

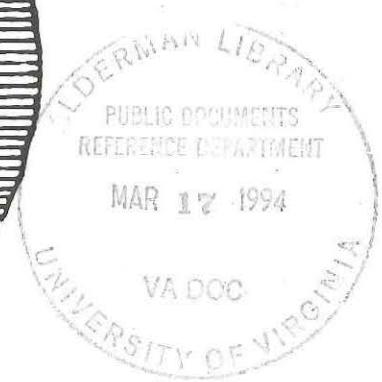
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# THE VIRGINIA REGISTER

OF REGULATIONS

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## VIRGINIA REGISTER

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

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

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

### ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

A regulation becomes effective at the conclusion of this thirty-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall

be after the expiration of the twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

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

### EMERGENCY REGULATIONS

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

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

### STATEMENT

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

### CITATION TO THE VIRGINIA REGISTER

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

Dec. 22	<b>Jan. 10, 1994</b>
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

---

<b>NOTICES OF INTENDED REGULATORY ACTION</b>	
Notices of Intent .....	2543
<b>PROPOSED REGULATIONS</b>	
<b>DEPARTMENT OF HEALTH (STATE BOARD OF)</b>	
Public Participation Guidelines. (VR 355-01-100) .....	2545
<b>DEPARTMENT OF MEDICAL ASSISTANCE SERVICES</b>	
State Plan for Medical Assistance Relating to Durable Medical Equipment. ....	2548
Amount, Duration, and Scope of Services (Supplement 1 to Attachment 3.1 A&B). (VR 460-03-3.1100) .....	2552
Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1-C). (VR 460-02-3.1300) .....	2567
<b>DEPARTMENT OF MOTOR VEHICLES</b>	
Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card. (VR 485-50-9302) .....	2589
<b>BOARD OF PROFESSIONAL COUNSELORS</b>	
Public Participation Guidelines (REPEALING). (VR 560-01-01) .....	2590
Public Participation Guidelines. (VR 560-01-01:1) .....	2591
<b>BOARD OF PSYCHOLOGY</b>	
Public Participation Guidelines (REPEALING). (VR 565-01-1) .....	2594
Public Participation Guidelines. (VR 565-01-1:1) .....	2594
<b>BOARD OF VETERINARY MEDICINE</b>	
Public Participation Guidelines. (VR 645-01-0:1) .....	2598
<b>STATE WATER CONTROL BOARD</b>	
Water Quality Standards. (VR 680-21-00) .....	2602
Antidegradation Policy. (VR 680-21-01.3) .....	2602
<b>FINAL REGULATIONS</b>	

<b>DEPARTMENT OF EDUCATION (STATE BOARD OF)</b>	
Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits. (VR 270-01-0034) .....	2606
<b>DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)</b>	
Public Participation Guidelines. (VR 394-01-1) .....	2633
Virginia Certification Standards. (VR 394-01-2) .....	2634
Virginia Amusement Device Regulations/1993. (VR 394-01-4) .....	2643
Virginia Statewide Fire Prevention Code/1993. (VR 394-01-6) .....	2654
Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1993. (VR 394-01-21) .....	2672
Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code/1993. (VR 394-01-22) .....	2703
Virginia Industrialized Building and Manufactured Home Safety Regulations/1993. (VR 394-01-31) .....	2712
Virginia Private Activity Bond Regulations. (VR 394-01-200) .....	2723
<b>VIRGINIA MANUFACTURED HOUSING BOARD</b>	
Public Participation Guidelines. (VR 449-01-01) .....	2732
Manufactured Housing Licensing and Transaction Recovery Fund Regulations. (VR 449-01-02) .....	2733
<b>DEPARTMENT OF STATE POLICE</b>	
Motor Carrier Safety Regulations. (VR 545-01-1) .....	2749
<b>STATE CORPORATION COMMISSION</b>	
<u>ORDER GRANTING PETITION FOR RECONSIDERATION</u>	
In the matter of evaluating the Experimental Plan for Alternative Regulation of Virginia Telephone Companies. (PUC920029) .....	2754
<b>MARINE RESOURCES COMMISSION</b>	
Pertaining to the Licensing of Fixed Fishing Devices. (VR 450-01-0004) .....	2755
Pertaining to Summer Flounder. (VR 450-01-0081) ...	2756

# Table of Contents

---

<b>GOVERNOR</b>	
<b>EXECUTIVE MEMORANDA</b>	
Establishing and Maintaining Official Abbreviations for State Agency Names (5-93). ....	2758
Stimulating Recycling Markets (6-93). ....	2761
Compliance with the Americans with Disabilities Act (1-94). ....	2762
<b>EXECUTIVE ORDERS</b>	
Declaration of a State of Emergency Arising From a Severe Winter Storm Which Threatened the Commonwealth (83-94). ....	2762
Creating a Blue Ribbon Strike Force: The Governor's Commission on Government Reform (1-94). ....	2764
Equal Opportunity (2-94). ....	2764
Authority and Responsibility of Chief of Staff (3-94). ....	2765
<b>GOVERNOR'S COMMENTS</b>	
<b>DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)</b>	
Guidelines for Public Participation (REPEAL). (VR 115-01-01) ....	2766
Public Participation Guidelines. (VR 115-01-01:1) ....	2766
<b>Pesticide Control Board</b>	
Public Participation Guidelines. (VR 115-04-21) ....	2766
<b>ALCOHOLIC BEVERAGE CONTROL BOARD</b>	
Tied House. (VR 125-01-3) ....	2766
Requirements for Product Approval. (VR 125-01-4) ..	2766
Retail Operations. (VR 125-01-5) ....	2766
Manufacturers and Wholesalers Operations. (VR 125-01-6) ....	2766
Other Provisions. (VR 125-01-7) ....	2766
<b>VIRGINIA ASBESTOS LICENSING BOARD</b>	
Asbestos Licensing Regulations (REPEAL). (VR 190-05-01) ....	2767
<b>Virginia Asbestos Licensing Regulations. (VR 137-01-02)</b>	2767
<b>DEPARTMENT OF CORRECTIONS (STATE BOARD OF)</b>	
Public Participation Guidelines. (VR 230-01-001) .....	2767
Guide for Minimum Standards in Design and Construction of Jail Facilities (REPEAL). (VR 230-30-005) .....	2767
Regulations for State Reimbursement of Local Correctional Facility Costs (REPEAL). (VR 230-30-008) .....	2767
<b>DEPARTMENT OF EDUCATION (STATE BOARD OF)</b>	
Regulations Governing the Employment of Professional Personnel. (VR 270-01-0042:1) .....	2767
<b>BOARD OF HEALTH PROFESSIONS</b>	
Regulations Governing Practitioner Self-Referral. (VR 365-01-2) .....	2767
<b>BOARD FOR HEARING AID SPECIALISTS</b>	
Public Participation Guidelines (REPEAL). (VR 375-01-1) .....	2768
Public Participation Guidelines. (VR 375-01-1:1) .....	2768
<b>STATE LOTTERY BOARD</b>	
Administration Regulations. (VR 447-01-2) .....	2768
<b>DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)</b>	
Amount, Duration and Scope of Services. (VR 460-03-3.1100) .....	2768
Case Management Services. (VR 460-03-3.1102) .....	2768
Regulations for Home and Community-Based Care Services for Individuals with Mental Retardation. (VR 460-04-8.12) .....	2768
Community Mental Health and Mental Retardation Services: Amount, Duration and Scope of Services. (VR 460-04-8.1500) .....	2768
State/Local Hospitalization Program. (VR 460-05-1000.0000) .....	2768
<b>DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)</b>	
Assessment and Case Management in Adult Care	

## Table of Contents

---

Residences. (VR 615-46-02) .....	2768	or Foreign Commerce. (VR 630-10-98) .....	2770
<b>DEPARTMENT OF TAXATION</b>			
Retail Sales and Use Tax: Adult Care Facilities. (VR 630-10-2.2) .....	2768	Retail Sales and Use Tax: Typesetting. (VR 630-10-108.1) .....	2771
Retail Sales and Use Tax: Agricultural and Seafood Processing. (VR 630-10-5) .....	2769	<b>STATE WATER CONTROL BOARD</b>	
Retail Sales and Use Tax: Aircraft Sales, Leases and Rentals, Repair and Replacement Parts and Maintenance Materials. (VR 630-10-6) .....	2769	General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Nonmetallic Mineral Mining. (VR 680-14-20) .....	2771
Retail Sales and Use Tax: Commercial Watermen. (VR 630-10-24.1) .....	2769	<b>BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS</b>	
Retail Sales and Use Tax: Containers, Packaging Materials, and Equipment. (VR 630-10-26) .....	2769	Public Participation Guidelines (REPEAL). (VR 675-01-01) .....	2771
Retail Sales and Use Tax: Dentists, Dental Laboratories and Dental Supply Houses. (VR 630-10-33) .....	2769	Public Participation Guidelines. (VR 675-01-01;1) .....	2771
Retail Sales and Use Tax: Federal Areas (REPEAL). (VR 630-10-39) .....	2769	<b>GENERAL NOTICES/ERRATA</b>	
Retail Sales and Use Tax: Flags (REPEAL). (VR 630-10-39.2) .....	2769	<b>DEPARTMENT OF ENVIRONMENTAL QUALITY</b>	
Retail Sales and Use Tax: Governments. (VR 630-10-45) .....	2769	General Notice. ....	2772
Retail Sales and Use Tax: Harvesting of Forest Products. (VR 630-10-45.1) .....	2769	<b>Waste Division</b>	
Retail Sales and Use Tax: Hospitals, Nursing Homes and Other Medical Related Facilities. (VR 630-10-47) .....	2770	Designation of Regional Solid Waste Management Planning Area. ....	2772
Retail Sales and Use Tax: Medical Equipment and Supplies. (VR 630-10-64.1) .....	2770	Designation of Regional Solid Waste Management Planning Area. ....	2772
Retail Sales and Use Tax: Medicines and Drugs. (VR 630-10-65) .....	2770	<b>VIRGINIA CODE COMMISSION</b>	
Retail Sales and Use Tax: Physicians, Surgeons, and Other Practitioners of the Healing Arts. (VR 630-10-83) .....	2770	Notice of mailing address. ....	2772
Retail Sales and Use Tax: Prescription Medical Appliances - Visual and Audio. (VR 630-10-85.1) .....	2770	Forms for filing material on dates for publication. ..	2772
Retail Sales and Use Tax: Research. (VR 630-10-92) .....	2770	<b>ERRATA</b>	
Retail Sales and Use Tax: Services. (VR 630-10-97.1) .....	2770	.....	.....
Retail Sales and Use Tax: Ships or Vessels Used or to be Used Exclusively or Principally in Interstate		.....	.....
<b>BOARD OF DENTISTRY</b>			
Public Participation Guidelines. (VR 255-01-2) .....	2773	<b>MARINE RESOURCES COMMISSION</b>	
Pertaining to the Taking of Striped Bass. (VR 450-01-0034) .....	2773	<b>BOARD OF NURSING</b>	
Board of Nursing Regulations. (VR 495-01-1) .....	2773	<b>CALENDAR OF EVENTS</b>	
<b>EXECUTIVE</b>			

## Table of Contents

---

Open Meetings and Public Hearings ..... 2774

### CHRONOLOGICAL LIST

Open Meetings ..... 2820

Public Hearings ..... 2822

# NOTICES OF INTENDED REGULATORY ACTION

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

## 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.

V.A.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,

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.

## BOARD OF NURSING

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider amending regulations entitled: **VR 495-01-1. Board of Nursing Regulations.** The purpose of the proposed action is to (i) consider changes in Part III related to licensure by examination as the result of the implementation of computerized testing; (ii) consider changes in Parts II and V related to educational program approval to clarify compliance with the Administrative Process Act; (iii) give possible consideration to changes in Part II related to faculty supervision of students and recognition of other forms of accreditation as comparable to Board of Nursing approval. A public hearing will be

# Notices of Intended Regulatory Action

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held on any proposed regulations developed as a result of the consideration described in the purpose of this intended regulatory action.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Written comments may be submitted until March 11, 1994.

Contact: Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909.

V.A.R. Doc. No. R94-472; Filed January 18, 1994, 10 a.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.

# PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

## Symbol Key

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

### DEPARTMENT OF HEALTH (STATE BOARD OF)

**Title of Regulation:** VR 355-01-100. Public Participation Guidelines.

**Statutory Authority:** §§ 9-6.14:7.1 and 32.1-12 of the Code of Virginia.

**Public Hearing Date:** N/A – Written comments may be submitted through April 8, 1994.

(See Calendar of Events section  
for additional information)

**Basis:** Section 32.1-12 of the Code of Virginia charges the State Board of Health with the authority to promulgate regulations necessary to implement those activities required to protect, preserve and promote the public health of Virginia's residents and visitors. Section 9-6.14:7.1 of the Administrative Process Act further requires the board to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations.

**Purpose:** The purpose of these Public Participation Guidelines is to ensure that the public and all parties interested in the regulations adopted by the board have the opportunity to participate in the process of promulgation, and that the process to be used by the department's staff to ensure that participation is defined.

**Substance:** The guidelines define the procedures for the development of interested parties lists to be used by the staff to notify known interested parties of planned actions; the publication and advertisement of Notices of Intended Regulatory Action; the development of ad hoc advisory committees to assist in the drafting of regulations; the publication and advertisement of proposed and final regulations, including the statement of basis, purpose, substance, issues, and estimated impact; and exempt regulations.

**Issues:** The guidelines as currently written provide a clearly outlined process for public initiation of the review of regulations. In addition, the procedures to be followed by the staff in assisting the board in drafting and proposing regulations for public comment are detailed for public awareness and review.

**Estimated Impact:** The State Board of Health and the Department of Health are charged with the responsibility for providing programs that protect the health of all 6.2 million of Virginia's residents and its visitors. Regulations promulgated by the board range in nature from those defining the requirements for restaurant licensure to the

requirements for reporting of communicable diseases to the closing of shellfish growing areas. The guidelines defining the process for public participation in the development of these governing regulations are critical to allow the board to promulgate effective and fair regulations.

No additional costs should be caused by these guidelines to either the public in participation or the department in the development of these regulations. The impact of the guidelines on small business will be similar to that on any other regulated or interested parties. Benefit of the guidelines is found in the clarity provided for the process of development and participation.

The proposed guidelines are required by the Administrative Process Act, and to not approve these revisions would prohibit the board from properly promulgating regulations. The guidelines as presented are currently in operation as emergency guidelines and the department has received no comments to indicate that the processes imposed are overly burdensome. The regulations will be evaluated for effectiveness on a regular basis.

### Summary:

*These proposed amendments are identical to those contained within the emergency Public Participation Guidelines effective July 1, 1993, and promulgated to maintain the board's compliance with revisions to the Administrative Process Act effective on that same day. These revised guidelines clarify the actions to be taken by the staff of the Department of Health to ensure participation by the interested public in the process of regulation development as well as during the comment period that occurs after draft regulations are completed and published for review. The proposed guidelines also identify how the public may initiate consideration of regulations for development or review.*

VR 355-01-100. Public Participation Guidelines.

## PART I. DEFINITIONS.

### § 1.1. Definitions.

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

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

# Proposed Regulations

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"Board" means the State Board of Health.

within 180 days.

"Commissioner" means the State Health Commissioner.

"Department" means the Virginia Department of Health.

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an authorized board or agency.

## PART II. GENERAL INFORMATION.

### § 2.1. General information.

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

B. At the discretion of the board or the commissioner, the procedures in Part III may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

D. Any person may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
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.

If the board determines not to act upon a petition it shall provide a written response to such petition. The board shall receive, consider and respond to such petition

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Interested parties lists.

A. Whenever the board so directs or upon its own initiative, the department may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

B. Programs within the department which are responsible for rule making as assigned by the commissioner will maintain a list of those persons and organizations who have demonstrated an interest in the adoption, amendment or repeal of specific program regulations.

C. Periodically, but not less than every two years, the commissioner shall publish a notice in The Virginia Register, in a newspaper published at Richmond, and in other newspapers in Virginia localities to request that any individual or organization interested in participating in the development of specific rules and regulations so notify the office of the commissioner. Any persons or organizations identified in this process will be incorporated in the lists developed under this section. The commissioner may at any time remove from the lists persons or organizations that request to be removed or who fail to respond to any inquiry regarding continued interest.

### § 3.2. Notice of intent.

A. The department shall issue a Notice of Intended Regulatory Action (NOIRA) at the direction of the board whenever it considers the adoption, amendment or repeal of any regulation. The NOIRA shall include at least the following:

1. The title of the regulation to be developed or modified;
2. A summary of the subject matter including a brief statement as to the need for regulatory action;
3. A request for comments on the intended regulatory action, to include any ideas to assist the department in the drafting and formation of any proposed regulation developed pursuant to the NOIRA;
4. An indication of the board's intent to hold a public hearing on the proposed regulation after it is published, and the reason if a public hearing is not planned;
4. 5. The program contact person, mailing address and telephone number; and
5. 6. The date by which comments must be received.

# Proposed Regulations

B. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in The Virginia Register.

C. The department shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register; and

2. Distribution by written notice to persons on the list(s) established under § 3.1 of this part.

D. If the department published a statement in the NOIRA indicating no intention to hold a public hearing on the proposed regulation after publication, no public hearing is required unless, prior to completion of the specified NOIRA comment period:

1. The Governor directs that the agency shall hold a public hearing; or

2. The agency receives requests for a public hearing from 25 persons or more.

## § 3.3. Ad hoc advisory committees.

A. The board or the commissioner may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The ad hoc committee shall provide professional specialization or technical assistance when the board or commissioner determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

C. The advisory committee may be dissolved when the process for promulgating the specific regulation is completed.

## § 3.4. Proposed regulations.

A. After consideration of public input, the department may prepare the draft proposed regulation and any supporting documentation required for review. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the board.

B. Upon approval of the draft proposed regulation by the board, the department shall publish a Notice of Public Comment (NOPC) and the proposal for public comment together with the proposed regulation for public comment,

a summary of the regulation, and a statement containing the basis, purpose, substance, issues and estimated impact as described in § 3.2 D.

C. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the draft may be obtained and a name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A request for comments on the costs and benefits of the proposal.

D. A statement of basis, purpose, substance, issues, and estimated impact shall be published and include at least the following:

1. Basis: the statutory authority for promulgating the regulation.

2. A statement of Purpose: why the regulation is proposed and the desired end result or objective of the regulation.

3. Substance: the identification and explanation of the key provisions of the regulations.

4. Issues: the primary advantages and disadvantages for the public affected by the proposed regulations.

5. A statement that Estimated impact: an analysis of the estimated impact has been conducted by the agency and is available to the public upon request. The statement of estimated impact should include the following:

a. Number and types of regulated entities or persons affected.

b. Projected cost to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the department is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

c. Projected cost to the department for implementation and enforcement.

d. The beneficial impact the regulation is designed to produce.

e. An explanation of the need for the proposed regulation and potential consequences that may result in the absence of the regulation.

# Proposed Regulations

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- f. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.
- g. A statement assessing in what manner the department believes the proposed regulation is the least burdensome alternative to the regulated community that fully meets the state purpose of the proposed regulation.
- h. A schedule setting forth when and how the department will evaluate the regulation for effectiveness and continued need.
5. 6. The date, time and place of at least one public hearing, if needed, if indicated in the NOIRA or required as specified in § 3.2 D, held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. The *public* hearing(s) may be held at any time during the public comment period. The hearing(s) and may be held in such location(s) as the department determines will best facilitate input from interested persons.
6. 7. The public comment period shall close no fewer than 60 days after publication of the NOPC in The Virginia Register.
7. 8. The department shall disseminate the NOPC to the public via the following:
- Distribution to the Registrar of Regulations for publication in The Virginia Register and for publication in a newspaper of general circulation published at the state capital and as the department may determine, it may similarly request publication in newspapers in localities particularly affected.
  - Distribution by mail to persons on the list(s) established under § 3.1 of this part.
8. 9. The department shall prepare a summary of comments received in response to the NOPC and submit it or, if requested, submit the full comments to the board. Both the summary and the comments shall become a part of the department's file.

## § 3.4. § 3.5. Completing adoption process.

Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

## § 3.6. Exempt regulations.

*Any regulations exempt under § 9-6.14:4.1 of the Administrative Process Act and being considered by the board for adoption shall be provided to any member of the public requesting a copy at least two days prior to the meeting of the board at which the regulation is to be*

considered.

## PART IV. TRANSITION.

### § 4.1. Transition.

A. All regulatory actions for which a NOIRA has been published in the Virginia Register prior to July 1, 1993, shall be processed in accordance with the VR 355-01-01 Public Participation Guidelines in the Formation and Development of Regulations.

B. All regulatory actions for which a NOIRA has not been published in the Virginia Register prior to July 1, 1993, shall be processed in accordance with this regulation (VR 355-01-100).

V.A.R. Doc. No. R94-508; Filed January 19, 1994, 11:20 a.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

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

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

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1-C).

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

Public Hearing Date: N/A — Written comments may be submitted through April 8, 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. The Code also provides, in § 9-6.14:7.1 of the Administrative Process Act (APA), 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.

The Code of Federal Regulations, Title 42, Part 440, provides for DMAS' authority to administer the home health services and durable medical equipment and supplies programs.

Purpose: The purpose of this proposal is to promulgate permanent regulations, to supersede the existing emergency regulations, to clarify the requirements and the process for providing durable medical equipment and supplies.

## Proposed Regulations

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**Summary and Analysis:** The sections of the State Plan for Medical Assistance which are affected by this action are the Narrative for the Amount, Duration, and Scope of Services (Attachment 3.1 A&B, Supplement 1) and Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C). This proposed regulation is identical to the emergency regulation it will replace.

Durable medical equipment, supplies, and appliances are only available under the home health benefit. Services are available as prescribed by the home health regulations at Title 42, Code of Federal Regulations, Part 440, in the recipient's home on a physician's order as part of a written plan of care that is periodically reviewed.

DMAS previously required that a recipient who received durable medical equipment or supplies also receive skilled nursing visits provided by a home health agency. The purposes for making the nursing service a prerequisite for the receipt of medical equipment and supplies were (i) to assess the recipient's needs in the actual environment in which he would be using the items, (ii) to determine the quantity of supplies needed to meet his current condition, (iii) to assess the patient and/or caregiver's knowledge and appropriate utilization of the items, and (iv) to assess the need for other services that may help to further reduce the risks associated with the limitations or conditions imposed by the recipient's current health status. Previously also, DMAS never specified those services which will not be covered under home health services program.

In addition, a single skilled nursing follow-up visit was required after the recipient received the prescribed equipment or supplies to determine that it met the recipient's needs, that it was suitable for use in the home, and the recipient or caregiver was knowledgeable and comfortable in using the equipment.

Care provided by a home health agency follows a written plan of care established and reviewed by a physician as often as the patient's condition requires, but at least every 60 days. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The plan of care, developed in consultation with the agency staff, covers all pertinent diagnoses, including mental status; types of services and equipment required; frequency of visits; prognosis; rehabilitation potential; functional limitations; activities permitted; nutritional requirements; medications and treatments; any safety measures to protect against injury; instructions for a timely discharge or referral; and any other appropriate items.

Recently, HCFA has informed the department that it may no longer require nursing visits for the provision of durable medical equipment, supplies, and appliances. Consequently, this amendment allows for the provision of medically necessary supplies, equipment, and appliances for Medicaid recipients who meet home health criteria.

Consistent with HCFA's directive that no type of prerequisite condition that predicated the receipt of one home health service on the receipt of another such service may be imposed, DMAS removed the requirement that the recipient who receives medical equipment and supplies also receive skilled nursing visits with an emergency regulation which was effective September 1, 1993.

Durable medical equipment, supplies, and appliances must be ordered by a physician and be medically necessary to treat a health care condition. Because physicians will no longer be required to order equipment and supplies through the home health plan of treatment, DMAS is seeking to replace the currently used plan of treatment with the certificate of medical necessity for those recipients who require durable medical equipment and supplies.

The physician will be required to complete a written certificate of medical necessity (CMN) for all medical equipment and supplies. Therefore, the CMN will serve as the physician's authorization for equipment and supplies in lieu of the home health plan of treatment.

The medical equipment and supply vendor must provide the supplies as prescribed by the physician. Utilization review will be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate.

Since federal regulations at 42 CFR 440.70 allow the provision of equipment and supplies only under the home health benefit, language addressing medical equipment and supplies in the rehabilitation section of Attachment 3.1-C of the Plan is removed. Recipients who are discharged from intensive rehabilitative services and who require equipment or supplies would meet home health criteria and would be eligible to receive such items under that program.

In addition to these changes, the population for which nutritional supplements will be covered is expanded under home health services. Instead of requiring that the enteral or total parenteral nutrition be the sole source of nutrition and administered only by nasogastric or gastrostomy tube, coverage will also include individuals who receive the nutrition orally. All other criteria must still be met (e.g., the supplement must be medically necessary). Coverage of oral administration does not include the provision of routine infant formulae.

Technical changes have also been included in this package to incorporate by reference the Virginia Medicaid provider manuals that relate to long-term care services (nursing facility, hospice, home health, rehabilitation, and durable medical equipment and supplies). This was done as recommended by the Office of the Attorney General. Other technical changes made here conform the regulations' language to the Registrar's Style Manual guidance on writing numbers.

# Proposed Regulations

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**Issues:** This action amends the State Plan for Medical Assistance by removing the currently required prerequisite skilled nursing visit for persons receiving durable medical equipment and supplies through the home health services program. This change has been required by the Health Care Financing Administration (HCFA) to bring the Commonwealth's State Plan into compliance with federal regulations. This regulation also specifies those services which Medicaid does not cover under the home health services program.

The promulgation of this regulation will allow Medicaid recipients who need durable medical equipment or supplies to access such services without having to go through a home health agency. For providers, this means fewer requirements to be met before supplies or equipment can be provided. This regulation also eliminates on-site visits by the home health nurse, thereby removing another step to be completed before services can be received.

This regulation establishes the responsibilities of the durable medical equipment provider. When supplies and equipment were provided through the home health agency, the home health agency was responsible for ensuring that the recipient received appropriate equipment and supplies suitable for use in the home, and that the recipient or caregiver understood how to properly use the equipment. These functions will now be managed by the durable medical equipment provider.

For DMAS, the elimination of the home health agency as the conduit for the provision of equipment and supplies removes a level of professional medical review for ensuring that the equipment and supplies are appropriate. As such, utilization review activities will be increased. The physician is required to prescribe all equipment and supplies and will be completing a Certificate of Medical Necessity in lieu of the current home health plan of care for each recipient who requires equipment or supplies.

**Impact:** These regulations supersede emergency regulations issued in June 1993. In FY 92, there were 10,795 total unduplicated recipients who received durable medical equipment and supplies. The total expenditures for durable medical equipment and supplies were \$10,613,116 in FY 92.

The revisions to the durable medical supplies and equipment program are effecting no new reimbursement methodology changes nor are they expected to result in an increase in service utilization. Therefore, there is no fiscal impact attached to either these changes or the incorporation by reference change regarding long-term care provider manuals.

For the changes to the provision of nutritional supplements, it is anticipated that additional FY 94 expenditures will be approximately \$200,000 to cover the cost of covering nutritional supplements for individuals who are able to take the supplement without special

intubation. This change in coverage applies only to those individuals receiving nutritional supplements under the home health program. The cost of providing nutritional supplements for nursing facility residents is included in the cost report.

## **Summary:**

*The purpose of this proposal is to promulgate permanent regulations, to supersede the existing emergency regulations, and to clarify the requirements and the process for providing durable medical equipment and supplies.*

*The sections of the State Plan for Medical Assistance which are affected by this action are the Narrative for the Amount, Duration, and Scope of Services (Attachment 3.1 A&B, Supplement 1) and Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C). This proposed regulation is identical to the emergency regulation it will replace.*

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*In addition, a single skilled nursing follow-up visit was required after the recipient received the prescribed equipment or supplies to determine that it met the recipient's needs, that it was suitable for use in the home, and the recipient or caregiver was knowledgeable and comfortable in using the equipment.*

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## Proposed Regulations

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Recently, HCFA has informed the department that it may no longer require nursing visits for the provision of durable medical equipment, supplies, and appliances. Consequently, this amendment allows for the provision of medically necessary supplies, equipment, and appliances for Medicaid recipients who meet home health criteria. Consistent with HCFA's directive that no type of prerequisite condition that predicated the receipt of one home health service on the receipt of another such service may be imposed, DMAS removed the requirement that the recipient who receives medical equipment and supplies also receive skilled nursing visits with an emergency regulation which was effective September 1, 1993.

Durable medical equipment, supplies, and appliances must be ordered by a physician and be medically necessary to treat a health care condition. Because physicians will no longer be required to order equipment and supplies through the home health plan of treatment, DMAS is seeking to replace the currently used plan of treatment with the certificate of medical necessity for those recipients who require durable medical equipment and supplies.

The physician will be required to complete a written certificate of medical necessity (CMN) for all medical equipment and supplies. Therefore, the CMN will serve as the physician's authorization for equipment and supplies in lieu of the home health plan of treatment.

The medical equipment and supply vendor must provide the supplies as prescribed by the physician. Utilization review will be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate.

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In addition to these changes, the population for which nutritional supplements will be covered is expanded under home health services. Instead of requiring that the enteral or total parenteral nutrition be the sole source of nutrition and administered only by nasogastric or gastrostomy tube, coverage will also include individuals who receive the nutrition orally. All other criteria must still be met (e.g., the supplement must be medically necessary). Coverage of oral administration does not include the provision of routine infant formulae.

Technical changes have also been included in this package to incorporate by reference the Virginia Medicaid provider manuals that relate to long-term care services (nursing facility, hospice, home health, rehabilitation, and durable medical equipment and supplies). This was done as recommended by the Office of the Attorney General. Other technical changes made here conform the regulations' language to the Registrar's Style Manual guidance on writing numbers.

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The promulgation of this regulation will allow Medicaid recipients who need durable medical equipment or supplies to access such services without having to go through a home health agency. For providers, this means fewer requirements to be met before supplies or equipment can be provided. This regulation also eliminates on-site visits by the home health nurse, thereby removing another step to be completed before services can be received.

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For DMAS, the elimination of the home health agency as the conduit for the provision of equipment and supplies removes a level of professional medical review for ensuring that the equipment and supplies are appropriate. As such, utilization review activities will be increased. The physician is required to

# Proposed Regulations

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*These regulations supersede emergency regulations issued in June 1993. In FY 92, there were 10,795 total unduplicated recipients who received durable medical equipment and supplies. The total expenditures for durable medical equipment and supplies were \$10,613,116 in FY 92.*

*The revisions to the durable medical supplies and equipment program are effecting no new reimbursement methodology changes nor are they expected to result in an increase in service utilization. Therefore, there is no fiscal impact attached to either these changes or the incorporation by reference change regarding long-term care provider manuals.*

*For the changes to the provision of nutritional supplements, it is anticipated that additional FY 94 expenditures will be approximately \$200,000 to cover the cost of covering nutritional supplements for individuals who are able to take the supplement without special intubation. This change in coverage applies only to those individuals receiving nutritional supplements under the home health program. The cost of providing nutritional supplements for nursing facility residents is included in the cost report.*

## 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 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.

# Proposed Regulations

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. Kidney transplants 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 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.

§ 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.

# Proposed Regulations

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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 ages 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 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.

# Proposed Regulations

**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 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 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. *Home health services shall be provided in accordance with guidelines found in the Virginia Medicaid Home Health Manual.*

**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 limitaitons are determined by the physician to be required, then the provider shall request prior authorization from DMAS

# Proposed Regulations

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

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

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

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

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

7. *Medicaid shall not provide reimbursement to the medical equipment and supply vendor for services provided prior to the date prescribed by the physician*

# Proposed Regulations

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

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

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

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

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.

F. The following services are not covered under the

home health services program:

1. Medical social services;
2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;
3. Community food service delivery arrangements;
4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;
5. Custodial care which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and
6. Services related to cosmetic surgery.

§ 8. Private duty nursing services.

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 dentists.

§ 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;

# Proposed Regulations

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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

## Proposed Regulations

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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 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, *school divisions*, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service *within a 60-day period annually*. 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. Documentation for medical justification must include physician orders or a plan of care signed 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

# Proposed Regulations

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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.

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 anorexiant drugs 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.

## Proposed Regulations

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"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 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,

# Proposed Regulations

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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.

§ 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

## Proposed Regulations

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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 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 DMHMRSA 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;

# Proposed Regulations

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(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

## Proposed Regulations

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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:

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

# Proposed Regulations

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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.

# Proposed Regulations

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

The following is a description of the standards and the methods that will be used to assure that the medical and remedial care and services are of high quality:

§ 1. Institutional care will be provided by facilities qualified to participate in Title XVIII and/or Title XIX.

§ 2. Utilization control.

### A. General acute care hospitals.

1. The Commonwealth of Virginia is required by state law to take affirmative action on all hospital stays that approach 15 days. It is a requirement that the hospitals submit to the Department of Medical Assistance Services complete information on all hospital stays where there is a need to exceed 15 days. The various documents which are submitted are reviewed by professional program staff, including a physician who determines if additional hospitalization is indicated. This review not only serves as a mechanism for approving additional days, but allows physicians on the Department of Medical Assistance Services' staff to evaluate patient documents and give the Program an insight into the quality of care by individual patient. In addition, hospital representatives of the Medical Assistance Program visit hospitals, review the minutes of the Utilization Review Committee, discuss patient care, and discharge planning.

2. In each case for which payment for inpatient hospital services, or inpatient mental hospital services is made under the State Plan:

a. A physician must certify at the time of admission, or if later, the time the individual applies for medical assistance under the State Plan that the individual requires inpatient hospital or mental hospital care.

b. The physician, or physician assistant under the supervision of a physician, must recertify, at least every 60 days, that patients continue to require inpatient hospital or mental hospital care.

c. Such services were furnished under a plan established and periodically reviewed and evaluated by a physician for inpatient hospital or mental hospital services.

