - 9:30 a.m.** – Public Hearing
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia.

† **March 28, 1994** – Written comments may be made 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 Game and Inland Fisheries intends to adopt regulations entitled: **VR 325-01-1. Definitions and Miscellaneous.** The purpose of the proposed amendments is to establish a fee structure for permits required by the Code of Virginia, and in accordance with Chapter 623 of the 1993 Acts of Assembly. The public hearing is being held at a facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility should contact Ms. Karen Tuck, Administrative Services Division, Department of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, VA 23230, telephone (804) 367-1000 (V/TDD). Persons needing interpreter services for the deaf must notify Ms. Tuck no later than Monday, March 7, 1994. The board is seeking written comments from interested persons on the proposed regulation and on the costs and benefits of the guidelines.

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Contact: Mark D. Monson, Chief, Administrative Services,

4010 W. Broad Street, P. O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000/TDD ☎

* * * * *

February 11, 1994 – Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 that the Board of Game and Inland Fisheries intends to adopt regulations entitled: **VR 325-05-1. Public Participation Guidelines.** This proposed regulation sets forth the procedures to be followed by the Department of Game and Inland Fisheries for soliciting input from the public during all phases of the formation, development, promulgation, and final adoption of regulations not related to wildlife management, which have been exempted by the General Assembly from the public participation provisions of the Administrative Process Act. As such, they are the primary means for the public, regulated entities, environmental groups and other interested persons to provide meaningful input on the effects of a proposed action to their health, safety, or welfare. It also requires the agency to respond to citizen's comments.

Statutory Authority: §§ 9-6.14:7.1 and 29.1-103 of the Code of Virginia.

Contact: Mark D. Monson, Chief, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000.

GEORGE MASON UNIVERSITY

Board of Visitors

January 26, 1994 - 4 p.m. – Open Meeting
George Mason University, Mason Hall, Room D23, Fairfax, Virginia. ☎

A regular meeting to hear reports of the standing committees of the board and to act on those recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals or organizations who request it. The Student Affairs Committee will meet at 6:30 p.m. on January 25, 1994; standing committees will meet during the day on January 26 beginning at 9 a.m.

Contact: Ann Wingblade, Administrative Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8704.

DEPARTMENT OF HEALTH (STATE BOARD OF)

† **February 2, 1994 - 9 a.m.** – Open Meeting

The Omni, 100 S. 12th Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A regular business meeting.

6 p.m. - Legislative Reception.

† February 3, 1994 - 8:30 a.m. - Open Meeting
General Assembly Building, 910 Capitol Street, Richmond, Virginia. ☒ (Interpreter for the deaf available upon request)

The board will meet with legislators.

Contact: Susan R. Rowland, Assistant to the Commissioner, 1500 E. Main Street, Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

* * * * *

February 11, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** Sections 32.1-12 and 32.1-102.2 of the Code of Virginia provide the statutory basis for Virginia Medical Care Facilities Certificate of Public Need (COPN) regulations. The proposed regulations incorporate all of the amendments to the COPN law which were enacted by the 1993 Session of the Virginia General Assembly and became effective on July 1, 1993. In order to assure compliance with the amended COPN law, the Board of Health promulgated emergency COPN regulations on July 1, 1993, which are effective through June 30, 1994. The proposed COPN regulations will permanently incorporate all 1993 changes to the law which were implemented on an emergency basis. These regulations also propose modifications to the administrative review procedures and to the definition of a reviewable project which should improve the effectiveness of COPN regulation.

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

Contact: Wendy V. Brown, Project Review Manager, Office of Resources Development, Department of Health, 1500 East Main Street, Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

BOARD OF HEALTH PROFESSIONS

March 13, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1

of the Code of Virginia that the Board of Health Professions intends to adopt regulations entitled: **VR 365-01-1:1. Public Participation Guidelines.** These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Richard D. Morrison, Ph.D., Deputy Director for Research, Department of Health Professions, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9904.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

CHANGE IN MEETING TIME

January 25, 1994 - 9:30 a.m. - Open Meeting

Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia

A monthly meeting.

Contact: Kim B. Walker, Public Relations Coordinator, VHSCRC, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804)786-6371.

BOARD FOR HEARING AID SPECIALISTS

January 31, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Hearing Aid Specialists intends to repeal regulations entitled: **VR 375-01-01. Public Participation Guidelines** and adopt regulations entitled: **VR 375-01-01:1. Public Participation Guidelines.** The purpose of the proposed regulations is to implement the requirements of the Administrative Process Act (APA) and the legislative changes to the APA made by the 1993 Virginia General Assembly by establishing regulatory board (agency) procedures for soliciting, receiving and considering input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of hearing aid specialists in Virginia.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

Calendar of Events

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† February 8, 1994 - 9:30 a.m. - Open Meeting
† March 8, 1994 - 9:30 a.m. - Open Meeting
James Monroe Building, 101 N. 14th Street, 9th Floor,
Richmond, Virginia. ☒

A general business meeting.

Contact: Anne Pratt, Associate Director, 101 N. 14th Street,
9th Floor, Richmond, VA 23219, telephone (804) 225-2632
or (804) 361-8017/TDD ☒

DEPARTMENT OF HISTORIC RESOURCES

January 31, 1994 - Written comments may be submitted
until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Historic Resources intends to amend regulations entitled: **VR 392-01-01. Public Participation Guidelines.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation, and final adoption process. Furthermore, § 10.1-2202 of the Code of Virginia authorizes the Director of the Department of Historic Resources to adopt rules necessary for carrying out his powers and duties, including, at a minimum, criteria and procedures for nominating properties to the National Park Service for inclusion in the National Register of Historic Places.

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon receipt of written requests from five

persons during the associated comment period; expands the department's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment Period to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2202 of the Code of Virginia.

Contact: Margaret T. Peters, Information Director,
Department of Historic Resources, 221 Governor St.,
Richmond, VA 23219, telephone (804) 786-3143.

Board of Historic Resources

January 31, 1994 - Written comments may be submitted
until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Historic Resources intends to amend regulations entitled: **VR 390-01-01. Public Participation Guidelines.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation, and final adoption process. Furthermore, § 10.1-2205 of the Code of Virginia authorizes the board to adopt rules necessary for carrying out its powers and duties, including, at a minimum, criteria and procedures for designating historic landmarks and districts.

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment Period to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2205 of the Code of Virginia.

Contact: Margaret T. Peters, Information Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

February 1, 1994 - 9 a.m. - Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF LABOR AND INDUSTRY

February 2, 1994 - 10 a.m. - Public Hearing
Housing Development Authority, 601 S. Belvidere Street, Richmond, Virginia.

February 25, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1

of the Code of Virginia that the Department of Labor and Industry intends to adopt regulations entitled: **VR 425-01-100. Public Participation Guidelines.** Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Department of Labor and Industry's Commissioner on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the commissioner June 24, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Department of Labor and Industry to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Department of Labor and Industry (department) set out procedures to be followed by the department which ensure that the public and all parties interested in regulations adopted by the commissioner have a full and fair opportunity to participate at every stage in the development or revision of the regulations. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, and to solicit and use public comments and suggestions. For regulations adopted by the commissioner which are subject to the Administrative Process Act, the regulation sets forth procedures to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-6 of the Code of Virginia.

Contact: Bonnie H. Robinson, Agency Regulatory Coordinator, Department of Labor and Industry, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631.

Virginia Apprenticeship Council

January 27, 1994 - 7 p.m. - Public Hearing

Calendar of Events

Richmond Technical Center, 2020 Westwood Avenue, Richmond, Virginia.

February 25, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Apprenticeship Council intends to adopt regulations entitled: **VR 425-01-102. Public Participation Guidelines.** Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as “any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.” Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Apprenticeship Council on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the council June 28, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Apprenticeship Council to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Virginia Apprenticeship Council (council) set out procedures to be followed by the council and the Department of Labor and Industry which ensure that the public and all parties interested in regulations adopted by the council have a full and fair opportunity to participate at every stage. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, to solicit and use public comments and suggestions, to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch.

Statutory Authority: §§ 40.1-117 and 9-6.14:7.1 of the Code of Virginia.

Contact: Thomas E. Butler, Assistant Commissioner, Department of Labor and Industry, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2327.

Virginia Safety and Health Codes Board

February 2, 1994 - 2:30 p.m. – Public Hearing
Virginia Housing Development Authority, Conference Room 1, 601 S. Belvidere Street, Richmond, Virginia.

March 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Safety and Health Codes Board intends to adopt regulations entitled: **VR 425-02-95. Administrative Regulation for the Virginia Occupational Safety and Health Codes Program.** This proposed regulation is the first complete revision of the Administrative Regulation Manual adopted in 1986. It contains substantive changes primarily in the areas of additional definition of terms, clarification of the 48-hour accident reporting requirements of employers, the agency's response to requests for information by subpoena, and the VOSH program response to federal judicial action, such as vacation of § 1910.1000 permissible exposure limits (PEL).

This revision will also simplify the regulation by omitting requirements already stipulated in Title 40.1 of the Code of Virginia in those cases where no further regulatory language is necessary to carry out that mandate.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Contact: John J. Cristanti, Director, Enforcement Policy, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2384.

* * * * *

February 2, 1994 - 1 p.m. – Public Hearing
Virginia Housing Development Authority, Conference Room 1, 601 S. Belvidere Street, Richmond, Virginia.

February 25, 1994 – Written 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 Safety Health Codes Board intends to adopt regulations entitled: **VR 425-02-101. Public Participation Guidelines.** Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as “any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.” Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Safety and Health Codes Board on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the board June 21, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Safety and Health Codes Board to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Virginia Safety and Health Codes Board (board) set out procedures to be followed by the board and the Department of Industry and Labor which ensure that the public and all parties interested in regulations adopted by the board have a full and fair opportunity to participate at every stage in the development or revision of the regulations. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, and to solicit and use public comments and suggestions. For regulations adopted by the board which are subject to the Administrative Process Act, the regulation sets forth procedures to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch. The regulation also provides a procedure to notify the public of proposed Federal Occupational Safety and Health regulatory action and encourages the public's participation in the formulation of these regulations at the federal level.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-22(5) of the Code of Virginia.

Contact: Bonnie H. Robinson, Agency Regulatory Coordinator, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631.

LIBRARY BOARD

January 24, 1994 - 10:30 a.m. - Open Meeting
Virginia State Library and Archives, 11th Street at Capitol Square, Supreme Court Room, 3rd Floor, Richmond, Virginia. ☒

A meeting to discuss administrative matters of the Virginia State Library and Archives.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Archives and Records Management Committee

January 24, 1994 - 9 a.m. - Open Meeting
The Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, Virginia. ☒

A meeting to discuss matters pertaining to archives and records management.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Public Library Development Committee

January 24, 1994 - 9 a.m. - Open Meeting
11th Street at Capitol Square, Room 4-24, Richmond, Virginia. ☒

A meeting to discuss the issues on the agenda for the Library Board to be held later that morning.

Contact: Tony Yankus, Director, Library Development, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219-3491, toll-free 1-800-336-5266, or (804) 786-3618/TDD ☎

STATE COUNCIL ON LOCAL DEBT

† February 16, 1994 - 11 a.m. - Open Meeting
† March 16, 1994 - 11 a.m. - Open Meeting
† April 20, 1994 - 11 a.m. - Open Meeting
James Monroe Building, 101 N. 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☒

A regularly scheduled meeting subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to the meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P. O. Box 1879, Richmond, VA 23215, telephone (804) 225-4928.

STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

† January 24, 1994 - 10 a.m. - Open Meeting
State Lottery Department, 2201 W. Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Calendar of Events

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad Street, Richmond, VA 23220, telephone (804) 367-3106 or (804) 367-3000/TDD ☎

* * * * *

January 24, 1994 - 10 a.m. - Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **VR 447-01-1. Public Participation Guidelines.** The purpose of the proposed amendments is to comply with statutory changes to establishing procedures for soliciting input of interested parties in the formation and development of regulations.

Statutory Authority: §§ 9-6.14:7.1 and 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

* * * * *

January 24, 1994 - 10 a.m. - Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **VR 447-01-2. Administration Regulations.** The purpose of the proposed amendments is to include appeal procedures for placement of an instant ticket vending machine or a self-service terminal, procurement procedures for the purchase of goods and services exempt from competitive procurement and contract change order procedures.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

* * * * *

January 24, 1994 - 10 a.m. - Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **VR 447-02-1. Instant Game Regulations.** The purpose of the proposed amendments is to incorporate housekeeping and technical changes, as well as substantive changes to include lottery retailer conduct, license standards validation requirements and payment of prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

* * * * *

January 24, 1994 - 10 a.m. - Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **VR 447-02-2. On-line Game Regulations.** The proposed amendments incorporate numerous housekeeping, technical and substantive changes throughout the On-Line Game Regulations, including retailer compensation and conduct, license and operational fees, license standards, validation requirements and payment of prizes and disposition of unclaimed prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

MARINE RESOURCES COMMISSION

January 25, 1994 - 9:30 a.m. - Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☑ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.: permit applications for projects in wetland, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; and policy and regulatory issues.

The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans, fishery conservation issues, licensing, and shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing.

The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Sandra S. Schmidt, Secretary to the Commission, P. O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646, or (804) 247-2292/TDD ☎

January 31, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Marine Resources Commission intends to amend regulations entitled: **VR 450-01-0045. Public Participation Guidelines.** The purpose of the proposed amendments is to comply with the 1993 amendments to the Administrative Process Act and conform with the other agencies in the Natural Resources Secretariat.

Statutory Authority: §§ 28.2-103 and 9-6.14:7.1 of the Code of Virginia.

Contact: Robert W. Grabb, Chief, Habitat Management Division, P. O. Box 756, Newport News, VA 23607-0756 or toll-free 1-800-541-4646.

MATERNAL AND CHILD HEALTH COUNCIL

† **January 26, 1994 - 1 p.m.** – Open Meeting
Ninth Street Office Building, 202 N. Ninth Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The meeting will focus on improving the health of the Commonwealth's mothers and children by promoting and improving programs and service delivery systems related to maternal and child health, including prenatal care, school health, and teenage pregnancy.

Contact: Pat Avery, Executive Secretary Senior, Office of Family Health Services, 1500 East Main Street, Room 104-B, Richmond, VA 23219, telephone (804) 371-0478.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† **March 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt regulations entitled: **VR 460-01-86. Hospital Credit Balance Reporting.** The purpose of this proposal is to promulgate regulations which ensure that hospitals refund Medicaid overpayments in a timely fashion. Untimely review and refunding of Medicaid overpayments result in Medicaid program funds being unavailable for payment of services.

Title XIX of the Social Security Act, § 1902(a)(25), provides that states take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available to recipients of Medicaid.

Medicaid is by law the payor of last resort.

In December 1992, the Office of the Inspector General (IG) of the U.S. Department of Health and Human Services issued a report entitled "Medicaid Accounts Receivables with Credit Balances at Hospitals Participating in the Medicaid Program Administered by the Virginia Department of Medical Assistance Services." As a result of a review of a sample number of hospitals participating in the Virginia Medicaid program, hospitals were determined to be receiving and retaining Medicaid overpayments contrary to federal law and regulations.

Failure to enact this regulation will result in Medicaid overpayments not being refunded to this agency either in a timely manner or at all.

The primary advantage to the public of the adoption of this regulation is that public funds appropriated for the coverage of medical care services for the indigent and poor will be more quickly returned to DMAS for appropriate expenditure.

The primary disadvantage to the hospital providers, which receive Medicaid funds in payment for services rendered, is that they will be required to more diligently monitor their credit balance accounts and more quickly return funds to DMAS. These providers will no longer have the short term use of these public funds. Since these same providers are being required by the Medicare Program to perform the same function, Medicaid's requirements are expected to be minimally additional to Medicare's.

All hospitals, which number approximately 150, will be affected by this proposed regulation. There will be no additional costs to this provider group's operations because reviewing accounts for credit balances is part of routine bookkeeping practice. There will be no additional costs to DMAS to administer this regulation because these funds would have eventually been recovered through the cost settlement or third party liability processes. This regulation will merely speed up the funds recovery process.

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

Written comments may be submitted through March 25, 1994, to Jesse Garland, Director, Fiscal Division, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

† **March 25, 1994** – Written comments may be submitted through this date.

Calendar of Events

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 460-03-3.1100. Amount, Duration, and Scope of Services; VR 460-02-3.1500. Standards for the Coverage of Organ Transplant Services.** The purpose of the proposed amendments is to expand coverage of transplantation for children, under age 21 only, to liver, heart, and bone marrow (both autologous and allogeneic) transplantation. Coverage of transplantation is continued for cornea and kidney. The proposal is identical to the emergency regulation currently in effect.

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

Written comments may be submitted through March 25, 1994, to Betty Cochran, Department of Medical Assistance Services, 600 E. Broad Street, Richmond, VA 23219.

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

* * * * *

February 25, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend and adopt regulations entitled: **VR 460-01-46:1, 460-01-76, 460-01-79.19, 460-02-4.3900, 460-02-4.3910, 460-02-3.1300, 460-03-3.1301, 460-02-4.1410, and 460-04-4.3910. PASARR; Education Component in NF's; NF Residents' Appeal Rights.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations, providing for preadmission screening and annual resident reviews, education component requirements for children in nursing facilities, and nursing facilities' residents appeal rights.

The federal requirements regarding preadmission screening and annual resident review (PASARR) are that placement determinations 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. The final regulations published by HCFA are similar to the original requirements but with 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. Third, states are allowed discretion in defining specialized services to be offered and in establishing categorical determinations.

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. 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 Appeals and not with the Department of Health. DMAS will hear appeals filed by any nursing facility resident regardless of the payment source. Prior to the DMAS emergency regulation, DMAS' Division of Client Appeals only heard appeals when Medicaid was the payment source.

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

Written comments may be submitted through February 25, 1994, to Mary Chiles, Manager, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219

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

* * * * *

February 25, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-02-2.6100:1. Eligibility Conditions and Requirements: Guardianship Fees in Post-Eligibility Treatment of Income.** Medicaid eligibility policy has long allowed deduction of guardianship fees in determining countable income for the purposes of calculating patient pay for institutional and home- and community-based waiver services. Since a guardian has control of an individual's income, he deducts his fee before any of the income is applied to the bills of

an incompetent individual. Thus, this income is not available to be applied to the cost of institutional and home- and community-based waiver services.

If Medicaid does not add guardianship fees to the personal needs allowance, then Medicaid calculations of the patient's income available for patient pay will exceed that amount actually available and Medicaid will not pay the full balance of the institutional and home- and community-based waiver services bill. The result will be an outstanding balance for the institutional and home- and community-based waiver services that the provider can collect neither from the patient nor from Medicaid.

The Medicaid eligibility policy has recognized that the income available for patient pay is the net income after deduction of guardianship fees. The long-standing policy was based upon interpretation of the way in which the Social Security Administration calculates income for eligibility for Supplemental Security Income. The Health Care Financing Administration issued an instruction that confirmed that guardianship fees are allowable deductions, but directed states to specify that deduction in the State Plan for Medical Assistance. This regulatory change is designed to specify the deduction of guardianship fees as required by the Health Care Financing Administration and will ensure that the deductions are applied uniformly to all recipients of institutional and home- and community-based waiver services who pay guardianship fees.

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

Written comments may be submitted through February 25, 1994, to Ann Cook, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

* * * * *

February 25, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1100, 460-02-3.1300, 460-03-3.1301, 460-04-8.10, 460-04-3.1300. Criteria for Preadmission Screening and Continued Stay.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations containing the same policies. These regulations concern the criteria by which applicants for and recipients of long-term care services and

community-based care services are evaluated for appropriate placement.

The Department of Medical Assistance Services (DMAS) promulgated an emergency regulation for these criteria effective September 1, 1992. The agency's proposed regulations were filed March 30, 1993, with the Registrar of Regulations for publication to begin its comment period from April 20 - June 18, 1993. DMAS held 4 public hearings in different statewide locations and received numerous comments from individuals and organization. These initial proposed regulations were substantially similar to the preceding emergency regulations. Commenters on those emergency regulations expressed a belief that they have resulted in the discharge of numerous nursing facility residents and the denial of various long-term care services to numerous others. Although the department's research demonstrated that there had not been discharges from nursing facilities based on those emergency regulations, it was clear that the department's intent to clarify medical/nursing management had not been clearly communicated. Since the regulations proposed by the agency for public comment period mirrored the emergency regulations, they were opposed by the various interests groups concerned with care for the elderly and disabled. Due to the 1993 General Assembly's modifications to § 9-6.14:1 et seq. of the Code of Virginia, DMAS was required to promulgate a second set of emergency regulations. DMAS is now reinitiating the Article 2 process (§ 9-6.14:7.1) to conform to the new APA promulgation requirements.

Due to the significant comments DMAS received on the prior proposed regulations, the second set of emergency regulations contained revisions to the definition of medical/nursing need and revisions to the evaluation of persons seeking community-based care to avoid future nursing facility placement. HCFA allows the Commonwealth to offer home- and community-based care to persons who meet nursing facility criteria and to those whom it determines will meet nursing facility criteria in the near future except for the provision of community-based services. In the currently effective emergency regulations, DMAS established the criteria which define when an individual can be determined to be at risk of nursing facility placement in the near future as "prenursing facility criteria." These proposed regulations mirror the current emergency regulations on which the agency has received no comments.

Nursing Home Preadmission Screening Committees will still use a separate assessment instrument for preadmission screening, the purpose of which is to determine appropriate medical care between community services and institutionalization.

In addition, this regulation package makes amendments to clarify and improve the consistency of

Calendar of Events

the regulations as they relate to outpatient rehabilitation. DMAS is making certain nonsubstantive changes as follows. The authorization form for extended outpatient rehabilitation services no longer requires a physician's signature. Although the physician does not sign the form, there is no change in the requirement that attached medical justification must include physician orders or a plan of care signed by the physician. Services that are non-covered home health services are described. These services are identified for provider clarification and represent current policy. Also, technical corrections have been made to bring the Plan into compliance with the 1992 Appropriations Act and previously modified policies (i.e., deleting references to the repealed Second Surgical Opinion program under § 2. Outpatient hospital services and § 5. Physicians services).

The program's policy of covering services provided by a licensed clinical social worker under the direct supervision of a physician is extended to include such services provided under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical. This change merely makes policy consistent across different provider types.

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

Written comments may be submitted through February 25, 1994, to Betty Cochran, Director, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

* * * * *

March 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1102, 460-02-3.1300. Case Management Services; Utilization Review of Case Management for Recipients of Auxiliary Grants.** During the 1993 session, the General Assembly passed significant legislation governing the Auxiliary Grant Program and licensure of homes for adults. This new legislation required that all recipients of auxiliary grants must be evaluated using the state designated uniform assessment instrument to determine their need for residential care as a condition of eligibility for an auxiliary grant. The law provides that no public agency shall incur a financial obligation if the individual is determined ineligible for an auxiliary grant. This requirement is to become effective on June 1, 1994.

During the same session, the General Assembly also revised the law governing licensing of homes for adults. These residential facilities will be called adult care residences and will be licensed to provide either residential living or assisted living.

In preparation for implementation of these new requirements, a new system of reimbursement for adult care residences was developed. This new reimbursement method will provide for payments for residential and assisted living for individuals who are in financial need. Residents of licensed adult care residences who meet the financial eligibility requirements for the Auxiliary Grant Program and who require at least a residential level of care based on an assessment by a case manager shall be eligible to receive an auxiliary grant. Individuals who are eligible for auxiliary grants may also receive a payment for assisted living from the DMAS if their needs are determined, according to an assessment, to meet the level of care criteria for assisted living which are being promulgated by the DMAS in separate regulations.