B. Long-stay acute care hospitals (nonmental hospitals).

1. Services for adults in long-stay acute care hospitals. The population to be served includes individuals requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, comprehensive rehabilitative therapy services and individuals with communicable diseases requiring universal or respiratory precautions.

a. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care hospital placement, and any additional information that justifies the need for intensive services. Physician certification must accompany the request. Periods of care not authorized by DMAS shall not be approved for payment.

b. These individuals must have long-term health conditions requiring close medical supervision, the need for 24-hour licensed nursing care, and the need for specialized services or equipment needs.

c. At a minimum, these individuals must require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is the designated unit must be on the nursing unit 24 hours a day on which the resident resides), and coordinated multidisciplinary team approach to meet needs that must include daily therapeutic leisure activities.

d. In addition, the individual must meet at least one of the following requirements:

(1) Must require two out of three of the following rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of one hour each day; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

(2) Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by a licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy; or

(3) The individual must require at least one of the following special services:

(a) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only);

# Proposed Regulations

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- (c) Dialysis treatment that is provided on-unit (i.e. peritoneal dialysis);
  - (d) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;
  - (e) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body); or
  - (f) Ongoing management of multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e. suctioning every hour; stabilization of feeding; stabilization of elimination, etc.).
- 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 individuals' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.
- f. When the individual no longer meets long-stay acute care hospital criteria or requires services that the facility is unable to provide, then the individual must be discharged.
2. Services to pediatric/adolescent patients in long-stay acute care hospitals. The population to be served shall include children requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, daily dependence on device-based respiratory or nutritional support (tracheostomy, gastrostomy, etc.), comprehensive rehabilitative therapy services, and those children having communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.) and with terminal illnesses.
- a. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care, and any additional information that justifies the need for intensive services. Periods of care not authorized by DMAS shall not be approved for payment.
  - b. The child must have ongoing health conditions requiring close medical supervision, the need for 24-hour licensed nursing supervision, and the need for specialized services or equipment. The recipient must be age 21 or under.
  - c. The child must minimally require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is that nursing unit must be on the unit 24 hours a day on which the child is residing), and a coordinated multidisciplinary team approach to meet needs.
- d. In addition, the child must meet one of the following requirements:
- (1) Must require two out of three of the following physical rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of 45 minutes per day; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or
  - (2) Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy, etc.; or
  - (3) Must require at least one of the following special services:
    - (a) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);
    - (b) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, strep throat, etc.);
    - (c) Dialysis treatment that is provided within the facility (i.e. peritoneal dialysis);
    - (d) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;
    - (e) Extensive wound care requiring debridement, irrigation, packing, etc. more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body);
    - (f) Ostomy care requiring services by a licensed nurse;
    - (g) Services required for terminal care.
- e. In addition, the long-stay acute care hospital must provide for the educational and rehabilitative needs of the child. These services must be age appropriate, must meet state educational requirements, and must

## Proposed Regulations

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be appropriate to the child's cognitive level. Services must also be individualized to meet the child's specific needs and must be provided in an organized manner that encourages the child's participation. Services may include, but are not limited to, school, active treatment for mental retardation, habilitative therapies, social skills, and leisure activities. Therapeutic leisure activities must be provided daily.

f. 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.

g. When the resident no longer meets long-stay hospital criteria or requires services that the facility is unable to provide, the resident must be discharged.

### C. Nursing facilities.

1. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements. *All nursing facility services, including specialized care, shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.*

2. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

3. The Department of Medical Assistance Services shall *periodically* conduct at least annually a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. The survey will be composed of a sample of Medicaid residents and will include review of both current and closed medical records.

4. Nursing facilities must submit to the Department of Medical Assistance Services resident assessment information at least every six months for utilization review. If an assessment completed by the nursing facility does not reflect accurately a resident's capability to perform activities of daily living and significant impairments in functional capacity, then reimbursement to nursing facilities may be adjusted

during the next quarter's reimbursement review. Any individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties.

5. In order for reimbursement to be made to the nursing facility for a recipient's care, the recipient must meet nursing facility criteria as described in Supplement 1 to Attachment 3.1-C, Part 1 (Nursing Facility Criteria).

In order for reimbursement to be made to the nursing facility for a recipient requiring specialized care, the recipient must meet specialized care criteria as described in Supplement 1 to Attachment 3.1-C, Part 2 (Adult Specialized Care Criteria) or Part 3 (Pediatric/Adolescent Specialized Care Criteria). Reimbursement for specialized care must be preauthorized by the Department of Medical Assistance Services. In addition, reimbursement to nursing facilities for residents requiring specialized care will only be made on a contractual basis. Further specialized care services requirements are set forth below.

In each case for which payment for nursing facility services is made under the State Plan, a physician must recommend at the time of admission or, if later, the time at which the individual applies for medical assistance under the State Plan that the individual requires nursing facility care.

6. For nursing facilities, a physician must approve a recommendation that an individual be admitted to a facility. The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter. At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

7. When the resident no longer meets nursing facility criteria or requires services that the nursing facility is unable to provide, then the resident must be discharged.

### 8. Specialized care services.

a. Providers must be nursing facilities certified by the Division of Licensure and Certification, State Department of Health, and must have a current signed participation agreement with the Department of Medical Assistance Services to provide nursing facility care. Providers must agree to provide care to at least four residents who meet the specialized care criteria for children/adolescents or adults.

b. Providers must be able to provide the following specialized services to Medicaid specialized care

# Proposed Regulations

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recipients:

- (1) Physician visits at least once weekly;
- (2) Skilled nursing services by a registered nurse available 24 hours a day;
- (3) Coordinated multidisciplinary team approach to meet the needs of the resident;
- (4) For residents under age 21, provision for the educational and habilitative needs of the child;
- (5) For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of six sessions each day, 15 minutes per session, five days per week;
- (6) For residents over age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of four sessions per day, 30 minutes per session, five days a week;
- (7) Ancillary services related to a plan of care;
- (8) Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);
- (9) Psychology services by a board-certified psychologist related to a plan of care *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical related to a plan of care ;*
- (10) Necessary durable medical equipment and supplies as required by the plan of care;
- (11) Nutritional elements as required;
- (12) A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;
- (13) Nonemergency transportation;
- (14) Discharge planning;
- (15) Family or caregiver training; and
- (16) Infection control.

D. *Intermediate Care Facilities for the Mentally Retarded (FMR) (ICF/MR) and Institutions for Mental Disease (IMD).*

1. With respect to each Medicaid-eligible resident in an FMR ICF/MR or IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet his current health needs and promote his maximum physical well being; the necessity and desirability of his continued placement in the facility; and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

2. With respect to each intermediate care FMR ICF/MR or IMD, periodic on-site inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, the necessity and desirability of continued placement in the facility, and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Full reports shall be made to the state agency by the review team of the findings of each inspection, together with any recommendations.

3. In order for reimbursement to be made to a facility for the mentally retarded, the resident must meet criteria for placement in such facility as described in Supplement 1, Part 4, to Attachment 3.1-C and the facility must provide active treatment for mental retardation.

4. In each case for which payment for nursing facility services for the mentally retarded or institution for mental disease services is made under the State Plan:

- a. A physician must certify for each applicant or recipient that inpatient care is needed in a facility for the mentally retarded or an institution for mental disease. The certification must be made at the time of admission or, if an individual applies for assistance while in the facility, before the Medicaid agency authorizes payment; and
- b. A physician, or physician assistant or nurse practitioner acting within the scope of the practice as defined by state law and under the supervision of a physician, must recertify for each applicant at least every 365 days that services are needed in a facility for the mentally retarded or institution for

# Proposed Regulations

mental disease.

5. When a resident no longer meets criteria for facilities for the mentally retarded or an institution for mental disease or no longer requires active treatment in a facility for the mentally retarded, then the resident must be discharged.

6. *All services provided in an IMD and in an ICF/MR shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.*

E. Psychiatric services resulting from an EPSDT screening.

Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403 and § 4b to Attachment 3.1 A & B Supplement 1, psychiatric services shall be covered, based on their prior authorization of medical need, for individuals younger than 21 years of age when the need for such services has been identified in a screening as defined by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. The following utilization control requirements shall be met before preauthorization of payment for services can occur.

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

"Admission" means the provision of services that are medically necessary and appropriate, and there is a reasonable expectation the patient will remain at least overnight and occupy a bed.

"CFR" means the Code of Federal Regulations.

"Psychiatric services resulting from an EPSDT screening" means services rendered upon admission to a psychiatric hospital.

"DMHMRSA" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMAS" means the Department of Medical Assistance Services.

"JCAHO" means Joint Commission on Accreditation of Hospitals.

"Medical necessity" means that the use of the hospital setting under the direction of a physician has been demonstrated to be necessary to provide such services in lieu of other treatment settings and the services can reasonably be expected to improve the recipient's condition or to prevent further regression so that the services will no longer be needed.

"VDH" means the Virginia Department of Health.

2. It shall be documented that treatment is medically necessary and that the necessity was identified as a result of an EPSDT screening. Required patient documentation shall include, but not be limited to, the following:

a. Copy of the screening report showing the identification of the need for further psychiatric diagnosis and possible treatment.

b. Copy of supporting diagnostic medical documentation showing the diagnosis that supports the treatment recommended.

c. For admission to a psychiatric hospital, for psychiatric services resulting from an EPSDT screening, certification of the need for services by an interdisciplinary team meeting the requirements of 42 CFR §§ 441.153 or 441.156 that:

(1) Ambulatory care resources available in the community do not meet the recipient's treatment needs;

(2) Proper treatment of the recipient's psychiatric condition requires admission to a psychiatric hospital under the direction of a physician; and

(3) The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed, consistent with 42 CFR § 441.152.

3. The absence of any of the above required documentation shall result in DMAS' denial of the requested preauthorization.

4. Providers of psychiatric services resulting from an EPSDT screening must:

a. Be a psychiatric hospital accredited by JCAHO;

b. Assure that services are provided under the direction of a physician;

c. Meet the requirements in 42 CFR Part 441 Subpart D;

d. Be enrolled in the Commonwealth's Medicaid program for the specific purpose of providing psychiatric services resulting from an EPSDT screening.

F. Home health services.

1. Home health services which meet the standards prescribed for participation under Title XVIII will be supplied.

# Proposed Regulations

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2. Home health services shall be provided by a licensed home health agency on a part-time or intermittent basis to a homebound recipient in his place of residence. The place of residence shall not include a hospital or nursing facility. Home health services must be prescribed by a physician and be part of a written plan of care utilizing the Home Health Certification and Plan of Treatment forms which the physician shall review at least every 62 days.
3. Except in limited circumstances described in subdivision 4 below, to be eligible for home health services, the patient must be essentially homebound. The patient does not have to be bedridden. Essentially homebound shall mean:
  - a. The patient is unable to leave home without the assistance of others who are required to provide medically necessary health care interventions or the use of special medical equipment;
  - b. The patient has a mental or emotional problem which is manifested in part by refusal to leave the home environment or is of such a nature that it would not be considered safe for him to leave home unattended;
  - c. The patient is ordered by the physician to restrict activity due to a weakened condition following surgery or heart disease of such severity that stress and physical activity must be avoided;
  - d. The patient has an active communicable disease and the physician quarantines the patient.
4. Under the following conditions, Medicaid will reimburse for home health services when a patient is not essentially homebound. When home health services are provided because of one of the following reasons, an explanation must be included on the Home Health Certification and Plan of Treatment forms:
  - a. When the combined cost of transportation and medical treatment exceeds the cost of a home health services visit;
  - b. When the patient cannot be depended upon to go to a physician or clinic for required treatment, and, as a result, the patient would in all probability have to be admitted to a hospital or nursing facility because of complications arising from the lack of treatment;
  - c. When the visits are for a type of instruction to the patient which can better be accomplished in the home setting;
  - d. When the duration of the treatment is such that rendering it outside the home is not practical.
5. Covered services. Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.
  - a. Nursing services,
  - b. Home health aide services,
  - c. Physical therapy services,
  - d. Occupational therapy services,
  - e. Speech-language pathology services, or
  - f. Medical supplies, equipment, and appliances suitable for use in the home.
6. General conditions. The following general conditions apply to reimbursable home health services: skilled nursing, home health aide, physical therapy, occupational therapy, and speech-language pathology services provided by home health agencies.
  - a. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his or her license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.
  - b. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The written plan of care shall appear on the Home Health Certification and Plan of Treatment forms.
  - c. A physician recertification shall be required at intervals of at least once every 62 days, must be signed and dated by the physician who reviews the plan of care, and should be obtained when the plan of care is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. Recertifications must appear on the Home Health Certification and Plan of Treatment forms.
  - d. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.
  - e. The physician orders for durable medical

## Proposed Regulations

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equipment and supplies shall include the specific item identification including all modifications, the number of supplies needed monthly, and an estimate of how long the recipient will require the use of the equipment or supplies. All durable medical equipment or supplies requested must be directly related to the physician's plan of care and to the patient's condition.

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

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

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

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

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

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

(1) Diagnosis and prognosis,

(2) Functional limitations,

(3) Orders for nursing or other therapeutic services,

(4) Orders for medical supplies and equipment, when applicable

(5) Orders for home health aide services, when applicable,

(6) Orders for medications and treatments, when applicable,

(7) Orders for special dietary or nutritional needs, when applicable, and

(8) Orders for medical tests, when applicable, including laboratory tests and x-rays

6. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

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

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

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

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

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

(2) Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered

# Proposed Regulations

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and certified by the American Occupational Therapy Certification Board. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

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

d. Durable medical equipment and supplies. Durable medical equipment, supplies, or appliances must be ordered by the physician, be related to the needs of the patient, and included on the plan of care for persons receiving home health services *in addition to durable medical equipment and supplies*. Treatment supplies used for treatment during the visit are included in the visit rate. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.

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

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

H. In the broad category of Special Services which includes nonemergency transportation, all such services for recipients will require preauthorization by a local health department.

I. Standards in other specialized high quality programs such as the program of Crippled Children's Services will be incorporated as appropriate.

J. Provisions will be made for obtaining recommended medical care and services regardless of geographic boundaries.

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## PART I. INTENSIVE PHYSICAL REHABILITATIVE SERVICES.

§ 1.1. A patient qualifies for intensive inpatient or outpatient rehabilitation if:

A. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of a multi-disciplinary coordinated team approach to improve his ability to function as independently as possible; and

B. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

§ 1.2. In addition to the initial disability requirement, participants shall meet the following criteria:

A. Require at least two of the listed therapies in addition to rehabilitative nursing:

1. Occupational Therapy
2. Physical Therapy
3. Cognitive Rehabilitation
4. Speech-Language Therapy

B. Medical condition stable and compatible with an active rehabilitation program.

## PART II. INPATIENT ADMISSION AUTHORIZATION.

§ 2.1. Within 72 hours of a patient's admission to an intensive rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility shall notify the Department of Medical Assistance Services in writing of the patient's admission. This notification shall include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is approved, the Department will establish and notify the facility of an approved length of stay. Additional lengths of stay shall be requested in writing and approved by the Department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

## PART III.

# Proposed Regulations

## DOCUMENTATION REQUIREMENTS.

§ 3.1. Documentation of rehabilitation services shall, at a minimum:

- A. Describe the clinical signs and symptoms of the patient necessitating admission to the rehabilitation program;
- B. Describe any prior treatment and attempts to rehabilitate the patient;
- C. Document an accurate and complete chronological picture of the patient's clinical course and progress in treatment;
- D. Document that a multi-disciplinary coordinated treatment plan specifically designed for the patient has been developed;
- E. Document in detail all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment;
- F. Document each change in each of the patient's conditions;
- G. Describe responses to and the outcome of treatment; and
- H. 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.

§ 3.2. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no reimbursement will be provided. *All intensive rehabilitative services shall be provided in accordance with guidelines found in the Virginia Medicaid Rehabilitation Manual.*

## PART IV. INPATIENT REHABILITATION EVALUATION.

§ 4.1. For a patient with a potential for physical rehabilitation for which an outpatient assessment cannot be adequately performed, an intensive evaluation of no more than seven calendar days will be allowed. A comprehensive assessment will be made of the patient's medical condition, functional limitations, prognosis, possible need for corrective surgery, attitude toward rehabilitation, and the existence of any social problems affecting rehabilitation. After these assessments have been made, the physician, in consultation with the rehabilitation team, shall determine and justify the level of care required to achieve the stated goals.

§ 4.2. If during a previous hospital stay an individual completed a rehabilitation program for essentially the

same condition for which inpatient hospital care is now being considered, reimbursement for the evaluation will not be covered unless there is a justifiable intervening circumstance which necessitates a re-evaluation.

§ 4.3. Admissions for evaluation and/or training for solely vocational or educational purposes or for developmental or behavioral assessments are not covered services.

## PART V. CONTINUING EVALUATION.

§ 5.1. Team conferences shall be held as needed but at least every two weeks to assess and document the patient's progress or problems impeding progress. The team shall periodically assess the validity of the rehabilitation goals established at the time of the initial evaluation, and make appropriate adjustments in the rehabilitation goals and the prescribed treatment program. A review by the various team members of each others' notes does not constitute a team conference. A summary of the conferences, noting the team members present, shall be recorded in the clinical record and reflect the reassessments of the various contributors.

§ 5.2. Rehabilitation care is to be terminated, regardless of the approved length of stay, when further progress toward the established rehabilitation goal is unlikely or further rehabilitation can be achieved in a less intensive setting.

§ 5.3. 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 reimbursement shall be provided.

## PART VI. THERAPEUTIC FURLough DAYS.

§ 6.1. Properly documented medical reasons for furlough may be included as part of an overall rehabilitation program. Unoccupied beds (or days) resulting from an overnight therapeutic furlough will not be reimbursed by the Department of Medical Assistance Services.

## PART VII. DISCHARGE PLANNING.

§ 7.1. Discharge planning shall be an integral part of the overall treatment plan which is developed at the time of admission to the program. The plan shall identify the anticipated improvements in functional abilities and the probable discharge destination. The patient, unless unable to do so, or the responsible party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every two weeks, as a part of the team conference.

## PART VIII.

# Proposed Regulations

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## REHABILITATION SERVICES TO PATIENTS.

§ 8.1. Rehabilitation services are medically prescribed treatment for improving or restoring functions which have been impaired by illness or injury or, where function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning. The rules pertaining to them are:

### A. Rehabilitative nursing.

Rehabilitative nursing requires education, training, or experience that provides special knowledge and clinical skills to diagnose nursing needs and treat individuals who have health problems characterized by alteration in cognitive and functional ability.

Rehabilitative nursing are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan approved by a physician after any needed consultation with a registered nurse who is experienced in rehabilitation;
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 registered nurse or licensed professional nurse, nursing assistant, or rehabilitation technician under the direct supervision of a registered nurse who is experienced in rehabilitation;
3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and
4. The service shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice and include the intensity of rehabilitative nursing services which can only be provided in an intensive rehabilitation setting.

### B. Physical therapy.

Physical therapy services are 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 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 under the direct supervision of a qualified physical therapist licensed by the Board of Medicine;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. 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.

### C. Occupational therapy.

Occupational therapy services are 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 the 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 or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of a qualified occupational therapist as defined above;
3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and
4. 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.

### D. Speech-language therapy.

## Proposed Regulations

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Speech-language therapy services are 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;
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 speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;
3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and
4. 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.

### E. Cognitive rehabilitation.

Cognitive rehabilitation services are 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 the physician after any needed consultation with a clinical psychologist experienced in working with the neurologically impaired and 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 rendered after a neuropsychological evaluation administered by a clinical psychologist or physician experienced in the administration of neuropsychological assessments and licensed by the Board of Medicine and in accordance with a plan of care based on the findings of the neuropsychological evaluation;
3. Cognitive rehabilitation therapy services may be provided by occupational therapists, speech-language pathologists, and psychologists who have experience in working with the neurologically impaired when provided under a plan recommended and coordinated by a physician or clinical psychologist licensed by the Board of Medicine;

4. The cognitive rehabilitation services shall be an integrated part of the total patient care plan and shall relate to information processing deficits which are a consequence of and related to a neurologic event;

5. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and

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

### F. Psychology.

Psychology services are 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 ordered by a physician;
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 qualified psychologist as required by state law;
3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and
4. 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.

### G. Social work.

Social work services are 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 ordered by a physician;
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 qualified social worker as required by state law;

# **Proposed Regulations**

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3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

## **H. Recreational therapy.**

Recreational therapy are 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 ordered by a physician;

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 are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

## **I. Prosthetic/orthotic services.**

1. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member, and services necessary to design the device, including measuring, fitting, and instructing the patient in its use;

2. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design the device, including measuring, fitting and instructing the patient in its use; and

3. Maxillofacial prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine oral and dental care.

4. The services shall be directly and specifically related to an active written treatment plan approved by a physician after consultation with a prosthodontist, orthotist, or a licensed, board eligible prosthodontist, certified in Maxillofacial prosthetics.

5. The services shall be provided with the expectation, based on the assessment made by physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and predictable period of time, or shall be necessary to establish an improved functional state of maintenance.

6. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical and dental practice; this includes the requirement that the amount, frequency, and duration of the services be reasonable.

## **J. Durable medical equipment.**

1. Durable medical equipment furnished the patient receiving approved covered rehabilitation services is covered when the equipment is necessary to carry out an approved plan of rehabilitation. A rehabilitation hospital or a rehabilitation unit of a hospital enrolled with Medicaid under a separate provider agreement for rehabilitative services may supply the durable medical equipment. The provision of the equipment is to be billed as an outpatient service. Medically necessary medical supplies, equipment and appliances shall be covered. 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. Payment shall not be made for additional equipment or supplies unless the extended provision of services has been authorized by DMAS. All durable medical equipment is subject to justification of need. Durable medical equipment normally supplied by the hospital for inpatient care is not covered by this provision.

2. Supplies, equipment, or appliances that are not covered for recipients of intensive physical rehabilitative services 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

# Proposed Regulations

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ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office;

e. Furniture or appliance 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, for example, an electric wheelchair plus a manual chair; cleansing wipes);

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

f. Home or vehicle modifications;

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

h. Equipment that the primary function is vocationally or educationally related (i.e., but not limited to, computers, environmental control devices, speech devices) environmental control devices, speech devices).

## PART IX. HOSPICE SERVICES.

### § 9.1. Admission criteria.

To be eligible for hospice coverage under Medicare or Medicaid, the and elect to receive hospice services rather than active treatment for the illness. Both the attending physician (if the individual has an attending physician) and the hospice medical director must certify the life expectancy.

### § 9.2. Utilization review.

Authorization for hospice services requires an initial preauthorization by DMAS and physician certification of life expectancy. Utilization review will be conducted to

determine if services were provided by the appropriate provider and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patients' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided. *All hospice services shall be provided in accordance with guidelines established in the Virginia Medicaid Hospice Manual.*

§ 9.3. Hospice services are a medically directed, interdisciplinary program of palliative services for terminally ill people and their families, emphasizing pain and symptom control. The rules pertaining to them are:

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

2. Medical social services. Medical social services must 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.

3. Physician services. Physician services must be performed by a professional who is licensed to practice, who is acting within the scope of his 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 must be a licensed doctor of medicine or osteopathy.

4. Counseling services. Counseling services must be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Counseling, including dietary counseling, may be provided both for the purpose of training the individual's family or other caregiver to provide care, and for the purpose of helping the individual and those caring for him to adjust to the individual's approaching death. 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.

5. 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.

# Proposed Regulations

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6. 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.

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

8. 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.

9. 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.

## PART X. COMMUNITY MENTAL HEALTH SERVICES.

### § 10.1. Utilization review general requirements.

A. On-site utilization reviews shall be conducted, at a minimum annually at each enrolled provider, by the state Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS). During each on-site review, an appropriate sample of the provider's total Medicaid population will be selected for review. An expanded review shall be conducted if an appropriate number of exceptions or problems are identified.

B. The DMHMRSAS review shall include the following items:

1. Medical or clinical necessity of the delivered service;
2. The admission to service and level of care was appropriate;
3. The services were provided by appropriately qualified individuals as defined in the Amount, Duration, and Scope of Services found in Attachment 3.1 A and B, Supplement 1 § 13d Rehabilitative

Services; and

4. Delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

### § 10.2. Mental health services utilization criteria.

Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found at VR 460-03-3.1100.

A. Intensive in-home services for children and adolescents.

1. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service shall be recommended in the Individual Service Plan (ISP) which shall be fully completed within 30 days of initiation of services.

2. Services shall be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.

3. Services shall be used when out-of-home placement is a risk and when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the client's residence as the setting for services is more likely to be successful than a clinic.

4. Services are not appropriate for a family in which a child has run away or a family for which the goal is to keep the family together only until an out-of-home placement can be arranged.

5. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

6. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services, with the goal of keeping the child with the family.

7. The provider of intensive in-home services for children and adolescents shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

8. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home service is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in-home service, and

## Proposed Regulations

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includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in-home services below the five-hour a week minimum may be covered. However, variations in this pattern must be consistent with the individual service plan. Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive or nonhome based services.

9. The intensity of service dictates that caseload sizes should be six or fewer cases at any given time. If on review caseloads exceed this limit, the provider will be required to submit a corrective action plan designed to reduce caseload size to the required limit unless the provider can demonstrate that enough of the cases in the caseload are moving toward discharge so that the caseload standard will be met within three months by attrition. Failure to maintain required caseload sizes in two or more review periods may result in termination of the provider agreement unless the provider demonstrates the ability to attain and maintain the required caseload size.

10. Emergency assistance shall be available 24 hours per day, seven days a week.

B. Therapeutic day treatment for children and adolescents.

1. Therapeutic day treatment is appropriate for children and adolescents who meet the DMHMRSAS definitions of "serious emotional disturbance" or "at risk of developing serious emotional disturbance" and who also meet one of the following:

a. Children and adolescents who require year-round treatment in order to sustain behavioral or emotional gains.

b. Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(1) This programming during the school day; or

(2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. Children and adolescents who have deficits in social skills, peer relations, dealing with authority;

are hyperactive; have poor impulse control; are extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

2. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

3. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

4. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e. before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day; and three units of service equals five or more hours of service. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled activities.

5. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

6. Services shall be provided following a diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker or certified psychiatric nurse and in accordance with an ISP which shall be fully completed within 30 days of initiation of the service.

C. Day treatment/partial hospitalization services shall be provided to adults with serious mental illness following diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse, and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

1. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

2. The program shall operate a minimum of two

# Proposed Regulations

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continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

3. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state or when other less intensive services may achieve stabilization. Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

D. Psychosocial rehabilitation services shall be provided to those individuals who have mental illness or mental retardation, and who have experienced long-term or repeated psychiatric hospitalization, or who lack daily living skills and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term care is needed to maintain the individual in the community.

1. Services shall be provided following an assessment which clearly documents the need for services and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

2. The provider of psychosocial rehabilitation shall be licensed by DMHMRSA.

3. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

4. Time allocated for field trips may be used to calculate time and units if the goal is to provide

training in an integrated setting, and to increase the client's understanding or ability to access community resources.

E. Admission to crisis intervention services is indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress. Crisis intervention may be the initial contact with a client.

1. The provider of crisis intervention services shall be licensed as an Outpatient Program by DMHMRSA.

2. Client-related activities provided in association with a face-to-face contact are reimbursable.

3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP must be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. When travel is required to provide out-of-clinic services, such time is reimbursable. Crisis intervention may involve the family or significant others.

## F. Case management.

1. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. The Medicaid eligible individual shall meet the DMHMRSA criteria of serious mental illness, serious emotional disturbance in children and adolescents, or

# Proposed Regulations

youth at risk of serious emotional disturbance.

3. There shall be no maximum service limits for case management services.
4. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.
5. The ISP shall be updated at least annually.

## § 10.3. Mental retardation utilization criteria.

Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found at VR 460-03-3.1100.

A. Appropriate use of day health and rehabilitation services requires the following conditions shall be met:

1. The service is provided by a program with an operational focus on skills development, social learning and interaction, support, and supervision.
2. The individual shall be assessed and deficits must be found in two or more of the following areas to qualify for services:
  - a. Managing personal care needs,
  - b. Understanding verbal commands and communicating needs and wants,
  - c. Earning wages without intensive, frequent and ongoing supervision or support,
  - d. Learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,
  - e. Exhibiting behavior appropriate to time, place and situation that is not threatening or harmful to the health or safety of self or others without direct supervision,
  - f. Making decisions which require informed consent,
  - g. Caring for other needs without the assistance or personnel trained to teach functional skills,
  - h. Functioning in community and integrated

environments without structured, intensive and frequent assistance, supervision or support.

3. Services for the individual shall be preauthorized annually by DMHMRSA.
  4. Each individual shall have a written plan of care developed by the provider which shall be fully complete within 30 days of initiation of the service, with a review of the plan of care at least every 90 days with modification as appropriate. A 10-day grace period is allowable.
  5. The provider shall update the plan of care at least annually.
  6. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting plan of care goals.
  7. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be at least four but less than seven hours on a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.
  8. The provider shall be licensed by DMHMRSA.
- B. Appropriate use of case management services for persons with mental retardation requires the following conditions to be met:
1. The individual must require case management as documented on the consumer service plan of care which is developed based on appropriate assessment and supporting data. Authorization for case management services shall be obtained from DMHMRSA Care Coordination Unit annually.
  2. An active client shall be defined as an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and other entities including a minimum of one face-to-face contact within a 90-day period.
  3. The plan of care shall address the individual's needs in all life areas with consideration of the individual's age, primary disability, level of functioning

# Proposed Regulations

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and other relevant factors.

- a. The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of the actual review.
- b. The need for case management services shall be assessed and justified through the development of an annual consumer service plan.
4. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.

## PART XI. GENERAL OUTPATIENT PHYSICAL REHABILITATION SERVICES.

### § 11.1. Scope.

A. Medicaid covers general outpatient physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals and by rehabilitation agencies which have a provider agreement with the Department of Medical Assistance Services (DMAS).

B. Outpatient rehabilitative services shall be prescribed by a physician and be part of a written plan of care.

C. Outpatient rehabilitative services shall be provided in accordance with guidelines found in the Virginia Medicaid Rehabilitation Manual, with the exception of such services provided in school divisions which shall be provided in accordance with guidelines found in the Virginia Medicaid School Division Manual.

### § 11.2. Covered outpatient rehabilitative services.

Covered outpatient rehabilitative services shall include physical therapy, occupational therapy, and speech-language pathology services. Any one of these services may be offered as the sole rehabilitative service and shall not be contingent upon the provision of another service.

### § 11.3. Eligibility criteria for outpatient rehabilitative services.

To be eligible for general outpatient rehabilitative services, the patient must require at least one of the following services: physical therapy, occupational therapy, speech-language pathology services, and respiratory

therapy. All rehabilitative services must be prescribed by a physician.

#### § 11.4. Criteria for the provision of outpatient rehabilitative services.

All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

A. 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.

B. 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

# Proposed Regulations

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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.

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 subdivision B1 above. The program must 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.

## § 11.5. Authorization for services.

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

therapist is with a client to provide services prescribed by the physician. Visits shall not be defined in measurements or increments of time.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized by using the Rehabilitation Treatment Authorization form (DMAS-125). This request must be signed and dated by a physician. Documentation for medical justification must include physician orders or a plan of care signed by the 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. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

## § 11.6. Documentation requirements.

A. Documentation of general outpatient rehabilitative services provided by a hospital-based outpatient setting , *home health agency, 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; and
7. 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.

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.

## § 11.7. Service limitations.

The following general conditions shall apply to reimbursable physical rehabilitative services:

## **Proposed Regulations**

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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.

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. Rehabilitation care is 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.

V.A.R. Doc. No. R94-509; Filed January 19, 1994, 11 a.m.

## **Proposed Regulations**

# Proposed Regulations

SECTION I: TRANSACTION TYPE				VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES PRE AUTHORIZATION REQUEST				Please mail request to: ATTN: [Enter from Section V] Dept. of Medical Assistance Services 600 East Broad Street, Suite 1300 Richmond, Virginia 23219			
<input type="checkbox"/> Original		<input type="checkbox"/> Change		<input type="checkbox"/> Tracking Number:		Date Received					
SECTION II: PROVIDER INFORMATION				Provider No: _____				SECTION V: PROGRAM CATEGORY			
Provider Name Address: Street		City		State		Zip		Check ONE Appropriate Category (Mail to Attention of)			
Contact Person: Telephone: (_____) - ____ - ____		(Last)		(First)				CBC PROGRAM: HOME HEALTH: <input type="checkbox"/> EPST (1) <input type="checkbox"/> Home Health (8) <input type="checkbox"/> Waiver (2) <input type="checkbox"/> DME (7) <input type="checkbox"/> Outpatient Psych (3)			
SECTION III: RECIPIENT INFORMATION				Recipient Name: _____				MED. SUPPORT: REHAB UNIT: <input type="checkbox"/> Medical Services (4) <input type="checkbox"/> Rehab (8) <input type="checkbox"/> Other Services (5)			
Recipient No: _____ Address: Street		City		State		Zip					
Telephone: (_____) - ____ - ____		Recipient's Birth Date: _____									
Other Insurance: Medicare Number:											
SECTION IV: REFERRAL SOURCE INFORMATION				Provider No: _____				SECTION VI: SERVICE CATEGORY			
Provider Name Address: Street		City		State		Zip		Check One Appropriate Category			
Contact Person: Telephone: (_____) - ____ - ____								<input type="checkbox"/> DME (1) <input type="checkbox"/> Inpt. Psych (4) <input type="checkbox"/> Home Hlth (7) <input type="checkbox"/> Practitioners (2) <input type="checkbox"/> Outpt. Psych (5) <input type="checkbox"/> Rehab (8) <input type="checkbox"/> Pharmacy (3) <input type="checkbox"/> Other (6) <input type="checkbox"/> Hospital (9)			
SECTION VII: REQUEST INFORMATION				From _____ Thru _____				SECTION VIII: DMAS USE ONLY: Do Not Write in This Section			
HCPCS / DPT Code / NDC / Revenue Code		HCPCS Modifier	Units Requested	Actual Cost per Unit	Total Dollar Request	Action Status	Approved Units	Approved Dollars/Unit	Approved Dates From _____ Thru _____	Action Reason	Initial and Date
(1) _____						A					
(2) _____						D					
(3) _____						P					
(4) _____						A					
(5) _____						D					
(6) _____						P					
Provider Comments				Comments							
Provider Signature				Date							

DMAS 351 7/92

ATTACH DOCUMENTATION OF MEDICAL NECESSITY

## INSTRUCTION FORM - PREAUTHORIZATION REQUEST

### SECTION I: Transaction Type

Check appropriate Transaction:  
 Original - use for new requests  
 Change - use for adjustment of original request  
 Delete - use for void of original request  
  
 (Original tracking number must appear on all requests for changes and/or deletions)

Address:

Complete Address of Provider (Use the current address of the referral source; include box number, street address, city and zip code)

### SECTION II: Provider Information (Provider who will deliver and bill for requested service)

Provider Name: Complete Address of Provider

### SECTION V: Program Category

Check the appropriate program from which recipient is eligible to receive requested service (Select only 1 program per request)

Provider No: Complete Provider Number (7 DIGITS)

### SECTION VI: Service Category

Check the appropriate category for which request refers to (Select only 1 service category per request)

Complete Address of Provider  
 Identify facility that service is being provided from. (All correspondence will be sent to the address identified on your provider agreement)

### SECTION VII: Request Information

Procedure Code: Procedure code (Revenue, HCPCS, or NDC Code) which identifies the specific service being requested, must be completed for request to be considered

Contact Person: Identify the contact person for DMAS to call if the reviewer has questions

If specific code is not established, please provide a complete narrative description of service being requested in the Provider Comment Section

Telephone No.: Identify the telephone number of the contact person (Including Area Code)

Use appropriate Procedure Modifier; refer to Billing Chapter of the Provider Manual

### SECTION III: Recipient Information

Recipient No.: Complete Medicaid Number (12 DIGITS)  
 It is your responsibility to verify Recipient Medicaid eligibility before submitting request or providing items

Procedure Modifier:

Identify Units requested using the established Billing Units: If authorization is needed because more than the established allowable is needed, Only list the amount in excess of the allowable

Recipient: Recipient's Full Name (Last & First Name)

Units Requested:

Must be completed when requesting service item that requires DMAS consideration for pricing (Request must include a Description, Manufacturer name, Catalog number and copy of Purchase Invoice)

Address: Complete Address of Recipient (use current address of Medicaid Recipient; include box#, street address, city, state and zip code)

Actual Cost:

Identify Total Dollars requested based on corresponding Procedure Codes and Units Requested

Telephone No.: Complete Telephone Number of Recipient (Including area code)

Dates of Service:

Identify Dates of Service for which the corresponding Procedure Codes and Units are Requested

Date of Birth: Full Date of Birth (MONTH, DAY, YEAR)

Signature of Provider and Date of Request must appear in Section VII

ATTACH DOCUMENTATION OF MEDICAL NECESSITY: IF A HOME HEALTH PARTICIPANT, THE HOME HEALTH PLAN OF CARE MUST BE ATTACHED

Medicare No.: Complete Medicare Number (10 DIGITS)

SECTION VIII: DMAS USE ONLY - DO NOT WRITE IN THIS SECTION

Other Insurance: Identify any other insurance that the recipient has (Include the name of the insurance carrier and the policy number if available)

MAIL TO: ATTENTION \_\_\_\_\_ UNIT  
 DMAS - 600 EAST BROAD STREET, SUITE 1300  
 RICHMOND, VA 23219

# Proposed Regulations

## DEPARTMENT OF MOTOR VEHICLES

Title of Regulation: VR 485-50-9302. Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card.