Assessments and case management for auxiliary grant and assisted living will be provided by case managers employed by human service agencies in accordance with the Code of Virginia. The case managers will be responsible for assessing the applicant's or recipient's need for care using a uniform assessment instrument as required by regulations of the Department of Social Services. In addition to assessment, the case manager will be responsible for locating, coordinating and monitoring the services needed by auxiliary grant recipients residing in licensed adult care residences. The case manager will notify the eligibility worker in the local department of social services of the results of the assessment and will notify the DMAS if the applicant or recipient meets the criteria for assisted living. In addition, the case manager will notify the DMAS if changes occur in the condition of the client that affect his continued level of care.

These regulations describe the qualifications of case managers and case management agencies. Adopting these regulations will permit the Commonwealth to carry out the requirement of the law that recipients of auxiliary grants receive an assessment to determine their need and appropriate placement assuring that each individual will be placed in an adult care residence able to meet his needs and will monitor any changes in his condition which may indicate a need for a more appropriate placement as his condition changes. In addition, Medicaid coverage of case management for this group will permit federal financial participation in the cost of administering the case management requirement.

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

Written comments may be submitted through March 11,

Calendar of Events

1994, to Ann Cook, Department of Medical Assistance Services, Policy Division, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

* * * * *

February 25, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1922. Item j. Payment of Title XVIII Part A and Part B Deductible/Coinsurance.** This action affects Attachment 4.19 B, Supplement 2, Methods and Standards for Establishing Payment Rates. Other Types of Care, item j, Payment Title XVIII Part A and Part B Deductible/Coinsurance.

DMAS pays Medicare premiums for individuals who are eligible for both Medicare and Medicaid. This policy results in Medicare's coverage of their medical care, allowing for the use of 100% federal Medicare dollars, thereby reducing the demand for general fund dollars.

Medicare pays inpatient skilled nursing under Medicare Part A (hospital insurance). Part A pays for all covered services in a skilled nursing facility for the first 20 days. For the next 80 days, it pays for all covered services except for a specific amount determined at the beginning of each calendar year, i.e., Medicare pays for all covered services except for \$84.50 per day which is the responsibility of the patient; in the case of the Medicaid recipient it is the responsibility of DMAS.

Federal statute and regulations allow DMAS to limit its coinsurance payments to the Medicaid maximum instead of the Medicare maximum allowable payment. Therefore, this proposed permanent regulation limits the payment of the Medicare Part A coinsurance amount paid by the department so that the combined payments of Medicare and Medicaid do not exceed the Medicaid per diem rate for the specific nursing facility of the Medicare/Medicaid recipient's residence.

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

Written comments may be submitted through February 25, 1994, to C. Mack Brankley, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad

Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

* * * * *

February 25, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1923. Establishment of Rate Per Visit: State Plan for Medical Assistance Relating to Home Health Reimbursement.** This proposal will promulgate permanent regulations to supersede existing emergency regulations which were adopted pursuant to a 1993 General Assembly mandate. The regulations provide for the fee-for-service reimbursement of home health agencies.

The 1993 General Assembly, in the Appropriations Act, directed the Board of Medical Assistance Services to adopt revised regulations governing home health agency reimbursement methodologies, effective July 1, 1993, that would (i) eliminate the distinction between urban and rural peer groups; (ii) utilize the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; and (iii) reimburse hospital-based home health agencies at the rate set for freestanding home health agencies. The General Assembly also required that the adopted regulations comply with federal regulations regarding access to care. In addition, the Joint Legislative Audit and Review Commission recommended that a revision be made to the existing statistical methodology.

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

Written comments may be submitted through February 25, 1994, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

* * * * *

February 25, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1940:1, 460-03-4.1941. Nursing Home Payment System: 95% Rule, Criminal Record Checks, Blood Borne Pathogens.** The purpose of this proposal is to promulgate permanent regulations, to

Calendar of Events

supersede the existing emergency regulations, regarding nursing facility 95% occupancy rule and criminal record checks. This proposal also provides for permanent regulations for the reimbursement for nursing facilities' costs of complying with OSHA requirements for protecting employees against exposure to blood.

95% Occupancy Rule: Prior to the emergency regulation, DMAS set a nursing facility's (NF) interim plant rate for the year in approximately the ninth month of the NF's fiscal year. This could have resulted in a new provider receiving substantial overpayment during the first nine months of the second fiscal year. This proposed amendment provides that the 95% occupancy rule will be applied on the first day of a new provider's second fiscal year. The effect of this amendment will be to eliminate any potential overpayments in the first nine months of the provider's second fiscal year.

Criminal Record Checks: The 1993 General Assembly, in Chapter 994 of the Acts of Assembly of 1993 (Item 313. T), directed DMAS to adopt revised regulations and forms governing nursing facilities that would reimburse providers for the costs of complying with the requirement of obtaining criminal record background checks on nursing facility employees, as implemented by § 32.1-126.01 of the Code of Virginia. This proposed regulation intends to make permanent those policies currently in effect under an emergency regulation.

Blood Borne Pathogens: The Occupational Safety and Health Administration (OSHA) promulgated a standard, effective March 6, 1992, to eliminate or minimize occupational exposure to blood borne pathogens (final rule published in the December 6, 1991 Federal Register, adopting 29 CFR 1910.1030). The Virginia Safety and Health Codes Board of the Department of Labor and Industry adopted these regulations as VR 415-02-83, effective June 1, 1992 (published in the Virginia Register of Regulations, pp. 2145-2158, March 23, 1992).

The General Assembly, in Item 312.1 of the 1993 Budget Bill, directed DMAS to study the cost of reimbursing nursing facilities for complying with these new requirements. DMAS has completed its study and, with input from the nursing facility community, is proposing revisions to the State Plan to permit reimbursement for these required costs. If DMAS takes no action with respect to the cost of the OSHA requirements, some of the cost would still be reimbursed under existing rate setting rules. However, some facilities would be reimbursed less than all the costs of implementation, and some would receive little or no additional reimbursement.

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

Written comments may be submitted through February 25, 1994, to N. Stanley Fields, Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

* * * * *

January 28, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1102, Case Management Services: Preauthorization of Case Management for the Elderly.** The purpose of the proposed amendment is to streamline the Medicaid utilization control requirements imposed on agencies participating in the Case Management for the Elderly Pilot Projects by conforming the Medicaid requirements with those of the policy for the pilot projects imposed by the Long-Term Care Council.

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

Written comments may be submitted through January 28, 1994, to Ann E. Cook, Eligibility and Regulatory Consultant, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

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

* * * * *

January 28, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1100, VR 460-02-3.1300, VR 460-04-8.12, VR 460-04-8.1500, DMHMR Community and Waiver Services.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations. The permanent regulations will remove certain administrative impediments to the effective and efficient implementation of mental retardation waiver services in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. They will also allow persons having conditions related to mental retardation to be served by providers under

contract with the Department of Rehabilitative Services (DRS).

The parts of the State Plan for Medical Assistance affected by this action are: Amount, Duration and Scope of Services (Supplement 1 to Attachment 3.1 A&B), Case Management Services (Supplement 2 to Attachment 3.1 A). The state-only regulations affected by this action are: Home and Community-Based Care Services for Individuals with Mental Retardation (VR 460-04-8.12) and Community Mental Health Services, Amount, Duration, and Scope of Services (VR 460-04-8.1500).

The emergency regulations broadened the provider qualifications for persons with related conditions to include those providers contracted by DRS as habilitative service providers. The emergency regulations did not affect the amount or scope of services an individual may receive, did not affect the state's approved waiver for community services to persons with mental retardation, and did not impact on the quality of services being provided to the population. The key provisions of this proposed regulatory action are described below.

The changes to the State Plan for targeted case management services for persons with mental retardation and mental illness make consistent the requirement for a face-to-face contact (between the patient and provider) every 90 days, regardless of the case management service being offered, and clarify the frequency as once every 90 days rather than one within a 90-day period. Another change allows up to 60 days for completion of the plan of care from the initiation of services. Changes to the service limitations on State Plan community mental health and mental retardation services do not change the amount of services an individual is able to receive, but only change the previous designation of "days" to "units" which is consistent with the manner in which these services are billed. The two levels of day health and rehabilitation services have been removed. Additionally, changes are made to revise the existing definition of developmental disability and to rename the definition "related conditions" to conform to the designation used by the Health Care Financing Administration (HCFA) in OBRA '87. The prior authorization requirement for case management for this group is also being removed.

Another change clarifies coverage of day health and rehabilitation services for persons with mental retardation and persons with related conditions. It also allows providers contracted with DRS as habilitation providers to be qualified for Medicaid reimbursement for day health and rehabilitation services. Reference to two waivers and use of the Inventory for Client and Agency Planning (ICAP) have been removed because the Commonwealth is consolidating the two waivers into one waiver for renewal in 1993. The

Commonwealth is also revising the assessment and will discontinue using the ICAP as the required assessment for MR Waiver Services. The requirement for an annual physical and psychological examination has been removed to eliminate unnecessary duplication. Freedom of choice language has been strengthened to respond to concerns expressed in this area.

These proposed regulations modify the definition of some existing services and broaden the range of services which may be offered to individuals in the MR waiver by adding five new services: Personal Assistance, Assistive Technology, Environmental Modifications, Respite Care, and Nursing Services. Prevocational Services, previously included in Habilitation Services, has now been included under the service titled Day Support. The definition of the services and provider qualifications have been developed in conjunction with the MR Executive Workgroup and are a continuation of the effort initiated in the emergency regulations to remove impediments to the effective and efficient administration of services to persons with mental retardation.

While these regulations add five cheaper substitute services to the MR Waiver program, the cost savings will be offset by increased utilization. The increased utilization is limited by the current allocated general funds. Thus, no budget impact from the proposed regulations is expected.

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

Written comments may be submitted through January 28, 1994, to Chris Pruett, Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

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

* * * * *

January 28, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-04-8.900. Public Participation Guidelines**. The purpose of this proposal is to amend the agency's Public Participation Guidelines to be consistent with provisions of the Administrative Process Act.

Effective October 1984 the Department of Medical Assistance Services (DMAS) became subject to the Administrative Process Act. Because the State Plan is

Calendar of Events

a "regulation" as defined in § 9-6.14:4 F of the Code of Virginia, amendments to it must be promulgated in accordance with the Administrative Process Act.

The Administrative Process Act (§ 9-6.14:7.1 et seq. of the Code of Virginia) requires the development and use of Public Participation Guidelines by executive agencies. DMAS' Public Participation Guidelines became effective November 1, 1985, and were most recently revised effective April 1991.

The 1993 General Assembly-approved House Bill 1652 made numerous changes in the Administrative Process Act which were intended to improve and increase the public's opportunities to participate in the Commonwealth's executive agencies' rulemaking processes. These changes in the Act necessitate a modification to the DMAS' Public Participation Guidelines. Specifically, § 4 A is being modified regarding methods for soliciting the input of interested parties in the development of regulations.

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

Written comments may be submitted through January 28, 1994, to Roberta Jonas, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

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

* * * * *

February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-02-4.1940. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care: Nonenrolled Provider Reimbursement.** The purpose of this proposal is to reimburse out-of-state nonenrolled providers at amounts which are more consistent with the reimbursement amounts for in-state enrolled providers.

The section of the State Plan for Medical assistance affected by this action is the Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care (Attachment 4.19-A).

Medicaid providers have the option of enrolling with the program to serve Virginia Medicaid recipients. Without exception, high volume providers enroll in the program. The Code of Federal Regulations at 42 CFR 421.52 provides that the state must furnish Medicaid to recipients utilizing nonenrolled hospitals in several

specific circumstances.

Currently, reimbursement for nonenrolled hospitals is limited to a percentage of their covered charges. The percentage is derived from the ratio of reimbursable inpatient costs to inpatient charges of enrolled providers less 5% which represents the cost of manually processing the claims. This can result in excessive reimbursement for nonenrolled providers that have very high charges.

For purposes of maintaining equitable reimbursement levels between enrolled and nonenrolled providers, the Department of Medical Assistance Services has determined that the excessive reimbursement could be eliminated through the imposition of a maximum reimbursement amount or cap. This proposed amendment caps the reimbursement to nonenrolled providers. The cap is the Department of Medical Assistance Services' average per diem of enrolled providers, excluding state-owned teaching hospitals' per diems and disproportionate share adjustment payments. The cap will eliminate excessive reimbursement to nonenrolled providers.

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

Written comments may be submitted through February 11, 1994, to Scott Crawford, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

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

BOARD OF MEDICINE

February 11, 1994 – Written comments may be submitted through this date

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to repeal regulations entitled: **VR 465-01-1. Public Participation Guidelines** and adopt regulations entitled: **VR 465-01-01:1. Public Participation Guidelines.** The purpose of the proposed regulations is to establish requirements governing Public Participation Guidelines. The proposed regulations will replace emergency regulations VR 465-01-01 in effect on June 28, 1993, due to new statutes. No public hearing will be held unless requested; the regulations respond to statutory changes. The subject, substance, issues, basis, purpose and estimated impact may be requested in addition to the proposed regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Written comments may be submitted until February 11, 1994, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Russell Porter, Assistant Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎

† **February 10, 1994 - 9 a.m. – Open Meeting**
Department of Health Professions, 6606 W. Broad Street, 5th Floor, Board Rooms 1, 2, 3, and 4, Richmond, Virginia. ☒

A meeting to conduct general board business, receive committee and board reports, and discuss any other items which may come before the board. The board will entertain public comments during the first 15 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

† **February 11, 1994 - 9 a.m. – Open Meeting**
† **February 12, 1994 - 9 a.m. – Open Meeting**
† **February 13, 1994 - 9 a.m. – Open Meeting**
Department of Health Professions, 6606 W. Broad Street, 5th Floor, Board Rooms 1, 2, 3 and 4, Richmond, Virginia. ☒

A meeting to (i) review reports; (ii) interview licensees; and (iii) make decisions on disciplinary matters. The board will entertain public comments during the first 15 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Director, Discipline, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Credentials Committee

† **February 11, 1994 - 8:15 a.m. – Open Meeting**
Department of Health Professions, 6606 W. Broad Street, 5th Floor, Richmond, Virginia. ☒

The Credentials Committee will meet in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Informal Conference Committee

January 25, 1994 - 9:30 a.m. – Open Meeting
Department of Health Professions, 6606 W. Broad Street, Richmond, Virginia. ☒

January 28, 1994 - 9:30 a.m. – Open Meeting
Fort Magruder Inn, Route 60 East, Williamsburg, Virginia. ☒

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

16TH ANNUAL SYMPOSIUM ON MENTAL HEALTH AND THE LAW

March 31, 1994 - 9 a.m. – Open Meeting
April 1, 1994 - 9 a.m. – Open Meeting
Richmond Hyatt Hotel, Richmond, Virginia. ☒

Symposium on mental health law issues.

Contact: Bettie T. Amiss, Administrator, Institute of Law, Psychiatry and Public Policy, Blue Ridge Hospital, Box 100, Charlottesville, VA 22908, telephone (804) 924-5435.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

February 23, 1994 - 10 a.m. – Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, James Madison Building, 13th Floor Conference Room, Richmond, Virginia. ☒

A regular monthly meeting. Agenda to be published on February 16, 1994. Agenda can 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, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

† **March 15, 1994 - 4 p.m. – Public Hearing**

Calendar of Events

New River Community College, Rt. 100 North, Dublin, Virginia. (Interpreter for the deaf provided upon request)

† **March 15, 1994 - 4 p.m.** – Public Hearing

James Madison Building, 109 Governor Street, 7th Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Public hearings and public comment on Virginia's Sixth Year Grant Application (3 year application) to the U. S. Department of Education, Office of Special Education Part H Early Intervention for Infants and Toddlers with Disabilities Program. Call (804) 786-3710 by March 11, 1994, to speak at the public hearing. Interpreters for persons with hearing impairments will be provided based on calls received by March 11, 1994. Written testimony will be accepted until March 31, 1994. Please submit to the Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214. Copies of the application will be located at local community services boards for review.

Contact: Michael Fehl, Director, Department of Mental Health Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

State Human Rights Committee

† **January 28, 1994 - 9 a.m.** – Open Meeting

Henrico Area Mental Health and Retardation Services Board, Conference Room C, 10299 Woodman Road, Glen Allen, Virginia. ☐

A meeting to discuss human rights issues involving local human rights committees, DMHMRSAS and community services boards as well as DMHMRSAS licensed MH, MR and SAS programs.

Contact: Elsie D. Little, Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988.

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

February 3, 1994 - 7 p.m. – Open Meeting

1845 Orange Road, Camp 11, 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 it 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, 1845 Orange Road, Culpeper, VA 22701, telephone (703) 825-4562.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

February 12, 1994 - 8:30 a.m. – Open Meeting

Smith Hall, Virginia Military Institute, Lexington, Virginia. ☐

A regular meeting to (i) receive committee reports; (ii) consider 1994-1995 budget; and (iii) receive reports on visits to academic divisions and departments.

Contact: Colonel Edwin L. Dooley, Jr., Secretary, Board of Visitors, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206

DEPARTMENT OF MINES, MINERALS AND ENERGY

February 2, 1994 - 1 p.m. – Open Meeting

Department of Mines, Minerals and Energy, 202 N. Ninth St., Room 829, Richmond, Virginia

A public meeting to receive comments on the department's guidelines for public participation in the regulatory development process.

Contact: Stephen A. Walz, Policy and Planning Manager, Department of Mines, Minerals and Energy, 202 N. Ninth St., Richmond, VA 23219, telephone (804) 692-3200.

* * * * *

February 2, 1994 - 1 p.m. – Public Hearing

Department of Mines, Minerals and Energy, 202 N. Ninth Street, Room 829, Richmond, Virginia.

February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to amend regulations entitled: **VR 480-01-1. Public Participation Guidelines**. The purpose of the proposed amendments is to reflect the order of the regulatory process under the Administrative Process Act and clarify that the guidelines apply to the Virginia Gas and Oil Board and Board of Examiners.

Statutory Authority: §§ 9-6.14:7.1, 45.1-1.3, 45.1-12 and 45.1-361.15 of the Code of Virginia.

Contact: Stephen A. Walz, Policy and Planning Manager, Department of Mines, Minerals and Energy, 202 N. Ninth

Calendar of Events

Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3200.

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

January 25, 1994 - 9 a.m. - Open Meeting
Linden Row Inn, 100 E. Franklin Street, Richmond, Virginia. ☒

The meeting will include reports from the executive, finance, marketing, outreach, personnel, planning/facilities, and research and collections committees. Public comment will be received following approval of the minutes of the October meeting.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, VA 24112, telephone (703) 666-8616 or (703) 666-8638/TDD ☎

BOARD OF NURSING

January 25, 1994 - 8:30 a.m. - Open Meeting
January 26, 1994 - 8:30 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, 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 other matters under the jurisdiction of the board. Public comment will be received during an open fourm session beginning at 11 a.m. on Tuesday, January 27, 1994. At 3 p.m. on January 25, 1994, the board will consider and adopt proposed Public Participation Guidelines to replace those adopted as emergency regulations in June 1993. The board may also discuss plans to develop future changes in its regulations.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9909.

January 24, 1994 - 9 a.m. - Open Meeting
January 27, 1994 - 8:30 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, Richmond, Virginia. ☒

A panel of the board will conduct formal hearings. Two Special Conference Committees may conduct informal conferences in the afternoon if panel agenda is completed in the morning. Public comment will not be received.

Contact: Corrine F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor,

Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

† **February 17, 1994 - 10 a.m. - Open Meeting**
ABC Commission Hearing Room, Route 13 (Military Highway), Chesapeake, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct formal hearings with certified nurse aides. Public comment will not be received.

Contact: Corinne F. Dorsey, Executive Director, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

January 26, 1994 - 9:30 a.m. - Open Meeting
6606 West Broad Street, Conference Room 1, 5th Floor, Richmond, Virginia. ☒

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

* * * * *

February 8, 1994 - 9 a.m. - Public Hearing
Department of Health Professions, 6606 W. Broad Street, 5th Floor, Richmond, Virginia.

March 28, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing Home Administrators intends to amend regulations entitled: **VR 500-01-2:1. Regulations of the Board of Nursing Home Administrators.** The purpose of the proposed amendments is to revise continuing education requirements of the board, to establish as permanent fee increases in emergency regulations, and to delete public participation guidelines.

Statutory Authority: §§ 54.1-2400 and 54.1-3100 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111.

* * * * *

February 25, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing

Calendar of Events

Home Administrators intends to adopt regulations entitled: **VR 500-01-3. Public Participation Guidelines.** The proposed regulations are intended to replace emergency regulations governing Public Participation Guidelines currently in effect.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

* * * * *

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3101 of the Code of Virginia.

February 13, 1994 – Written comments may be submitted until this date.

Contact: Meredyth P. Partridge, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors intends to amend regulations entitled: **VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed amendments is to set a new examination fee and reduce renewal fees.

BOARD FOR OPTICIANS

February 4, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. FT3001 5

Statutory Authority: §§ 54.1-113, 54.1-2400 and 54.1-3500 of the Code of Virginia.

A meeting to conduct regular board business and any other matters which may require board action.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

Advisory Committee on Counselor Education and Supervision

BOARD OF PHARMACY

February 26, 1994 – Written comments may be submitted until this date.

† **January 28, 1994 - 8:30 a.m. – Open Meeting**
Department of Health Professions, 6606 W. Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to adopt regulations entitled: **VR 530-01-3. Public Participation Guidelines.** The proposed regulations are intended to replace emergency regulations governing Public Participation Guidelines which are currently in effect. No public hearing is planned unless requested.

A meeting to discuss counselor education and supervision. Public comment will not be received.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9912

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

February 10, 1994 – Written comments may be submitted until this date.

Contact: Scotti Milley, Executive Director, Board of Pharmacy, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9911.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION (BOARD OF)

BOARD OF PROFESSIONAL COUNSELORS

† **February 25, 1994 - 9 a.m. – Open Meeting**
Department of Health Professions, 6606 W. Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional and Occupational Regulation intends to adopt regulations entitled: **VR 190-00-04. Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the board to follow to inform and incorporate public participation when promulgating board regulations.

A board meeting to conduct general board business and respond to committee reports and regulatory review. Public comment will not be received.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-310 of the Code of Virginia.

Contact: Joyce K. Brown, Secretary to the Board, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804)

367-8564.

REAL ESTATE APPRAISER BOARD

February 10, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Appraiser Board intends to repeal regulations entitled: **VR 583-01-1. Public Participation Guidelines** and adopt regulations entitled: **VR 583-01-1:1. Public Participation Guidelines**. The purpose of the proposed guidelines is to set procedures for the Real Estate Appraiser Board to follow to inform and incorporate public participation when promulgating appraiser regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2013 of the Code of Virginia.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039.

REAL ESTATE BOARD

† **February 3, 1994 - 10 a.m.** – Open Meeting
Alcoholic Beverage Control, Alexandria Division, 501 Montgomery Street, Alexandria, Virginia.

A formal hearing in regard to Real Estate Board v. Marilyn Vogt King, File Number 93-00825.

Contact: Stacie Camden, Legal Assistant, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2393.

BOARD OF REHABILITATIVE SERVICES

† **February 10, 1994 - 10 a.m.** – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Ave., Richmond, Virginia.

A regular monthly business meeting of the board.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Avenue, Richmond, VA 23230, telephone (804) 367-0318, toll-free 1-800-552-5019/TDD ☎ or (804) 367-0315/TDD ☎

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

January 26, 1994 - 10 a.m. – Open Meeting
City Council Chambers, City of Danville, City Hall, Municipal Building, Patton St., Danville, Virginia FT3001 5

A meeting to hear all administrative appeals of

denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia; and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, 1500 E. Main Street, Richmond, VA 23218, telephone (804) 786-1750.