Statutory Authority: §§ 46.2-203, 46.2-323, 46.2-345, and 46.2-348 of the Code of Virginia.

Public Hearing Date: March 4, 1994 - 1 p.m.

Written comments may be submitted until April 11, 1994.

(See Calendar of Events section  
for additional information)

Basis: Chapters 471 and 501 of the 1993 Acts of Assembly and § 46.2-323.1 of the Code of Virginia provide the basis for this regulation. Section 46.2-323.1 provides that no driver's license shall be issued to any person who is not a Virginia resident. The section further provides that every person applying for the license shall execute and furnish to the Commissioner his certificate that he is a resident of Virginia, and the Commissioner may require the applicant to supply such evidence of residency as the Commissioner may deem appropriate and adequate.

Purpose: The regulation establishes the process that will be used and the documentation that will be required by the Department of Motor Vehicles for proof of residency in the Commonwealth of Virginia when applying for a Virginia driver's license, commercial driver's license, photo identification card, learner's permit or temporary driver's permit.

Substance: The regulation establishes the documents that are acceptable to provide proof of residency in the Commonwealth. To establish residency, an applicant must either (i) produce one of enumerated documents to the Department of Motor Vehicles, or (ii) produce an "Affirmation of Residency" completed by an individual who possesses a Virginia driver's license, commercial driver's license, or photo identification card, and who has certified that the applicant is also a Virginia resident.

The applicant must establish residency before the Department of Motor Vehicles will issue a Virginia driver's license, commercial driver's license, or photo identification card to the applicant.

The regulation specifies unacceptable documentation and provides penalties for false certification by another on the applicant's application for a license.

Issues: The state residency requirement mandated by Chapters 471 and 501 of the 1993 Acts of Assembly, effective July 1, 1994, is to satisfy requirements associated with the "instant record check" provided by statute for the purchase of handguns by Virginia residents. If a person is a resident of Virginia, then Virginia law-enforcement officials should have access to his criminal history records and can accomplish an accurate, on-line, instantaneous

background check on such an individual when he purchases a gun. If a potential gun purchaser is not a Virginia resident, however, then his criminal history record may not be available to Virginia authorities for an instantaneous record check. By restricting the issuance of driver's licenses to state residents, the legislature intended to make it possible for gun dealers to accept a driver's license as proof of residency so that only an instant record check need be accomplished.

Estimated Impact: This regulation will impact all persons who apply for or apply to renew a Virginia driver's license. However, the impact on those persons is anticipated to be minimal. There should be no fiscal impact.

## Summary:

*The regulation establishes the process that will be used and the documentation that will be required by the Department of Motor Vehicles for proof of residency in the Commonwealth of Virginia when applying for a Virginia driver's license, commercial driver's license, photo identification card, learner's permit or temporary driver's permit. An applicant must establish residency before the Department of Motor Vehicles will issue a Virginia driver's license, commercial driver's license, or photo identification card to the applicant.*

VR 485-50-9302. Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card.

### § 1. Purpose of regulations.

*The purpose of these regulations is to establish the process that will be used and the documentation that will be required by the Department of Motor Vehicles for proof of residency in the Commonwealth of Virginia when applying for a Virginia driver's license, commercial driver's license, photo identification card, learner's permit or temporary driver's permit.*

### § 2. Definitions.

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

*"Department" means the Virginia Department of Motor Vehicles.*

*"Duplicate original" means a reproduction of a document previously issued to an individual, which reproduction is intended to serve as an original. It does not mean photocopies or facsimiles of an original document.*

*"Original" means the first production of a document issued to an individual.*

# Proposed Regulations

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"Principal residence" means the address at which a person lives. A person must occupy the residence as their home. A person may have only one principal residence. A post office box or other mailing address (such as a business address) will not be considered a principal residence.

A principal residence includes, by way of example, but not by way of limitation, the residence which a person owns, rents or is purchasing, and is the residence for which a person receives utility bills in their name.

"Resident" means any person whose principal residence is in the Commonwealth of Virginia and who certifies on his application for a Virginia driver's license, commercial driver's license, photo identification card, learner's permit or temporary driver's permit that he lives at that address as his principal residence.

"Valid document" means an unexpired, authentic document that has not been tampered with or altered and which has not been acquired through fraud, theft or other illegal means.

## § 3. Acceptable documentation for providing proof of residency in the Commonwealth of Virginia.

A. The applicant shall be required to furnish, as proof of residency in the Commonwealth of Virginia, one valid original or duplicate original document that contains the address of his principal residence. This address must be within the Commonwealth of Virginia.

B. This document must be written in English, and must contain the name and principal residence address of the applicant as it appears on the application for the driver's license, commercial driver's license, photo identification card, learner's permit or temporary driver's permit.

C. The following documents may be accepted as proof of residency, provided that they show the applicants' principal residence as an integral part of the document:

1. A payroll check or payroll check stub issued by an employer within two months of the application;
2. A Voter Registration Card;
3. A W-2 tax form used for reporting purposes to the United States Internal Revenue Service which is not more than 18 months old;
4. A bank statement (not checks) that is not more than two months old;
5. A United States passport;
6. A United States income tax return from the previous year;
7. A Commonwealth of Virginia income tax return for

the previous year;

8. Utility bills issued to the applicant;
9. A receipt for personal property taxes or real estate taxes paid to the Commonwealth of Virginia or a city, county, town, or locality within the Commonwealth of Virginia within the last year;
10. An automobile or life insurance policy which is currently in force;
11. A transcript from a school, college or university in which the applicant is currently enrolled;
12. A Virginia driver's license or identification card or permit issued on or after July 1, 1994.

D. If the applicant does not have access to any of the documents listed in subsection C, he may obtain from the department an "Affirmation of Residency" (form DL 51) and have it completed by an individual who possesses a Virginia driver's license, commercial driver's license, or photo identification card, and who is willing to certify that the applicant is also a Virginia resident. This document must be signed and sworn to before a Notary Public.

E. If any document presented to the Department of Motor Vehicles (including a Virginia driver's license) pursuant to these regulations was issued more than three months prior to the date of the application, then the applicant must certify that his principal residence remains as shown on the document.

## § 4. Unacceptable documentation.

A. The department will not accept as proof of residency any document when there is reason to believe it has been altered, fraudulently obtained, or is fake, forged, counterfeit or otherwise nongenuine or illegitimate.

B. Notwithstanding any provisions of these regulations, the department may require additional documentation when there is reason to suspect fraudulent, fake, forged, altered, or otherwise nongenuine or illegitimate documents have been submitted.

## § 5. False certification by another.

Any person who certifies that any applicant is a Virginia resident shall be subject to the penalties specified in § 46.2-348 of the Code of Virginia for fraud or false statements in applications for licenses.

V.A.R. Doc. No. R94-512; Filed January 19, 1994, 11:32 a.m.

## BOARD OF PROFESSIONAL COUNSELORS

Title of Regulation: VR 560-01-01. Public Participation Guidelines (REPEALING).

# Proposed Regulations

**Title of Regulation:** VR 560-01-01:1. Public Participation Guidelines.

**Statutory Authority:** §§ 9-6.14:7.1, 54.1-2400 and 54.1-3500 et seq. of the Code of Virginia.

**Public Hearing Date:** N/A – Written comments may be submitted until April 11, 1994.

(See Calendar of Events section for additional information.)

**Basis:** Section 54.1-3500 et seq. of the Code of Virginia establishes the general powers and duties of the Board of Professional Counselors which include the promulgation of regulations. Section 9-6.14:7.1 of the Administrative Process Act establishes the statutory requirements for public participation in the regulatory process.

**Purpose:** The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The regulations replace emergency regulations currently in effect.

**Substance:**

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations.

Section 2.1 establishes the composition of the mailing list and the process for adding or deleting names from that list.

Section 2.2 lists the documents to be sent to persons on the mailing list.

Section 3.1 establishes the requirements and procedures for petitioning the board to develop or amend a regulation. The regulation sets forth the guidelines for a petition and the requirements for a response from the board.

Section 3.2 sets forth the requirements and procedures for issuing a Notice of Intended Regulatory Action.

Section 3.3 sets forth the requirements and procedures for issuing a Notice of Comment Period.

Section 3.4 sets forth the requirements and procedures for issuing a Notice of Meeting.

Section 3.5 sets forth the requirements and guidelines for a public hearing on a proposed regulation.

Section 3.6 sets forth the requirements and guidelines for a biennial review of all regulations of the board.

Section 4.1 establishes the requirements and criteria for the appointment of advisory committees in the

development of regulations.

Section 4.2 establishes the requirements for determining the limitation of service for an advisory committee.

Section 4.2 A sets forth the conditions in which an advisory committee may be dissolved for lack of public response to a Notice of Intent or in the promulgation of an exempt or excluded regulation.

Section 4.2 B sets forth a term of 12 months for the existence of an advisory committee or the requirements for its continuance.

**Issues:** The issues addressed are those presented by the amended provisions of the Administrative Process Act. These amendments pertain to: (i) public notifications and the establishment of public participation guidelines mailing list; (ii) petitioning the board for rulemaking, the conduct of public hearings related to proposed regulations, and the conduct of biennial reviews of existing regulations; and (iii) guidelines for the use of advisory committees.

An overall issue related to whether provisions of the Administrative Process Act were to be repeated in regulation. The board generally agreed with the Registrar that provisions stated in statute should not be repeated in regulation, but in instances in which clarity was enhanced by restating or elaborating on statutory provisions, the provisions were repeated.

**1. Mailing Lists and Notifications.** To establish requirements for mailing lists and for documents to be mailed to persons or entities on the mailing lists.

The board proposes language to instruct persons or entities who wish to be placed on its mailing list on how to proceed and identifies explicitly those documents which will be mailed to those persons or entities. A listing of these documents, which are specified in statute, is repeated for the sake of clarity.

The proposed regulation also establishes a mechanism for identifying segments of the mailing list of interest to specific persons or entities, and for the board, at its discretion, to notify additional persons or entities of opportunities to participate in rulemaking. In addition, the proposed regulation provides for periodic updating of the mailing lists, and for removal of persons or entities when mail is returned as undeliverable.

**2. Petitioning for Rulemaking/Public Hearings/Biennial Reviews.** The APA, as amended, states general requirements for public petitions for rulemaking, encourages the conduct of informational proceedings and periodic reviews of existing regulations, and specifies certain information to be included in Notices of Intended Regulatory Action, Notices of Comment Periods, and Notices of Meetings. The board believes these requirements and processes should be further elaborated in regulation for the benefit of public

# Proposed Regulations

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understanding.

The board adopted as emergency provisions and proposes these regulations as recommended by the Department of Health Professions. The proposed regulations specify:

- a. The process and content required for petitions for rulemaking.
- b. The content of Notices of Intended Regulatory Action, including a requirement that the board state whether it intends to convene a public hearing on any proposed regulation. If no such hearing is to be held, the board shall state the reason in the notice. The notice must also indicate that a public hearing shall be scheduled during the comment period if requested by at least 25 persons or entities.
- c. The content of Notices of Meetings, including a requirement that the notice indicate that copies of regulations for which an exemption from the provisions of the APA is claimed will be available prior to any meeting at which the exempted regulation is to be considered.
- d. A requirement that the board conduct a public hearing during the comment period unless, at a noticed meeting, the board determines that a hearing is not required.
- e. A requirement, consistent with Executive Order Number 23(90), that the board review all existing regulations at least once each biennium.

These elaborations on the Administrative Process Act are included in the proposed regulations in the belief that the board should provide every opportunity feasible for public participation, and that any curtailment of these opportunities should require affirmative action by the board at a noticed meeting.

3. Guidelines for Use of Advisory Committees. The APA, as amended, requires that agencies specify guidelines for the use of advisory committees in the rulemaking process. The statutory provisions do not specify the content of these guidelines or the duration of appointment of advisory committees.

The board adopted emergency provisions and proposes regulations identical to those recommended by the Department of Health Professions. These proposed regulations include:

- a. Provision for the board, at its discretion, to appoint an ad hoc advisory committee to assist in review and development of regulations.
- b. Provision for the board, at its discretion, to appoint an ad hoc committee to provide technical or professional assistance when the board determines

that such expertise is necessary, or when groups of individuals register an interest in working with the board.

- c. Provisions for tenure of advisory committees and for their dissolution.

These provisions are considered necessary to specify to the public the conditions which should be met in the board's use of general or technical advisory committees in its rulemaking processes. They also avoid the continuation of such committees beyond their period of utility and effectiveness.

## Estimated Impact:

A. Regulated Entities: The proposed regulations will affect those persons or entities currently on the mailing lists of the board. However, there is no estimation of how many persons or groups may be affected by notices, hearings, or appointments of ad hoc advisory committees as a result of these proposed regulations.

B. Projected Costs to Regulated Entities: There are no projected costs for compliance with proposed regulations.

C. Projected Cost for Implementation: There are no additional costs to the agency associated with the promulgation of these regulations, since the board has conducted its business in compliance with the requirements of the Administrative Process Act under existing Public Participation Guidelines.

## Summary:

*The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Professional Counselors. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The proposed regulations will replace emergency regulations currently in effect.*

VR 560-01-01:1. Public Participation Guidelines.

## *PART I. GENERAL PROVISIONS.*

### *§ 1.1. Purpose.*

*The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Professional Counselors. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).*

### *§ 1.2. Definitions.*

# Proposed Regulations

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

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

"Board" means the Board of Professional Counselors.

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

## PART II. MAILING LIST.

### § 2.1. Composition of the mailing list.

A. The board shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.

### § 2.2. Documents to be sent to persons or entities on the mailing list.

Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action.
2. A Notice of Comment Period.
3. A copy of any final regulation adopted by the board.
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia,

any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

### § 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

### § 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

### § 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee

# Proposed Regulations

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at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

## § 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

## § 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

### § 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

V.A.R. Doc. Nos. R94-510 and R94-516; Filed January 19, 1994, 11:38 a.m.

## BOARD OF PSYCHOLOGY

Title of Regulation: VR 565-01-1. Public Participation Guidelines (REPEALING).

Title of Regulation: VR 565-01-1:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3600 et seq. of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until April 11, 1994.

(See Calendar of Events section for additional information.)

Basis: Section 54.1-3600 et seq. of the Code of Virginia establishes the general powers and duties of the Board of Psychology which include the promulgation of regulations. Section 9-6.14:7.1 of the Administrative Process Act establishes the statutory requirements for public participation in the regulatory process.

Purpose: The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The regulations replace emergency regulations currently in effect.

Substance:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations.

Section 2.1 establishes the composition of the mailing list and the process for adding or deleting names from that list.

## Proposed Regulations

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Section 2.2 lists the documents to be sent to persons on the mailing list.

Section 3.1 establishes the requirements and procedures for petitioning the board to develop or amend a regulation. The regulation sets forth the guidelines for a petition and the requirements for a response from the board.

Section 3.2 sets forth the requirements and procedures for issuing a Notice of Intended Regulatory Action.

Section 3.3 sets forth the requirements and procedures for issuing a Notice of Comment Period.

Section 3.4 sets forth the requirements and procedures for issuing a Notice of Meeting.

Section 3.5 sets forth the requirements and guidelines for a public hearing on a proposed regulation.

Section 3.6 sets forth the requirements and guidelines for a biennial review of all regulations of the board.

Section 4.1 establishes the requirements and criteria for the appointment of advisory committees in the development of regulations.

Section 4.2 establishes the requirements for determining the limitation of service for an advisory committee.

Section 4.2 A sets forth the conditions in which an advisory committee may be dissolved for lack of public response to a Notice of Intent or in the promulgation of an exempt or excluded regulation.

Section 4.2 B sets forth a term of 12 months for the existence of an advisory committee or the requirements for its continuance.

**Issues:** The issues addressed are those presented by the amended provisions of the Administrative Process Act. These amendments pertain to: (i) public notifications and the establishment of public participation guidelines mailing list; (ii) petitioning the board for rulemaking, the conduct of public hearings related to proposed regulations, and the conduct of biennial reviews of existing regulations; and (iii) guidelines for the use of advisory committees.

An overall issue related to whether provisions of the Administrative Process Act were to be repeated in regulation. The board generally agreed with the Registrar that provisions stated in statute should not be repeated in regulation, but in instances in which clarity was enhanced by restating or elaborating on statutory provisions, the provisions were repeated.

1. Mailing Lists and Notifications. To establish requirements for mailing lists and for documents to be mailed to persons or entities on the mailing lists.

The board proposes language to instruct persons or

entities who wish to be placed on its mailing list on how to proceed and identifies explicitly those documents which will be mailed to those persons or entities. A listing of these documents, which are specified in statute, is repeated for the sake of clarity.

The proposed regulation also establishes a mechanism for identifying segments of the mailing list of interest to specific persons or entities, and for the board, at its discretion, to notify additional persons or entities of opportunities to participate in rulemaking. In addition, the proposed regulation provides for periodic updating of the mailing lists, and for removal of persons or entities when mail is returned as undeliverable.

2. Petitioning for Rulemaking/Public Hearings/Biennial Reviews. The APA, as amended, states general requirements for public petitions for rulemaking, encourages the conduct of informational proceedings and periodic reviews of existing regulations, and specifies certain information to be included in Notices of Intended Regulatory Action, Notices of Comment Periods, and Notices of Meetings. The board believes these requirements and processes should be further elaborated in regulation for the benefit of public understanding.

The board adopted as emergency provisions and proposes these regulations as recommended by the Department of Health Professions. The proposed regulations specify:

- a. The process and content required for petitions for rulemaking.
- b. The content of Notices of Intended Regulatory Action, including a requirement that the board state whether it intends to convene a public hearing on any proposed regulation. If no such hearing is to be held, the board shall state the reason in the notice. The notice must also indicate that a public hearing shall be scheduled during the comment period if requested by at least 25 persons or entities.
- c. The content of Notices of Meetings, including a requirement that the notice indicate that copies of regulations for which an exemption from the provisions of the APA is claimed will be available prior to any meeting at which the exempted regulation is to be considered.
- d. A requirement that the board conduct a public hearing during the comment period unless, at a noticed meeting, the board determines that a hearing is not required.
- e. A requirement, consistent with Executive Order Number 23(90), that the board review all existing regulations at least once each biennium.

These elaborations on the Administrative Process Act

# Proposed Regulations

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are included in the proposed regulations in the belief that the board should provide every opportunity feasible for public participation, and that any curtailment of these opportunities should require affirmative action by the board at a noticed meeting.

3. Guidelines for Use of Advisory Committees. The APA, as amended, requires that agencies specify guidelines for the use of advisory committees in the rulemaking process. The statutory provisions do not specify the content of these guidelines or the duration of appointment of advisory committees.

The board adopted emergency provisions and proposes regulations identical to those recommended by the Department of Health Professions. These proposed regulations include:

- a. Provision for the board, at its discretion, to appoint an ad hoc advisory committee to assist in review and development of regulations.
- b. Provision for the board, at its discretion, to appoint an ad hoc committee to provide technical or professional assistance when the board determines that such expertise is necessary, or when groups of individuals register an interest in working with the board.
- c. Provisions for tenure of advisory committees and for their dissolution.

These provisions are considered necessary to specify to the public the conditions which should be met in the board's use of general or technical advisory committees in its rulemaking processes. They also avoid the continuation of such committees beyond their period of utility and effectiveness.

## Estimated Impact:

A. Regulated Entities: The proposed regulations will affect those persons or entities currently on the mailing lists of the board. However, there is no estimation of how many persons or groups may be affected by notices, hearings, or appointments of ad hoc advisory committees as a result of these proposed regulations.

B. Projected Costs to Regulated Entities: There are no projected costs for compliance with proposed regulations.

C. Projected Cost for Implementation: There are no additional costs to the agency associated with the promulgation of these regulations, since the board has conducted its business in compliance with the requirements of the Administrative Process Act under existing Public Participation Guidelines.

## Summary:

*The purpose of these regulations is to provide*

*guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Psychology. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The proposed regulations will replace emergency regulations currently in effect.*

VR 565-01-1:1. Public Participation Guidelines.

## *PART I. GENERAL PROVISIONS.*

### *§ 1.1. Purpose.*

*The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Psychology. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).*

### *§ 1.2. Definitions.*

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

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

*"Board" means the Board of Psychology.*

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

## *PART II. MAILING LIST.*

### *§ 2.1. Composition of the mailing list.*

*A. The board shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.*

*B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.*

*C. The board may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.*

*D. The board shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.*

# Proposed Regulations

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§ 2.2. Documents to be sent to persons or entities on the mailing list.

Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action.
2. A Notice of Comment Period.
3. A copy of any final regulation adopted by the board.
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

### § 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be

scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

### § 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

### § 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

### § 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

### § 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

## PART IV.

# Proposed Regulations

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## ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

### § 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

V.A.R. Doc. Nos. R94-511 and R94-517; Filed January 19, 1994, 11:35 a.m.

## BOARD OF VETERINARY MEDICINE

### Title of Regulation: VR 645-01-01. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Public Hearing Date: February 24, 1994.

Written comments may be submitted through April 8, 1994.

(See Calendar of Events section for additional information.)

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of the Board of Veterinary Medicine which include the promulgation of regulations. Section 9-6.14:7.1 of the Administrative Process Act

establishes the statutory requirements for public participation in the regulatory process.

**Purpose:** The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The regulations replace emergency regulations currently in effect.

#### Substance:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations.

Section 2.1 establishes the composition of the mailing list and the process for adding or deleting names from that list.

Section 2.2 lists the documents to be sent to persons on the mailing list.

Section 3.1 establishes the requirements and procedures for petitioning the board to develop or amend a regulation. The regulation sets forth the guidelines for a petition and the requirements for a response from the board.

Section 3.2 sets forth the requirements and procedures for issuing a Notice of Intended Regulatory Action.

Section 3.3 sets forth the requirements and procedures for issuing a Notice of Comment Period.

Section 3.4 sets forth the requirements and procedures for issuing a Notice of Meeting.

Section 3.5 sets forth the requirements and guidelines for a public hearing on a proposed regulation.

Section 3.6 sets forth the requirements and guidelines for a biennial review of all regulations of the board.

Section 4.1 establishes the requirements and criteria for the appointment of advisory committees in the development of regulations.

Section 4.2 establishes the requirements for determining the limitation of service for an advisory committee.

Section 4.2 A sets forth the conditions in which an advisory committee may be dissolved for lack of public response to a Notice of Intent or in the promulgation of an exempt or excluded regulation.

Section 4.2 B sets forth a term of 12 months for the existence of an advisory committee or the requirements for its continuance.

Issues: The issues addressed are those presented by the

# Proposed Regulations

amended provisions of the Administrative Process Act. These amendments pertain to: (i) public notifications and the establishment of public participation guidelines mailing list; (ii) petitioning the board for rulemaking, the conduct of public hearings related to proposed regulations, and the conduct of biennial reviews of existing regulations; and (iii) guidelines for the use of advisory committees.

An overall issue related to whether provisions of the Administrative Process Act were to be repeated in regulation. The board generally agreed with the Registrar that provisions stated in statute should not be repeated in regulation, but in instances in which clarity was enhanced by restating or elaborating on statutory provisions, the provisions were repeated.

## 1. Mailing Lists and Notifications. To establish requirements for mailing lists and for documents to be mailed to persons or entities on the mailing lists.

The board proposes language to instruct persons or entities who wish to be placed on its mailing list on how to proceed and identifies explicitly those documents which will be mailed to those persons or entities. A listing of these documents, which are specified in statute, is repeated for the sake of clarity.

The proposed regulation also establishes a mechanism for identifying segments of the mailing list of interest to specific persons or entities, and for the board, at its discretion, to notify additional persons or entities of opportunities to participate in rulemaking. In addition, the proposed regulation provides for periodic updating of the mailing lists, and for removal of persons or entities when mail is returned as undeliverable.

## 2. Petitioning for Rulemaking/Public Hearings/Biennial Reviews. The APA, as amended, states general requirements for public petitions for rulemaking, encourages the conduct of informational proceedings and periodic reviews of existing regulations, and specifies certain information to be included in Notices of Intended Regulatory Action, Notices of Comment Periods, and Notices of Meetings. The board believes these requirements and processes should be further elaborated in regulation for the benefit of public understanding.

The board adopted as emergency provisions and proposes these regulations as recommended by the Department of Health Professions. The proposed regulations specify:

- a. The process and content required for petitions for rulemaking.
- b. The content of Notices of Intended Regulatory Action, including a requirement that the board state whether it intends to convene a public hearing on any proposed regulation. If no such hearing is to be held, the board shall state the reason in the notice.

The notice must also indicate that a public hearing shall be scheduled during the comment period if requested by at least 25 persons or entities.

c. The content of Notices of Meetings, including a requirement that the notice indicate that copies of regulations for which an exemption from the provisions of the APA is claimed will be available prior to any meeting at which the exempted regulation is to be considered.

d. A requirement that the board conduct a public hearing during the comment period unless, at a noticed meeting, the board determines that a hearing is not required.

e. A requirement, consistent with Executive Order Number 23(90), that the board review all existing regulations at least once each biennium.

These elaborations on the Administrative Process Act are included in the proposed regulations in the belief that the board should provide every opportunity feasible for public participation, and that any curtailment of these opportunities should require affirmative action by the board at a noticed meeting.

## 3. Guidelines for Use of Advisory Committees. The APA, as amended, requires that agencies specify guidelines for the use of advisory committees in the rulemaking process. The statutory provisions do not specify the content of these guidelines or the duration of appointment of advisory committees.

The board adopted emergency provisions and proposes regulations identical to those recommended by the Department of Health Professions. These proposed regulations include:

- a. Provision for the board, at its discretion, to appoint an ad hoc advisory committee to assist in review and development of regulations.
- b. Provision for the board, at its discretion, to appoint an ad hoc committee to provide technical or professional assistance when the board determines that such expertise is necessary, or when groups of individuals register an interest in working with the board.
- c. Provisions for tenure of advisory committees and for their dissolution.

These provisions are considered necessary to specify to the public the conditions which should be met in the board's use of general or technical advisory committees in its rulemaking processes. They also avoid the continuation of such committees beyond their period of utility and effectiveness.

## Estimated Impact:

# Proposed Regulations

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A. Regulated Entities: The proposed regulations will affect those persons or entities currently on the mailing lists of the board. However, there is no estimation of how many persons or groups may be affected by notices, hearings, or appointments of ad hoc advisory committees as a result of these proposed regulations.

B. Projected Costs to Regulated Entities: There are no projected costs for compliance with proposed regulations.

C. Projected Cost for Implementation: There are no additional costs to the agency associated with the promulgation of these regulations, since the board has conducted its business in compliance with the requirements of the Administrative Process Act under existing Public Participation Guidelines.

## Summary:

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Veterinary Medicine. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The proposed regulations will replace emergency regulations currently in effect.

VR 645-01-0:1. Public Participation Guidelines.

## **PART I. GENERAL PROVISIONS.**

### **§ 1.1. Purpose.**

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Veterinary Medicine. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

### **§ 1.2. Definitions.**

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

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

"Board" means the Board of Veterinary Medicine.

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

## **PART II. MAILING LIST.**

### **§ 2.1. Composition of the mailing list.**

A. The board shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.

### **§ 2.2. Documents to be sent to persons or entities on the mailing list.**

Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action.
2. A Notice of Comment Period.
3. A copy of any final regulation adopted by the board.
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

## **PART III. PUBLIC PARTICIPATION PROCEDURES**

### **§ 3.1. Petition for rulemaking.**

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.

# Proposed Regulations

4. A recommended addition, deletion, or amendment to the regulation.
- C. The board shall receive, consider and respond to a petition within 180 days.
- D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

## § 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

## § 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

## § 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

## § 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the

60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

## § 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

### § 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

# Proposed Regulations

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V.A.R. Doc. R94-518; Filed January 19, 1994, 11:29 a.m.

## STATE WATER CONTROL BOARD

Title of Regulation: VR 680-21-00. Water Quality Standards.  
VR 680-21-01.3. Antidegradation Policy.

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

Public Hearing Dates:

March 10, 1994 - 7 p.m.  
March 15, 1994 - 7 p.m.  
March 16, 1994 - 7 p.m.  
March 17, 1994 - 7 p.m.  
March 22, 1994 - 7 p.m.

Written comments may be submitted until April 11, 1994.

(See Calendar of Events section  
for additional information)

Basis: Section 62.1-44.15(3a) of the State Water Control Law, as amended, authorizes the State Water Control Board (board) to establish, amend or cancel water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law. Such standards shall be adopted only after a hearing is held and the board takes into consideration water quality issues, and the economic and social costs and benefits which can reasonably be expected to be obtained as a result of the standards as adopted, modified, or cancelled. Section 303(c)(1) of the Federal Clean Water Act requires the states to hold hearings for the purpose of reviewing water quality standards and, as appropriate, modifying and adopting standards. The Environmental Protection Agency's (EPA) water quality standards regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish the exceptional waters category and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the selection and designation of specific water bodies as exceptional waters.

Purpose: The purpose of these amendments is to amend the Antidegradation Policy (VR 680-21-01.3 C 3), part of the state's Water Quality Standards, by designating five waters for special protection as exceptional waters. Nominations and supporting eligibility decision criteria documentation from the public were used in drafting these amendments. The Southern Environmental Law Center on behalf of the Citizens for Albemarle nominated the Moormans River and the Virginia Council of Trout Unlimited nominated Stewarts, Crooked, Whitetop Laurel and North Creeks.

Substance: The proposed amendments designate five surface waters for special protection as exceptional waters. The exceptional waters category was established by the board effective May 20, 1992, in response to an EPA

requirement, but no waters have yet been designated under this category. The five waters are the Moormans River in Albemarle County and the Shenandoah National Park, Stewarts Creek and Crooked Creek in Carroll County and land owned and managed by the Department of Game and Inland Fisheries, Whitetop Laurel Creek in Washington County and the Jefferson National Forest, and North Creek within the Glenwood Ranger District of the Jefferson National Forest in Botetourt County.

Issues: There are two main issues relevant to the proposed amendment. First, is the recognized need to protect the high quality waters of the five designated creeks which display exceptional ecological resources and/or offer unique recreational opportunities. Second, is the prohibition of any new, additional or increased discharge of pollutants into the designated waters. The only exception would be temporary, limited impact activities.

In addition, the board is unaware of any opposition to the proposed designations. Nearby local, state, and federal government entities have not voiced any concerns about the discharge restrictions that would be imposed by the designations of these five waters. The Department of Game and Inland Fisheries, the Nature Conservancy, and the County of Albemarle have endorsed the Moormans River nomination.

Impact:

Regulated Community: Upon permanent regulatory designation of a water body as an exceptional water, the quality of the water would be maintained and protected by not allowing any degradation except on a very short term basis. No new, additional or increased discharge of sewage, industrial wastes or other pollution would be allowed into waters designated as exceptional waters. For example, the Department of Environmental Quality (department) would be prohibited by the regulation from issuing a permit for any new industrial or municipal discharge as well as for any increase of an existing industrial or municipal discharge. In addition, no new mixing zones would be allowed in an exceptional water, and mixing zones from upstream or tributary waters could not extend into the exceptional water sections. The board does not believe there are any compliance costs associated with the proposed designation of the water bodies as exceptional waters since the designation does not impose requirements which would result in a discharger having to take action to come into compliance.

Only one of these five proposed exceptional waters, Whitetop Laurel Creek, has an existing Virginia Pollutant Discharge Elimination System (VPDES) discharger into its waters. If Whitetop Laurel Creek was designated an exceptional water, the discharger, Konnarock Store Car Wash, would not be allowed to increase its existing industrial discharge or its mixing zone. Because of the potential impact of an exceptional waters designation on permitted discharges to the water body, the exceptional waters section of the standards requires the board, when

## Proposed Regulations

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considering regulatory action to designate any waters under this section, to take all reasonable steps to notify potentially impacted parties, including local governments, of the board's intent and the estimated impacts of any possible designation. The department attempted to comply with this requirement by sending a letter about the pending nomination to each potentially impacted local government as well as to dischargers to these waters permitted under the VPDES. In addition, Water Division staff within the department provided six identical half day educational seminars for the public during August and September, 1993 in Front Royal, Lexington, Williamsburg, Roanoke, Fredericksburg, and Goshen.

**Environmental Impact:** State classification of these water bodies as exceptional waters would prevent any water quality degradation of the waters. The only exception would be temporary, limited impact activities. This designation for a water body would protect the exceptional recreational and ecological resources of the water from degradation and avoid the potential incremental lowering of water quality which is allowed for some waters (VR 680-21-01.3 B) if a public decision is made to allow degradation due to local socio-economic factors.

All five waters nominated meet the eligibility decision criteria of exceptional environmental settings, recreational opportunities, and aquatic communities. The Moormans River is a Virginia scenic river as well as an Albemarle County scenic river designated under the county's zoning ordinance, and the headwaters are located in Shenandoah National Park. The north and south forks of the Moormans support some of the best native brook trout populations in the state and are renowned for the quality of the trout fishing they provide; the Sugar Hollow Reservoir below their confluence is stocked for put and take trout fishery and downstream of the reservoir the Moormans supports a warmwater fishery. The Moormans is a whitewater stream, and over its last eight to 10 miles, canoeing is possible, depending on the season; the wider stretches are popular among swimmers and paddlers. A considerable portion of Crooked Creek is within the Crooked Creek Fee Fishing Area managed by the Department of Game and Inland Fisheries (DGIF); it is rated as a Class II wild trout stream and contains native brook trout. All of the section of North Creek are located within the Glenwood Ranger District of the Jefferson National Forest; it is a DGIF Class II wild trout and is one of the few Virginia streams that contain wild rainbow trout. The section of Whitetop Laurel Creek nominated is 90% within the Mount Rogers National Recreation Area within the Jefferson National Forest and is rated as a Class I wild trout stream by DGIF; it also is one of a few Virginia streams that contain a wild rainbow trout population.

Nearby local, state, and federal governmental entities have not voiced any concerns about the discharge restrictions that would be imposed by the designations of these five waters. The DGIF, the Nature Conservancy, and the County of Albemarle have endorsed the Moormans River nomination. Any possible loss in local income from

restrictions on discharges to the water bodies may be offset by the income generated by ecotourism to the area. In addition, there is the benefit, intangible in terms of monetary documentation but nonetheless still a recognizable benefit, to the quality of life of residents in living in an area with such exceptional water quality. There is also the benefit to the citizens of Virginia of protecting these waters at their present quality for future generations.

**State Impact:** The board does not believe the agency will incur any costs to implement the proposed amendments.

**Applicable Federal Requirements:** The EPA's Water Quality Standards Regulation is the regulatory basis for requiring states to establish the exceptional waters category and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the selection and designation of specific water bodies as exceptional waters.

**Affected Locality:** While this proposal affects specific localities (Albemarle, Botetourt, Carroll and Washington Counties), the board does not believe any one locality to be adversely affected. Nearby local governmental entities have not voiced any concerns about the discharge restrictions that would be imposed by the designations of these five waters.

### Summary:

*The State Water Control Board (board) proposes to amend the state's Antidegradation Policy (VR 680-21-01.3), part of the Water Quality Standards, by designating five surface waters for special protection as exceptional waters (VR 680-21-01.3 C 3). The exceptional waters category of the Antidegradation Policy, which allows the board to designate waters which display exceptional recreational opportunities, aquatic communities or settings for added protection, was established by the board effective May 20, 1992, in response to an Environmental Protection Agency (EPA) requirement. No waters have yet been designated under this category.*

*The five waters are the Moormans River in Albemarle County and the Shenandoah National Park, Stewarts Creek and Crooked Creek in Carroll County and land owned and managed by the Department of Game and Inland Fisheries, Whitetop Laurel Creek in Washington County and Jefferson National Forest, and North Creek within the Glenwood Ranger District of the Jefferson National Forest in Botetourt County.*

*Upon designation of these five waters as exceptional waters, the quality of the waters will be maintained and protected by not allowing any degradation except on a very short term basis. No new, additional or increased discharge of sewage, industrial wastes or other pollution will be allowed into the designated waters.*

# Proposed Regulations

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VR 680-21-01.3. Antidegradation Policy.

*€ 1, 2 and 3 this subsection .*

A. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

B. Waters whose existing quality is better than the established standards as of the date on which such standards become effective will be maintained at the existing quality; provided that the board has the power to authorize any project or development, which would constitute a new or an increased loading of pollutants to high quality water, when it has been affirmatively demonstrated that a change is necessary to provide important economic or social development in the area in which the waters are located. Present and anticipated use of such waters will be preserved and protected.

1. A new or increased discharge is defined as a newly constructed facility or an existing facility which requests a significant increase in its loading of one or more of the constituents listed in VR 680-21-01.14 B.

2. In considering whether a possible significant change in water quality is necessary to provide important economic or social development, the board will provide notice and opportunity for a public hearing so that interested persons will have an opportunity to present information and the board will satisfy the requirement of intergovernmental coordination as part of the Commonwealth's continuing planning process.

3. Upon a finding that such change is justifiable, the change, nevertheless, must not result in violation of those water quality characteristics necessary to attain the water quality goals in VR 680-21-01.2 A of protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water. Further, if a change is considered justifiable, it must not result in any significant loss of marketability or recreational use of fish, shellfish or other marine resources, and all practical measures should be taken to eliminate or minimize the impact on water quality.

4. When degradation or lower water quality is allowed, the board shall assure that there shall be achieved the highest statutory and regulatory requirements applicable to all new and existing point sources to the water body and all cost-effective and reasonable best management practices for nonpoint source control which are under the jurisdiction of the board.

5. Any determinations concerning thermal discharge limitations made under Section 316(a) of the Clean Water Act will be considered to be in compliance with the antidegradation policy.

C. Surface waters, or portions thereof, which provide exceptional environmental settings and exceptional aquatic communities or exceptional recreation opportunities may be designated and protected as described in VR 680-21-01.3

1. Designation procedures. Designations shall be adopted in accordance with the provisions of the Administrative Process Act and the board's Public Participation Guidelines. As part of the process, the board shall, when considering regulatory action to designate any waters under this section, take all reasonable steps to notify potentially impacted parties, including local governments, of the board's intent and the estimated impacts of any possible designation.

2. Implementation procedures.

a. The quality of waters designated in VR 680-21-01.3 *€ 3 subdivision 3 of this subsection* shall be maintained and protected to prevent permanent or long-term degradation or impairment.

b. No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in VR 680-21-01.3 *€ 3 subdivision 3 of this subsection* shall be allowed.

c. Nonpermitted activities causing temporary sources of pollution, which are under the jurisdiction of the board, may be allowed in waters designated in VR 680-21-01.3 *€ 3 subdivision 3 of this subsection* even if degradation may be expected to temporarily occur as long as after a minimal period of time the waters are returned or restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

3. Reserved for Future Designations of waters defined in VR 680-21-01.3 C. Surface waters designated under this subsection C are as follows:

a. The Moorman's River in Albemarle County from its headwaters in the Shenandoah National Park, and including its north and south forks, to its confluence with the Mechums River near Whitehall.

b. Stewarts Creek in Carroll County from its headwaters to the lower boundary of the Department of Game and Inland Fisheries' Stewarts Creek Wildlife Management Area (36°35'51"N; 80°47'0"W).

c. Crooked Creek in Carroll County from its headwaters to the Route 712/713 intersection on both Crooked Creek and East Creek.

d. Whitetop Laurel Creek in Washington County from the confluence of Laurel Creek upstream to the confluence of Green Cove Creek.

e. North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters.

## **Proposed Regulations**

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V.A.R. Doc. No. R94-471; Filed January 14, 1994, 11:11 a.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)

**Title of Regulation:** VR 270-01-0034. Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits.

**Statutory Authority:** §§ 22.1-321 and 22.1-327 of the Code of Virginia.

**Effective Date:** March 9, 1994.

### Summary:

The regulations state the criteria for the establishment, operation and continuing approval of certain privately owned and operated postsecondary schools offering occupational training, correspondence schools and schools for children with disabilities. Although some of the defined schools may be operated by nonprofit entities, the majority are for-profit institutions. The regulations further set forth the criteria to be used for monitoring the operation of the schools by staff of the Department of Education. Amendments were made to the regulations to have them conform to applicable state and federal statutes, to provide a basis for improved consumer protection, to respond to new budgetary needs due to changes imposed by the 1992 budget bill and as a result of input from the Proprietary Schools Advisory Committee, the Virginia Association of Private Career Schools and the Virginia Association of Independent Special Education Facilities.

The regulations delete some existing language as well as amend and add new language. The original adoption of these regulations occurred in 1970 and the subsequent addition of the requirement of regulating privately owned and operated schools for the handicapped occurred in 1973. In 1991 revisions were also made; however, this submission is the most substantial since the regulations went into effect in 1970.

Major changes to the regulations are (i) substantial increases to user fees which allow the Department of Education to collect moneys to support, in part, the proprietary schools regulatory function; (ii) an updating of the nomenclature for special classifications to coincide with language in the Americans with Disabilities Act and federal special education regulations; (iii) the creation of a five-member committee to arbitrate and resolve student/school complaints; (iv) new definitions added to clarify

certain activities for which fees will be charged; and (v) revisions which update and provide for consistency between the regulations and current practice.

Based upon public comments received during the public comment period, the following changes have been made:

1. Proposed § 3.1 13 which requests a signed teach-out agreement has been deleted; and
2. In § 8.1 F, the amount of time given schools to transact refunds has been changed from 30 to 45 days within receipt of cancellation notice.

**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 Ms. Carol Buchanan, Department of Education, James Monroe Building, 101 North 14th Street, 19th Floor, Richmond, VA 23219, telephone (804) 225-2848. There may be a charge for copies.

VR 270-01-0034. Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits.

## PART I. DEFINITIONS, EXEMPTIONS.

### § 1.1. Definitions.

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

**"Agent"** means a person who is employed by any school, whether such school is located within or outside this Commonwealth, to act as an agent, solicitor, procurer, broker or independent contractor to procure students or enrollees for any such school by solicitation in any form at any place in this Commonwealth other than the office or principal location of such school.

**"Assessment year"** means the calendar year (January 1 through December 31) to which the term "gross tuition collected" is applicable.

**"Aversive stimuli"** means physical forces (e.g. sound, electricity, heat, cold, light, water or noise) or substances (e.g. hot pepper or pepper sauce on the tongue)

# Final Regulations

*measurable in duration and intensity which when applied to a student are noxious or painful to the student, but in no case shall the term "aversive stimuli" include striking or hitting the student with any part of the body or with an implement or pinching, pulling, or shaking the student.*

*"Behavior management" means planned, individualized, and systematic use of various techniques selected according to group and individual differences of the students and designed to teach awareness of situationally appropriate behavior, to strengthen desirable behavior. The term is consistently generic and is not confined to those techniques which derive specifically from behavior therapy, operant condition, etc.*

*"Board"* means the Virginia Board of Education.

*"Branch campus" means any institution or other nonmain campus where courses and student services are offered on a regular continuing basis.*

*"Correspondence school" means a privately owned and operated educational organization which, for a consideration, profit or tuition, teaches or instructs in any subject through the medium of correspondence between the pupil and the school by which the school transmits or exchanges matter to the pupil via printed material, telecommunications or other means.*

*"Course" means presentation of an orderly sequence of lectures or other presentation of material related to an individual topic or portion of a topic.*

*"Extension classroom" means a location away from the main campus where only courses are offered.*

*"Fees" means a cost or charge associated with an approval or other activity completed in response to upgrading or maintaining a certificate to operate.*

*"Fund"* means Student Tuition Guaranty Fund.

*"Gross tuition collected" means all fees received on a cash or accrual accounting method basis for all instructional programs or courses, except for nonrefundable registration and application fees and charges for materials, supplies, and books which have been purchased by, and are the property of, the student.*

*"Guaranty instrument" means a surety bond, irrevocable letter of credit or certificate of deposit.*

*"Intrusive aversive therapy" means a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior through the application of aversive stimuli contingent upon the exhibition of such behavior. The term shall not include verbal therapies, seclusion, physical or mechanical restraints used in conformity with the applicable human rights regulations promulgated pursuant to § 37.1-84.1 of the Code of Virginia or psychotropic medications which*

*are used for purposes other than intrusive aversion therapy.*

*"Regulations"* means this document in its entirety.

*"Person" means any individual, group of individuals, partnership, association, business trust, corporation, or other business entity.*

*"Program" means a listing of an orderly sequence of individual courses.*

*"Proprietary career school" means a privately owned and operated institution or organization, no matter how titled, maintaining or conducting classes for the purpose of offering instruction for a consideration, profit or tuition, designed to prepare an individual for entry level positions in occupations, including but not limited to business, industry, skilled trades, or service occupations, or to upgrade an individual in previously acquired occupational-related skills. Such schools may be further classified by the board as necessary.*

*"School" or "schools" means any school defined in this section.*

*"School for the handicapped" "School for students with disabilities" means a privately owned and operated preschool, school, industrial institution or educational organization, no matter how titled, maintained or conducting classes for the purpose of offering instruction, for a consideration, profit or tuition, to mentally retarded persons with mental retardation, visually impaired visual impairment, speech impaired impairment, hearing impaired impairment, learning disabled disabilities, physically handicapped physical disabilities, emotionally disturbed emotional disabilities or multiple handicapped persons disabilities.*

*"Superintendent" means the Superintendent of Public Instruction.*

*"Teach-out" means the process whereby a school undertakes to fulfill its educational and contractual obligations to currently enrolled students prior to voluntarily closing. Among its options are a cessation of enrollments with continued operation until present students are graduated, or making an agreement with a school or a group of schools in the same geographic areas to absorb its students at no additional cost to the affected students.*

## § 1.2. Exemptions.

A. Any school that is licensed or approved pursuant to other statutes of the Commonwealth.

B. Any school conducted by any person, firm, corporation, or other organization solely on a contractual basis where approval as a school is not a requirement of the contract and no individual person is charged tuition or for which no tuition or charge is made.

# Final Regulations

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C. Any course or instruction not exceeding 16 hours in length offered by any person or any course or instruction not exceeding 40 hours which is offered as an adjunct to another primary business or service by any person.

D. Any college, university or professional school approved or recognized as such by the State Council of Higher Education for Virginia or similar agency of another state in which its primary campus is located, which has offered or which may offer one or more courses covered in this chapter, if any tuition, fees and charges made by the institution are collected in accordance with the regulations prescribed by the board of trustees or other governmental body of such university, college, or institution of higher education.

E. Any public or private high school accredited or recognized by the Board of Education which has offered or which may offer one or more courses covered in this chapter, if any tuition, fees and charges made by the school or collected in accordance with the regulations prescribed by the governing body of such school.

F. Tutorial instruction given in a private home or elsewhere as supplemental to regular classes for students enrolled in any public or private school or in preparation of an individual for an examination for professional practice or higher education.

G. Schools of fine arts or other avocational courses which are conducted solely to further artistic appreciation, talent, or for personal development or information.

H. Schools offering exclusively religious instruction.

I. A program through which handicapped persons with disabilities are provided employment and training primarily in simple skills in a sheltered or protective environment.

J. Any school, institute or course of instruction offered by any trade association or any nonprofit affiliate of a trade association on subjects related to the trade, business or profession represented by such trade association.

## PART II. COMPLIANCE.

### § 2.1. Certificate to operate requirement.

It shall be unlawful for any school defined in the Act to be operated in this Commonwealth without having received a Certificate to Operate issued by the board.

### § 2.2. Application process period.

A school seeking a Certificate to Operate shall submit the required information on forms provided by the Board of Education at least [ 30 60 ] days prior to the date approval is requested.

### § 2.3. Application completion deadline.

Following notification of the results of the initial review of an application for certification, all deficiencies must be corrected within a period of time, not to exceed 90 100 days. Thereafter, the school must submit a written request for continued consideration and repay the initial application fee pay the penalty prescribed in § 14.1 A 7 of these regulations .

### § 2.4. Restrictions.

No school may advertise or enroll students prior to receiving a Certificate to Operate.

### § 2.5. Exemption of certain information for accredited schools.

Any school which is accredited by an accrediting agency recognized by the United States Department of Education shall continue to be certified or may operate branch campuses after the initial issuance of a Certificate to Operate without the submission of certain information required by §§ 22.1-319 through 22.1-335 of the Code and these regulations. Such accreditation shall exempt the school from the inspection provisions of § 22.1-323 and from submission of information required by subdivisions 4, 5, 6, and 9 of § 22.1-324 of the Code and subsections C, F, G, H, and K of § 3.1 of these regulations. In addition, such schools may be exempt from the periodic monitoring visits required by § 5.1 A of these regulations if department staff is invited and accompanies the team from the school's accrediting agency on its visits to the school.

### § 2.6. Certification of branch campus/extension facilities.

Any school holding a Certificate to Operate may open an additional facility to be operated under that certificate in this Commonwealth by submitting an application on forms provided by the department and securing authorization from the board or Superintendent acting under authority from the board .

### § 2.7. Penalty for noncompliance with regulations.

Any person who opens, operates or conducts any school defined in the Act without having first obtained a Certificate to Operate shall be guilty of a Class 2 misdemeanor, and each day the owner permits the school to be open and operate without such a certificate shall constitute a separate offense.

### § 2.8. Enforcement.

Any alleged or known violation of the provisions of the Act and this part shall be referred to the Office of the Attorney General for referral to the attorney for the Commonwealth of the county or city in which the violation is alleged to have occurred or is occurring.

### § 2.9. Information sharing.

The department may seek information on applicant schools and may provide information on certified schools from other states and agencies as it deems necessary to administer these regulations.

## PART III. APPLICATION.

### § 3.1. Application requirements.

The following information shall be submitted as part of the application:

1. The title or name of the school, together with the names and home addresses of its owners, controlling officials, and managing employees. Where a school is owned by a partnership or corporation, evidence of compliance with all applicable regulations of the State Corporation Commission to lawfully conduct business in the Commonwealth shall be submitted. Every school shall be designated by a permanent and distinct name which shall not be changed without first securing the approval of the department. The school name shall not be in violation of § 23-272 D of the Code of Virginia which deals with the use of the word "college" in the school name nor shall it misrepresent the nature of the school;
2. Program outlines, along with narrative descriptions of the courses in the program and occupational objectives shall be submitted where applicable;
3. A scale drawing or copy of the floor plan which includes room dimensions of the location or locations where such instruction will take place;
4. A Certificate of Occupancy or other report(s) from the appropriate government agency(ies) indicating that the location or locations meet applicable fire safety, building code and sanitation requirements;
5. A copy of the deed, lease, or other legal instruments authorizing the school to occupy such locations;
6. A listing of the equipment, training aids and textbooks used for instruction in each program or course;
7. The maximum anticipated enrollment to be accommodated with the equipment available in each specified program or course and the ratio of students to instructors;
8. A listing of the educational and teaching qualifications of instructors and administrative staff of the school;
9. A copy of the financial statements of the school or owning entity to include, but not be limited to, the following:

- a. A balance sheet, reflecting assets, liabilities, equity, and retained earnings;
- b. An income statement, reflecting revenues, expenses, and profits and losses;
- c. A statement of increase or decrease in cash, reflecting the sources and uses of working capital; and
- d. Explanatory notes, which reflect the disclosures required by generally accepted accounting principles. These statements must be as of the date of the school's most recently-ended fiscal year.

The department reserves the right to call for, if need be in specific cases, one of these two types of statements:

- a. An audited financial statement, certified by an outside, independent, certified public account in accordance with standards established by the American Institute of Certified Public Accountants; or
  - b. A financial statement which has been "reviewed" by an outside, independent, certified public accountant in accordance with principles established for reviews by the American Institute of Certified Public Accountants.
10. A copy of the student enrollment agreement, a current schedule of tuition and other fees, copies of all other forms used to keep student records, and the procedure for collecting and refunding tuition;
  11. Copies of all advertising currently used or proposed for use by such school;
  12. Documentation as determined by the department evidencing compliance with the student tuition guaranty provisions of § 22.1-324 B of the Code and Part XIII of these regulations;
- [ 13. A signed teach-out agreement.]
- [ 13. ] Such additional information as the board or department may deem necessary to carry out the provisions of the Act.

### § 3.2. Applicant commitments.

Each application for a Certificate to Operate also shall include the following commitments:

1. To conduct the school in an ethical manner and in accordance with the provisions of §§ 22.1-319 through 22.1-335 of the Code and all applicable regulations which may from time to time be established by the board;

# Final Regulations

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2. To permit the board or department to inspect the school or classes being conducted therein at any time and to make available to the board or department, when requested to do so, all information pertaining to the activities of the school and its financial condition;
3. To advertise the school at all times in a form and manner that is free from misrepresentation, deception, or fraud and that conforms to the regulations of the board governing advertising;
4. To see that all representations made by anyone authorized by the school to act as an agent or solicitor for prospective students shall be free from misrepresentation, deception, or fraud and shall conform to the regulations of the board governing such representations;
5. To display prominently the current Certificate to Operate where it may be inspected by students, visitors, and the board or department;
6. To maintain all premises, equipment, and facilities of the school in an adequate, safe, and sanitary condition;
7. To submit to the department, in the event a school should close with students enrolled who have not completed their program of study, a list of students enrolled at the time the school closes, including the amount of tuition paid and the amount of their course or program completed;
8. To maintain current, complete, and accurate student records which shall be accessible at all times to the Board of Education or its authorized representatives. These records shall include information outlined in Part VII of these regulations;
9. To conduct all courses or programs in substantial accordance with outlines submitted to and approved by the department; and
10. To publish and adhere to policies which conform to all state and federal laws and regulations barring discrimination on the basis of race, religion, sex, national origin or handicapping condition in all school operations.

## PART IV. STAFF QUALIFICATIONS.

### § 4.1. Administrators.

Personnel employed as administrators shall have the following qualifications:

1. Hold a degree from an accredited college or university with a major in one of the areas of study offered by the school or appropriate to the job responsibilities; or

2. Is qualified by appropriate education and relevant experience; and
3. Have documented four years of experience related to the job responsibilities.

### § 4.2. Instructional staff.

All persons employed as instructional staff shall have the following qualifications:

1. Hold a degree from an accredited college or university with a major in the area of teaching responsibility, where applicable, or hold a degree in a related subject area; or
2. Be a graduate of a proprietary school certified by the board (or similar certification or approval if the school is located in another state) or other training program above the high school level with a major in the area of teaching responsibility and have a minimum of two years of occupational experience in the area of teaching responsibility or a related area; or
3. Have a minimum of four years of occupational experience, above the learning stage, in the area(s) of teaching responsibility.

### § 4.3. Staff competency requirements.

Administrators and instructors must be competent to carry out their assigned responsibilities. The board or department may utilize the services of consultants or employ other measures to determine the qualifications of personnel for the position in which they are employed.

### § 4.4. Personnel policies.

Each school shall develop written personnel policies for employees which shall include, but not be limited to, job descriptions, evaluation procedures and termination policies and make them available to the board or department if requested.

### § 4.5. Staff, schools for students with disabilities.

Personnel employed in schools for the handicapped students with disabilities shall meet the specific requirements of Part XI of these regulations.

### § 4.6. Exceptions.

The board or department may make exception to any of the above sections for good cause.

## PART V. PHYSICAL FACILITIES, INSPECTIONS.

### § 5.1. Facilities.

A. The department shall make an inspection of the school plant and facilities and file a report with the board which is available to the board for review as a prerequisite to certification. The department shall schedule periodic monitoring visits to each school at least once every two years. All facilities in use shall comply with appropriate state and local ordinances governing fire safety, sanitation, and health.

B. A change in the location of a school shall be reported to the department at least 30 days before the move on forms provided by the department, and documents required by subsections C, D and E of § 3.1 of these regulations for the new location shall be submitted to the department before the actual move takes place. An on-site visit shall be made by the department as soon as possible following notification of the change.

C. The services of representatives from the Division of Special Education Management Services or the Special Education Compliance Service Regional Services, Compliance Coordination, Early Childhood, Pre and Early Adolescent or Adolescent may be utilized in the inspection of schools for the handicapped students with disabilities. Whenever possible, the inspection of schools for the handicapped students with disabilities should be made by a team knowledgeable of education for the handicapped disabled. In addition, representatives of local school divisions or other schools for the handicapped students with disabilities may be included if appropriate.

D. Schools which find it necessary to utilize extension facilities must submit the information required by subsections C, D, and E of § 3.1 of these regulations and undergo an on-site visit to the facilities conducted by staff of the department.

## PART VI. INSTRUCTIONAL PROGRAMS.

### § 6.1. Occupational training programs.

A. The instructional programs shall consist of those programs or courses or subjects which schools have been certified to offer. The course of study shall conform to state, federal, trade, or manufacturing standards of training for the occupational fields in which such standards have been established or must conform to recognized training practices in those fields.

B. Each program shall include clearly defined occupational objectives, an orderly sequence of individual courses or units of instruction, standards of progress and grading, and specific requirements for entrance and completion.

C. Narrative descriptions of programs and courses or units shall be submitted.

D. Where programs contain internships or externships, in any form, the school shall enter into a written agreement

for such internship or externship with the receiving company or entity, a copy of which shall be available for review by the board or department.

E. Each resident school offering programs longer than three months in length shall divide the programs into sessions such as semesters, terms, quarters, or the like, most suitable to the school's operating calendar for a given year. Schools operating on a nonterm basis may divide their programs into modules not longer than four and one-half months in length.

F. The holder of a certificate may present a supplementary application in such form as may be prescribed by the department for approval of additional programs or courses of instruction at any time.

G. Revisions to existing programs must be submitted to the department for approval prior to implementation.

### § 6.2. Programs in schools for the handicapped students with disabilities.

Specific requirements for programs in schools for the handicapped students with disabilities are found in Part XI of these regulations.

## PART VII. STUDENT SERVICES, RECORDS, AND CONTRACTS.

### § 7.1. Student services and records.

A. Each school shall develop, use and maintain adequate student records which shall include, but not be limited to, the following:

1. Application for admission;
2. Enrollment agreement;
3. Academic/attendance record (transcript);
4. Financial payment record; and
5. Placement record.

B. Each school shall maintain a directory listing of all students who enroll which includes, but is not limited to, the student's name, address, telephone number, social security number, program, start date and anticipated graduation date. The information shall be current as of the date the student enrolls and shall be available for inspection by or submission to the board or department upon request.

C. Each school offering career training shall offer placement services to the graduates of the school. A written policy must be developed and an explicit description of the extent and nature of the service submitted to the department with the application for a certificate and published in the school's catalog. In the

# Final Regulations

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case of correspondence schools, promises for job placement or career enhancement shall be as proportioned, to include a placement service if appropriate.

D. Records of student counseling sessions for academic or disciplinary reasons shall be maintained in the student's permanent record if termination, dismissal or withdrawal is the basis for the counseling while he is in attendance and shall be signed by the student and the staff member administering the counseling or the institution must document the student's refusal to sign. The student shall receive a copy of said report.

E. Schools shall develop, publish and provide to students clearly written, definitive policies governing conduct, attendance, satisfactory progress, and other matters relative to encouraging responsible student behavior during their matriculation at the school.

F. Each school shall develop, publish and make available to students a procedure for resolving complaints which shall include information on reporting such complaints to the department. The department may utilize outside services to investigate and resolve complaints. The department may appoint an arbitration panel to review and resolve complaints if requested by the school. If such a panel is requested, it shall consist of three persons, one selected by the school, one selected by the department and one selected by mutual agreement between the department and the school a five-member committee to arbitrate and resolve complaints. Reasonable expenses incurred by the panel, if any, shall be paid by the school requesting the arbitration.

## § 7.2. Applications and enrollment agreements.

A. The application for admission to a school which has received a Certificate to Operate from the board or Superintendent under authority from the board shall be in writing on a form separate from any other document.

B. Any contract between a school certificated by the board or Superintendent under authority from the board and a student shall be separate from the application for admission referred to previously and shall clearly outline the obligations of both the school and the student.

C. Any contract or enrollment agreement used by the school shall comply with the following provisions:

1. The name and address of the school shall be clearly stated;
2. The name or other identification of the course or program, including the credit or number of hours of classroom instruction, home study lessons, or their study units shall be included;
3. The total cost of the course or program, including tuition and all other charges, shall be clearly stated;

4. Inclusion of a disclosure that such agreement becomes a legally binding instrument upon the school's written acceptance of the student, unless cancelled pursuant to applicable sections of these regulations;

5. Shall contain the school's cancellation and refund policy, which shall be clearly stated; and

6. Each contract or enrollment agreement shall contain an explanation of the form and notice that should be used if a student elects to cancel the contract or enrollment agreement, the effective date of cancellation, and the name and address to which the notice should be sent.

D. An application for admission is not to be construed as binding on the student.

## § 7.3. Students records maintenance.

Records for students in schools for the handicapped children with disabilities shall be kept in accordance with the provisions found in Part XI of these regulations.

## PART VIII. CANCELLATION AND REFUND POLICY.

### § 8.1. Cancellations, refunds, and minimum refund policy.

A. The school shall adopt a minimum refund policy relative to the refund of tuition, fees, and other charges if the student does not enroll in the school, does not begin the program or course, withdraws, or is dismissed.

B. A school may require the payment of a reasonable nonrefundable initial fee, not to exceed \$50, to cover expenses in connection with processing a student's enrollment, provided it retains a signed statement in which the parties acknowledge their understanding that the fee is nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.

C. All fees and payments, with the exception of the nonrefundable fee described in subsection B above, remitted to the school by a prospective student shall be refunded if the student is not admitted.

D. The school shall provide a period of at least three business days, weekends and holidays excluded, during which a student applicant may cancel his enrollment without financial obligation other than the nonrefundable fee described in subsection B above.

E. Following the period described in subsection D above, a student applicant (one who has applied for admission to a school) may cancel, by written notice, his enrollment at any time prior to the first class day of the session for which application was made. When cancellation is requested under these circumstances, the school is required to refund all tuition paid by the student, less a maximum tuition fee of 15% of the stated costs of the

# Final Regulations

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course or program or \$100 whichever is greater less. A student applicant will be considered a student as of the first day of classes.

F. An individual's status as a student shall be terminated by the school not later than seven consecutive instructional days after the last day on which the student actually attended the school. Termination may be effected earlier by written notice. In the event that a written notice is submitted, the effective date of termination will be the date the student last attended classes. Schools may require that written notice be transmitted via registered or certified mail, provided that such a stipulation is contained in the written enrollment contract. The school may require that the parents or guardians of students under 18 years of age submit notices of termination on behalf of their children or wards. Schools are required to submit refunds to individuals who have terminated their status as students within [ 30 45 ] days after receipt of a written request or the date the student last attended classes whichever is sooner.

G. The minimum refund policy for schools which financially obligate the student for a quarter, semester, trimester or other period not exceeding four and one-half months shall be as follows:

1. A student who enters school but withdraws during the first one-fourth (25%) of the period is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.

2. A student who enters a school but withdraws after completing one-fourth (25%), but less than one-half (50%) of the period is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.

3. A student who withdraws after completing half, or more than half, of the period is not entitled to a refund.

H. The minimum refund policy for schools which financially obligate the student for the entire amount of tuition and fees for the program or course shall be as follows:

1. A student who enters the schools but withdraws or is terminated during the first one-fourth of the program shall be entitled to a minimum refund amounting to 75% of the cost of the program.

2. A student who withdraws or is terminated during the second one-fourth of the program shall be entitled to a minimum refund amounting to 50% of the cost of the program.

3. A student who withdraws or is terminated during the third one-fourth of the program shall be entitled to a minimum refund amounting to 25% of the cost of the program.

4. A student who withdraws after completing three-fourths (75%) of the program shall not be entitled to a refund.

I. Fractions of credit for courses completed shall be determined by dividing the total amount of time required to complete the period or the program by the amount of time the student actually spent in the program or the period, or by the number of correspondence course lessons completed, as described in the contract.

J. It is not required that expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges, deposits, and all other charges be considered in tuition refund computations when these expenses have been represented separately to the student in the enrollment contract and catalogue, or other documents prior to enrollment in the course or program. Schools shall adopt and adhere to reasonable policies regarding the handling of these expenses when calculating the refund and submit the policies to the department for approval.

K. For programs longer than one year, the policy outlined in subsections G and H above shall apply separately for each year or portion thereof.

L. All certificated proprietary schools shall comply with the cancellation and settlement policy outlined in this section, including promissory notes or contracts for tuition or fees sold to third parties. When notes, contracts or enrollment agreements are sold to third parties, the school continues to have the responsibility to provide the training specified therein.

## § 8.2. Correspondence schools.

In the case of correspondence schools where a specific time limit for completion may not be applicable, the refund policy may be based on the number of lessons completed or other means acceptable to the department. If the program is a combination correspondence/resident program, the refund policy shall apply to each part separately and the policy outlined in either subsection G or H above shall apply to the resident portion depending on the length of the resident portion.

## § 8.3. Home solicitation sales act.

In the case of home-solicited sales, the terms of the "Virginia Home Solicitation Sales Act," § 59.1-21.3, shall supersede the provisions of this section of the regulations.

## § 8.4. Exemption.

Schools which charge or are paid on a "services-rendered" basis may be exempted from the provisions of this part upon written request to the department.

## § 8.5. Exception.

# Final Regulations

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Schools may adopt a policy more liberal or fairer to the student than those outlined in this part upon approval of the department.

## PART IX. ADVERTISING, PUBLICATIONS.

### § 9.1. Advertising and publications.

A. Each school shall use its complete name and address as listed on its Certificate to Operate for all publicity or advertising purposes and in all publications and promotions.

B. The school may advertise only that it has a "Certificate to Operate from the Virginia Board of Education or Superintendent under authority from the board ." No school, by virtue of having been issued a Certificate to Operate, may advertise that it is "supervised," "recommended," "endorsed," "accredited," "certified" or any other similar term, by the board, the department, or the Commonwealth of Virginia.

A school holding a Certificate to Operate issued by the board or Superintendent under authority from the board shall not expressly or by implication indicate by any means that the Certificate to Operate represents an endorsement of any course or program offered by the school.

C. No school, owner, partner, officer, employee, agent, or salesman shall advertise or represent, either orally or in writing, that the school is endorsed by colleges, universities, or other institutions of higher learning, unless it is so endorsed and a copy of such endorsement is filed with the board or department .

D. A guarantee of placement for graduates shall not be promised or implied by a school, owner, partner, officer, employee, agent, or salesman. No school, in its advertising or through its owners, officers, or representatives, shall guarantee employment or imply the guarantee of employment or of any wage or salary before enrollment, while the course is being offered, or after its completion.

E. A school shall not advertise for enrollment in the "help-wanted" or other employment columns of newspapers or other publications. Referral ads placed in these columns are also prohibited.

F. Printed catalogues, bulletins, pamphlets, or promotional literature must be accurate concerning the school's prerequisite training requirements for admission, curricula, subject and course content, graduation requirements, tuition and other fees or charges, and terms for payment of tuition and other fees. Copies of such materials must be filed with the board or department .

G. A school shall not make any fraudulent or misleading statement about any phase of its operation including, but not limited to, the course outline, curriculum, premises,

equipment, enrollment, and facilities in advertising, on its stationery, or in bulletins, pamphlets, or other material published or distributed by the school or its representatives.

H. Schools holding a franchise to offer specialized courses shall not advertise such courses in a manner that would impugn the value and scope of courses offered by other schools that do not hold such a franchise. Advertising special courses offered under a franchise shall be limited to the courses covered by the franchise.

I. Photographs, cuts, engraving, or illustrations in catalogues or sales literature shall not be used by a school in such a manner as to convey a false impression about the size, importance, or location of the school's facilities, or its equipment.

J. Schools shall not use endorsements, commendations, or recommendations by students, except with their consent and without any offer of financial compensation. Such material shall be kept on file by the school.

K. No school may advertise that it is endorsed by manufacturers, business establishments, organizations, or individuals engaged in the line of work for which it provides training, unless written evidence of this fact is presented to the board or department and permission to advertise is given by the board or department .

L. The accrediting agency must be named if accreditation is used as part of a school's promotional material.

M. No school may use the seal of the Commonwealth in any advertisement, publication or document.

N. Each school shall develop and publish a catalogue conforming to these regulations. The catalogue shall describe the school's programs, policies, etc., and be submitted to the department for review and approval prior to final printing.

## PART X. CORRESPONDENCE SCHOOLS.

### § 10.1. Correspondence schools.

A. The board recognizes that requirements for facilities, equipment, and methods of instruction for correspondence schools are different from those of resident schools. Where applicable, however, the regulations, as outlined, shall apply to correspondence schools.

B. Since the method of instruction provided by correspondence schools is provided primarily through the exchange of printed material and written examinations, the board will place considerable emphasis on the following when reviewing documentation submitted with an application from a correspondence school:

1. The educational objectives shall be clearly defined, simply stated, and of such a nature that they can be achieved through correspondence study.
  2. Courses offered are sufficiently comprehensive, accurate, and up-to-date, and educationally sound instructional material and methods are used to achieve the stated objectives.
  3. The school provides adequate examination services, maintenance of records, encouragement to students, and attention to individual differences.
- C. Correspondence schools that require, as a part of their training program, some type of terminal residence training shall comply with the regulations pertaining to facilities and staff.