VIRGINIA RESOURCES AUTHORITY

February 9, 1994 - 9:30 a.m. – Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to approve minutes of the prior meeting, to review the authority's operations for the prior months, and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., 909 East Main Street, Suite 707, Richmond, VA 23219, telephone (804) 644-3100, FAX number (804) 644-3109.

VIRGINIA SMALL BUSINESS ADVISORY BOARD

January 26, 1994 - 8:30 a.m. – Open Meeting
Department of Economic Development, 1201 E. Cary Street, 14th Floor Board Room, Richmond, Virginia. ☐

A regular meeting.

Contact: David V. O'Donnell, Director of Small Business and Financial Services, 1021 E. Cary Street, 11th Floor, Richmond, VA 23219, telephone (804) 371-8260.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† **February 16, 1994 - 1:30 p.m.** – Open Meeting
February 17, 1994 - 9 a.m. (if necessary)
Department of Social Services, 730 E. Broad Street, Richmond, Virginia. ☐

A general work session and formal business meeting.

Contact: Phyllis J. Sisk, Special Assistant to Commissioner, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1900 or toll free 1-800-552-7096.

February 11, 1994 – Written comments may be submitted through this date.

Calendar of Events

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-01-51. Auxiliary Grants Program: Levels of Care and Rate Setting.** The proposed regulation requires that auxiliary grant recipients be evaluated by case managers to determine level of care needed in adult care residences. Services provided to the auxiliary grant recipient are defined as well as process to be used in establishing auxiliary grant rates for adult care residences.

Statutory Authority: §§ 63.1-25 and 63.1-25.1 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Jeanine LaBrenz, Program Manager, Medical Assistance Unit, Department of Social Services, 730 East Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

* * * * *

February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled: **VR 615-22-02. Standards and Regulations for Licensed Homes for Adults.** This regulation is proposed for repeal, and will be replaced with the proposed regulation entitled: **VR 615-22-02:1, Standards and Regulations for Licensed Adult Care Residences.** No public hearing is scheduled for the repeal of this regulation; however, written comments will be received.

Statutory Authority: §§ 63.1-25 and 63.1-174 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Cheryl Worrell, Program Development Supervisor, Department of Social Services, 730 East Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

* * * * *

February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR**

615-22-02:1. Standards and Regulations for Licensed Adult Care Residences. The 1993 General Assembly enacted legislation which creates levels of care in licensed homes for adults. This legislation also changes the term "homes for adults" to "adult care residences." The proposed regulation replaces the regulations entitled: **Standards and Regulations for Licensed Homes for Adults** and has a proposed effective date of June 1, 1994.

Statutory Authority: §§ 63.1-25 and 63.1-174 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Cheryl Worrell, Program Development Supervisor, Department of Social Services, 730 East Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

* * * * *

February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-46-02. Assessment and Case Management in Adult Care Residences.** The proposed regulation sets forth assessment and case management procedures and general information for residents and operators of adult care residences.

Statutory Authority: §§ 63.1-25.1 and 63.1-173.3 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Helen B. Leonard, Adult Services Program Manager, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

* * * * *

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-43-4. Adoptee Application for Disclosure of Identifying Information on Birth Family in a Closed Adoption Record.** This regulation establishes policy relative to the search and disclosure process when an adult adopted in Virginia applies to the Virginia

Department of Social Services to obtain identifying information on his birth family pursuant to § 63.1-236 of the Code of Virginia. The State Board of Social Services will consider public comments at its regularly scheduled meeting.

Statutory Authority: §§ 63.1-25, 63.1-236, and 63.1-236.1 of the Code of Virginia.

Written comments may be submitted until March 14, 1994, to Sandra Sanroma, Department of Social Services, 2nd Floor, 730 E. Broad Street, Richmond, VA 23219-1849.

Contact: Margaret J. Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad Street, 8th Floor, Richmond, VA 23219-1849, telephone (804) 692-1821.

February 28, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-53-01.2. Child Day Care Services Policy.** The proposed regulation establishes child day care policy that the department must have to implement its child day care programs.

Statutory Authority: §§ 63.1-25 and 63.1-55 of the Code of Virginia.

Written comments may be submitted until February 28, 1994, to Paula S. Mercer, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849.

Contact: Margaret Friedenberg, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1820, telephone (804) 692-1820.

DEPARTMENT OF TAXATION

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-0-1. Guidelines for Public Participation in Regulation Development and Promulgation.** This regulation has been revised as follows:

1. The regulation governs the development of regulations which are not exempt from the public participation provisions of the Administrative Processes

Act.

2. The amendments to the regulation provide:

a. The general policy for regulation revision, and conditions for petitioning the Department of Taxation (the "department") for revision of a particular regulation.

b. Procedures by which the department develops a list of interested parties for participation in the regulation development process.

c. Procedures by which the department will notify interested parties.

d. Procedures by which the department will involve interested parties, including ad hoc working groups, preparation of working drafts, submission of the proposed regulation, public hearings, response to comments on proposed regulations, and procedures for publication and adoption of final regulations.

3. The regulation was initially adopted on September 18, 1984, and became effective on October 25, 1984. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

4. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: §§ 9-6.14:7.1 and 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 -- Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-302. Corporate Income Tax: Definitions.** This regulation has been revised as follows:

1. The definitions of "compensation" and "sales" have been moved to VR 630-3-413 and VR 630-3-414, respectively. Amendments to these definitions have been made in the respective regulations.

Calendar of Events

2. The definitions of "income from Virginia sources" and "foreign source income" have been moved to regulations VR 630-3-302.1 and VR 630-3-302.2, respectively. These are new regulations, and have significantly amended the definitions previously contained in this regulation.

3. The definition of "corporation" has been amended to include any publicly traded partnership that is taxed as a corporation for federal purposes.

4. Duplicate language was removed from the definition of "affiliated." The language was more appropriate in the regulations issued under § 58.1-442 of the Code of Virginia.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-3-302.2. Foreign Source Income.** This regulation has been revised as follows:

1. The definition of foreign source income, which was previously defined in VR 630-3-302, has been replaced by this new (and separate) regulation. The original definition has been expanded, and comprehensive examples added for clarity.

2. The regulation contains guidance for determining the source of income. In situations where the federal sourcing rules are not incorporated by reference, detailed sourcing rules are provided.

3. The regulation provides that the apportionment factors must exclude items of income which qualify for the subtraction.

4. The regulation incorporates previously published policy that:

a. Provides guidance as to the types of income that qualify for the subtraction. Income of a type not

specifically provided does qualify regardless of its source.

b. Provides a definition of the term "technical fees" for purposes of the subtraction. Numerous examples have been provided to assist taxpayers in determining what constitutes a "technical fee" which qualifies for the subtraction.

c. Provides examples of how expenses are apportioned to, and netted against, the income which qualifies for the subtraction. The subtraction must be determined net of related expenses determined in accordance with federal sourcing rules.

d. Reinforces the utilization of federal Form 1118 as a starting point for the computation.

5. The regulation provides guidance with respect to income arising from the sale of software. The regulation breaks this type of income into license fees, programming services, and wholesale and retail activity. The eligibility of each type of income is separately addressed.

6. The regulation provides detailed rules for sourcing income from the sale of an intangible property. The sale of software is distinguished from the sale of intangibles.

7. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-311. Corporate Income Tax: Report of Change of Federal Taxable Income.** This regulation has been revised to clarify existing department policy with respect to (i) amended tax returns filed due to a change in federal taxable income, and (ii) when extensions are available for amended income tax returns which are filed due to a change in federal taxable income.

In particular, this regulation clarifies the department's position with respect to amended returns. In filing an amended return due to a change in federal taxable income, a corporation is required to either concede the accuracy of an I.R.S. final determination, or explain why the determination is erroneous. If a corporation pays any additional tax resulting from a final determination without filing an amended return, and the department has sufficient information available with which to verify the tax computation, the department may waive the amended return requirement.

Corporations in general are required to file an amended return within 90 days from a final determination date. Under this regulation, corporations are permitted to apply for a six-month extension of the required filing, after meeting the applicable requirements.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-312. Corporate Income Tax: Limitations on Assessments.** The existing regulation provides a three-year limitation on the department for assessing taxes from the date such taxes were due. The three-year limitation is not applicable in situations where (i) no return was filed, (ii) a false or fraudulent return was filed, or (iii) a change in federal taxable income was not reported.

The existing regulation also permits the department to assess additional tax within one year of the date a report of change in federal taxable income was filed.

The term "erroneous refund" is defined under the existing regulation, and recovery times are provided for the department. The department is permitted (i) two years to recover an erroneous refund if it was originally made due to an error on the part of the department, and (ii) five years to recover if the refund was made because of fraud or misrepresentation on the part of a taxpayer.

The changes made to the existing regulation are made

in order to clarify the regulation. There are no substantive changes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-323. Corporate Income Tax: Excess Cost Recovery - Taxable Years Beginning before January 1, 1988.** This regulation has been revised as follows:

1. The regulation applies to the ACRS additions and subtractions required in taxable years beginning before January 1, 1988.

2. The provisions of this section were repealed for taxable years beginning on or after January 1, 1988. ACRS additions which had not been previously recovered are allowed as subtractions in determining Virginia taxable income pursuant to § 58.1-323.1 of the Code of Virginia and VR 630-3-323.1. This regulation provides guidance in determining the balance of ACRS subtractions that are allowed to be recovered pursuant to § 58.1-323.1 in post 1987 taxable years.

3. The regulation incorporates previously published policy that:

a. Makes it clear that Modified Accelerated Cost Recovery (MACRS) deductions were subject to the ACRS addition.

b. Makes it clear that deductions under the Alternative Depreciation System did not require an ACRS addition.

c. Makes it clear that the ACRS additions did not create a separate Virginia basis, that ACRS subtractions do not follow assets in the event of a sale, and that no lump sum recovery of ACRS subtractions is permitted in the event of a sale of the assets.

d. Makes it clear that REIT's are subject to the ACRS addition, but that no subtraction may be passed through to REIT shareholders.

Calendar of Events

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-323.1. Corporate Income Tax: Excess Cost Recovery.** This regulation has been revised as follows:

1. Section 58.1-323.1 of the Code of Virginia has been amended subsequent to its enactment to defer the timing of subtractions allowed to corporate taxpayers; the amendments to this regulation incorporate such legislative changes.

2. The amendments to the regulation also provide:

a. Where a net operating loss is carried back to a taxable year beginning after December 31, 1987, the post-1987 ACRS subtraction for such year shall be redetermined. Where, after such net operating loss carryback, a post-1987 ACRS carryback is created or increased, the revised amount may be carried to subsequent years.

b. Where a net operating loss carryback creates or increases the amount of a post-1987 ACRS carryover, the year(s) to which the revised ACRS carryover can be carried may be amended within the statute of limitations prescribed for filing the carryback claim arising from the net operating loss. Where the statute of limitations is otherwise closed for such carryover year, the amended return is limited solely to the changes arising from the changes to the post-1987 ACRS carryover.

c. Carryovers of unused subtractions are not

determined at the entity level by conduit entities.

d. Unused post-1987 ACRS subtractions may be carried over until fully utilized.

e. Where a net operating loss incurred in a taxable year beginning before January 1, 1988, is deducted in a taxable year beginning on or after January 1, 1988, the net ACRS addition carried with the loss (as provided in VR 630-3-402.3 and VR 630-2-311.1) shall be eliminated. Also, post-1987 ACRS subtractions are not considered to be Virginia additions or subtractions that must be carried forward or back with a net operating loss for purposes of VR 630-3-402.3 or VR 630-2-311.1.

3. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-400.1. Corporate Income Tax: Telecommunication Companies.** This regulation has been revised as follows:

1. New definitions have been added to the regulation, and duplicate language deleted.

2. Guidance on the taxation of telephone companies which are organized as mutual associations or cooperatives has been added to the regulation. Examples are provided.