## PART XI.

### SPECIFIC REQUIREMENTS FOR SCHOOLS FOR THE HANDICAPPED CHILDREN WITH DISABILITIES.

#### § 11.1. Statement of purpose, philosophy, and objectives.

Each school shall be responsible for formulating a written statement setting forth its purpose, philosophy, objectives and admissions policies which shall be used for guidance concerning the character and number of handicapped students with disabilities to be served, the instructional program to be offered, the staff to be used, and the services to be provided.

#### § 11.2. Administrative personnel.

##### A. Administrators.

1. Each school shall designate a person to be responsible for the administration of the school. This person shall be a graduate of an accredited college or university and shall have sufficient time, training, and ability to carry out effectively the duties involved.
2. The individual responsible for the day-to-day operation of the educational program, no matter how titled, shall hold and maintain a valid teaching certificate issued by the department. This individual shall hold an endorsement in at least one appropriate area of exceptionality disability served by the school. The individual serving in this capacity could be the same person functioning as the administrator identified in subdivision 1 above provided certification requirements are met.
3. The department may make exception to the above requirements for good cause upon application by the school.

#### § 11.3. Teachers.

A. Teachers of academic courses shall hold a valid teaching certificate, issued by the department, with

endorsement in at least one of the specific areas of exceptionality disability served by the school, or otherwise comply with board regulations. "Otherwise comply" means: a teacher without endorsement in a specific area of exceptionality disability must secure a waiver from the department and agree in writing to earn credit at the rate of six semester hours per year toward full endorsement beginning in the next semester. Requirements for a teaching certificate and the procedure for securing a certificate are outlined in the current edition of the department's bulletin Certification Regulations for Teachers.

B. Teachers of specialized subjects such as music, art, and vocational education must hold a valid teaching certificate with an endorsement in the teaching area of responsibility and agree to complete coursework or inservice training in working with the types of students of exceptionailities served by the school.

C. The board may make exception to the above requirements for good cause.

#### § 11.4. Ancillary personnel.

A. A therapist employed by a school shall be professionally trained in the area or areas of therapy in which he practices. The areas of therapy would include physical and occupational therapy. If the school employs a physical therapist, this person shall be licensed by the appropriate state authority. It is preferred that occupational therapists be registered with the American Occupational Therapy Association.

B. Audiologists or speech therapists employed by the school shall be licensed by the appropriate state authority or meet the requirements for certification as outlined in Certification Regulations for Teachers.

C. Psychologists employed by the school shall be licensed by the appropriate state authority, or meet the requirements for school psychologists, or both, as outlined in Certification Regulations for Teachers.

D. Teacher aides employed by the school shall be, at a minimum, a high school graduate or the equivalent and have inservice training or experience in working with the type of student served by the school.

E. All support personnel such as librarians, guidance counselors, social workers, etc., shall have earned a bachelor's degree from an accredited institution and hold a valid certificate, where applicable, issued by the department or be licensed by the appropriate state authority.

F. All medical personnel, including but not limited to nurses and physicians, shall hold all licenses required by the Commonwealth of Virginia to practice in this Commonwealth.

# Final Regulations

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G. All volunteers and interns, or students who are receiving professional training shall be properly supervised.

H. The department may make exception to the above for good cause upon application by the school.

## § 11.5. Personnel files.

Personnel files for staff shall be maintained and shall include the following documentation:

1. Academic preparation and past experience;
2. Attendance records;
3. Copies of contract(s) indicating dates and term(s) of employment; and
4. Results of a current X-ray or tuberculin test and preemployment physical examination reports or other health records required by § 22.1-300 of the Code and applicable regulations of the Virginia Department of Health.

## § 11.6. Educational program.

A. The educational program of each school shall reflect the written philosophy of the school by implementing the stated objectives through methods, procedures, and practices which reflect an understanding of and meet the applicable academic, vocational, therapeutic, recreational, and socialization needs of the students served. Educational programs for handicapped students *with disabilities* shall be conducted in accordance with appropriate regulations governing the education of the handicapped children *with disabilities* approved and issued by the board.

B. Programs for the handicapped students *with disabilities* shall also comply with the following requirements:

1. Each student identified by an LEA (Local Education Agency) as eligible for special education and related services shall have an individualized education program on file with the school in accordance with regulations of the board governing the education of handicapped children *with disabilities*. Students not identified as such shall have an individualized program plan;
2. Records of students shall be kept in accordance with regulations of the board. Guidelines for recordkeeping are outlined in the current edition of the publication, Management of the Students Scholastic Record in the Public Schools of Virginia;
3. The school uses testing and evaluation materials that are not racially or culturally discriminatory and do take into consideration the student's *handicapping disabling* condition(s), racial and cultural background;

4. Records of triennial evaluations of eligible handicapped students *with disabilities* conducted in accordance with board regulations shall be on file;

5. A planned program for personnel development shall be provided;

6. There will be a plan for and documentation of contact with parents, guardians, and local school division personnel;

7. All procedural safeguards required by regulations governing the education of the handicapped students *with disabilities* shall apply for eligible handicapped students;

8. Instructional/training schedules shall be conducted in accordance with board regulations; and

9. The school shall maintain pupil-teacher ratios in accordance with department regulations.

## § 11.7. Behavior management programs.

If a school has a program for behavior management or modification, the school shall develop and have on file written policies and procedures conforming to the provisions of this section approved by the governing body of the school. All interested parties shall be informed of the policies through written information contained in the institution's catalogue, brochure, enrollment contract or other publications.

### I. Definitions.

For the purposes of this section, the following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Aversive stimuli" means physical forces (e.g., sound, electricity, heat, cold, light, water or noise) or substances (e.g., hot pepper or pepper sauce on the tongue) measurable in duration and intensity which when applied to a student are noxious or painful to the student, but in no case shall the term "aversive stimuli" include striking or hitting the student with any part of the body or with an implement or pinching, pulling, or shaking the student.

"Behavior management" means planned, individualized, and systematic use of various techniques selected according to group and individual differences of the students and designed to teach awareness of situationally appropriate behavior, to strengthen desirable behavior. (The term is consistently generic and is not confined to those techniques which derive specifically from behavior therapy, operant conditioning, etc.).

"Intrusive aversive therapy" means a formal behavior management technique designed to reduce or

# Final Regulations

eliminate severely maladaptive, violent, or self-injurious behavior through the application of aversive stimuli contingent upon the exhibition of such behavior. The term shall not include verbal therapies, seclusion, physical or mechanical restraints used in conformity with the applicable human rights regulations promulgated pursuant to § 37.1-84.1 of the Code of Virginia or psychotropic medications which are used for purposes other than intrusive aversive therapy.

## 2. The following actions are prohibited:

- a. 1. Deprivation of drinking water or food necessary to meet a student's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the student's file. Denial of use of toilet facilities is also prohibited;
- b. 2. Any action which is humiliating, degrading, or abusive;
- c. 3. Corporal punishment except as permitted in a public school or a school maintained by the Commonwealth pursuant to § 22.1-280 of the Code of Virginia;
- d. 4. Deprivation of health care including counseling;
- e. 5. Intrusive aversive therapy except as permitted by other applicable regulations; and
- f. 6. Application of aversive stimuli except as part of an intrusive aversive therapy plan approved pursuant to other applicable regulations.

## § 11.8. Equipment and instructional materials.

A. Equipment and materials for instruction shall be provided in sufficient variety, quantity, and design to implement the educational program to meet the needs of the handicapped students with disabilities as identified in the IEP (Individual Education Program) as appropriate.

B. There shall be a library adequately equipped or resource materials available on site to meet the needs of the students according to the types of training or educational programs offered by the school, if applicable. Depending upon the age and needs of the handicapped students with disabilities, reference materials should be available to the preacademic, the academic, and the career education levels, if applicable.

## § 11.9. The school plant.

In the case of new construction, schools shall comply with § 2.1-109 of the Code of Virginia with reference to architectural barriers.

## § 11.10. Provisions for health.

A. A report of physical examination by a physician and an immunization record shall be on file for each student. Said reports shall not be more than three years old.

B. A student suffering with contagious or infectious disease shall be excluded from school while in that condition unless attendance is approved by a physician.

C. An adequate first-aid outfit shall be provided for use in the case of accidents.

D. In schools where meals are served on a daily basis, the school shall have the services of either a full-time or part-time dietitian or nutritionist, or consultative assistance to ensure that a well-balanced nutritious daily menu is provided. Records of menus for all meals served will be kept on file for six months.

## § 11.11. Transportation.

A. All drivers of vehicles transporting students shall comply with the requirements of the applicable laws of Virginia. Appropriate safety measures which take into consideration the age range and handicapping disabling conditions of students served at the school shall be taken by staff members or other adults who may transport students to and from school.

B. Evidence of liability insurance to protect those students transported to and from the school shall be submitted.

C. All schools shall have on file evidence that school owned vehicles used for the purpose of transporting students to and from school and school-related activities meet federal and state standards and are maintained in accordance with applicable state and federal laws.

## § 11.12. Intradepartmental cooperation.

Staff from the Division of Special Education Programs for the Handicapped and the Special Education Compliance Service of the Department of Education will be available for consultation on educational programming.

## PART XII. CERTIFICATE GENERALLY, RESTRICTIONS.

### § 12.1. Certificate to Operate.

A. A Certificate to Operate is not transferable. New owners of a school shall make an application for an original Certificate to Operate. A change of ownership occurs when control of a school changes from one person to another.

B. If there is a change in ownership of a school, the current owner shall notify the board or department at least 30 days prior to the proposed date of sale and provide a copy of the agreement of sale. An application for an original Certificate to Operate, including all

# Final Regulations

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attachments listed in § 3.1 of these regulations shall be submitted to the board *or department* by the new owner within 30 days following the effective date of the change. The school may be operated on a temporary basis under the new ownership until an original Certificate to Operate has been issued by the board.

C. A school may be operated as a branch under the certificate issued to the main campus provided application is made to the department on forms provided and the school has complied with all applicable regulations.

D. The Certificate to Operate issued by the board shall be returned immediately by registered mail to the department upon:

1. Revocation;
2. Change of location;
3. Change of ownership;
4. Change of name;
5. Voluntary closure of institution;
6. Termination of surety bond or failure to comply with the guaranty provisions of Part XIII of these regulations; and
7. Any other cause deemed sufficient by the board.

## § 12.2. Display of Certificate to Operate.

A Certificate to Operate issued hereunder shall be prominently displayed on the premises of the school where it may be inspected by students, visitors, the board, its representatives, or any interested person during regular school hours.

## § 12.3. Restrictions.

A. Certificate to Operate shall be restricted to the programs or courses specifically indicated and no other program(s) or course(s) shall be offered by a school.

B. No school offering franchised courses shall be issued a Certificate to Operate, nor shall any franchised course be approved without prior inspection and approval of the franchise agreement by the department. Such agreement shall contain a provision that the franchise shall not be terminated unless a satisfactory arrangement has been made to assure completion of instruction of the students in the school.

C. Authority is granted to the department to *suspend enrollment in* or withdraw approval of programs or courses of holders of Certificates to Operate that do not continue to meet the requirements of these regulations. A school that has had *enrollment suspended* or approval withdrawn shall be notified by certified mail and shall not

enroll new students in such programs.

## PART XIII. STUDENT GUARANTY PROVISIONS.

### § 13.1. Protection of contractual rights of students.

As required by § 22.1-321 of the Code of Virginia each school applying for or maintaining a Certificate to Operate shall provide a certain guaranty to protect the contractual rights of students. Either or both of the following provisions shall apply as determined by the department.

A. § 13.2. Student Tuition Guaranty Fund (Career schools only).

1. For purpose of this regulation, the following terms have the meanings indicated:

a. "Assessment year" means the calendar year (January 1 through December 31) to which the term "gross tuition collected" is applicable, as specified in these regulations.

b. "Fund" means Student Tuition Guaranty Fund.

c. "Gross tuition collected" means all fees received a cash or accrual accounting method basis for all instructional programs or courses, except for nonrefundable registration and application fees and charges for materials, supplies, and books which have been purchased by, and are the property of, the student.

d. "Regulations" means this document in its entirety.

2 A. The board hereby creates and provides for a Student Tuition Guaranty Fund.

3 B. The purpose of the fund is to reimburse tuition and fees due students at institutions approved under these regulations when the institution ceases to operate.

4 C. The initial minimum operating balance of the fund shall be set at \$250,000.

5 D. Each institution *approved to operate by the board* granted a Certificate to Operate shall pay into the fund the amount required by this regulation. Except as otherwise provided, each institution participating in the fund need not maintain or acquire surety bonds, irrevocable letters of credit, or other financial guaranties to protect student tuition as a condition to continued operation after the adoption of these regulations unless notified by the department.

6 E. If the department determines that deficiencies exist in the operating circumstances of any institution authorized to operate, the institution may be required to post a *surety bond guaranty instrument* in accordance with the provisions of these regulations. If so required, the

# Final Regulations

institution shall maintain the *bond guaranty instrument* and comply with these provisions until notified otherwise.

7 F. Each institution shall make payment into the fund on the following basis:

a. 1. Payment into the fund for an institution approved to operate on or before the adoption of these regulations shall be in accordance with the schedule set forth in subdivision 7 e below F 3 , and shall be based upon gross tuition collected in the assessment year beginning January 1 of the preceding year. The payment shall be made not later than 60 days after notification or January 1, whichever is earliest.

b. 2. Payment into the fund for an institution operating for less than one assessment year on the effective date of this regulation or for an institution approved to operate on or after the effective date of this regulation shall be \$150.

e. 3. An assessment shall then be made after an institution has been operating one assessment year and it shall then make payment into the fund in accordance with the schedule set forth below based on the previous assessment year's operation. All payments into the fund shall be made within 30 days of the close of the assessment year or notification, whichever is sooner:

Gross Tuition Collected During Assessment Year	Payment Into the Fund
\$ 0 to \$ 25,000	\$ 200
25,000 to 50,000	250
50,000 to 100,000	300
100,000 to 200,000	400
200,000 to 300,000	500
300,000 to 400,000	600
400,000 to 500,000	700
500,000 to 750,000	1,000
750,000 to 1,000,000	1,250
1,000,000 to 1,500,000	1,500
1,500,000 to 2,000,000	2,000
Over 2,000,000	2,000 plus 1/10 of 1% of all gross tuition over \$2,000,000

d. 4. New schools shall meet the *bonding guaranty* requirements of § 13.2 13.3. for the first three years of operation and pay an initial fee of \$150 upon receipt of its *Certificate to Operate*. Thereafter, the institution shall pay into the fund in a pattern equal to payments made by other schools upon notification by the department. After this initial period and upon satisfactory performance by the school, the *bonding guaranty* requirement may be waived by the department.

8 G . If, after the effective date of this regulation, the

board authorizes the operation of an institution upon the determination that there has been a change in ownership, the institution shall make a payment into the fund, without regard to payments, if any, previously made by the institution or its predecessor under the following conditions:

a. 1. If the institution has been operating for at least one assessment year, the institution, under its new ownership, shall pay into the fund in accordance with the schedule in subdivision 7 e F 3 of this section for the last assessment year of operation and the payment shall be due before approval to operate under new ownership; or

b. 2. If an institution has been operating for less than one assessment year, the institution, under its new ownership, shall pay into the fund in accordance with the provisions of subdivision 7 b F 2 of this section .

H. In the event the school fails to pay its student *guaranty fund assessment* within the time set forth in subsection G of this section, the *Certificate to Operate* will automatically expire. The department may grant one 60-day extension if the school submits a written request citing hardship and submits a current financial statement.

9. I. Advisory committee.

a. 1. The board shall appoint a five-member advisory committee to make recommendations to it respecting the fund.

b. 2. The five-member advisory committee shall be appointed and have terms as follows:

(1) a. Three members shall be school owners or operators;

(2) b. Two members shall be persons other than school owners or operators;

(3) c. All members shall be appointed for a three-year term except that the first appointment shall be for terms as follows:

(a) (1) The terms for each of the three school owners or operators shall be one for three years, one for two years, and one for one year, respectively.

(b) (2) The terms for each of the two persons who are other than school owners or operators shall be one to a two-year and one to a one-year term, respectively.

(c) (3) Advisory committee members are eligible for reappointment.

(d) (4) The advisory committee shall establish the time and place for its meetings and rules of

# Final Regulations

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procedures for its meetings.

(e) (5) On July 31 of each year the advisory committee shall file an advisory report on the fund with the board which shall include such recommendations concerning the operations or changes in operation or minimum balance of the fund as it may deem appropriate.

(f) (6) The advisory committee shall recommend to the superintendent the amount of money which it concludes is the minimum operating level of the fund necessary for the fund to function effectively.

10. J. The superintendent may appoint a director of the fund from his staff who shall serve at his pleasure and be responsible to the superintendent for the administration of the fund.

11. K. The director of the fund, after consulting with the advisory committee, shall have the authority to determine whether a claim merits reimbursement from the fund, and if so, the:

- a. 1. Amount of the reimbursement;
- b. 2. Time, place, and manner of its payment;
- c. 3. Conditions upon which payment shall be made; and
- d. 4. Order in which payments shall be made.

12. L. A claimant or other person does not have any right in the fund as beneficiary or otherwise.

13. M. Claims against the fund may be paid in whole or in part, based upon the extent to which program objectives were met for each claimant, and taking into consideration the:

- a. 1. Amounts available and likely to become available to the fund for payments of claims;
- b. 2. Total amount and number of claims presented or reasonably likely to be presented in the future;
- c. 3. Total amount and number of claims caused by the cessation of operation of an institution;
- d. 4. Amounts paid out from the fund on claims in the past;
- e. 5. Availability to the claimant of a transfer ("teach-out") program;
- f. 6. The total amount of moneys paid to the school by identified or prospective claimants; and
- g. 7. The balance maintained in the fund after payment of duly authorized claims may not drop

below \$35,000.

14. N. A claim shall be made against the fund only if it arises out of the cessation of operation by an institution on or after the effective date of these regulations. If the institution holds a surety bond or other guaranty instrument as required by § 13.2 § 13.3 of these regulations, the first priority shall be to file a claim against the bond guaranty instrument. Claims shall be filed with the Director of the fund on forms prescribed by the department within three years after cessation of operation by the institution. Claims filed after that are not considered. Within a reasonable time after receipt of a claim, the director shall give the institution or its owners, or both, notice of the claim and an opportunity to show cause, within 30 days, why the claim should not be reimbursed in whole or part. The director may cause to be made other investigation of the claim as he deems appropriate or may base his determination, without further investigation, upon information contained in the records of the board.

15. O. The director's determination shall be in writing and shall be mailed to the claimant and the institution or its owners, or both, and shall become final 30 days after the receipt of the determination unless either the claimant or the institution, or its owners, within the 30-day period, files with the director a written request for a hearing. Upon request, a hearing shall be held and, subject to the authority of the director to exclude irrelevant or other inappropriate evidence, the claimant and the institution or its owners may present such information as they deem pertinent.

16. P. The superintendent shall administer the fund upon the following basis:

- a. 1. The assets of the fund may not be expended for any purpose other than to pay bona fide claims made against the fund;
- b. 2. All payments into the fund shall be maintained by the State Comptroller who shall deposit and invest the assets of the fund in any savings accounts or funds which are federally or state insured, and all interests or other return on the fund shall be credited to the fund;
- c. 3. Payment into the fund shall be made in the form of a company or cashier's check or money order made payable to the "Student Tuition Guaranty Fund";

17. Q. When a claim is allowed by the director, the superintendent, as agent for the fund, shall be subrogated in writing to the amount of the claim and the superintendent is authorized to take all steps necessary to perfect the subrogation rights before payment of the claim. Refunds will be made, first, to the lender issuing student financial aid or the guarantor of the loan, and second, to the student. In the event there was no financial aid involved, refunds will be made to the student. If payment

of an institution's obligation is made from the fund, the superintendent shall seek repayment of the sums from the institution or such other persons or entities as may be responsible for the institution's obligations. This provision shall be enforced through the office of the Attorney General.

**18. R.** If the moneys in the fund are insufficient to satisfy duly authorized claims, there shall be a reassessment based on the formula specified in subdivision 7 e above F 3 of this section . If there are three reassessments, the superintendent and the advisory committee shall conduct a review of the operating circumstances of the fund and make recommendations to the board. These recommendations shall include, but not be limited to, recommendations as to whether the fund should remain in force or whether the minimum balance is sufficient. During the course of this review, the superintendent shall solicit advice from the schools and members of the public respecting the fund.

**§ 13.2. § 13.3. Bonding Guaranty instrument requirements.**

A. All initial applicants for a certificate to operate shall provide a bond , *irrevocable letter of credit or certificate of deposit* as required by this section and maintain said *bond guaranty instrument* for the first three years of operation. *After that time the school may petition the guaranty fund advisory committee for release from its obligation of the guaranty instrument.* In addition, schools for the handicapped students with disabilities shall maintain a *bond guaranty instrument* as required by this section as a condition of continued certification.

B. If it is determined that a *surety bond guaranty instrument* is required for a career school in accordance with the provisions of § 13.1 5 13.2 E , a *surety bond guaranty instrument* , payable to the Commonwealth of Virginia, on forms provided by the Board Department of Education to protect the contractual rights of the students shall be filed with the application for a Certificate to Operate.

C. The amount of the *bond guaranty instrument* shall be based on the total maximum enrollments as follows:

Maximum Student Enrollment	Minimum Bond Guaranty
0-50	\$5,000
51-100	10,000
101-150	15,000
151-200	20,000
201-250	25,000
251-300	30,000
301-350	35,000
351-400	40,000
401-450	45,000
451 and over	50,000

**C. D.** The *bonding guaranty* requirements for schools for the handicapped students with disabilities may be reduced, at the discretion of the department, if the school shows that it collects no advance tuition other than equal monthly installments or is paid after services have been rendered. The minimum *bond guaranty* for any school shall be \$1,000. Schools that feel they may qualify for a reduced *bond guaranty* may apply, on forms provided for that purpose, to the proprietary school service for authority to submit less *bond guaranty* than the law requires.

**D. E.** For *bonding guaranty instrument* purposes, the school shall count its total current enrollment as of the date of the application, or its largest enrollment as of the date of the application, or its largest enrollment in the preceding 12 months, whichever is greater. A school being organized shall use the maximum projected enrollment which will be subject to revision based on the enrollment 60 days following the date classes start.

**E. F.** In the event the a surety bond is terminated, the Certificate to Operate will automatically expire if a replacement bond is not provided.

**PART XIV.  
FEES.**

**§ 14.1. Fees, generally.**

A. The following fees shall be charged and shall apply toward the cost of investigation and issuance of the Certificate to Operate to Career Schools :

1. Original Certificate to Operate - \$150 \$300
2. Renewal of Certificate to Operate - \$ 75 \$150 plus 0.1% of gross tuition receipts for the prior assessment year.
3. Reissuance of Certificate to Operate for:
  - a. Change of Location - \$ 25 \$100
  - b. Addition of Program(s) - \$ 25 \$100
  - c. Program Deletions - \$ 50
  - d. Addition of Branch Campus - \$100
4. Review of Out-of-State School for Issuing of Agent Permits (Annual) - \$ 50 \$100
5. Original Agent Permit - \$ 5 \$ 50
6. Renewal of Agent Permit - \$ 1 \$ 25
7. Revised program review and approval/program name change - \$ 50
8. Extension Classroom/Additional Space Approval - \$

# Final Regulations

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9. Requested Catalog Review - \$ 50

7. 10. Penalty for failure to meet the deadline for submission of renewal applications or complete the initial application timelines - \$100

11. Search and issuance of student transcript - \$ 5

B. The following fees shall be charged and shall apply toward the cost of investigation and issuance of the Certificate to Operate to Schools for Students with Disabilities:

1. Original Certificate to Operate - \$150

2. Renewal of Certificate to Operate - \$ 75

3. Reissuance of Certificate to Operate for:

a. Change of Location - \$ 25

b. Addition of Program(s) - \$ 25

4. Review of Out-of-State School for Issuing of Agent Permits (Annual) - \$ 50

5. Original Agent Permit - \$ 5

6. Renewal of Agent Permit - \$ 1

7. Penalty for failure to meet the deadline for submission of renewal applications - \$100

B. C. All fees shall be submitted at the time of application and are nonrefundable.

C. D. All fees shall be paid by school or company check or money order made payable to the "Treasurer of Virginia." Personal checks are not acceptable.

## PART XV. CERTIFICATE RENEWAL.

§ 15.1. Renewal of certificate to operate.

A. Every school that continues to operate as such shall submit annually, on or before May 1 at least 45 days prior to the expiration date of its Certificate to Operate, an application, on forms provided by the board department and pay the required fee for certificate renewal. The application for renewal shall include in addition to other information, a current financial statement, a current fire inspection report, and a current schedule of tuition and other fees. Schools which do not submit complete applications and documents required for renewal within the renewal period designated by the department, including a grace period of five business days after the deadline, shall be subject to the penalty fee described in subdivision A 7 of § 14.1 of these regulations.

B. Every Certificate to Operate which has not been renewed by the board on or before June 30 of each year the annual certificate renewal anniversary date shall expire and the school shall cease operation immediately. A new Certificate to Operate shall be obtained from the board before such school may resume operations. All of the requirements of Part III of these regulations shall be met.

C. Any school not complying with the provisions of this section shall be deemed to be in violation of these regulations and shall be reported to the Office of the Attorney General for appropriate action.

## PART XVI. DENIAL, REVOCATION, SUSPENSION OR REFUSAL TO RENEW A CERTIFICATE, GROUNDS.

§ 16.1. Board actions.

The Certificate to Operate shall not be denied, revoked or suspended or a request for renewal refused except upon the action of the board which shall be reported in writing. Records of the board's findings, recommendations and actions shall be preserved in writing.

§ 16.2. Refusal, denial, revocation or suspension.

The board may refuse to renew or may deny, revoke or suspend the Certificate to Operate of a school for any one or combination of the following causes:

1. Violation of any provision of the act or any regulation made by the board;
2. Furnishing false, misleading, or incomplete information to the board or department or failure to furnish information requested by the board or department;
3. Violation of any commitment made in an application for a Certificate to Operate;
4. Presenting to prospective students information which is false, misleading, or fraudulent regarding employment opportunities, starting salaries or the possibility of receiving academic credit from any institution of higher learning;
5. Failure to provide or maintain the premises or equipment in a safe and sanitary condition as required by law or by state regulations or local ordinances;
6. Making false promises through solicitors or by advertising or by using some other method to influence, persuade, or induce enrollment;
7. Paying a commission or providing other compensation for service performed in violation of the act;

8. Failing to maintain adequate financial resources to conduct satisfactorily the courses of instruction offered or to retain an adequate, qualified instructional staff;
9. Conducting instruction in a course or program which has not been approved by the board or department;
10. Demonstrating unworthiness or incompetency to conduct a school in any matter not calculated to safeguard the interests of the public;
11. Failing within a reasonable time to provide information requested by the board or department as a result of a formal or informal complaint or as supplement to an application;
12. Attempting to use or employ enrolled students in any commercial activity whereby the school receives compensation without reasonable remuneration to the students unless activities are essential to their training and are permitted and authorized by the board *or department* as a part of the program or course;
13. Engaging in or authorizing other conduct which constitutes fraudulent or dishonest action;
14. Attempt to confer any degree on any student in violation of § 23-272 D of the Code of Virginia;
15. Violation of or failure to adhere to the student guaranty provisions set forth in Part XIII of these regulations;
16. Failure to comply with all applicable laws promulgated by a state outside Virginia in which the school is soliciting students; and,
17. Failing, within a reasonable time, to make refunds due and payable.

#### § 16.3. *Board investigation.*

The board or department may, upon its own motion, and shall upon the written complaint of any individual setting forth facts which, if proved, would constitute grounds for denial, refusal, suspension, or revocation of a Certificate to Operate, investigate the actions of any applicant or any persons holding or claiming to hold such certificate.

#### § 16.4. *Department investigation procedures.*

Authority is granted to the department staff to investigate complaints from individuals and other sources concerning alleged violations of the Act or the regulations either by a school or by an agent. *The department may use the services of a five-member arbitration committee to resolve the matter.* Where the finding(s) of the department is in favor of the complainant, the school shall abide by any recommendation(s) made. If the school disagrees with the recommendation(s), the department shall hold an

informal hearing to determine whether further action (i.e., revocation, suspension or refusal to renew a certificate) is warranted. The superintendent or his designee shall chair the hearing.

#### § 16.5. *Corrective actions.*

Before proceeding to a hearing, as provided for in the Act, on the question of whether a Certificate to Operate or permit shall be denied, refused, suspended, or revoked for any cause, the board may grant to the holder of, or applicant for, a Certificate to Operate a reasonable period of time to correct any unsatisfactory condition. If within such time, the condition is corrected to the board's satisfaction, no further action leading to denial, refusal, suspension, or revocation shall be taken by the board.

#### § 16.6. *Procedure for taking actions.*

All actions taken under the provisions of this section in regard to denials, revocations, suspensions, or refusals to renew shall be taken in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

#### § 16.7. *Revocation or denial consequences.*

Any owner of a school which has had a certificate revoked, has been denied a certificate, or has been refused renewal of a certificate shall not be allowed to apply for another certificate before at least 12 months have passed since the date the formal action was taken. In addition, this policy shall apply to any owner who fails to comply with the provisions of Part XIX of these regulations when closing a school.

### PART XVII. LISTING OF SCHOOLS.

#### § 17.1. *School listing.*

The department shall maintain a list of schools holding valid Certificates to Operate under the provisions of the Act which shall be available for the information of the public.

### PART XVIII. AGENT PERMITS.

#### § 18.1. *Agent's permits: general provisions.*

A. Every agent or solicitor representing any school for the purpose of recruiting or enrolling students off the premises of the school, whether the school is located in the Commonwealth or outside the Commonwealth, shall apply to the department in writing upon forms prepared and furnished by it. Every such agent shall not function as such until he has been issued a permit by the department. Representatives of a school participating in high school career or college-day programs to explain their school's program of study and for that purpose only are exempted from securing an agent's permit.

# Final Regulations

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B. Any individual representing a school who in any way comes into contact with prospective students off the premises of the school for the purpose of gaining information or soliciting enrollment shall be regarded as an agent of the school subject to all permit licensing requirements of the Commonwealth.

C. Each school shall be responsible and liable for the acts of its agent(s) acting within the scope of his authority and must familiarize such agent(s) with the provisions of Chapter 16 (§§ 22.1-319 through 22.1-335) of Title 22 of the Code of Virginia and regulations adopted by the board.

D. After an application for a permit has been filed with the department and is complete and acceptable, the department shall prepare and deliver to the applicant a card which among other things, shall contain the name, address, and picture of the agent, and the name of the employing school, and shall certify that the person whose name appears thereon is an authorized agent of the school named thereon. The year for which a permit is issued shall be prominently displayed on the card. The permit shall be valid for not more than one year and shall expire on December 31 following the date of issue.

E. Each agent shall display or produce the agent's permit when requested to do so by any student(s), prospective student(s), parent(s), guardian(s), school official(s) or by a member of the department or its representative(s).

F. If agents are authorized to prepare or publish advertising, or to use promotional materials, the school accepts full responsibility for the advertising and the contents of the materials used.

G. Where agents are authorized to collect money from an applicant for enrollment, they shall give the applicant a receipt for the money collected and a copy of the enrollment agreement.

H. No agent is permitted to use a title which misrepresents his duties and responsibilities.

I. No agent shall violate any of the standards set by the board governing advertising and promotional material.

J. Each agent or solicitor shall submit annually on or before November 15 an application to renew his permit on forms provided by the department and pay a renewal fee as prescribed in Part XIV of these regulations. Every permit which has not been renewed by the department on or before December 31 of each year shall expire. Schools which do not submit complete applications and documents required for renewal within the renewal period designated by the department, including a grace period of five business days after the deadline shall be subject to the penalty fee described in subdivision A 7 of § 14.1 of these regulations.

## § 18.2. Application for permit.

A. Each applicant for an agent's permit shall furnish all information required by the department. The department may make such reasonable investigation of any applicant as it deems necessary. The application shall include, among other things:

1. Recommendations of three reputable persons certifying that the applicant is truthful, honest, and of good reputation and that they recommend that a permit be issued to the applicant. The recommendations shall include at least one from a former employer and one other professional relation.
2. Each application for an agent's permit shall be accompanied by a fee as prescribed in Part XIV of these regulations. Payment shall be made by company or school check or money order payable to the "Treasurer of Virginia." The fee submitted with the agent's application shall not be refunded if the agent's permit is denied. Personal checks are not acceptable.

## B. Agents representing out-of-state schools.

Out-of-state schools desiring to employ agents to solicit students in the Commonwealth shall submit the information prescribed in Part III of these regulations or as requested by the department in the case of renewal of permits and pay fees as listed in Part XIV of these regulations. All catalogs, applications, enrollment agreements, advertising, or other similar items shall be in compliance with applicable sections of these regulations.

## § 18.3. Revoking and suspending an agent's permit.

A. The department may deny issuance of or suspend or revoke a permit issued to any agent for a school for the following causes:

1. Violation of any provision of the Act or any regulation of the board;
2. Presenting or giving to a prospective student or his parent or guardian, information which is false, misleading, or fraudulent or which makes false or misleading representations concerning employment opportunities, or the possibility of receiving credit for courses offered by the school at any institution of higher learning;
3. Failing to display a valid permit when requested by a prospective student, his parent, or guardian, or by any members of the board or representative of the department;
4. Failing to provide information requested by the department as a result of a formal or informal complaint to the department; or
5. Failing to comply with laws promulgated by any

state outside Virginia in which the agent is soliciting students.

B. The department may temporarily suspend a permit held by an agent employed by any school if action is being taken against the school by its state approving authority or accrediting agency pending resolution of the action if it is determined that such action may cause closure of the school.

B. C. No permit shall be revoked, suspended, or not renewed by the department until it has held a hearing. Such hearings and appeals therefrom shall be conducted in the same manner as those relating to revoking, suspending, refusing to renew or denying a Certificate to Operate described in Part XVI of these regulations.

C. D. At the option of the student or his parent or guardian, all contracts entered into by any student, his parent or guardian, solicited or given them by any agent or solicitor who does not possess a current and valid permit, and any nonnegotiable promissory note or other nonnegotiable evidence of indebtedness taken in lieu of cash by such agent or solicitor may be declared invalid by the department and moneys paid recovered from the school he represents.

D. E. Any agent having a permit revoked shall be prohibited from soliciting students for any school governed by these regulations for a period of one year following the date of formal action of the revocation.

## PART XIX. SCHOOL CLOSINGS.

### § 19.1. School closing procedures.

A. A school which is closing shall notify its students of the closing in writing and make arrangements to assure that they are able to complete their program of study or provide for refunds to students. In the event such arrangements cannot be made, the department shall be available to assist in making special arrangements for students to complete their programs or students will be advised of their rights in regard to filing claims against the Student Tuition Guaranty Fund.

B. Each school which is closing shall notify the board department in writing in advance of the anticipated closing date and provide the following information relative to the students currently enrolled:

1. A directory listing as described in § 7.1 B of these regulations.
2. A copy of each student's academic attendance and financial payment records and a copy of the enrollment agreement.

C. At the time of notification, the school shall submit a written plan detailing the process of closure which

provides for the following:

1. The cessation of all recruitment activities and student enrollments as of the date of the notice;
2. A description of the provisions made for the students to complete their program of study;
3. Copies of all notices of the closing given to students, the general public and other interested parties such as accrediting agencies, the U.S. Department of Education, loan guarantee agencies, etc.;
4. Provisions for the transfer of all student records to the board department within 30 days of the close and notification to all students of the location of their records; and
5. Provisions for notifying students in writing of their financial obligations.

D. Records for students transmitted to the board department shall be the originals or certified true copies which include, at a minimum, the following components;

1. Academic records showing the basis for admission, transfer credits, courses completed, and grades for those courses;
2. Up-to-date attendance and financial payment records and, where applicable, a completed financial aid transcript;
3. Evidence of refunds made to students where applicable; and
4. Any enrollment agreement(s) executed between the student and the school.

E. The cost of transferring the records to the board department shall be borne by the school.

F. In the event a school files a bankruptcy petition, a complete, certified true copy shall be filed with the board department. If students are unable to complete their program of study, they shall be given the highest creditor status allowed by statute for refunds in the full amount of moneys paid into the school.

G. Records for students in schools for the handicapped children with disabilities shall be returned to the student's home school division.

H. The board or department may request any additional information which is reasonable and necessary to carry out its responsibility.

## PART XX. TRANSMITTAL OF DOCUMENTS AND MATERIALS.

# Final Regulations

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## § 20.1. Transmitting documents and other materials.

A. The mailing of applications, forms, letters, or other papers shall not constitute receipt of the same by the department unless sent by registered mail, certified mail, express mail, or courier with return receipt requested.

B. All materials should be addressed to the Proprietary School Service, Department of Education, Box 6-Q 2120 , Richmond, VA 23216 23216-2120 or Proprietary School Service, James Monroe Building, 19th Floor, 101 North 14th Street, Richmond, VA 23219.

C. Material submitted by electronic means (e.g., facsimile machine, computer, etc.) will be accepted contingent upon receipt of original documents sent in accordance with subsection A of this section.

## PART XXI. AMENDMENTS.

### § 21.1. *Regulatory changes.*

Substantive amendments to these regulations shall be made in accordance with the provisions of § 9-6.14:1 et seq. of the Code of Virginia, formally known as the Virginia Administrative Process Act.

V.A.R. Doc. No. R94-513; Filed January 19, 1994, 11:31 a.m.

QL014-B 12/92

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF EDUCATION  
PROPRIETARY SCHOOLS

## APPLICATION FOR APPROVAL OF PROGRAM NAME CHANGE

School Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Contact Person \_\_\_\_\_

Telephone \_\_\_\_\_

Old Program Name:  
\_\_\_\_\_New Program Name:  
\_\_\_\_\_

Rationale for change:

This application must be accompanied by a company, certified or cashier's check or money order in the amount of \$50.00 made payable to the "Treasurer of Virginia". The fee is nonrefundable, personal checks are not acceptable.

QL021 12/92

COMMONWEALTH OF VIRGINIA  
BOARD OF EDUCATION  
RICHMOND, VIRGINIA 23216-2060

## APPLICATION FOR APPROVAL OF CHANGE OF LOCATION

## I. CURRENT INFORMATION

School Name \_\_\_\_\_ Phone No. \_\_\_\_\_

Address \_\_\_\_\_ City &amp; Zip Code \_\_\_\_\_

Contact Person \_\_\_\_\_ Title \_\_\_\_\_

## II. NEW LOCATION INFORMATION

Address \_\_\_\_\_ City &amp; Zip Code \_\_\_\_\_

New Phone No. (if applicable) \_\_\_\_\_

Reason for Change \_\_\_\_\_

Effective Date of the Change \_\_\_\_\_

## III. ATTACHMENTS

1. A company, certified or cashier's check or money order in the amount of \$100.00 made payable to the "Treasurer of Virginia". This fee is nonrefundable.
2. A new surety bond showing the new address or a Change of Address Rider for the existing bond.
3. A Certificate of Occupancy for the new location or individual building code, fire safety, and sanitation inspection reports from the appropriate government agency. (If a new Certificate of Occupancy is not required and the existing one is more than six (6) months old, a current fire inspection report must be submitted.)
4. A copy of the deed, lease or other legal instrument authorizing the school to occupy the new location.
5. A scale drawing of the floor plan of the new location.

## IV. CERTIFICATION

I certify that the forgoing statements and the information attached are complete and correct to the best of my knowledge and belief.

Print Name of Authorized School Official \_\_\_\_\_ Title \_\_\_\_\_

Signature of Authorized School Official \_\_\_\_\_ Date \_\_\_\_\_

## FOR OFFICE USE ONLY

Date Application Received/Reviewed \_\_\_\_\_ Date of On-Site Visit \_\_\_\_\_

QL014 12/92

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF EDUCATION  
PROPRIETARY SCHOOLS

APPLICATION FOR APPROVAL OF A NEW OR REVISED PROGRAM

School name \_\_\_\_\_

School location \_\_\_\_\_

Telephone \_\_\_\_\_

Contact person \_\_\_\_\_ Title \_\_\_\_\_

New program \_\_\_\_\_ Revised program \_\_\_\_\_

Program title \_\_\_\_\_

If revised, old title \_\_\_\_\_

Length of program: clock hours \_\_\_\_\_ quarter hours \_\_\_\_\_ semester hours \_\_\_\_\_

other (describe) \_\_\_\_\_

If revised, indicate length of old program:

clock hours \_\_\_\_\_ quarter hours \_\_\_\_\_ semester hours \_\_\_\_\_

other (describe) \_\_\_\_\_

Proposed starting date \_\_\_\_\_

Tuition \_\_\_\_\_ Registration fee \_\_\_\_\_

Additional charges and fees (please specify) \_\_\_\_\_

Will graduates be awarded a certificate or diploma \_\_\_\_\_

If seeking approval for more than one campus, list all locations where program will be offered

**ATTACHMENTS**

The following documents/information must accompany this application:

FOR EACH REVISED PROGRAM, PROVIDE THE FOLLOWING INFORMATION:

1. A cashier's or company check or money order in the amount of \$50.00 made payable to the 'Treasurer of Virginia'. Fees are nonrefundable and personal checks are not acceptable.

QL014

Page 2

2. A cross-reference between the two programs which show old and new course numbers, titles, credit, etc. for each course in the program.
3. The rationale for the revision and any applicable notes or comments regarding the program.
4. A description of the requirements for graduation from the program?
5. A list of new equipment needed as result of revisions. If not yet purchased, cite commitment to acquire (purchase orders, invoices, etc.)

FOR EACH NEW PROGRAM, PROVIDE THE FOLLOWING INFORMATION:

1. A cashier's or company check or money order in the amount of \$100.00 made payable to the 'Treasurer of Virginia'. The fee is nonrefundable and personal checks are not acceptable.
2. Objective of the program.
3. Vocational competencies expected to be attained by a graduate.
4. List, as identified by the Dictionary of Occupational Titles, the potential job opportunities for which training will prepare.
5. Evidence of market demand. Describe the rationale upon which you predicated the need for this program. Describe the extent to which individual employers or an industry advisory committee assisted in the formulation of the proposed program.
6. If an entrance test will be used, enclose copy of the test and indicate what score is required for entry. Explain how this score was determined and on what basis you determined it would assist in assessing the potential success of the student. If the test is nationally normed, submit a copy of the publisher's normative data relative to the test.
7. State the maximum number of students who will be enrolled in any one session of the program for whom you have space and equipment?
8. State the maximum instructor:student ratio?
9. Completed and signed Personnel Qualifications Records for all new instructors.
10. A list of all equipment/instructional supplies to be used in the program that are currently on-site at the school. Include copies of invoices, purchase orders, or leasing agreements for each item of equipment which is not currently on-site.
11. Describe the requirements for graduation from the program.

QL014

12. Curriculum design submissions must include the following information for each course or subject area with the program:
- A. Individual course objectives.
  - B. The total hours for theory instruction and the total hours for laboratory or practical instruction.
  - C. A detailed course outline.
  - D. A list of the textbook(s) to be used in the course, including the titles, editions, publishers and dates of publication.
  - E. A college catalog type narrative description of each course.
  - F. A description of the methods proposed to be used to teach the course (e.g. lecture, class discussion, video presentations, field trips, student demonstrations, small group activities, etc.).
  - G. A description of how the student's assimilation of the material will be assessed (e.g. short answer tests, essay questions, standardized tests, practical application problems, demonstrations, projects, etc.). Include the intervals at which these assessment tools will be utilized.
  - H. Samples of quizzes, tests, exams and daily lesson plans.
13. If an externship experience is included, please provide the following:
- A. Describe the externship content and length, include a description of the relationship between the classroom and the externship experiences (i.e., how the externship provides reinforcement of the classroom instruction).
  - B. Describe the process to be used to evaluate student performance during the externship and provide copies of the instruments.
  - C. Describe how and by whom students will be supervised during the externship.
  - D. Indicate the maximum number of students who will be at each site at anyone time.
  - E. Submit a list of the names, addresses and contact persons for each externship site. Submit copy of sample agreement between the school and sites.

Page 3

QL0018 12/92

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF EDUCATION  
RICHMOND, VIRGINIA 23216-2060

**APPLICATION FOR APPROVAL OF A BRANCH CAMPUS**  
*(Please type or print legibly in ink)*

School Name \_\_\_\_\_

Branch Address \_\_\_\_\_

Branch City &amp; Zip Code \_\_\_\_\_ Telephone \_\_\_\_\_

Branch Campus Contact Person \_\_\_\_\_ Title \_\_\_\_\_

Main Campus Location \_\_\_\_\_

City &amp; Zip Code \_\_\_\_\_ Telephone \_\_\_\_\_

Contact Person \_\_\_\_\_ Title \_\_\_\_\_

Anticipated Opening Date \_\_\_\_\_

**GENERAL INFORMATION**

Will the ownership and control of the branch be the same as that of the main campus?

 Yes  No*(If no, attach a detailed explanation of the difference and evidence of compliance with requirements of the State Corporation Commission as required by Section 3.1 (A) of the regulations.)*

Anticipated enrollment at the branch for the upcoming year \_\_\_\_\_

Will the programs offered at the branch be identical to those offered at the main campus?

 Yes  No*(If no, attach a detailed explanation.)*Will the branch campus be financially independent of the main campus?  Yes  No*(If yes, attach an explanation of the relationship to the main campus (if applicable) and a financial statement for the branch which conforms to the requirements of Section 3.1 (j) of the regulations.)*

Will all policies, tuition and fees currently in effect at the main campus be applicable to the branch campus?

 Yes  No*(If no, attach a detailed explanation.)*

# Final Regulations

## ATTACHMENTS

The information listed below shall be submitted with the completed application (if applicable):

1. A cashier's or company check or money order in the amount of \$100.00 made payable to the "Treasurer of Virginia". Personal checks are not acceptable.
2. A copy of the institution's financial statement in the format described in Section 3.1 (f) of the regulations clearly showing costs for establishing the branch. An updated budget showing allowances for the branch shall also be submitted.
3. A copy of the institution's catalog with branch information highlighted.
4. A copy of the deed, lease or other legal instrument authorizing the institution to utilize the facility in which the branch is housed.
5. A Certificate of Occupancy for the branch location or individual inspection reports as required by Part III, Section 3.1 (4) of the regulations.
6. Evidence of compliance with the student guaranty provisions of Part XIII of the regulations. This evidence may be a new surety bond or payment of assessment as required by the Department resulting from the establishment of the branch.
7. Forms QL13-Proprietary School Personnel Qualification Record for all staff employed at the branch as required by Part III, Section 3.1 (6) of the regulations.

If there are revisions to any of the following items, new copies must also be submitted:

1. Student record forms as required by Part VII of the regulations.
2. Advertising currently being used or proposed for the future use.

QL001D 12/92

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF EDUCATION  
PROPRIETARY SCHOOLS

## APPLICATION FOR APPROVAL OF EXTENSION CLASSROOM/ADDITIONAL SPACE

### L GENERAL INFORMATION

School Name: \_\_\_\_\_

Extension Classroom/Additional Space Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

Main Campus Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Anticipated Enrollment at Extension: \_\_\_\_\_

What student services, if any, will be available at extension? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is this space temporary? If so, anticipated length of time to occupy?

Projected operating date \_\_\_\_\_

(over)

PART II - ATTACHMENTS

1. A company, certified, cashier's check or money order in the amount of \$50.00. Made payable to the "Treasurer of Virginia". This fee is nonrefundable, personal checks are not acceptable.
2. A copy of deed, lease or other legal instrument authorizing the school to occupy the new location.
3. A scale drawing of the floor plan of the new location.
4. Verification from bonding company that bond covers this location.
5. A certificate of occupancy for the new location or individual building code, fire safety and sanitation inspection reports from the appropriate government agency. If a new certificate of occupancy is not required and the existing one is more than six (6) months old, a current fire inspection report must be submitted.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION  
P.O. BOX 2120  
RICHMOND 23216-2120

June 8, 1993

M E M O R A N D U M

TO:

FROM: Proprietary Schools Staff  
RE: 1993-94 Certificate to Operate Renewal Assessment

1. GROSS TUITION REPORTED PER FORM QL.012B: \$ \_\_\_\_\_

2. ASSESSMENT (0.1% OF ABOVE FIGURE) \$ \_\_\_\_\_

Amount on line 2 must be paid within ten (10) days of your receipt of this bill. Please submit a company, certified or cashier's check or money order made payable to the "Treasurer of Virginia" in the stipulated amount.

If you have any questions or comments, please feel free to contact this office at 804/225-2100.

# Final Regulations

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QL.012B 3/93

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF EDUCATION  
P. O. BOX 2120  
RICHMOND, VIRGINIA 23216-2120

## ANNUAL RENEWAL FEE ASSESSMENT CERTIFICATION

\*ASSESSMENT YEAR: \_\_\_\_\_

SCHOOL  
NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONTACT  
PERSON: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

### FINANCIAL INFORMATION

TOTAL RECEIPTS FOR INSTRUCTIONAL  
PROGRAMS/COURSES \$ \_\_\_\_\_

LESS:  
NONREFUNDABLE REGISTRATION  
& APPLICATION FEES \_\_\_\_\_

RECEIPTS FOR BOOKS, SUPPLIES  
& MATERIALS PURCHASED BY  
AND CONSIDERED THE PROPERTY  
OF THE STUDENTS \_\_\_\_\_

GROSS TUITION COLLECTED \$ \_\_\_\_\_

I certify, that the information contained in this document is true  
and correct to the best of my knowledge and that furnishing  
incomplete or incorrect information may lead to the denial  
revocation or suspension of any Certificate to Operate issued to  
this institution.

Date \_\_\_\_\_ Signature of Official \_\_\_\_\_

\*Assessment year is defined as the prior Certificate year. Use  
estimated figures for April, May and June.

# Final Regulations

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Title of Regulation: VR 394-01-1. Public Participation Guidelines [ for Formation, Promulgation and Adoption of Regulations ].

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

Effective Date: April 1, 1994.

### Summary:

*The amendments provide for public petition of the Board of Housing and Community Development to develop or amend a regulation and clarify under what condition the board believes the use of advisory committees to be appropriate.*

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 George W. Rickman, Jr., Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170. There may be a charge for copies.

VR 394-01-01. Public Participation Guidelines.

## 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 Board of Housing and Community Development.

"Department" means Department of Housing and Community Development.

"Guidelines" means the regulations adopted by the Board of Housing and Community Development for public participation in the formulation, promulgation and adoption of regulations.

"Staff" means employees of the Department of Housing and Community Development or Board of Housing and Community Development.

### § 1.2. Application.

These guidelines apply to all regulations adopted by the board. They will be used whenever regulations are

hereafter adopted, amended or deleted.

### § 1.3. Periodic review.

It is the intent of the board to conduct a periodic review of all regulations that have been adopted under state law. Such reviews will be undertaken at appropriate intervals as needed to keep the regulations up-to-date. These guidelines will be used in the review process.

## PART II. PUBLIC PARTICIPATION.

### § 2.1. Mailing lists.

The department will maintain lists of individuals, businesses, associations, agencies, and public interest groups which have expressed an interest, or which could reasonably be expected to have an interest, in the board's regulations. The lists will be updated and expanded as new interested parties are identified. Deletions will be made when lack of interest is determined.

### § 2.2. Notification.

The lists will be used to notify and solicit input to the regulatory revision process from interested parties. Selected mailings will be made independently of notices in The Virginia Register of Regulations and of notices in newspapers. Advertising in department newsletters, in trade and professional publications, and in public interest group publications will be used when appropriate.

### § 2.3. Solicitation of input.

The staff of the department will continually receive, retain and compile all suggestions for changes and improvements to the regulations. Any person may petition the board to request the board to develop a new regulation or amend an existing regulation. The board shall receive, consider, and respond to the petition within 180 days. In addition, a Notice of Intent to Adopt or Amend Regulations Intended Regulatory Action will be published in The Virginia Register of Regulations to solicit public input before drafting the proposals.

### § 2.4. Regulatory review workshops.

Before adoption or revision of the regulations, the board may conduct one or more meetings for the general public to explain the review process and to solicit proposals for needed changes. At least [ thirty days' 30 days ] notice of such meetings will be published in The Virginia Register of Regulations and in a newspaper of general circulation published in the region in which the meeting is to be held, and in a newspaper of general circulation published in Richmond, Virginia. Press releases and other media will be used as needed. Selected interested persons and groups will be notified by mail.

### § 2.5. Preparation of preliminary draft.

# Final Regulations

The board will prepare a preliminary draft of proposed amendments to the regulations based on public input received and on the results of its own study of the regulations.

## § 2.6. Ad hoc committee review.

The board may intends to establish an standing or ad hoc advisory committee committees consisting of invited representatives of all groups believed to be affected by the regulations and the proposed amendments or individuals registering interest in working with the board. The board believes the use of standing or ad hoc committees to be appropriate when the subject matter is of an unusual technical nature, or when the regulation has significant impact on a regulated community . The board will give consideration to recommendations received from the committee committee(s) , and will make appropriate revisions to the draft.

## § 2.7. Public hearings.

Prior to completion of a final draft, the board will convene at least one public hearing in accordance with the procedures required by the Administrative Process Act and the Virginia Register Act , except for those regulations which may be adopted without public comment pursuant to § 9-6.14:4.1 of the Code of Virginia .

## PART III. ACTION ON COMMENTS OF GOVERNOR AND LEGISLATURE.

### § 3.1. When Governor suspends process.

If the Governor suspends the regulatory process to require solicitation of additional public comment, the board will do so in the manner prescribed by the Governor. If no specific method is required, the board will employ one or more of the following procedures, as deemed necessary:

1. Consult with affected persons and groups.
2. Reconvene the ad hoc review committee for further consultation.
3. Advertise and conduct an additional public hearing under the procedures prescribed by the Administrative Process Act and the Virginia Register Act.

### § 3.2. Other legislative and executive comments.

If the Governor does not require solicitation of additional public comment, but does provide suggestions, or if further suggestions are received from the required legislative review during the [ thirty-day 30-day ] final adoption period, the board will determine whether solicitation of additional public comment should be undertaken. If needed, one or more of the procedures described above may be used.

V.A.R. Doc. No. R94-459; Filed January 11, 1994, 11:17 a.m.

\* \* \* \* \*

**Title of Regulation:** VR 394-01-2. **Virginia Certification Standards for Building Inspection Personnel, Amusement Device Inspectors, Blasters, Plumbers, Electricians, and Building Related Mechanical Workers/1990 /1993 .**

**Statutory Authority:** §§ 15.1-11.4, 36-98.3, 36-137, and 27-97 of the Code of Virginia.

**Effective Date:** April 1, 1994.

### Summary:

*The amendments put in place certification standards to be used for the certification of local fire and building maintenance inspectors, and for the certification of fire protection system designers and installers when they are required to be certified by local governments pursuant to other laws.*

**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 George W. Rickman, Jr., Department of Housing and Community Development, 501 N. Second Street, Jackson Center, Richmond, VA 23219-1321, telephone (804) 371-7170. There may be a charge for copies.

VR 394-01-2. Virginia Certification Standards.

## PART I. GENERAL.

### § 1.1. Definitions.

The terms used in these standards shall have the following meaning:

*"Agent"* means the person designated by the county, city, or town, according to local ordinance, to examine and determine an applicant's qualifications for certification.

*"Agricultural blasting"* means any blasting operation which is conducted on real estate devoted to agricultural or horticultural use as defined in § 58.1-3230 of the Code of Virginia, and no less than five acres in area.

*"Apprentice"* means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Voluntary Apprenticeship Act, § 40.1-120 of the Code of Virginia.

*"Approved"* means approved by the Department of

# Final Regulations

## Housing and Community Development.

*"Blaster"* or *"shot firer"* means the qualified person in charge of, and responsible for, the loading and firing of an explosive or blasting agent.

*"Board"* means the Board of Housing and Community Development.

*"Board of appeals"* means the board established by a county, city or town, by local ordinance, to hear appeals concerning the application of [ Part II and Part VIII of ] these standards or from a decision of the local board or agent.

*"Building official"* means the executive official in charge of the local building department.

*"Building-related mechanical worker"* means a tradesman who does building-related mechanical work, including heating, air conditioning, and ventilation.

*"Certified building official"* means a person certified by the Council of American Building Officials as a certified building official.

*"Code official"* means the official who is charged with the administration and enforcement of Volume II of the Virginia Uniform Statewide Building Code.

*"Contractor"* means a person licensed according to § 54.1-1100 of the Code of Virginia who for a fixed price, commission, fee or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing or superintending the construction, removal, repair or improvement of any building or structure owned, controlled or leased by another person.

*"Department"* means the Department of Housing and Community Development.

*"Division"* means a limited certification subcategory within any of the trades, as approved by the department.

*"Electrical work"* consists of, but is not limited to the following: (i) plan and layout of detail for installation or modifications of electrical apparatus and controls, preparation of sketches showing location of wiring and equipment; (ii) measures, cuts, bends, threads, assembles and installs electrical conduits; (iii) performs maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect hazards and need for adjustments, relocation or replacement; (v) repairs faulty systems or apparatus.

*"Electrician"* means a tradesman who does electrical work including, but not limited to, installing, repairing and maintaining electrical systems and equipment.

*"Fire Alarm System (FAS)"* means a system and associated components which provide an indication or

warning of fire, smoke or combustion in its incipient stages, or other conditions which affect the operation of the fire alarm system or other systems to which it is connected.

[ *"Fire Alarm System (FAS) Certified Design Technician"* means an individual who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation of FAS and has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development. ]

*"Fire Alarm System (FAS) Certified Installer"* means an individual who does the initial placement of equipment or the extension, modification, alteration, testing, inspection or maintenance of fire alarm equipment and who has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development.

*"Fire official"* means the designated person charged with the administration and enforcement of the Virginia Statewide Fire Prevention Code.

*"Fire Protection Special Hazard System (FPSHS)"* means for fire suppression purposes a nonwater based special hazard system of underground or overhead piping designed in accordance with fire protection engineering standards. Such systems include [ , ] but are not limited to [ , ] carbon dioxide systems, dry chemical systems, wet chemical systems, halon and other chemical or gaseous systems used for fire suppression purposes.

[ *"Fire Protection Special Hazard System (FPSHS) Certified Design Technician"* means an individual who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation of FPSHS and has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development. ]

*"Fire Protection Special Hazard System (FPSHS) Certified Installer"* means an individual who does the initial placement of the equipment or the extension, modification, alteration, testing, inspection or maintenance of fire protection special hazard systems and who has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development.

*"Fire Protection Sprinkler System (FPSS)"* means for fire suppression purposes an integrated system of underground and overhead piping designed in accordance with fire protection engineering standards. The installation includes one or more automatic water supplies with or without other agents. The portion of the sprinkler system above ground is a network of specially sized or hydraulically designed piping installed in a building, structure, or area generally overhead and to which sprinklers are attached in a systematic pattern.

# Final Regulations

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[ “*Fire Protection Sprinkler System (FPSS) Certified Design Technician*” means an individual who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation of FPSS and has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development. ]

“*Fire Protection Sprinkler System (FPSS) Certified Installer*” means an individual who does the initial placement of the equipment or the extension, modification, alteration, testing, inspection or maintenance of fire protection sprinkler systems and who has satisfactorily completed an examination from an approved testing agency recognized by the Board of Housing and Community Development.

“*Formal vocational training*” means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, military, correspondence schools, or other similar training organizations.

“*Gasfitter*” means a tradesman who does gasfitting related work as a [ subdivision division ] within the building-related mechanical or plumbing trades.

“*Helper*” or “*laborer*” means a person who assists a tradesman certified according to these standards.

“*Inspector*” means a person authorized by the building local official to perform the inspections required in the Virginia Uniform Statewide Building Code regulations adopted and promulgated by the Board of Housing and Community Development .

“*J Journeyman*” means a person who possesses the necessary ability, proficiency and qualifications to install, repair and maintain specific types of materials and equipment, utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

“*Local board*” means the board established by a county, city or town, according to local ordinance, to examine and determine an applicant’s qualifications for certification.

“*Master*” means a person who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing, and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Uniform Statewide Building Code.

[ “*Professional code administrator*” means a person certified by the Board of Housing and Community Development as a professional code administrator. ]

“*Plumber*” means a tradesman who does plumbing work.

“*Plumbing work*” means the practice, materials and fixtures used in the installation, maintenance, extension and alteration of all piping, fixtures, appliances and appurtenances in connection with any of the following: sanitary drainage facilities, the venting system and the public or private water-supply systems within or adjacent to any building or structure.

[ “*Professional code administrator*” means a person certified by the Board of Housing and Community Development as a professional code administrator. ]

“*Supervision*” means monitoring of the work in progress to assure that the final installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code.

“*Supervisor*” means the certified master tradesman who has the responsibility to determine that the final installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code.

“*Technical assistant*” means any person employed by, or under contract to, a Virginia governing body as an inspector for determining compliance with the building, electrical, plumbing, mechanical or fire protection provisions regulations adopted and promulgated by the Board of Housing and Community Development , including plans examination ; of the Virginia Uniform Statewide Building Code .

“*Testing organization*” means an independent testing organization whose main function is to develop and administer examinations.

“*Trade*” means any of the following: plumbing, building-related mechanical or electrical work, and divisions within them.

“*Tradesman*” means a person who engages in or offers to engage in, for the general public or for compensation, any of the trades covered by these standards.

[ “*Virginia Certified Building Official*” means a professional code administrator, or a certified building official who has also passed an examination and been certified by the Board of Housing and Community Development. ]

## § 1.2. Authority.

A. The tradesmen standards are adopted under authority granted by [ Chapter 1, ] § 15.1-11.4 of the Code of Virginia for use by counties, cities, and towns to be used for the certification of plumbing, building-related mechanical and electrical workers. These standards are not intended to affect licensing by local governments under other provisions of the Code of Virginia.

B. The building official, fire official, code official technical assistants, and amusement device inspecto:

standards are adopted under authority granted by [ Chapter 6, ] §§ 36-137(6) and 36-98.3 of the Code of Virginia for the certification of building officials, technical assistants and amusement device inspectors.

C. The certification standards for blasters are adopted under authority granted by [ Chapter 9 ] of Title 27 § 27-97 of the Code of Virginia.

D. These standards were adopted by order of the Board of Housing and Community Development on [ November December ] 19, 1990 [ 15 13, ] 1993. This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development and is available for public inspection.

E. The 1990 1993 edition of these standards replaces previous editions. It shall become effective on [ March April ] 1, 1991 1994. Persons already enrolled in a certification program shall remain subject to the edition in effect at the time of enrollment. Subsequent enrollment shall be subject to the pertinent provisions of the standards in effect at the time of such action enrollment.

F. The Department of Housing and Community Development shall be the administrative agency providing advisory interpretations concerning the application of these standards.

G. The Department of Housing and Community Development may utilize testing organizations that develop and administer examinations based on the current provisions of the Virginia Uniform Statewide Building Code, Virginia Statewide Fire Prevention Code, Virginia Amusement Device Regulations, and the model codes and standards referenced by those regulations including standards for plumbing, building-related mechanical and electrical work. The department may designate divisional examinations within these trades.

## PART II. CERTIFICATION OF TRADESMAN STANDARDS.

### § 2.1. Exemption from certification.

A. Plumbers, plumber-gasfitters, building-related mechanical workers, building-related mechanical gas-fitters or electricians who were certified or licensed prior to July 1, 1978, in accordance with the certification or license provisions of the Commonwealth or any local government, shall be exempt from any further local certification requirement for the same trade.

B. Helpers or laborers who assist certified tradesmen shall be exempt.

C. Any person [ that who ] performs plumbing, plumbing gas-fitting, building-related mechanical gas-fitting, building-related mechanical, or electrical work on their

own property rather than not for the general public or for compensation shall be exempt from local certification.

D. Any person who installs television or telephone cables, or lightning arrestor systems shall be exempt from certification as an electrician. Installers of wood stove equipment, masonry or prefabricated chimneys, or duct systems shall be exempt from certification as a building-related mechanical worker.

### § 2.2. Temporary certification.

A. Upon initial adoption of the Tradesmen Certification Standards, a locality shall be entitled to issue temporary journeymen and master tradesmen certificates to applicants that furnish evidence documenting their competence to perform work at their desired level of certification.

B. Temporary journeymen and master tradesmen certificates shall be effective for a period of six months from the date of issuance. Localities may extend a temporary tradesmen certificate for no longer than one additional six-month period, if the locality determines that the certificate holder is making an effort towards certification or special circumstances exist, or both.

C. Temporary journeymen and master tradesmen certificates shall be valid only in the jurisdiction of the issuing locality.

D. A temporary journeymen or master tradesmen certificate shall entitle the certificate holder to take the corresponding journeymen or master tradesmen certification examination.

E. Should the holder of a temporary journeymen or master tradesmen certificate fail to pass the appropriate certification examination by the expiration date of their temporary certificate, the individual shall be subject to the requirements of § 2.3 of these standards.

### § 2.3. Evidence of ability and proficiency.

A. Applicants for examination to be certified as a journeyman shall furnish evidence that one of the following experience and education standards have has been attained:

1. Four years of practical experience in the trade, and 240 hours of formal vocational training in the trade; however, experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours; or

2. Successful completion of a registered apprenticeship program established in accordance with the Virginia Voluntary Apprenticeship Act; or

[ 3. An Associate Degree in a curriculum related to

# Final Regulations

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*the trade for which certification is desired and two (2) years of practical experience in the trade for which certification is desired; or ]*

3. [ ~~4.~~ 3. ] A Bachelor's Degree in an engineering curriculum related to the trade for which certification is desired, and one year of practical experience in the trade for which certification is desired; or

4. [ ~~5.~~ 4. Seven Ten ] years of practical experience in the trade for which certification is desired.

B. Applicants ~~desiring to obtain certification for examination to be certified~~ as a master shall furnish evidence that [ they have one year of experience as a certified journeyman. *one of the following experience and education standards has been attained:*

1. Meet the requirements of § 2.3 A and have one additional year of supervisory experience; or

2. Ten years of practical experience in the trade for which certification is desired. ]

C. Individuals who have successfully passed the Class A contractors ~~exam~~ examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with these standards.

## § 2.4. Application and issuance of certificates.

A. An applicant must successfully complete an examination to be issued a card and deemed certified.

B. The local agent or board or agent shall receive and review applications and forward applications to the national testing organizations designated by the department.

C. The applicant shall present to the local agent or board or agent evidence of successful completion of an examination based on the current edition of the Virginia Uniform Statewide Building Code.

D. The local agent or board or agent shall issue certificates provided by the department to applicants successfully completing the examination.

E. Apprentices that completed a program prior to July 1, 1981, shall make application for certification with a locality; apprentices completing programs after July 1, 1981, shall make application with the Department of Labor and Industry, Apprenticeship Division.

## § 2.5. Revocation of certification.

A. Certification may be revoked for misrepresentation or a fraudulent application, or for incompetence as demonstrated by an egregious or repeated violations of the Virginia Uniform Statewide Building Code.

B. The Department of Housing and Community Development shall be notified by the local board or agent when a certification has been revoked in accordance with provisions of these standards.

## § 2.6. Reciprocity Other recognized programs .

Individuals certified as a journeyman or master by governing bodies located outside the Commonwealth of Virginia shall be considered to be in compliance with these standards, if the Department of Housing and Community Development has determined the certifying system to be equivalent to the Virginia system.

## [ § 2.7. Appeals.

A. Each local governing body shall establish a board of appeals. The local board of appeals shall consist of not less than five members appointed by the local government. Members shall be selected on the basis of their ability to render fair and competent decisions. Employees or officials of the local government appointing the board of appeals shall not serve as members. The agent shall designate an employee to serve as secretary to the board of appeals, who shall keep a detailed record of all proceedings. The board of appeals shall hear appeals concerning the application of these standards or from a decision of the local agent or certification board. Application for appeals shall be in writing and made within 90 days of receipt of the decision of the agency or certification board. The appeals board must meet within 20 working days of the filing of an appeal. All hearings shall be *open to the public* ] and conducted in accordance with the applicable provisions of the Administrative Process Act, § 9-6.14.1 of the Code of Virginia .

[ B. Any person aggrieved by a decision of a local board of appeals may appeal to the State Building Code Technical Review Board in accordance with § 117.0 116.0 of the Uniform Statewide Building Code, Volume I. ]

## PART III. CERTIFICATION PROGRAM FOR BUILDING OFFICIALS AND INSPECTORS TECHNICAL ASSISTANTS .

### § 3.1. Exemption from certification.

A. An individual employed as the building official in any locality in Virginia prior to April 1, 1983, shall be exempt from certification while employed as the building official in that jurisdiction. This exemption shall not apply to subsequent employment in another jurisdiction, or a change in area of inspection discipline.

B. An individual employed as the building, electrical, plumbing, mechanical, fire protection systems inspector or plans examiner in Virginia prior to March 1, 1988, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment as a technical

# Final Regulations

assistant in another jurisdiction.

## § 3.2. Certification.

To be eligible for certification an applicant shall meet the following criteria:

1. The applicant shall be qualified according to Volume I of the Uniform Statewide Building Code (USBC).
2. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A.
3. The applicant shall complete designated programs *the core and applicable advanced modules* of the Virginia Building Code Academy.
4. The applicant shall submit an application for certification along with a copy of examination results from the testing agency to the Professional Services Training and Certification Office.

## § 3.3. Maintenance of certification.

A. A certificate issued under the Virginia Certification Standards shall expire three years from January 1 of the year in which the certificate is issued.

B. A. To maintain certification a certificate holder shall attend programs of instruction *approved as mandated* by the Department of Housing and Community Development and after each code change cycle of the Uniform Statewide Building Code (USBC) and Virginia Statewide Fire Prevention Code (VFPC).