3. Guidance is provided with respect to credits received from pass through entities.

4. Guidance in determining the minimum tax and minimum tax credit where an affiliated group of corporations files a consolidated or combined return which contains one or more telecommunications company is provided. A telecommunications company contained in a combined or consolidated return must use procedures contained in the regulation to determine the amount of the group's corporate income

Calendar of Events

tax that such company is deemed to have paid for purposes of determining the minimum tax or credit allowed.

5. Detailed examples are provided for guidance in situations where more than one telecommunications company is included in a combined or consolidated return.

6. A telecommunications company may petition the State Corporation Commission for a review and recertification of the company's status or amount of gross receipts certified. Upon receipt of such redetermination, the telecommunications company must file an amended return in accordance with procedures contained therein. Any application for refund must be filed in accordance with the procedures contained in § 58.1-1823 of the Code of Virginia.

7. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-402. Corporate Income Tax: Determination of Virginia Taxable Income.** This regulation has been revised as follows:

1. The regulation originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.1 defines additions required in determining Virginia taxable income, VR 630-3-402.2 defines subtractions and adjustments allowed in determining Virginia taxable income, and VR 630-3-402.3 defines adjustments necessary to Virginia taxable income when net operating losses are present.

2. The amendments to the regulation provide:

a. A definition of federal taxable income.

b. References to the new regulations, and delete duplicate language.

c. That a homeowner's association is subject to Virginia corporate income tax on its homeowner's association taxable income.

d. That a political organization is subject to Virginia corporate income tax on its political organization taxable income.

e. That a foreign corporation is subject to Virginia corporate income tax on its branch profits dividend equivalent, gross transportation income, and income for which an election has been made under § 897(i) of the Internal Revenue Code.

f. That net operating loss adjustments are required by VR 630-3-442.1 and VR 630-3-442.2 for consolidated and combined returns, respectively.

g. That the adjustments required in determining the federal alternative minimum tax do not apply in determining Virginia taxable income.

h. That adjustments are required by VR 630-3-442.1 and VR 630-3-442.2 for consolidated and combined returns, respectively.

i. That federal taxable income as reported on the federal return generally will be relied upon for Virginia purposes. The department will usually not accept a difference from the federal return if such difference has an impact on federal tax liabilities.

j. That certain adjustments may be necessary to reconcile federal taxable income for Virginia purposes to federal taxable income as actually reported.

k. That affiliated corporations may be required to make special adjustments where federal and Virginia returns are filed on a different basis, or where a federal consolidated return contains corporations which are not subject to the Virginia corporate income tax.

l. That if a federal consolidated return is filed, but separate Virginia returns are filed, federal taxable income must be determined as if separate federal returns had been filed.

m. In determining federal taxable income as if separate federal returns had been filed, no effect is given for any deferral of gain, loss, income, or deduction which may have been permitted as a result of filing a federal consolidated return.

n. Unless otherwise provided, elections made on a federal consolidated return shall be considered to have been made by each separate company in

Calendar of Events

determining its separate federal taxable income.

o. If an election was made under § 338(h) 10 of the Internal Revenue Code, the Virginia returns of any members of the selling group shall reflect the amount and character of income recognized in the federal consolidated return.

3. The regulation was initially adopted on September 14, 1984, but revised on February 1, 1987, with a retroactive effective date of January 1, 1985. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. 1880, Richmond, VA 23282-1180, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-3-402.1. Corporate Income Tax: Additions in Determining Virginia Taxable Income.** This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402 now governs the determination of Virginia taxable income.

2. This new regulation provides:

a. That the additions to Virginia taxable income are only added to federal taxable income to the extent such items are excluded or deducted from federal taxable income.

b. Additions to Virginia taxable income are made net of any related expenses that were disallowed in determining federal taxable income.

c. If an item excluded or deducted from federal taxable income has been included in Virginia taxable income by operation of another section of the Code of Virginia, the item will not be added again pursuant to this regulation.

d. That interest on the obligations of any state other than Virginia, or on the obligations of a political subdivision of any other state, must be added to federal taxable income in determining Virginia taxable income. The addition to Virginia taxable income is net of expenses which were disallowed under § 265 of the Internal Revenue Code. The regulation provides that zero coupon bonds, or equivalent types of obligations, may produce interest income that must be added back to federal taxable income.

e. That interest or dividends on United States obligations that are exempt from federal income tax but not from state income tax must be added to federal taxable income in determining Virginia taxable income. Such addition shall be net of any expenses which were disallowed under § 265 of the Internal Revenue Code.

f. That any Virginia corporate income tax imposed by § 58.1-400 of the Code of Virginia deducted in determining federal taxable income must be added back in determining Virginia taxable income.

g. Any net income taxes or other taxes, including franchise and excise taxes which are based on, measured by, or computed with reference to net income imposed by any other taxing jurisdiction deducted in determining federal taxable income must be added back in determining Virginia taxable income.

h. A tax satisfies the net income requirement if its base is computed by reducing gross receipts to permit the recovery of significant costs and attributable to such gross receipts. For this purpose, the environmental tax imposed pursuant to § 59A of the Internal Revenue Code is a tax based on net income that must be added back in determining Virginia taxable income.

i. A tax measured by capital stock, net worth, property or other measure unrelated to net income is not deemed to be a tax based on, measured by, or computed with reference to net income. In the event that a taxing authority imposes a tax on a basis other than net income, but such tax only applies to the extent it exceeds a tax based on net income, such tax shall be added back in determining Virginia taxable income to the extent the total tax is (or would have been) determined by net income.

j. The minimum tax on telecommunications

companies imposed pursuant to § 58.1-400.1 of the Code of Virginia applies in any year that such tax exceeds the corporate income tax. If a corporation deducts the minimum tax in determining federal taxable income, such tax shall be added back in determining Virginia taxable income to the extent the corporate income tax would have been imposed for such year.

k. That unrelated business taxable income of a tax exempt organization must be added to federal taxable income in determining Virginia taxable income.

l. That any ESOP credit carryover that is deducted in computing federal taxable income under § 404(i) of the Internal Revenue Code shall be added to federal taxable income in determining Virginia taxable income.

m. That, to the extent not already included in federal taxable income, Virginia taxable income shall include the amount required to be included in income for purposes of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-3-402.2. Corporate Income Tax: Subtractions and Adjustments in Determining Virginia Taxable Income.** This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402 now

governs the determination of Virginia taxable income.

2. This new regulation provides:

a. That the subtractions from Virginia taxable income are only allowed to the extent such items are included in federal taxable income.

b. If an item has been excluded from Virginia taxable income by operation of another section of the Code of Virginia, the item will not be subtracted again pursuant to this regulation.

c. If an item of income qualifies for a subtraction or exclusion from Virginia taxable income pursuant to more than one section of the Code of Virginia, the taxpayer is limited to one subtraction for such item, but may utilize whichever subtraction is most beneficial to the taxpayer.

d. If an item does not qualify for a subtraction under this regulation, or under the Code of Virginia, no subtraction is allowed.

e. That interest on the obligations of the United States, to the extent exempted from state taxation under federal laws, shall be subtracted from federal taxable income.

f. Guarantees by the United States of obligations of private individuals or corporations do not qualify for the subtraction.

g. Repurchase obligations usually will not qualify for the subtraction.

h. Interest paid on federal tax refunds, equipment purchase contracts, or other normal business transactions does not qualify for the subtraction.

i. The subtraction for U. S. interest must be determined net of any related expenses.

j. That interest on obligations of the Commonwealth of Virginia shall be subtracted to the extent included in federal taxable income. Such addition shall be net of any expenses which were disallowed under § 265 of the Internal Revenue Code.

k. That income realized by a pass-through entity will generally have the same character in the hands of the recipient as in the hands of the pass-through entity.

l. A subtraction is allowed for certain DISC dividends. Distributions which are excluded from the shareholder's income as made out of previously taxed income are eligible for the Virginia subtraction if 50% or more of the income of a DISC was assessable in Virginia for the preceding year, or the last year in which the DISC had income. The

Calendar of Events

subtraction for DISC dividends must be reduced to the extent of any related expenses.

m. That if federal taxable income includes a refund or credit for overpayment of income taxes to Virginia or any other state, the amount of such refund or credit shall be subtracted from federal taxable income in determining Virginia taxable income. Generally, there are no offsetting expenses which reduce the subtraction.

n. That income included in federal taxable income pursuant to § 78 of the Internal Revenue Code shall be subtracted in determining Virginia taxable income. Because § 78 income is deemed to have been received, there are generally no expenses which reduce the subtraction. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income.

o. That to the extent a deduction for wages was disallowed by § 280C (a) of the Internal Revenue Code in determining federal taxable income, a subtraction shall be allowed in determining Virginia taxable income. Because this subtraction relates to a deduction which is disallowed in computing federal taxable income, it does not have to be reduced by related expenses.

p. That the amount of Subpart F income required to be included in federal taxable income shall be subtracted in determining Virginia taxable income. Because such income is deemed to have been received, there are generally no expenses which reduce the Virginia subtraction. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income.

q. That to the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income equal to the amount of foreign source income as defined by § 58.1-302 of the Code of Virginia and VR 630-3-302.2. The subtraction allowed by this section shall not include any amount which is allowed as a subtraction as § 78 income, Subpart F income, or dividends received.

r. That for taxable years beginning on or after January 1, 1988, taxpayers may claim a subtraction in determining Virginia taxable income for the outstanding excess cost recovery as provided by § 58.1-323.1 of the Code of Virginia and VR 630-3-323.1.

s. That to the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income for the amount of dividends

received from a corporation when the corporation receiving the dividend owns 50% or more of the voting power of all classes of stock of the payer. Foreign source dividends from corporations in which the taxpayer owns 50% or more of the voting power of all classes of the stock of the payer may be claimed as a subtraction pursuant to this section in lieu of the subtraction for foreign source income.

t. That the amount of any qualified agricultural contribution shall be subtracted from federal taxable income in determining Virginia taxable income. Contributions that qualify for the subtraction in determining Virginia taxable income are contributions of agricultural products made by a corporation engaged in the trade or business of growing or raising such products.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-3-402.3. Corporate Income Tax: Net Operating Losses**. This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402 now governs the determination of Virginia taxable income.

2. This new regulation provides:

a. There is no express authority in the Code of Virginia for a Virginia net operating loss, a net operating loss carryback or carryover. However, because the computation of Virginia taxable income begins with federal taxable income the starting point

for determining Virginia taxable income is affected by the federal net operating loss deduction.

b. For Virginia purposes, the ability to utilize a net operating loss carryback or carryover is dependent on the taxpayer's ability to utilize the net operating loss carryback or carryover to reduce federal taxable income.

c. In determining Virginia taxable income, certain modifications are made to federal taxable income as provided by the Code of Virginia. Modifications from a loss year follow the loss for Virginia purposes and affect Virginia taxable income as the net operating loss is absorbed.

d. To prevent double deduction or taxation for Virginia purposes, the definition of federal taxable income is modified accordingly in any year in which a net operating loss is absorbed. Federal limitations, rules and elections regarding the utilization of net operating losses control the ability to utilize losses for Virginia purposes.

e. In any loss year, a corporation is required to determine all of the modifications to federal taxable income required by the Code of Virginia. A corporation incurring a net operating loss may have Virginia taxable income and owe Virginia income tax after making the required modifications. A similar result may occur in any year in which a net operating loss is carried back or over.

f. Virginia modifications attributable to a loss year follow the carryback or carryover of the net operating loss suffered in the loss year. In any year in which a loss is utilized to reduce federal taxable income, Virginia modifications attributable to such loss will be applied proportionately to the amount of the loss utilized.

g. Because there is no provision for a separate Virginia net operating loss, income allocated out of Virginia taxable income cannot create or increase a Virginia net operating loss. Neither the allocable income nor the apportionment factor of the loss year is a modification which follows the net operating loss.

h. The recovery of the outstanding balance of excess cost recovery in post 1987 taxable years pursuant to § 58.1-323.1 of the Code of Virginia has its own carryover and recovery provisions, and is not a modification that follows a net operating loss.