C. B. Certificate holders are responsible for notifying the Department of Housing and Community Development of address changes *prior to the renewal date of their certification*.

## § 3.4. Revocation of certification.

The board may revoke the certification for any of the following:

1. Any willful misrepresentation in obtaining or renewing the certification.
2. Gross negligence or continued incompetence in the practice of the profession.

## [ § 3.5. Appeals.]

Any person aggrieved by a decision based upon these certification standards may appeal that decision, in writing, in accordance with the appeals process outlined in §§ 116.0 and 117.0 of the Virginia Uniform Statewide Building Code, Volume I.

[ Any person aggrieved by a decision based upon application of this certification standard may appeal that decision, in writing, directly to the State Building Code Technical Review Board in accordance with the appeals process outlined in § 116.0 of the Virginia Uniform Statewide Building Code, Volume I. ]

## PART IV. BLASTER CERTIFICATION.

### § 4.1. Exemption from certification.

Individuals conducting agricultural blasting operations on their own property are not required to be certified as a blaster.

### § 4.2. Certification.

Certification shall be in the following two classifications:

1. Unrestricted blaster. A person classified as a certified unrestricted blaster shall be qualified to conduct appropriate blasting without limit as to size of shot or type of detonation devices. An applicant for unrestricted blaster certification shall successfully complete an examination developed and administered by a recognized and approved testing agency listed in Appendix A.
2. Restricted blaster. A person classified as a certified restricted blaster shall be qualified to conduct blasting operations involving five pounds of explosives or less per shot and use only instantaneous blasting caps. An applicant for restricted blaster certification shall successfully complete an examination developed and administered by a recognized and approved testing agency listed in Appendix A.

### § 4.3. Qualifications of candidates.

An applicant for a blaster's certification shall meet the following criteria:

1. Be at least 21 years of age;
2. Be able to understand and give written and oral instructions in the English language;
3. [ a. For ] unrestricted blaster certification [ , ] have worked at least one year under the direct supervision of a blaster certified by the Commonwealth of Virginia or another authority recognized by the Department of Housing and Community Development;

[ b. For ] restricted blaster certification [ , ] have worked at least one year under the direct supervision of an individual certified as an unrestricted blaster or as a restricted blaster by the Commonwealth of Virginia or another authority recognized by the Department of Housing and

# Final Regulations

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## Community Development.

NOTE: In no case shall a certified restricted blaster's supervision be acceptable for an unrestricted blaster's experience requirements.

4. Have a working knowledge of federal, state, and local laws and regulations pertaining to explosive materials.

### § 4.4. Temporary certification.

A temporary certificate may be issued to any person who meets the applicant criteria listed in § 4.3. Any temporary certificate issued shall expire 12 months from the date of issuance. Temporary certifications shall not be renewed.

### § 4.5. Renewal.

A blasters certificate shall be renewed every three years *from date of issuance*. As a condition of renewal, proof of continued training or education in the use of explosives in an amount not less than 16 hours in three consecutive years shall be provided to the department. Requests for renewal shall be submitted on forms provided by the department.

### § 4.6. Revocation or suspension of certification.

The Department of Housing and Community Development may revoke or suspend certification issued under the provisions of this regulation if conditions of the certification have been violated, or if there has been any false statement or misrepresentation in the application on which the certification was based *or for incompetence as demonstrated by flagrant and repeated violations of the VSFPC, or participating in three or more incidents within a five-year period resulting in property damage, [ in ] injury or death .*

### [ § 4.7. Appeals.

*Any person aggrieved by a decision based upon application of this certification standard may appeal that decision, in writing, directly to the State Building Code Technical Review Board in accordance with the appeals process outlined in § 116.0 of the Virginia Uniform Statewide Building Code, Volume I. ]*

## PART V. CERTIFICATION OF AMUSEMENT DEVICE INSPECTOR STANDARDS.

### § 5.1. Certification.

A. To be eligible for certification, an applicant shall meet the following criteria:

1. The applicant shall have at least three years of experience in general building construction or any

combination of education and experience which would confer equivalent knowledge and ability;

2. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A; and
3. The applicant shall submit an application for certification and a copy of examination results from the testing agency to the Professional Services Offices *Training and Certification Office*.

B. Notwithstanding any regulations to the contrary, no exemption shall be permitted from the requirements for certification for any person, including local building officials and their representatives, to inspect amusement devices.

### § 5.2. Maintenance of certification.

A. A certificate issued under the Virginia Amusement Device Certification Standards shall expire three years from January 1 of the year in which the certificate is issued.

B. A. To maintain certification, a certificate holder shall attend programs of instruction *approved as mandated* by the Department of Housing and Community Development and after each code change cycle of the Virginia Amusement Device Regulations.

C. B. Certificate holders are responsible for notifying the Department of Housing and Community Development of address changes prior to the renewal date of their certification .

### § 5.3. Revocation or suspension of certification.

The Department of Housing and Community Development may revoke or suspend certification issued under the provisions of this code if conditions of the certification have been violated, or if there [ has have ] been any false [ statement statements ] or [ misrepresentation misrepresentations ] in the application on which the certification was based.

### [ § 5.4. Appeals.

*Any person aggrieved by a decision based upon application of this certification standard may appeal that decision, in writing, directly to the State Building Code Technical Review Board in accordance with the appeals process outlined in § 116.0 of the Virginia Uniform Statewide Building Code, Volume I. ]*

## PART VI. CERTIFICATION PROGRAM FOR FIRE OFFICIALS AND TECHNICAL ASSISTANTS.

### § 6.1. Certification.

To be eligible for certification an applicant shall meet the following criteria:

1. The applicant shall be qualified according to the Virginia Statewide Fire Prevention Code (SFPC).
2. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A.
3. [ The applicant shall complete the Fire Official Core of the Virginia Building Code Academy. a. The fire official shall complete a designated program of the Virginia Building and Fire Code Academy, developed in cooperation with the Department of Fire Programs and administered by the Department of Housing and Community Development.  
b. The technical assistants shall complete the "Fire Inspector II" course developed in cooperation with the Department of Housing and Community Development and administered by the Department of Fire Programs. ]
4. The applicant shall submit an application for certification and a copy of examination results from the testing agency to the Training and Certification Office.

#### § 6.2. Maintenance of certification.

A. To maintain certification a certificate holder shall attend programs of instruction as mandated by the Department of Housing and Community Development and after each code change cycle of the Virginia Uniform Statewide Building Code (USBC) and Virginia Statewide Fire Prevention Code (SFPC).

B. Certificate holders are responsible for notifying the Department of Housing and Community Development of address changes.

#### § 6.3. Revocation of certification.

The board may revoke the certification for any of the following:

1. Any willful misrepresentation in obtaining the certification.
2. Gross negligence or continued incompetence in the practice of the profession.

#### § 6.4. Appeals.

Any person aggrieved by a decision based upon [ these application of this ] certification [ standards standard ] may appeal that decision, in writing, [ directly to the State Building Code Technical Review Board ] in accordance with the appeals process outlined in [ § ] § F-105.0 [ and F-106.0 ] of the Virginia Statewide Fire

Prevention Code.

#### PART VII.

#### CERTIFICATION PROGRAM FOR CODE OFFICIALS AND TECHNICAL ASSISTANTS.

##### § 7.1. Exemption from certification.

A. An individual employed as the code official in any locality in Virginia prior to April 1, 1995, shall be exempt from certification while employed as the [ fire code ] official in that jurisdiction. This exemption shall not apply to subsequent employment in another jurisdiction.

B. An individual employed as the technical assistant in any locality in Virginia prior to April 1, 1995, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment in another jurisdiction.

##### § 7.2. Certification.

To be eligible for certification an applicant shall meet the following criteria:

1. The applicant shall be qualified according to the Virginia Uniform Statewide Building Code, Volume II.
2. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A.
3. The applicant shall complete designated programs of the Virginia Building Code Academy.
4. The applicant shall submit an application for certification along with a copy of examination results from the testing agency to the Training and Certification Office.

##### § 7.3. Maintenance of certification.

A. To maintain certification a certificate holder shall attend programs of instruction as mandated by the Department of Housing and Community Development and after each code change cycle of the Virginia Uniform Statewide Building Code (USBC) and Virginia Statewide Fire Prevention Code (SFPC).

B. Certificate holders are responsible for notifying the Department of Housing and Community Development of address changes.

##### § 7.4. Revocation of certification.

The board may revoke the certification for any of the following:

1. Any willful misrepresentation in obtaining the certification.

# Final Regulations

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2. Gross negligence or continued incompetence in the practice of the profession.

## § 7.5. Appeals.

Any person aggrieved by a decision based upon [ these application of this ] certification [ standards standard ] may appeal that decision, in writing, [ directly to the State Building Code Technical Review Board ] in accordance with the appeals process outlined in § [ F ] 106.0 of the Virginia Uniform Statewide Building Code, Volume II.

## PART VIII. FIRE PROTECTION SYSTEM CERTIFICATION.

### § 8.1. Certification.

Designated individuals engaged in the [ design and ] installation of Fire Alarm Systems (FAS), Fire Protection Sprinkler Systems (FPSS), or Fire Protection Special Hazard Systems (FPSHS) shall become certified [ within three years of the effective date of these standards by April 1, 1997 ].

To be eligible for certification, an applicant shall meet the following criteria:

1. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A.
2. The applicant shall submit an application for certification along with a copy of examination results from the testing agency to the Training and Certification Office.

### [ § 8.2. Maintenance of Certification.

A. All certified individuals shall maintain certification through continued validation as required by the approved testing agency.

B. To maintain certification, a certificate holder shall attend programs of instruction approved by the Department of Housing and Community Development after each code change cycle of the Uniform Statewide Building Code (USBC) and the Virginia Statewide Fire Prevention Code (SFPC).

### § [ 8.3. 8.2 ] Revocation of certification.

The board may revoke the certification for any of the following:

1. Any willful misrepresentation in obtaining the certification.
2. Gross negligence or continued incompetence in the practice of the profession.

### § [ 8.4. 8.3. ] Appeals.

[ Any person aggrieved by a decision based upon these certification standards may appeal that decision, in writing, in accordance with the appeals process outlined in § 116.0 of the Virginia Uniform Statewide Building Code, Volume I. ]

A. Each local governing body shall establish a board of appeals. The local board of appeals shall consist of not less than five members appointed by the local government. Members shall be selected on the basis of their ability to render fair and competent decisions. Employees or officials of the local government appointing the board of appeals shall not serve as members. The agent shall designate an employee to serve as secretary to the board of appeals, who shall keep a detailed record of all proceedings. The board of appeals shall hear appeals concerning the application of these standards or from a decision of the local agent or certification board. Application for appeals shall be in writing and made within 90 days of receipt of the decision of the agent or certification board. The appeals board must meet within 20 working days of the filing of an appeal. All hearings shall be open to the public.

B. Any person aggrieved by a decision of a local board of appeals may appeal to the State Building Code Technical Review Board in accordance with § 116.0 of the Uniform Statewide Building Code, Volume I. ]

## APPENDIX A. TESTING AGENCIES.

The following testing agencies have been approved by the Department of Housing and Community Development for administering the exams examinations. Other exams examinations may be approved on an individual basis. Requests for exam approval of examinations shall be submitted to the department.

Professional Code Administrator Certified Building Official

Information and registration forms may be obtained from:

NAI, Inc.  
National Assessment Institute  
2817 Parham Road  
Richmond, VA 23294  
(804) 747-3297

Council of American Building Officials (CABO)  
5203 Leesburg Pike  
Suite 708  
Falls Church, VA 22041  
(703) 931-4533

Inspection Inspector Certification Program

Information and registration forms may be obtained from:

# Final Regulations

Certification Training and Education Services  
BOCA International  
4051 West Flossmoor Road  
Country Club Hills, IL 60477  
(708) 799-2300

Educational Testing Service  
~~National Certification Program for Construction Code Inspectors~~  
CN 6508 [ P.O. Box 6508 ]  
Princeton, New Jersey 08541-6508  
(609) 921-9000

National Association of Elevator Safety Authorities  
P.O. Box 15643  
Phoenix, Arizona 85060  
(602) 266-9701

## Amusement Device Inspector Program

Information and registration forms may be obtained from:

NAI, Inc.  
National Assessment Institute  
2817 Parham Road 9881 Mayland Drive, Suite 110  
Richmond, VA 23294 23229  
(804) 747-3297

## Blaster Certification Program

Information and registration forms may be obtained from:

NAI, Inc.  
National Assessment Institute  
2817 Parham Road 9881 Mayland Drive, Suite 110  
Richmond, VA 23294 23229  
(804) 747-3297

## Professional Code Administrator Certification Program

Information and registration forms may be obtained from:

Board of Housing and Community Development  
501 North Second Street  
Richmond, VA 23219  
Attention: Training and Certification Office  
(804) 371-7180

V.A.R. Doc. No. R94-462; Filed January 11, 1994, 11:15 am.

\* \* \* \* \*

Title of Regulation: VR 394-01-4. Virginia Amusement Device Regulations/ 1990 1993 .

Statutory Authority: §§ 36-98 and 36-98.3 of the Code of Virginia.

Effective Date: April 1, 1994.

## Summary:

*The amendments specifically provide construction and inspection requirements for gravity ride type amusement devices.*

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 George W. Rickman, Jr., Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170. There may be a charge for copies.

VR 394-01-4. Virginia Amusement Device Regulations/1993.

## ARTICLE 1. GENERAL PROVISIONS.

### SECTION 100.0. GENERAL.

100.1. Title: These regulations shall be known as the Virginia Amusement Device Regulations ("VADR"). Except as otherwise indicated, VADR and regulations, as used herein, shall mean the Virginia Amusement Device Regulations.

100.2. Authority: The VADR is adopted under authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia. The VADR is intended to supplement the provisions of the Virginia Uniform Statewide Building Code (USBC).

100.3. Adoption: The 1990 1993 edition of the VADR was adopted by order of the Board of Housing and Community Development on [ November 10, 1990 - December 13 ], 1993 . This order was prepared according to requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.4. Effective date: The 1990 1993 edition of the VADR shall become effective on [ March April ] 1, 1991 1994 . The construction of any amusement device that was subject to a previous edition of the USBC when constructed, shall remain subject to the edition of the USBC in effect at the time of construction. Subsequent reconstruction, reassembly, maintenance, operation and inspection of such devices shall be subject to the pertinent provisions of the VADR in effect at the time of such action.

100.5. Application: The VADR shall govern the construction, maintenance, operation and inspection of amusement devices, whether mobile or permanently fixed

# Final Regulations

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to a site including kiddie rides defined by § 200.0 of these regulations. These regulations do not apply to any *single one, two, or three* passenger coin-operated ride, manually, mechanically, or electrically operated, which customarily is placed, singularly or in groups, in a public location and which does not normally require the supervision or service of an amusement ride operator and is not considered a kiddie ride for the purpose of these regulations, or to nonmechanized playground equipment, including swings, stationary spring-mounted animal features, rider propelled merry-go-rounds, climbers, slides, trampolines, swinging gates, and physical fitness devices except where an admission fee is charged for usage or an admission fee is charged to areas where such equipment is located. To the extent they are not superseded by the provisions of these regulations, all other state and local laws and regulations shall apply to amusement devices. The VADR does not supersede zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the construction, maintenance, operation and inspection of amusement devices.

## SECTION 200.0. DEFINITIONS.

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

*"Amusement attraction"* means any building or structure around, over or through which people may move or walk, without the aid of any moving device integral to the building structure, that provides amusement, pleasure, thrills, or excitement.

*"Amusement device"* means a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion.

*"Amusement park"* means a tract or area used principally as a location for amusement devices permanently fixed to the site.

*"ANSI"* means American National Standards Institute.

*"ASTM"* means American Society for Testing and Materials.

*"Board"* means the Board of Housing and Community Development.

*"Bungee jumping"* means that activity where a person free falls from a height and the person's descent is limited by attachment to an elastic rope known as a bungee cord.

*"Carnival"* means an itinerant enterprise consisting principally of portable amusement devices temporarily situated at a site.

*"Certificate of inspection"* means a certificate issued by the building official, pursuant to § 1500.0 of these regulations.

*"Committee"* means the Amusement Device Technical Advisory Committee.

*"Construction"* means the initial construction or manufacture of amusement devices. *"Construction"* does not include reassembly of existing devices.

*"Director"* means the Director of the Department of Housing and Community Development or his designee.

*"Fair"* means an enterprise principally devoted to the periodic and recurring exhibition of products of agriculture, industry, education, science, religion, or the arts that has one or more amusement devices, either portable or permanently fixed to the site, operated in conjunction with the exhibition.

[ *"First aid"* means the one time treatment or subsequent observation of scratches, cuts not requiring stitches, burns, splinters, or a diagnostic procedure, including examination and X-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed professional personnel. ]

*"Gravity ride"* means a ride that is installed on an inclined surface, which depends on gravity for its operation to convey a passenger from the top of the incline to the bottom, and which conveys a passenger in or on a carrier tube, bag, bathing suit, or clothes.

*"Inspector"* means a person authorized by the building official to perform the inspections required herein.

*"Kiddie ride"* *"Kiddie ride (Type A)"* means an amusement ride [ or device ] designed [ primarily and operated ] for use by children up to 12 years of age, [ that requires ] simple [ little or no reassembly procedures prior to operation ], and that does not require complex inspections prior to operation and 54 inches or less in height, with a capacity of 12 riders or less and taking two hours or less to assemble ].

[ *Example:*

1. *Trailer mounted self contained rides.*

2. *Moon/space walks.* ]

*"Kiddie ride (Type B)"* means [ an amusement ride designed primarily for use by children up to 12 years of age that requires partial or complete reassembly procedures prior to operation all other kiddie rides ].

[ *Example:*

1. *Merry go rounds.*

2. *Hampton type rides.*

3. *Swings.* ]

*"Major modification"* means any change in either the structural or operational characteristics of the ride or device which will alter its performance or structural integrity from that specified in the manufacturer's design criteria.

[ *"Minor injury"* means sprains, abrasions, bruises, and lacerations less than three inches. ]

*"Operator"* means any person or persons actually engaged in or directly controlling the operation of an amusement device.

*"Owner"* means a person who owns an amusement device, including the state or its political subdivision, or in the event the amusement device is leased, the lessee, or the agent of either.

*"Passenger tramway"* means a device used to transport passengers, suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans.

*"Permit"* means written authorization given by the local building official to construct, reassemble or locate an amusement device so as to make ready for operation. Issuance of a permit does not give authority to operate without a certificate of inspection.

*"Private inspector"* means a person performing inspections who is independent of the company, individual or organization owning, operating or having any vested interest in the amusement device being inspected.

*"Reassembly"* means the act of placing the component parts of an existing device into a configuration which allows its use and operation.

*"Review board"* means the State Building Code Technical Review Board as established by § 36-108 of the Code of Virginia.

[ *"Serious injury"* means an injury that requires medical treatment by a physician other than minor injuries or first aid. ]

*"Water slides."* See *"Gravity rides."*

## SECTION 300.0. TECHNICAL ADVISORY COMMITTEE.

300.1. Membership: In appointing an Amusement Device Technical Advisory Committee, the board shall may include representatives from the following groups:

1. Ride manufacturers,
2. Owners or operators of carnivals, amusement parks and fairs,
3. Mechanical or structural engineers,

4. Insurance underwriters, and

5. Members of the general public.

300.2. Term of membership: The members of the Technical Advisory Committee established by § 36-98.3(C) of the Code of Virginia, shall each serve for initial staggered terms of two and three years. Thereafter, appointments shall be for three years, with a provision for reappointment at the pleasure of the board.

## SECTION 400.0. REFERENCE STANDARDS.

400.1. Adoption of standards: The construction, maintenance, operation and inspection of amusement devices and passenger tramways shall be done in accordance with the following applicable referenced standards :

ANSI (American National Standards Institute, [ 1430 Broadway 11 West 42nd Street ], New York, [ N.Y. 10018 ) NY 10036 ), B77.1-90.

ASTM (American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103) F 698-88, Specification for Physical Information to be Provided for Amusement Rides and Devices

ASTM F [ 747-86 747-89 ], Definitions of Terms Relating to Amusement Rides and Devices

ASTM F 770-88, Practice for Operation Procedures for Amusement Rides and Devices

ASTM F [ 846-86 846-92 ], Guide for Testing Performance of Amusement Rides and Devices

ASTM F [ 853-86 853-91 ], Practice for Maintenance Procedures for Amusement Rides and Devices

ASTM F 893-87, Guide for Inspection of Amusement Rides and Devices

ASTM F [ 1159-88 1159-92 ], Practice for the Design and Manufacture of Amusement Rides and Devices

ASTM F 1193-88, Practice for an Amusement Ride and Device Manufacturer Quality Assurance Program

[ ASTM F 1305-90, Standard Guide for the Classification of Amusement Rides and Devices Related Injuries and Illnesses ]

If a ride was manufactured prior to the development of the ASTM standards (1978), the information listed in the referenced edition of ASTM 698, §§ 3.1 through 3.6, shall be available at the time of inspection.

Where differences occur between provisions of the VADR and the referenced standards, the provisions of the VADR shall apply.

# Final Regulations

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**400.1.1. Bungee jumping activities:** In addition to complying with applicable requirements of Article 1, bungee jumping activities shall meet the requirements established in Article 2 of these regulations.

**400.1.2. Gravity rides:** *In addition to complying with the applicable requirements of Article 1, gravity rides shall meet the requirements established in Article 3 of these regulations.*

## SECTION 500.0. ENFORCEMENT.

**500.1. Responsibility of local governments:** Enforcement of these regulations shall be the responsibility of the local building department in accordance with § 36-105 of the Code of Virginia. Inspections under these regulations shall be performed by:

1. The local building official or his representative when such official or representative has been certified by the board to inspect amusement devices pursuant to § 36-137(6) of the Code of Virginia; or, at the option of the owner or lessee or agent of either.
2. Persons from other departments of state government, local government, or private industry, when such personnel have been certified by the board to inspect amusement devices pursuant to § 36-137(6) of the Code of Virginia; or
3. Employees of insurance companies providing coverage for claims arising out of the use of the amusement device being inspected, when such personnel have been certified by the board to inspect amusement devices pursuant to § 36-137(6) of the Code of Virginia.

**500.2. Qualifications of inspectors:**

1. Any person seeking to become qualified to perform amusement device inspections pursuant to § 500.1 of these regulations shall successfully complete certification requirements in accordance with Part V of the Virginia Certification Standards [ for Building and Amusement Device Inspectors, Blasters and Tradesmen (VR 394-01-02) (VR 394-01-2) ].
2. Notwithstanding any regulation to the contrary, no exemption shall be permitted from the requirements for certification for any person including local building officials and their representatives to inspect amusement devices.

**500.3. Credentials:** The building official, state personnel, or any certified inspector shall carry proper credentials of authorization provided by the Department of Housing and Community Development when enforcing any provision of these regulations.

## SECTION 600.0. DUTIES AND POWERS OF THE BUILDING OFFICIAL.

**600.1. General:** The building official shall enforce the provisions of the VADR as provided herein, and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

**600.2. Applications and permits:** The building official shall receive applications and issue permits for the construction, reassembly, operation and inspection of amusement devices.

**600.3. Notices and orders:** The building official shall issue necessary notices or orders to remove unsafe conditions, to require the necessary safeguards during construction or reassembly and to ensure compliance with all the VADR requirements for the health, safety and general welfare of the public.

**600.4. Inspections:** The building official shall make or cause the required inspections to be conducted in accordance with § 1000.0 of these regulations, or shall accept reports of inspection by individuals certified to perform amusement device inspections when the owner or lessee of the amusement device has exercised the option of using private inspectors. Reports of such inspections shall be in writing and signed by the certified individual.

**600.5. Delegation of duties and powers:** The building official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with the VADR.

**600.6. Fees:** Fees may be levied by the local governing body in order to defray the cost of enforcement and appeals in accordance with § 36-105 of the Code of Virginia.

**600.6.1. Fee schedule:** A schedule of fees shall be established by the local government and shall be made available to the public upon request. The fee schedule adopted by the local government shall not exceed the fee schedule set by the Board of Housing and Community Development. The board shall review the fee schedule at least tri-annually and shall adjust the fee schedule as proven necessary. The fees shall be based on the actual cost of administrative activities and inspections performed by local government personnel. The local government shall not establish a fee schedule resulting in fees that exceed the actual costs of the activities performed by local government personnel. The fee schedule shall have provisions for fee reduction if private inspectors are utilized by the owner or lessee. When an inspector not an employee of the local governing body is retained by an owner, the owner shall pay the inspector's fees directly. When an inspector not an employee of the local governing body is retained by the local building department, that department shall pay the inspector's fees.

## SECTION 700.0. APPLICATION FOR PERMIT.

**700.1. When permit is required:** Written application shall

# Final Regulations

be made to the building official when a permit is required. A permit shall be issued by the building official before any of the following actions subject to the VADR may be commenced:

1. Constructing and operating an amusement device permanently fixed to a site.
2. Reassembling and operating any portable amusement device.

700.2. Who may apply for a permit: Application for a permit shall be made by the owner or lessee of the amusement device or agent of either.

700.3. Information for application: The application for a permit shall be submitted on forms supplied by the building official. The forms shall require the following information:

1. Name of the owner, lessee, or agent of either.
2. Identification of the person(s) authorized to accept service of process on behalf of the owner or lessee.
3. A general description of the amusement devices, their location, and the work or operation proposed.
4. Proof of financial responsibility in a minimum amount of \$300,000 per occurrence. Such proof may be demonstrated by a bond or cash reserve, or certificate or policy of insurance providing coverage for liability arising out of the use or operation of the amusement device.

## SECTION 800.0. MODIFICATION.

800.1. Modifications: If an owner or operator finds that compliance with the amusement device regulations or decision of the local building official presents a practical difficulty or undue hardship, the owner or operator may apply to the local building official for a modification of the regulation or decision. Such modification may be granted provided the spirit and intent of these regulations are observed, and public health, welfare and safety are assured.

800.2. Alternative design, materials, and equipment: Where there is an alternative design, material or equipment, the owner may apply to the local building official for a modification of the VADR relating to such design, material or equipment. Upon application of the owner, the building official may modify the provisions of the VADR relating to amusement device design or building materials, equipment, devices or assemblies provided the proposed alternatives are satisfactory and comply with the intent of the VADR and the standards incorporated therein, and are, for the purposes intended, at least the equivalent of that prescribed in the VADR for quality, strength, effectiveness, durability and safety.

800.3. Records: The application for modification and the final decision of the building official shall be in writing and shall be officially recorded with the copy of the certificate of inspection in the permanent records of the local building department.

## SECTION 900.0. AMUSEMENT DEVICE PERMITS.

900.1. Action on application: The building official shall examine all applications for permits within five days after filing. If the application does not conform to the requirements of the VADR, the building official shall reject such application in writing, stating the reasons for rejection. If the building official is satisfied that the proposed work or operation conforms to the requirements of the VADR and all applicable laws and ordinances, a permit shall be issued as soon as practicable. For purposes of coordination, the local governing body may require reports to the building official by other departments as a condition for issuance of a permit and certificate of inspection. Such reports shall be based upon review of the application or inspection of the project as determined by the local governing body.

Note: Before issuing a permit, the building official should consider the effects of any applicable regulations of other governmental agencies so that proper coordination may be achieved before the work is commenced.

900.2. Signature on permit: The signature of the building official or his authorized representative shall be attached to every permit.

900.3. Annual permit: Instead of an individual permit for each reassembly of an already approved amusement device, the building official may issue an annual permit.

900.4. Revocation of permits: The building official may revoke a permit or approval issued under the provisions of the VADR in case of any false statement or misrepresentation of fact in the application on which the permit or approval was based.

## SECTION 1000.0. INSPECTIONS.

1000.1. Preliminary inspection: Before issuing a permit, the building official may examine all sites for which an application has been filed for a permit to construct, reassemble or operate an amusement device.

1000.2. Required inspections: After issuing a permit, the building official shall conduct inspections from time to time during construction or reassembly or shall accept inspection reports from independent private inspectors employed by the owner or lessee, and may conduct inspections of the operation of amusement devices or may require the owner or lessee to provide reports from private inspectors for inspections conducted during operation of the amusement device(s). A record of such inspections shall be maintained by the building official.

# Final Regulations

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1000.2.1. Right of entry: The building official may inspect amusement devices for the purpose of enforcing the VADR in accordance with the authority granted by §§ 36-105 and 36-98.3(D) of the Code of Virginia.

1000.3. Minimum inspections: As part of their inspections, inspectors shall perform, but are not limited to the following actions:

1. Inspect all amusement devices permanently fixed to a site,

a. Prior to each seasonal operation; and

b. Prior to operation following any major modification; and

c. At least once during the operating season.

2. Inspect all portable amusement devices after each reassembly and prior to operation except that the inspector may accept a valid certificate of inspection which was issued with respect to a kiddie ride (*Type A*) by another inspector certified in Virginia. If an inspector chooses to inspect a "kiddie ride (*Type A*)" which has a valid certificate of inspection, no fee shall be charged. If upon inspection, the inspector finds that a device is not in compliance with applicable standards, the certificate of inspection may be declared invalid.

3. Verify that nondestructive testing has been conducted by a recognized testing agency as prescribed by the device manufacturer and in accordance with ASTM.

4. At the discretion of the inspector, verify that the operation and maintenance of amusement devices is in accordance with the requirements of these regulations and the standards referenced therein.

5. Inspect any amusement device upon the request of the director or local building official following a report or other notification that the device or one of substantially similar design and construction has been involved in an accident resulting in a fatality or serious injury.

6. Investigate any report or other notification of a problem or a defect with respect to an amusement device and inspect the device at the request of the director or the building official to determine whether it poses a hazard or threat of injury to the public.

7. Upon completion of the amusement device, and before issuance of the certificate of inspection, a final inspection shall be made to ensure that the device conforms with the VADR.

1000.4. Notice of readiness for inspection: Every owner or operator of an amusement device shall notify the local

building official when an amusement device or one that has undergone major modifications is scheduled to be ready and available for inspection.

In addition, every owner or operator of an amusement park shall notify the local building official when each amusement device located within the park is scheduled to be ready for inspection prior to its seasonal operation.

Every owner or operator of a carnival or fair shall notify the local building official of the date each amusement device is scheduled to be reassembled and ready for inspection on a site.

Note: Although no requirements are imposed on owners or operators with respect to time for giving notice of readiness for inspection, owners and operators are cautioned to refer to §§ 900.1 and 1000.5 of these regulations which require the building official to perform certain duties within five days of application or notice. Owners or operators failing to give at least five days notice of readiness for inspection will only be inspected by the building official or his authorized representative at their pleasure or convenience.

1000.5. Inspections to be prompt: The inspector shall respond to inspection requests without unreasonable delay. When given at least five days notice of readiness for inspection, the inspector shall inspect on the date designated by the owner or operator. The inspector shall approve the device or give written notice of defects to the owner or operator. Such defects shall be corrected and the amusement device reinspected before operation or proceeding with any work that would conceal the defects.

## SECTION 1100.0. ACCIDENTS.

1100.1. Owner/operator to suspend operation: An owner or operator shall immediately suspend operation of any amusement device which is involved in an accident resulting in fatality or serious injury.

1100.2. Reports: Every owner or operator of an amusement device shall report to the director and the local building official the details of any accident involving an amusement device which results in a fatality or serious injury. The report shall be submitted in writing to the local building official within 24 hours, and to the director the next working day. Such report shall include but is not limited to the following information:

1. A description of the amusement device including the name of the manufacturer, the serial number and the date the device was originally constructed, if available.

2. A description of the accident including the number of people involved, number and type of injuries, number of fatalities.

### 3. Cause of accident if determined.

1100.3. Owner's authority to resume operation: The owner, lessee or agent of either may resume operation of an amusement device following suspension of operation under this section if, after conducting an investigation, the owner, lessee, or agent determines that the incident was in no way the result of a failure or malfunction of the device or any of its operating or safety equipment. Any investigation conducted under this section shall include (i) examination of the accident scene, (ii) interviews with witnesses, if any, (iii) review of statements made by the injured person, if any, and (iv) trial operation and inspection of the amusement device. A written record of such investigation shall be made and submitted to the local building official or his designee.

The decision of the owner or operator not to resume operation of the amusement device shall not be construed as an admission that the incident was caused by the failure or malfunction of the device. Nothing in this section shall be construed to waive the requirements of notification of the occurrence set forth in § 1100.2.

### SECTION 1200.0. QUALIFICATION OF OPERATORS.

1200.1. Minimum age: No amusement device shall be operated by a person under 16 years of age, except that this provision shall not apply to a child under 16 years of age employed by his parents in an occupation not declared hazardous by the Commissioner of Labor and Industry.

### 1200.2. Requirements:

1. An operator may not operate more than one amusement device at a time unless the devices are within the sight of the operator and are operated by a common control panel or station, except that in the case of kiddie rides [ ; ] (Type A) and (Type B), two rides may be operated in unison under the continuous and common control of one operator provided that the farthest point of operation of either device is no more than 35 feet and the control is equipped with a positive pressure switch.
2. An amusement device shall be attended by an operator at all times during operation.

### 1200.3. Conduct; authority:

1. No amusement device shall be operated by an operator while under the influence of alcohol.
2. No amusement device shall be operated by an operator while under the influence of drugs which may affect the operator's judgment or ability to assure patrons' safety.
3. The operator has the authority to prohibit use of amusement devices by individuals who may present a

safety threat to others or to themselves.

1200.4. Training: The ride operator shall be trained in the proper use and operation of the ride as required by ASTM F770 and ASTM F853.

### SECTION 1300.0. SUSPENSION OF OPERATION.

1300.1. When director or local building official may order: The director or local building official shall order, in writing, a temporary suspension of operation of an amusement device if the director or local building official has reason to believe that the device is hazardous or unsafe, or if the director or local building official receives a report or is otherwise notified that the amusement device has been involved in an accident resulting in fatality or serious injury.

The director or local building official may order, in writing, a temporary suspension of operation of an amusement device if (i) the director or local building official receives a report or is otherwise notified that an amusement device or one of substantially similar design has been involved in an accident resulting in a fatality or serious injury; and (ii) an inspection conducted in accordance with § 1000.0 of these regulations reveals that the ride is hazardous or poses a threat to the safety of the public.

1300.2. When operation to resume: When the operation of an amusement device has been suspended under this section, such operation shall not resume until any hazardous or unsafe condition has been corrected and a certificate of inspection has been issued with respect to such device.

### SECTION 1400.0. VIOLATIONS.

1400.1. Code violations prohibited: No person, firm or corporation shall construct, reassemble, maintain, operate or inspect any amusement device regulated by the VADR, or cause same to be done in conflict with or in violation of any of the provisions of the VADR.

1400.2. Notice of violation: The building official shall serve a notice of violation on the person responsible for the construction, reassembly, maintenance, operation or inspection of any amusement device in violation of the provisions of the VADR, or in violation of plans and specifications approved thereunder, or in violation of a permit or certificate issued under the provisions of the VADR. Such order shall direct the discontinuance and abatement of the violation.