i. No Virginia modifications follow a capital loss or charitable contribution.

j. The net sum of loss year modifications follows the net operating loss to the year utilized. The net modifications, which may be positive or negative,

will be added or subtracted accordingly in determining Virginia taxable income in the year in which the net operating loss is absorbed. If the net operating loss is utilized to reduce federal taxable income in more than one taxable year, the net modifications will be applied proportionately to the utilization of the loss. If Virginia taxable income in a loss year equals or exceeds zero, then all of the net operating loss and Virginia subtractions have been offset by Virginia additions, and a net positive Virginia modification equal to 100% of the loss shall follow the carryback or carryover of such loss.

k. Generally, federal taxable income means federal taxable income as defined by § 63 of the Internal Revenue Code and any other income taxable under federal law. In order to prevent Virginia modifications associated with a net operating loss from being subject to double deduction or double taxation, the definition of federal taxable income is modified in any year in which a corporation incurs a net operating loss, or claims a net operating loss deduction. In determining the amount of a net operating loss, no deduction is allowed for a net operating loss deduction from any other year. For Virginia purposes, federal taxable income in a loss year shall be determined without net operating loss deductions attributable to any other taxable year.

l. If a net operating loss is carried back, and the federal taxable income in the carryback year is sufficient to fully absorb the loss, no adjustment is necessary for Virginia purposes. If a net operating loss is carried back, and federal taxable income in the carryback year is insufficient to fully absorb the carryback, then for Virginia purposes federal taxable income is defined as zero.

m. If a net operating loss is carried over, and the federal taxable income in the carryover year is sufficient to fully absorb the loss, no adjustment is necessary to federal taxable income for Virginia purposes. If a net operating loss is carried over, and federal taxable income in the carryover year is insufficient to fully absorb the carryover, then for Virginia purposes federal taxable income is defined as zero.

n. Federal law permits a corporation to carry a net operating loss back to each of the three taxable years preceding the loss year, and then over to each of the 15 taxable years following the taxable year of the loss. Because Virginia law does not provide for a separate Virginia net operating loss, federal law and regulations control the ability to utilize a net operating loss for Virginia purposes. The fact that a corporation has no Virginia source income or is not otherwise subject to tax in a carryover or carryback year does not affect the Virginia treatment.

Calendar of Events

o. If a corporation elects to relinquish the entire carryback period for federal purposes such election is binding for Virginia purposes. Any federal provision which acts to limit the availability of a net operating loss shall apply for Virginia purposes.

p. Corporations filing consolidated or combined Virginia returns may be subject to special rules where federal and Virginia returns are filed on a different basis or with different members. See VR 630-3-442.1 and VR 630-3-442.2.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-403. Corporate Income Tax: Additional Modifications for Savings and Loan Associations, Railway Companies and Telecommunications Companies.** This regulation has been revised as follows:

1. Chapter 614 of the 1987 Acts of the General Assembly restored the special bad debt deduction for savings and loan associations to the percentage of income (40%) that existed before the Tax Reform Act of 1986 reduced the federal deduction to 8.0%. An example of the calculation has been provided.

2. The amendments clarify that railway companies must increase federal taxable income by any net operating loss deduction attributable to a taxable year beginning before January 1, 1979, and may modify their federal taxable income for Virginia purposes if a net operating loss incurred in a taxable year beginning on or after January 1, 1979, is carried back to a taxable year beginning before January 1, 1979.

3. The amendments refer telecommunication companies to VR 630-3-400.1 for guidance in making the adjustments required for net operating losses.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title

9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-409. Corporate Income Tax: Property Factor.** The existing regulation provided guidance with respect to computing the property apportionment factor for corporations. Specifically, it provides that the property factor is a fraction, the numerator of which is average property used in Virginia, and the denominator of which is the average amount of property utilized everywhere. Property is defined to include all real and tangible personal property in which a corporation has any right of use or possession.

One revision to this regulation clarifies that property in transit between locations shall be considered to be at the destination for purposes of determining its location for inclusion in the property factor.

An additional revision deletes the reference to computing the property factor for corporations that are general partners in a partnership. A new regulation will be promulgated to clarify and provide guidance with respect to the determination of a corporate partner's apportionment factor, with respect to the partnership property, payroll, and sales.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

Calendar of Events

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-411. Corporate Income Tax: Average Value of Property.** The existing regulation provides guidance with respect to how the "average" value of property for purposes of determining the property apportionment factor is determined: either (i) by averaging the amounts owned at the beginning and ending of the year, or (ii) by using property amounts averaged on a monthly basis.

The regulation has been revised to include a requirement that under an election pursuant to § 338(h)(10) of the Internal Revenue Code, a target corporation will be required to use monthly averaging in determining its Virginia property numerator in the year of the sale deemed to occur when ownership of a target corporation is transferred from a seller to a buyer.

The regulation has also been revised to clarify when a consolidated group may be required to use monthly averaging, when the group has as a member a target corporation acquired pursuant to an election under § 338(h)(10) of the Internal Revenue Code.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-420. Corporate Income Tax: Railway Companies; Apportionment.** This regulation has had only minor changes made to it, so that it will conform to the requirements of the Virginia Administrative Process Act.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-431. Corporate Income Tax: Energy Income Tax Credit - Taxable Years Beginning Before January 1, 1988.** This regulation has been revised as follows:

1. Definitions were consolidated in the first section of the regulation.

2. The regulation makes it clear that the provisions of § 58.1-431 of the Code of Virginia only applied to property placed in service before January 1, 1988.

3. The references to § 44C of the Internal Revenue Code were changed to § 23 in accordance with the federal recodification of this section.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-440. Corporate Income Tax: Accounting.** This regulation has been revised as follows:

1. The amendments to the regulation provide:

a. Where a corporation has a taxable year of less

Calendar of Events

than 12 months, the taxable income does not need to be prorated because the corporate tax does not contain graduated rates. However, if short taxable years would affect the limitation of a credit or other modification, proration shall be required.

b. Information used for apportionment purposes shall be consistent with and, if possible, reconciled to information contained in the federal income tax return.

c. Adjustments under § 481 of the Internal Revenue Code apply in determining Virginia taxable income. Adjustments required by § 481 of the Internal Revenue Code apply for Virginia purposes regardless of whether the taxpayer was subject to tax in Virginia during the year the accounting method was changed.

d. A member of a federal consolidated return may be required to make certain adjustments to its federal taxable income if it files a Virginia return on a different basis than its federal return. If, after having made such adjustments, a federal change in accounting method would result in double taxation or deduction for Virginia purposes, than an adjustment shall be allowed to the extent of such duplication.

2. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

3. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-443. Corporate Income Tax: Prohibition of Worldwide Consolidation or Combination.** The

amendments to this regulation provide:

1. Even though a controlled foreign corporation may be excluded from a consolidated or combined return, such corporation may be subject to tax on some or all of its income, and may be required to file a return with the department. The fact that a controlled foreign corporation is subject to tax or required to file a return does not mean that such corporation may be included in a Virginia consolidated return.

2. A foreign corporation is defined by reference to U. S. Treasury Regulation § 301.7701-5.

3. The income of a controlled foreign corporation is derived from sources without the United States if such corporation is not subject to income tax on its world-wide income under § 11 of the Internal Revenue Code, or less than 80% of the gross income of such controlled foreign corporation is considered to be effectively connected with the conduct of a U. S. trade or business.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-445. Corporate Income Tax: Consolidation of Accounts.** This regulation has been revised as follows:

1. The accounts of two or more related trades or businesses may be consolidated if the department determines such consolidation is necessary to accurately distribute or apportion gains, profits, income, deductions, or capital between or among such

Calendar of Events

trades or businesses.

2. This regulation applies to situations where the federal taxable income is correctly stated, but income subject to Virginia taxation is inaccurate.

3. A taxpayer may apply to the department for consolidation in accordance with the instructions therein.

4. Permission for consolidation under this regulation may be granted if adequate separate accounting records are maintained, the entities are related, the entities are subject to Virginia taxation, and the entities are owned by the same interests as described therein.

5. The department will generally not permit the consolidation of two or more corporations that are not otherwise eligible for consolidation pursuant to VR 630-3-442.1 except where the department finds consolidation necessary to accurately determine Virginia taxable income.

6. Other duplicate language has been deleted.

7. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

8. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to repeal regulations entitled: **VR 630-3-446.1. Corporate Income Tax: Foreign Sales Corporations.** The regulation provides guidance with respect to adjusting the income of affiliated groups under § 58.1-446 of the Code of Virginia, if such groups had a Domestic International Sales Corporation

(DISC) as a member. This regulation is being repealed because (i) DISC's no longer exist under federal income tax law, and (ii) the existing regulations under § 58.1-446 provide adequate guidance with respect to Interest-Charge DISC's.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-449. Corporate Income Tax: Supplemental Accounts.** This regulation has had only minor revisions made to it, which were made so that it would conform to the provisions of the Virginia Administrative Proce ss Act.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

* * * * *

March 14, 1994 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-453. Corporate Income Tax: Extension of Time for Filing Returns.** The amendments to the regulation provide:

1. Where a corporation has been granted a federal extension of time to file, a Virginia extension will be granted to a date six months after the original Virginia due date or 30 days after the extended federal due date, whichever is later.

2. The penalty imposed by § 58.1-453 of the Code of Virginia will be imposed in addition to interest, and in addition to the penalty imposed under § 58.1-455 of

Calendar of Events

the Code of Virginia.

3. If the taxpayer has received a federal extension, the department will accept a timely filed Virginia extension signed by the same person authorized to sign the taxpayer's federal extension.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-500. Corporate Income Tax: Declarations of Estimated Income Tax.** The amendments to the regulation provide:

1. A tax liability of less than \$1,000 in a preceding year does not automatically exempt a corporation from filing estimated taxes in the subsequent year.

2. The declaration of estimated tax may only be amended once in each interval between installment dates.

3. A telecommunications company subject to tax pursuant to § 58.1-400.1 of the Code of Virginia must make estimated tax payments pursuant to this regulation if the total estimated tax due, less credits allowed, can be reasonably expected to exceed \$1,000. For this purpose, "estimated tax" includes the corporate income tax and the minimum tax on telecommunications companies.

4. Declarations are to be made on forms prescribed by the department, which will be provided in preprinted format wherever possible. However, the

failure of the department to provide a form will not excuse a taxpayer from making a declaration.

5. Filing a registration application or declaration of estimated tax is not an election of a method of reporting.

6. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

7. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-503. Corporate Income Tax: Instructions for Filing Estimated Taxes.** This regulation has been revised as follows:

1. Declarations shall be filed using prescribed forms, and signed as provided therein.

2. The regulation provides the manner in which payment shall be made, and the types of checks which are acceptable.

3. The regulation provides guidance for filing estimated tax payments by affiliated groups filing consolidated or combined returns.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to

conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

* * * * *

March 14, 1994 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-504. Corporate Income Tax: Failure to Pay Estimated Income Tax.** This regulation has been revised as follows:

- 1. The definitions have been moved to the beginning of the regulation, new definitions have been added, and existing definitions were amended.
- 2. The amendments clarify the exceptions to the underpayment penalty.

Exception 1 - Prior Years Tax. For this exception, the prior year's tax is equal to the sum of the corporate income tax and the minimum tax on telecommunications companies imposed under § 58.1-400.1 of the Code of Virginia, but without reduction for any credits allowed against the tax. For this purpose, the prior years return is deemed to show a liability for tax regardless of whether some or all of such tax was offset by credits. For purposes of exception 1, the amount of prior year's tax must be paid in timely installments in the current year even though the preceding year's tax did not exceed the estimated tax filing threshold of § 58.1-500 of the Code of Virginia.

Exception 2 - Tax on prior year's income using current year rates. For this exception, the prior year's return does not have to show a tax liability, and any credits allowed on the prior year's return may be offset against the tax calculated using the tax calculated using the current year's rates. For purposes of exception 2, the amount of prior year's tax must be paid in timely installments in the current year even though the preceding year's tax did not exceed the estimated tax filing threshold of § 58.1-500 of the Code of Virginia.

- 3. The amendments provide that the rate of interest used to determine the underpayment penalty shall be

the rate of interest established pursuant to § 6621 of the Internal Revenue Code plus 2.0% as provided in § 58.1-15 of the Code of Virginia.

4. The amendments provide guidance to affiliated corporations filing consolidated and combined returns in determining the penalty provided by this regulation or the exceptions thereto.

5. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

6. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

DEPARTMENT OF THE TREASURY (TREASURY BOARD)

February 11, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of the Treasury and Treasury Board intend to amend regulations entitled: **VR 640-01-1. Public Participation Guidelines for the Department of the Treasury and Treasury Board.** The proposed amendments provide for public petition to develop or amend a regulation and clarify under what condition the use of public hearings and advisory committees are appropriate.

Statutory Authority: §§ 2.1-179 and 9-6.14:7.1 of the Code of Virginia.

Contact: Robert S. Young, Director of Financial Policy, Department of the Treasury, P. O. Box 1879, Richmond, VA 23215-1879, telephone (804) 225-3131.

† February 16, 1994 - 9 a.m. - Open Meeting
† March 16, 1994 - 9 a.m. - Open Meeting
† April 20, 1994 - 9 a.m. - Open Meeting
James Monroe Building, 101 N. 14th St., 3rd Floor Board Room, Richmond, Virginia.

A regular meeting of the board.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, 101 N. 14th Street, 3rd Floor,

Calendar of Events

Richmond, VA 23219, telephone (804) 371-6011.

VIRGINIA RACING COMMISSION

February 9, 1994 - 10 a.m. - Public Hearing
Tyler Building, 1300 E. Main Street, Richmond, Virginia.

February 25, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to amend regulations entitled: **VR 662-01-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering (§ 2.24. Appeals of denial, fine, suspension or revocation of license).** The purpose of the proposed amendment is to repeal an unnecessary section of the regulation.

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

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

DEPARTMENT FOR THE VISUALLY HANDICAPPED (BOARD FOR)

February 1, 1994 - 9:30 a.m. - Open Meeting
Administrative Headquarters, 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 Avenue, Richmond, VA 23227, telephone (804) 371-3140 or (804) 622-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

February 16, 1994 - 10 a.m. - Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drugs and drug products to the formulary that became effective on 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, 109 Governor Street, Richmond, VA 23219. Written comments sent to the above address and received prior to 5 p.m. on February 16, 1994, will be

made a part of the hearing record.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor Street, Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

March 31, 1994 - 10:30 a.m. - Open Meeting
1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor Street, Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WASTE MANAGEMENT BOARD

January 31, 1994 - 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 Virginia Waste Management Board intends to amend regulations entitled: **VR 672-01-1:1. Public Participation Guidelines.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-1402 of the Virginia Waste Management Act authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Act and consistent with the federal statutes and regulations.

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of

methods; requires the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment Period to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1402 of the Code of Virginia.

Contact: William F. Gilley, Waste Division, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 225-3966.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

January 27, 1994 - 8:30 a.m. - Open Meeting
January 28, 1994 - 8:30 a.m. - Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad St., Conference Room 3, Richmond, Virginia. ☐

A general board meeting to conduct regulatory review and final examination review.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-8595.

STATE WATER CONTROL BOARD

January 26, 1994 - 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. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing Facilities.** The purpose of the proposed regulation is to authorize storm water discharges associated with industrial

activity from heavy manufacturing facilities through the development and issuance of a VPDES general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

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

Written comments may be submitted until 4 p.m. on January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

January 26, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-17. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity from Light Manufacturing Facilities.** The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from light manufacturing facilities through the development and issuance of a VPDES general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Calendar of Events

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

Written comments may be submitted until January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

* * * * *

January 26, 1994 – 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. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Transportation Facilities, Landfills, Land Application Sites and Open Dumps, and Materials Recycling Facilities, and Steam Electric Power Generating Facilities.** The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from transportation facilities, landfills, land application sites and open dumps, materials recycling facilities and steam electric power generating facilities through the development and issuance of a VPDES general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

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

Written comments may be submitted until 4 p.m. on January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

* * * * *

January 26, 1994 – 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. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges from Construction Sites.** The purpose of the proposed regulation is to authorize storm water discharges from construction sites. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

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

Written comments may be submitted until 4 p.m. on January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

* * * * *

January 28, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-22. Virginia Pollution Abatement General Permit for Intensified Animal Feeding Operations of Swine, Dairy, and Slaughter and Feeder Cattle.** The purpose of the proposed regulation is to authorize pollutant management activities at intensified animal feeding operations of swine, dairy, and slaughter and feeder cattle through the adoption of a Virginia Pollution Abatement general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD

Calendar of Events

(804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

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

Written comments may be submitted until January 28, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

* * * * *

January 28, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-23. Virginia Pollution Abatement General Permit for Concentrated Animal Feeding Operations of Swine, Dairy, and Slaughter and Feeder Cattle.** The purpose of the proposed regulation is to authorize pollutant management activities at concentrated animal feeding operations of swine, dairy, and slaughter and feeder cattle through the adoption of a Virginia Pollution Abatement general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

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

Written comments may be submitted until January 28, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

* * * * *

January 31, 1994 – 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 amend regulations entitled: **VR 680-41-01:1. Public Participation Guidelines.** The purpose of the proposed amendments is to replace existing emergency public participation guidelines with permanent guidelines in compliance with the Administrative Process Act.

The board has conducted analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed amendments. Any persons interested in reviewing these materials should contact Cindy Berndt at the Department of Environmental Quality, Office of Regulatory Service, P. O. Box 11143, Richmond, VA 23230. The meeting is being held at a facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, Office of Regulatory Services, P. O. Box 11143, Richmond, VA 23230, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than December 27, 1993.

Statutory Authority: §§ 9-6.14:7.1 and 62.1-44.15 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 31, 1994, to Ms. Doneva Dalton, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230.

Contact: Cindy Berndt, DEQ, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5158.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

January 31, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Waterworks and Wastewater Works Operators intends to repeal regulations entitled: **VR 675-01-01. Public Participation Guidelines** and adopt regulations entitled: **VR 675-01-01:1. Public Participation Guidelines.** The purpose of the proposed regulations is to implement the requirements of the Administrative Process (APA) and the legislative changes to the APA made by the 1993 General Assembly by establishing regulatory board (agency) procedures for soliciting, receiving and considering input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of

Calendar of Events

waterworks and wastewater works operators in Virginia.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

February 9, 1994 - 9 a.m. - Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☒

A meeting to conduct regular board business and any other matters which may require board action.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

THE COLLEGE OF WILLIAM AND MARY

Board of Visitors

† February 3, 1994 - 2 p.m. - Open Meeting
† February 4, 1994 - 8 a.m. - Open Meeting
Blow Memorial Hall, Richmond Road, Williamsburg, Virginia.

A regularly scheduled meeting to (i) review quarterly operations of the college and Richard Bland College; (ii) receive reports from several committees of the board; and (iii) act on those resolutions that are presented by the administrations of William and Mary and Richard Bland College. An informational release will be available four days prior to the board meeting for those individuals and organizations who request it.

Contact: William N. Walker, Director, Office of University Relations, College of William and Mary, P. O. Box 8795, Williamsburg, VA 23187-8795, telephone (804) 221-2630.

BOARD OF YOUTH AND FAMILY SERVICES

February 28, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Youth and Family Services intends to adopt regulations entitled: **VR 690-05-001. Standards Governing Research on Clients and Records of the Department.** These regulations set forth the process for receiving, reviewing, approving and monitoring proposals for research on clients and records of the Department of Youth and Family Services, including provision for a

Human Research Committee.

Statutory Authority: § 66-10.1 of the Code of Virginia.

Contact: Donald R. Carignan, Policy Coordinator, P. O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

CHRONOLOGICAL LIST

OPEN MEETINGS

January 24

Aging, Governor's Advisory Board on
Library Board
- Archives and Record Management Committee
- Public Library Development Committee
† Lottery Board, State
Nursing, Board of

January 25

Health Services Cost Review Council, Virginia
Marine Resources Commission
Medicine, Board of
Natural History, Virginia Museum of
- Board of Trustees
Nursing, Board of

January 26

George Mason University
- Board of Visitors
† Maternal and Child Health Council
Nursing, Board of
Nursing Home Administrators, Board of
Sewage Handling and Disposal Appeals Review Board
Small Business Advisory Board, Virginia

January 27

Education, Board of
Emergency Planning Committee, Local - Gloucester
Nursing, Board of
Waste Management Facility Operators, Board for

January 28

Medicine, Board of
- Informal Conference Committee
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee
† Professional Counselors, Board of
Waste Management Facility Operators, Board for

February 1

Hopewell Industrial Safety Council
Visually Handicapped, Board for the

February 2

Calendar of Events

† Emergency Planning Committee, Local - Winchester
† Health, State Board of
Mines, Minerals and Energy, Department of

February 3

† Health, State Board of
Middle Virginia Board of Directors and the Middle
Virginia Community Corrections Resources Board
† Real Estate Board
† William and Mary, The College of
- Board of Visitors

February 4

† Conservation and Recreation, Board of
Opticians, Board for
† William and Mary, The College of
- Board of Visitors

February 7

† Barbers, Board for

February 8

† Higher Education for Virginia, State Council of

February 9

Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
Resources Authority, Virginia
Waterworks and Wastewater Works Operators, Board
for

February 10

Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Fire Services Board, Virginia
- Fire/EMS Education and Training Committee
- Fire Prevention and Control Committee
- Legislative/Liaison Committee
† Medicine, Board of
† Rehabilitative Services, Board of

February 11

† Agriculture and Consumer Services, Department of
- Aquaculture Advisory Board, Virginia
- Bright Flue-Cured Tobacco Board, Virginia
† Fire Services Board, Virginia
† Medicine, Board of
- Credentials Committee

February 12

† Medicine, Board of
Virginia Military Institute
Visitors, Board of
† Medicine, Board of

February 13

† Medicine, Board of

February 16

† Aviation Board, Virginia
† Local Debt, State Council on

† Social Services, Board of
† Treasury Board

February 17

† Nursing, Board of
† Social Services, Board of

February 22

† Agriculture and Consumer Services, Board of

February 23

† Agriculture and Consumer Services, Board of
Mental Health, Mental Retardation and Substance
Abuse Services, State

February 24

Education, Board of

February 25

† Agriculture and Consumer Services, Department of
- Dark-Fired Tobacco Board, Virginia
† Professional Counselors, Board of

March 3

† Chesapeake Bay Local Assistance Board

March 8

† Higher Education for Virginia, State Council of

March 16

† Local Debt, State Council on
† Treasury Board

March 23

Contractors, Board for

March 31

Voluntary Formulary Board, Virginia
Mental Health and the Law, 16th Annual Symposium
on

April 1

Mental Health and the Law, 16th Annual Symposium
on

April 20

† Local Debt, State Council on
† Emergency Planning Committee, Local - Henrico
† Treasury Board

PUBLIC HEARINGS

January 27

Labor and Industry, Department of
- Apprenticeship Council

February 1

Air Pollution Control Board, State

Calendar of Events

February 2

Labor and Industry, Department of
- Safety and Health Codes Board

February 3

Air Pollution Control Board, State

February 8

Air Pollution Control Board, State
Forestry, Department of
Nursing Home Administrator, Board of

February 9

Air Pollution Control Board, State
Virginia Racing Commission

February 10

Air Pollution Control Board, State

February 16

Voluntary Formulary, Virginia

February 17

† Dentistry, Board of

March 14

Taxation, Department of

March 15

† Mental Health, Mental Retardation and Substance
Abuse Services, Department of

March 18

† Game and Inland Fisheries, Board of

March 24

Branch Pilots, Board for

April 6

Criminal Justice Services, Department of