1400.3. Prosecution of violation: If the notice of violation is not complied with promptly, the building official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation or to require the removal or termination of the use of any amusement device in violation of the provisions of the VADR.

# Final Regulations

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1400.4. Violation penalties: Violations are a misdemeanor in accordance with § 36-106 of the Code of Virginia. Violators, upon conviction, may be punished by a fine of not more than \$1,000-\$2,500.

1400.5. Abatement of violation: Conviction of a violation of the VADR shall not preclude the institution of appropriate legal action to prevent other violations or recurring violations of the VADR relating to construction, reassembly, maintenance, operation or inspection of any amusement device.

## SECTION 1500.0. CERTIFICATES OF INSPECTION.

1500.1. When certificate required: No amusement device shall be operated unless a certificate of inspection has been issued with respect to that device. A copy of the certificate shall be affixed to the entrance of the device in plain view of riders or patrons.

1500.2. Requirements: A certificate of inspection shall be issued to an owner or operator after an inspection conducted pursuant to § 1000.0 of these regulations indicates that the device is in satisfactory working order and poses no hazard or threat to the safety of the public.

1500.3. Term: A certificate of inspection will be *remain valid*:

1. For one year after the issue date, for a kiddie ride (Type A), regardless of whether the device is disassembled; or

2. Until the device, other than a kiddie ride (Type A), is disassembled except that a certificate of inspection issued with respect to a portable kiddie ride shall be valid for one year after the issue date, regardless of whether the device is disassembled; or

3. Until any major modification or alteration is made to the device; or

4. Until the inspection required by § 1000.0 is conducted on fixed site devices; or

5. Until termination of the proof of financial responsibility required by § 1600.0.

1500.4. Contents of the certificate of inspection: When an amusement device is entitled thereto, the building official shall issue a certificate of inspection. When the certificate is issued, the device shall be deemed in compliance with the VADR. The certificate shall specify the use of the amusement device, the type of construction, the occupancy load of the device, the date on which the certificate was issued, the term of the certificate, and any special stipulations and conditions. The certificate shall also include the name of the building official or his representative and a telephone number where they may be reached in case of an emergency or accident.

## SECTION 1600.0. FINANCIAL RESPONSIBILITY.

1600.1. Proof of financial responsibility: The owner shall provide proof of financial responsibility in a minimum amount of \$300,000 per occurrence. Such proof shall be demonstrated by a bond or cash reserve, or certificate of insurance providing coverage for liability arising out of the use or operation of the amusement device.

1600.2. Termination of financial responsibility: Each owner or operator of an amusement device shall report immediately to the director and to the local building official that the proof of financial responsibility required by this section will be terminated and shall include in the report the date of such termination.

## SECTION 1700.0. APPEALS.

1700.1. Assistance from director: An owner of an amusement device aggrieved by a decision of the building official may request the director to assist the building official and the owner in resolving any questions arising from the interpretation and application of these regulations. The director may request advice or assistance from members of the Technical Advisory Committee in resolving any questions.

1700.2. Appeal to review board: When the questions cannot be resolved with the assistance of the director, the owner may appeal to the State Building Code Technical Review Board. Application for review shall be made to the review board within 15 days of the decision of the building official. The review board may request advice or assistance from members of the Technical Advisory Committee when rendering a decision.

1700.3. Enforcement of decision: Upon receipt of the written decision of the State Building Code Technical Review Board, the building official shall take immediate action in accordance with the decision.

1700.4. Court review: Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board may be presented to the court of the original jurisdiction in accordance with the provisions of the Administrative Process Act.

1700.2. Appeal to the State Building Code Technical Review Board (TRB): An amusement device owner or operator aggrieved by a decision of the local building department pursuant to these regulations may appeal to the TRB by submitting an application [ef to] the office of the TRB within 14 calendar days of receipt of the decision. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of the decision.

1700.2.1. Information to be submitted: A copy of the decision of the local building department to be appealed shall be submitted with the application for appeal. Upon

*request by the office of the [ Review Board TRB ], the local building department shall submit a copy of all pertinent information concerning the appeal.*

*1700.2.2. Decision of TRB: Procedures of the TRB are in accordance with Article 2 (§ [ 36-107.1 36-108 ] et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom and the local building department shall take action accordingly.*

## SECTION 1800.0. CONTINUATION OF COMPLIANCE.

**1800.1. Continued compliance required:** Amusement devices constructed or manufactured before the effective date of the VADR shall be maintained, reassembled, operated and inspected in accordance with the provisions of the VADR. The construction and manufacture of such devices shall remain subject to the previous edition of the USBC in effect at the time the device was constructed or manufactured.

## ARTICLE 2. BUNGEE JUMPING.

### SECTION 1900.0. GENERAL.

**1900.1. Definitions:** The following words and terms, when used in this article, shall have the following meaning, unless the context clearly indicates otherwise.

*“Bungee cord” means the elastic rope to which the jumper is attached which lengthens and shortens to produce a bouncing action.*

*“Carabineer” means a shaped metal device with a gate used to connect sections of the bungee cord, jump rigging, equipment or safety gear.*

*“Ground operator” means a person who assists the jump master to prepare a jumper for jumping.*

*“Harness” means an assembly to be worn by a jumper to be attached to a bungee cord. It is designed to prevent the wearer from becoming detached from the bungee system.*

*“Jump master” means a person who has responsibility for the bungee jumper and who takes the jumper through the final stages to the actual jump.*

*“Jump zone” means the space bounded by the maximum designed movements of the jumper.*

*“Jumper” means the person who departs from a height attached to a bungee system.*

*“Landing area” means the surface area of ground or water directly under the jump zone, the area where the lowering device moves the jumper to be landed away from the jump space and the area covered by the movement of the lowering device.*

*“Operating manual” means the document that contains the procedures and forms for the operation of bungee jumping equipment and activity at a site.*

*“Platform” means the equipment attached to the structure from which the jumper departs.*

*“Ultimate tensile strength” means the greatest amount of load applied to a bungee cord prior to failure.*

**1900.2. Purpose:** The purpose of this article is to set minimum technical requirements for bungee jumpers and spectators in bungee jumping activities governed by these regulations.

**1900.3. Scope:** This article sets standards for bungee jumping operations which are open to the public and which are conducted from structures designed for use as part of the bungee jumping operation. Bungee jumping from other types of structures, cranes or derricks is not permitted for public participation.

**1900.3.1. Prohibited jumping activities:** Bungee jumping activities which involve double jumping, sandbagging, catapulting or stunt jumping shall not be permitted to be open for public participation.

### SECTION 2000.0. BUNGEE CORDS.

**2000.1. Testing requirements:** Bungee cords shall be tested by an approved testing agency or by an engineer licensed in Virginia. The following criteria shall be met:

1. Each lot of bungee cords shall have a minimum of 10%, but not less than one of the cords tested to determine the lowest ultimate tensile strength of the cords tested. A load versus elongation curve based on the test result shall be provided with each lot of bungee cords.

2. The manufacturer shall specify the maximum number of jumps for which each cord or cord type is designed and the criteria for use of the cord.

**2000.2. Cord retirement and destruction:** Bungee cords shall be retired when (i) the cords exhibit deterioration or damage, (ii) they do not react according to specifications, or (iii) they have reached the maximum usage expressed in number of jumps as specified by the manufacturer. Bungee cords retired from use shall be destroyed immediately by cutting the cord into five foot lengths.

### SECTION 2100.0. JUMP HARDWARE.

**2100.1. Jump harnesses:** Jump harnesses shall be either full body-designed, which includes a waist harness worn in conjunction with a chest harness, or ankle-designed with a link to a waist harness. All jump harnesses, carabiners, cables and other hardware shall be designed and manufactured for the purpose or designed or analyzed by an engineer licensed in Virginia and shall be used and

# Final Regulations

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maintained in accordance with the manufacturer's or engineer's instructions.

## SECTION 2200.0. STRUCTURE REQUIREMENTS.

2200.1. Engineering analysis: Structures constructed on site for bungee jumping activities shall be designed by an engineer licensed in Virginia. Structures manufactured for bungee jumping activities shall be analyzed by an engineer licensed in Virginia and assembled and supported in accordance with the manufacturer's instructions.

## SECTION 2300.0. OPERATIONAL AND SITE REQUIREMENTS.

2300.1. Bungee cord use: Operators shall follow the criteria provided by the manufacturer for the use of bungee cords. A record of the number of jumps with each cord shall be maintained. All cords shall be inspected daily for wear, slippage or other abnormalities, unless the manufacturer specifies more frequent inspections.

2300.1.1. Determining loading of bungee cord: The jump master or site manager shall be responsible for determining the appropriate use of all bungee cords in relation to the weight of the jumper and height of the platform. Bungee cords shall be attached to the structure at all times when in the connection area.

2300.2. Hardware inspections: All harnesses shall be inspected prior to harnessing a jumper and shall be removed from service when they exhibit signs of excessive wear or damage. All carabiners shall be inspected daily and shall be removed from service when they exhibit signs of excessive wear or damage or fail to function as designed. The anchors shall be inspected daily and shall be replaced if showing signs of excessive wear.

2300.3. Retrieval and lowering system: A secondary retrieval system shall be provided in all operations. A locking mechanism on the line shall be used to stop and hold the jumper in place after being pulled back to the jump platform in a retrieval system. A dead man's switch or locking mechanism that will stop the lowering action shall be used in a friction lowering system.

2300.4. Site requirements: The jump zone, preparation area and landing/recovery area shall be identified and maintained during bungee jumping activities. The landing/recovery area shall be accessible to emergency vehicles. Communication shall be maintained between all personnel involved with the jump.

2300.4.1. Over land site requirements: An air bag, a minimum of 10 feet by 10 feet shall be used. The air bag shall be rated for the maximum free fall height possible from the platform during operation. The air bag shall be located immediately below the jump space. The landing area shall be free of spectators and debris at all times and shall be free of any equipment or personnel when a jumper is being prepared on the jump platform and until

the bungee cord is at its static extended state. A place to sit and recover shall be provided adjacent to, but outside, the landing area where the jumper shall be allowed to recover.

2300.4.2. Over water site requirements: Where the jump space or landing area, or both, is over sea, lake, river or harbor waters, the following shall apply:

1. The landing water area shall be at least nine feet deep and a minimum of 10 feet by 10 feet or have a minimum of 15 feet in diameter if circular.
2. The jump space and landing area shall be free of other vessels, floating and submerged objects and buoys. A sign of approved size which reads "Bungee Jumping! Keep Clear" shall be fixed to buoys on four sides of the landing area.
3. The landing vessel shall be readily available for the duration of the landing procedures.
4. The landing vessel shall have a landing pad size of at least five feet by five feet within and lower than the sides of the vessel.
5. A landing vessel shall be available that can be maneuvered in the range of water conditions expected and will enable staff to pick up a jumper.
6. One person may operate the landing vessel where the vessel is positioned without the use of power. A separate person shall operate the vessel where power is required to maneuver into or hold the landing position.

Where the landing area is part of a swimming pool or the landing area is specifically constructed for bungee jumping, the following shall apply:

1. Rescue equipment shall be available, such as a life ring or safety pole.
2. The jump space and landing area shall be fenced to exclude the public.
3. Only the operators of the bungee jump and jumper shall be within the jump zone and landing areas.

2300.5. Storage: Storage shall be provided to protect equipment from physical, chemical and ultra-violet radiation damage. The storage shall be provided for any current, replacement and emergency equipment and organized for ready access and shall be secure against unauthorized entry.

## SECTION 2400.0. MANAGEMENT AND PERSONNEL RESPONSIBILITIES.

2400.1. General: All bungee jumping activities shall have a minimum of one site manager, one jump master and one

ground operator to be present at all times during operation of the bungee jump.

2400.2. Site manager: The site manager is responsible for the following:

1. Controlling the entire operation.
2. Site equipment and procedures.
3. Determining whether it is safe to jump.
4. Selection of, and any training of personnel.
5. Emergency procedures.
6. Maintaining records.

2400.3. Jump master: A jump master shall be located at each jump platform and shall have thorough knowledge of, and is responsible for, the following:

1. Overseeing the processing of jumpers, selection of the bungee cord, adjustment of the rigging, final check of jumper's preparation and countdown for and observation of the jump.
2. Verifying that the cord is attached to the structure at all times when the jumper is in the jump area.
3. Rescue and emergency procedures.
4. Ensuring that the number of jumps undertaken in a given period of time will allow all personnel to safely carry out their responsibilities.

2400.4. Ground operator: The ground operator shall have knowledge of all equipment used and of jump procedures and shall have the following responsibilities:

1. Ensuring that the jumper is qualified to jump.
2. Assisting the jump master to prepare the jumper and attach the jumper to the harness and rigging.
3. Assisting the jumper to the recovery area.
4. Maintaining a clear view of the landing area.

2400.5. Operating manual: Each site shall have an operating manual which shall include the following:

1. Site plan, job descriptions (including procedures), inspections and maintenance requirements of equipment including rigging, hardware, bungee cords, harnesses and lifelines.
2. An emergency rescue plan.

2400.6. Daily operating procedures: The daily operating procedures shall be conducted in accordance with ASTM

F-770 listed in § 400.1.

2400.7. Qualification and preparation of jumpers: The qualification and preparation of jumpers shall include obtaining any pertinent medical information, jumper weight and a briefing of jumping procedures and safety instructions.

## ARTICLE 3. GRAVITY RIDES.

### SECTION 2500.0. GENERAL.

2500.1. General: Gravity rides, as defined in § 200.1, shall comply with the following:

1. A ride using carriers shall be designed and constructed to retain the passengers in or on a carrier during the operation of the ride and retain the carrier on or within the track, slide, or chute system during the operation of the ride.
2. A ride that conveys passengers not in or on a carrier shall be designed and constructed to retain the passengers within the chute or slide during the ride.
3. At each loading or unloading area, a hard surface which is other than earth and which is reasonably level shall be provided. The surface shall be large enough to accommodate the intended quantity of passengers.
4. Where loading or unloading platforms are elevated more than [ 30" 30 inches ] from the adjacent areas, guard rails conforming to the Uniform Statewide Building Code shall be provided.
5. Passengers shall not have to step up or down more than [ 12" 12 inches ] from the loading or unloading surface to enter or exit the ride.
6. The frequency of departure of carriers or riders from the loading areas shall be controlled by a ride operator. The minimum distance between departures shall be determined by the designer of the specific ride.
7. When a passenger has control of the speed or course of the carrier, the passenger shall have a clear sight distance along the course of the ride long enough to allow the passenger to avoid a collision with another person or carrier.
8. The unloading area of the ride shall be designed and constructed to bring riders and carriers to a safe stop without any action by the rider.
9. There shall be attendants at the loading and unloading area when the ride is in use.
10. If the entire course of the ride is not visible to the operator, additional persons with communications

# Final Regulations

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*equipment shall be provided or approved visual surveillance equipment shall be installed along the course of the ride which is not visible to the operator.*

*11. Any moving or hot parts that may be injurious to the ride operator or the public shall be effectively guarded to prevent contact.*

*12. Fencing or adequate clearance shall be provided that will prevent the riders from contact with persons or nearby objects.*

V.A.R. Doc. No. R94-468; Filed January 11, 1994, 11:10 a.m.

\* \* \* \* \*

**Title of Regulation:** VR 394-01-6. Virginia Statewide Fire Prevention Code/ 1990 1993 .

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

**Effective Date:** April 1, 1994.

**Summary:**

*The amendments will update the existing regulation to reflect the requirements of the 1993 Edition of the National Model Fire Prevention Code.*

**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 George W. Rickman, Jr., Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170. There may be a charge for copies.

VR 394-01-6. Virginia Statewide Fire Prevention Code/1993.

**ARTICLE CHAPTER 1.**  
**ADMINISTRATION AND ENFORCEMENT .**

**SECTION F-100.0.**  
**GENERAL.**

F-100.1. Title. These regulations shall be known as the Virginia Statewide Fire Prevention Code [ /SFPC ] . Except as otherwise indicated, SFPC or code shall mean the 1990 1993 edition of the Virginia Statewide Fire Prevention Code.

F-100.2. Authority. The SFPC is adopted according to regulatory authority granted the Board of Housing and Community Development (BHCD) by the Statewide Fire Prevention Code Act, Chapter 9, Title 27, §§ 27-94 through 27-101 of the Code of Virginia.

F-100.3. Adoption. The SFPC was adopted by order of the Board of Housing and Community Development on January 28, 1991 [ November 15 December 13 ], 1993 . This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development (DHCD), and is available for public inspection.

F-100.4. Effective date. The SFPC shall become effective on April 15, 1991 [ March April ] 1, 1994 .

F-100.5. Effect on other codes. The SFPC shall apply to all buildings and structures as defined in the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia. The SFPC shall supersede the fire prevention regulations previously adopted by local government or other political subdivisions. When any provision of this code is found to be in conflict with the Uniform Statewide Building Code (USBC) , OSHA, or applicable laws of the Commonwealth, that provision of the SFPC shall become invalid. Wherever the words "building code" appear, it they shall mean the building code in effect at the time of construction.

F-100.6. Purpose. The purpose of the SFPC is to provide statewide standards for optional local enforcement to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling and use of substances, materials and devices, including explosives and blasting agents, wherever located.

F-100.7. Application to post-Uniform Statewide Building Code (USBC) buildings. Egress facilities, fire protection, built-in fire protection equipment, and other fire safety features in such buildings shall be maintained in accordance with the requirements of the USBC in effect at the time the building or structure was constructed.

F-100.8. Application to pre-Uniform Statewide Building Code (USBC) buildings. Pre-USBC buildings are those buildings that were not subject to the USBC when constructed. Such buildings shall be maintained in accordance with the Virginia Public Building Safety Regulations (VR 394-01-05) which are hereby incorporated into this code by reference, and other applicable requirements of this code.

Note: The Virginia Public Building Safety Regulations (VR 394-01-05) [ , which were formerly contained in Addendum 2 of this code, ] are available from the [ Professional Services Training and Certification ] Office (DHCD), [ 205 North Fourth 501 North Second ] Street, Richmond, VA [ 23219-1747 23219-1321 ].

F-100.9. Special provisions. The fire official shall require that buildings subject to the requirements of Section [ 100.0 108.0 ] of the Uniform Statewide Building Code, Volume II - Building Maintenance Code, 1990 1993 Edition,

[ shall ] comply with the provisions of that section. [ *Exception: Family day homes as defined in § 63.1-195 of the Code of Virginia shall be exempt from this provision.* ]

F-100.10. Exemptions for farm structures. Farm structures not used for residential purposes shall be exempt from the provisions of the SFPC.

## SECTION F-101.0. REFERENCED STANDARDS AND AMENDMENTS.

F-101.1. Adoption of model code. The following model code, as amended by Sections F-101.2 and F-101.3, is hereby adopted and incorporated in the SFPC.

The BOCA National Fire Prevention Code/ 1990 1993 Edition, published by: Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, IL 60477.

F-101.2. Administrative and enforcement amendments to the referenced model code. All requirements of the referenced model code and standards that relate to administrative and enforcement matters are deleted and replaced by Article Chapter 1 of the SFPC.

F-101.3. Other amendments to the referenced model code. The amendments noted in Addendum 1 shall be made to the specified articles and sections of the BOCA National Fire Prevention Code/ 1990 1993 Edition.

F-101.4. Limitation of application of model code. No provision of the model code shall affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure.

## SECTION F-102.0. ENFORCEMENT AUTHORITY.

F-102.1. Enforcement. Any local government may enforce the SFPC after official action. The local governing body may assign responsibility for enforcement of the SFPC to the local agency or agencies of its choice. The State Fire Marshal shall have authority to enforce the SFPC in jurisdictions in which the local governments do not enforce the code. The State Fire Marshal's office shall be notified by the local government in writing when the fire official has been appointed and shall provide a copy of the resolution or ordinance adopting the enforcement provisions of the SFPC. The terms "enforcing agency" and "fire official" apply to the agency or agencies responsible for enforcement. The terms "building official" or "building department" apply only to the local building official or building department.

F-102.1.1. Modifications. The fire official may grant modifications to any provisions of the Statewide Fire Prevention Code upon application of the owner or the owner's representative, provided that the spirit and intent of the code is observed and public health, welfare and

safety are assured.

F-102.1.1.1. Records. The application for modification and the final decision of the fire official shall be in writing and shall be officially recorded.

F-102.2. Alternative methods and materials. The provisions of this code are not intended to prevent the use of any material or method of work not specifically prescribed by this code, provided that such alternative shall comply with the intent of the provisions of this code. The material, method or work offered shall be, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fireresistance, durability and safety.

F-102.2.1. Supporting data. The fire official shall require that sufficient technical data be submitted to substantiate the proposed use of any material or assembly. If it is determined that the evidence presented is satisfactory proof of performance for the use intended, the fire official shall approve the use of such alternative subject to the requirements of this code. Supporting data, when required by the fire official to assist in the approval of all materials or assemblies not specifically provided for in this code, shall consist of duly authenticated research reports from approved sources.

F-102.3. Qualifications and certification of fire officials and technical assistants. The local government shall establish qualifications for the fire official and assistants. Fire officials and technical assistants shall meet the standards set forth in Sections F-102.3.1 and F-102.3.2.

F-102.3.1. Certification of fire official. The fire official shall be certified in accordance with the Virginia Certification Standards [ (VR 394-01-2) ] within three years after date of employment.

*Exception: An individual employed as the fire official in a locality in Virginia prior to [ the effective date of these regulations April 1, 1994, ] shall be exempt from certification while employed as the fire official in that jurisdiction. This exemption shall not apply to subsequent employment as the fire official in another jurisdiction.*

F-102.3.2. Certification of technical assistants. The technical assistants shall be certified in accordance with the Virginia Certification Standards [ (VR 394-01-2) ] within three years after date of employment.

Exceptions:

1. *An individual employed as a technical assistant in a locality in Virginia prior to [ the effective date of these regulations April 1, 1994, ] shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exception shall not apply to subsequent employment as a technical assistant in another jurisdiction.*

# Final Regulations

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2. An employee not having responsibility for code enforcement under the Virginia Statewide Fire Prevention Code shall be exempt from certification. Code enforcement shall mean, at a minimum, those actions outlined in §§ [ 107.7 F-106.7 ] and [ 107.9 F-106.9 ] of the Virginia Statewide Fire Prevention Code.

Note: It is recommended that the fire official have at least five years of fire prevention experience. The certification programs offered by the Department of Housing and Community Development, Department of Fire Programs, and ETS/NFPA should be considered when establishing qualifications.

F-102.4. Maintenance inspections. The fire official may inspect all buildings, structures and premises to assure compliance with this code or any other ordinance affecting fire safety.

Exceptions:

1. Single family dwellings.
2. Dwelling units in multi-family dwellings.

F-102.5. Right of entry. The fire official may enter any structure or premises when there is reasonable cause to believe that an unsafe condition exists. Proper credentials shall be presented before entering occupied structures or premises. Legal assistance may be requested if entry is refused.

F-102.6. Coordinated inspections. The fire official shall coordinate inspections and administrative orders with any other state and local agencies having related inspection authority, and shall coordinate with the local building department on those inspections required by the USBC, Volume I, for new construction, when involving provisions of the BOCA National Fire Prevention Code, so that the owners and occupants will not be subjected to numerous inspections or conflicting orders. Whenever the fire official or an authorized representative observes an apparent or actual violation of the provisions of another law, ordinance or code, not within the inspector's authority to enforce, the inspector shall report the findings to the official having jurisdiction in order that such official may institute the necessary measures.

Note: Section 110-6 110.8 of the USBC, Volume I, requires the building official to coordinate those inspections with the local fire official.

F-102.7. Records. The local fire official shall keep records of fires, inspections, notices, orders issued, and other matters as directed by the local government. Fire records shall include information as to the cause, origin and the extent of damage. Records may be disposed of in accordance with the provisions of the Virginia Public Records Act [ (§ 42.1-76 et seq.) of the Code of Virginia ], (a) after 20 years in the case of arson fires, (b) after five

years in nonarson fires, and (c) after three years in the case of all other reports, notices, and orders issued.

F-102.8. Relief from personal responsibility. The local enforcing agency personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as an employee. The fire official or his subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the SFPC as a result of any act required or permitted in the discharge of official duties while assigned to the enforcing agency as an employee, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed in the discharge of the SFPC may be defended by the enforcing agency's legal representative. The State Fire Marshal or his subordinates shall not be personally liable for damages or costs sustained by any person when the State Fire Marshal or his subordinates are enforcing this code as part of their official duties under Section F-102.1.

F-102.9. Local regulations. Local governments may adopt fire prevention regulations that are more restrictive or more extensive in scope than the SFPC provided such regulations are not more restrictive than the USBC and do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure.

F-102.10. Procedures or requirements. The local governing body may establish such procedures or requirements as may be necessary for the enforcement of the SFPC.

F-102.11. Control of conflict of interest. The minimum standards of conduct for officials and employees of the enforcing agency shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 40.1 (§ 2.1-639.1 et seq.) of Title 2.1 of the Code of Virginia.

## SECTION F-103.0. DUTIES AND POWERS OF THE FIRE OFFICIAL.

F-103.1. General. The fire official shall enforce the provisions of the SFPC as provided herein and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

F-103.2. Notices and orders. The fire official shall issue all necessary notices or orders to ensure compliance with the SFPC.

F-103.3. Delegation of duties and powers. The fire official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible

# Final Regulations

that any powers and duties delegated are carried out in accordance with this code.

## SECTION F-104.0. PERMITS.

F-104.1. General. The fire official may require notification prior to activities involving the handling, storage or use of substances, materials or devices regulated by the SFPC; or [ to ] conduct processes which produce conditions hazardous to life or property; or [ to ] establish establishing a place of assembly.

F-104.1.1. State permits. The State Fire Marshal will not issue permits under the SFPC except that annual permits shall be issued under Article 26 Chapter 30 , Explosives, Ammunition and Blasting Agents.

F-104.1.2. Local permits. In those jurisdictions that enforce the SFPC, the Fire Official shall issue permits as required by Article 26 Chapter 30 , Explosives, Ammunition and Blasting Agents.

F-104.2. Permits required. The local fire official may require permits to be obtained as specified in the model code. Permits shall be made available to the fire official upon request.

F-104.3. Application for permit. Application for a permit shall be made on forms prescribed by the local fire official.

F-104.4. Issuance of permits. Before a permit is issued, the local fire official shall make such inspections or tests as are necessary to assure that the use and activities for which application is made complies comply with the provisions of this code.

F-104.5. Conditions of permit. A permit shall constitute permission to store or handle materials, or to conduct processes in accordance with the SFPC and shall not be construed as authority to omit or amend any of the provisions of this code. Permits shall remain in effect until revoked, or for such period of time specified on the permit. Permits are not transferable.

F-104.6. Approved plans. Plans approved by the fire official are approved with the intent that they comply in all respects to this code. Any omissions or errors on the plans do not relieve the applicant of complying with all applicable requirements of this code.

F-104.7. Revocation of permit. The local fire official may revoke a permit or approval issued under the SFPC if conditions of the permit have been violated, or if the approved application, data or plans contain misrepresentation as to material fact.

F-104.8. Suspension of permit. A permit shall become invalid if the authorized activity is not commenced within six months after issuance of the permit, or if the

authorized activity is suspended or abandoned for a period of six months after the time of commencement.

F-104.9. Fees. Fees may be levied by the enforcing agency in order to defray the cost of enforcement and appeals. The fees listed in Table F-104.9 shall be levied on those permits issued in accordance with F-104.1.1.

Table F-104.9.

### FEE SCHEDULE FOR EXPLOSIVES PERMITS ISSUED BY THE STATE FIRE MARSHAL

Type of Permit	Fee
To possess, store or dispose of explosives or blasting agents	\$50.00 per year
To use explosives or blasting agents	\$75.00 per year

## SECTION F-105.0. LOCAL BOARD OF APPEALS.

F-105.1. Local board of appeals. Each local government shall have a local board of appeals as required by § 27.98 of the Code of Virginia; or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a state agency, approved by the Department of Housing and Community Development to act on appeals.

F-105.2. Membership. The local board of appeals shall consist of at least five members appointed by the local government. Members may be reappointed.

Note: In order to provide continuity, it is recommended that the terms of the local board members be staggered so that less than half of the terms expire in any one year.

F-105.3. Qualifications of board members. Board members shall be qualified by experience and training to rule on matters pertaining to building construction and fire prevention. Employees or officials of the local government appointing the board shall not serve as board members.

F-105.4. Officers of the board. The board shall select one of its members to serve as chairman. The agency enforcing the SFPC shall designate an employee from its agency to serve as secretary to the board. The secretary shall keep a detailed record of all proceedings in accordance with Section F-102.6.

F-105.5. Alternates and absentee of members. The local government may appoint alternate members who may sit on the board in the absence of any regular members of the board and, while sitting on the board, shall have the full power and authority of the regular member. A procedure shall be established for use of alternate members in case of absence of regular members.

# Final Regulations

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F-105.6. Control of conflict of interest. A member of the board shall not vote on any question involving their business or personal interests.

F-105.7. Notice of meeting. The board shall meet upon notice of the chairman or at stated periodic meetings if warranted by the volume of work. The board shall meet within 30 calendar days of the filing of an appeal.

F-105.8. Application for appeal. The owner or occupant of any building, structure or premises may appeal a decision of the fire official, by submitting written application within 10 calendar days of the decision, when it is claimed that:

1. The fire official has refused to grant a modification of the provisions of the code;
2. The intent of the code has been incorrectly interpreted;
3. The provisions of the code do not fully apply;
4. The use of a form of compliance that is equal to or better than that specified in the code has been denied.

F-105.9. Hearing open to public. All hearings shall be open to the public and conducted in accordance with the applicable provisions of the Administrative Process Act, § 9-6.14.1 of the Code of Virginia.

F-105.10. Postponement of hearing. When a quorum (over 50%) of the board, as represented by members or alternates, is not present to consider a specific appeal, either the appellant, the fire official or their representatives may, prior to the start of the hearing, request a single postponement of the hearing of up to 14 calendar days.

F-105.11. Decision. A vote equivalent to a majority of the quorum of the board is required to reverse or modify the decision of the fire official. Every action of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the fire official.

F-105.12. Enforcement of decision. The fire official shall take immediate action in accordance with the decision of the board.

F-105.1. General. Appeals concerning the application of the Statewide Fire Prevention Code (SFPC) by the local enforcing agency shall first lie to a local Board of Fire Prevention Code Appeals (BFPCA) established in accordance with this section. Appeals from the application of the [ SFPC by the ] State Fire Marshal shall be made directly to the State Building Code Technical Review Board (TRB). [ Local governments without a BFPCA shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a state agency, approved by the Department of Housing and Community Development to act on appeals. ]

F-105.2. Membership of BFPCA. The BFPCA shall consist of at least five members appointed by the local government and having terms of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and [ , ] as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary [ , ] shall be maintained by the enforcing agency. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

F-105.2.1. Chairman. The BFPCA shall annually select one of its regular members to serve as chairman. In the event of the absence of the chairman at a hearing, the members present shall select an acting chairman.

F-105.2.2. Secretary. The local government shall appoint a secretary to the BFPCA to maintain a detailed record of all proceedings.

F-105.3. Qualifications of BFPCA members. BFPCA members shall be selected on the basis of their ability to render fair and competent decisions regarding application of the SFPC and shall to the extent possible, represent different occupational or professional fields relating to building construction or fire prevention. Employees or officials of the local government shall not serve as members of the BFPCA.

F-105.4. Disqualification of member. A member of the BFPCA shall not hear an appeal in which that member has any personal, professional, financial or any other conflict of interest.

F-105.5. Application for appeal. An owner or occupant of a building, structure or property may appeal a decision of a local enforcing agency concerning the application of the SFPC to that building, structure or property by submitting a written request for appeal to the enforcing agency within 14 calendar days from the receipt of the decision to be appealed. A copy of the written decision of the enforcing agency upon which the appeal is being made shall be submitted by the applicant and retained as part of the record by the secretary of the BFPCA. In the case of an appeal of the decision of the State Fire Marshal, the applicant shall submit an application for appeal to the office of the TRB within 14 calendar days from the receipt of the decision to be appealed. A copy of the written decision of the State Fire Marshal upon which the appeal is being made shall also be submitted. The application for appeal shall be stamped or otherwise marked by the enforcing agency or the office of the TRB to indicate the date received. Failure to submit an application for appeal within the time limit established by this action shall constitute an acceptance of the enforcing agency or State Fire Marshal's decision.

F-105.6. BFPCA meeting. The BFPCA shall meet within 30

calendar days after the date of receipt of the application for appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing at least 14 calendar days prior to the date of the hearing. Less notice may be given if agreed upon by the applicant.

F-105.7. Hearing procedures. All hearings before the BFPCA shall be open to the public. The applicant, the enforcing agency's representative and any person whose interests are affected shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. Hearings from a decision of the State Fire Marshal to the TRB are governed by Article 2 [ (§ 36-108 et seq.) ] of Chapter 6 [ (§ 36-107.1 et seq.) ] of Title 36 of the Code of Virginia.

F-105.7.1. Postponement. When five members of the BFPCA are not present to hear an appeal, the applicant shall have the right to request a postponement of the hearing. The enforcing agency shall reschedule the appeal within 30 calendar days of the postponement.

F-105.8. Decision of BFPCA. The BFPCA shall have the power to reverse or modify the decision of the enforcing agency by a concurring vote of a majority of those present.

F-105.8.1. Resolution. The decision of the BFPCA shall be by resolution signed by the chairman and retained as part of the record by the enforcing agency. The following wording shall be part of the [ decision resolution ] :

"Upon receipt of this decision, any person who was a party to the appeal may appeal to the [ TRB State Building Code Technical Review Board ] by submitting an application to the State [ Building Code Technical Review ] Board within 21 calendar days. Application forms are available from the Office of the [ State Building Code Technical ] Review Board, 501 North Second Street, Richmond, Virginia 23219, (804) 371-7170."

F-105.9. Further appeal. After final determination by the BFPCA, any person who is a party to the local appeal may appeal to the TRB by submitting an application to the office of the TRB within 21 calendar days of receipt of the decision of the BFPCA. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of the enforcing agency's decision.

F-105.9.1. Information to be submitted. Copies of the decision of the enforcing agency and the resolution of the BFPCA which is being appealed shall be submitted with the application for appeal. Upon request by the office of the [ Review Board TRB ], the enforcing agency shall submit a copy of all pertinent information from the record of the BFPCA.

F-105.10. Decision of TRB. Procedures of the TRB for both

appeals from a decision of the State Fire Marshal and from the BFPCA are in accordance with Article 2 [ (§ 36-108 et seq.) ] of Chapter 6 [ (§ 36-1.7.1 et seq.) ] of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom and the enforcing agency or State Fire Marshal shall take action accordingly.

## SECTION F-106.0. APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

F-106.1. Appeal to the State Building Code Technical Review Board. Any person aggrieved by a decision of the local Board of Appeals who was a party to the appeal may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 15 days of receipt of the decision of the local appeals board by the aggrieved party.

F-106.2. Appeal of decision of State Fire Marshal. Appeals concerning the application of the code by the State Fire Marshal shall be made directly to the State Building Code Technical Review Board.

F-106.3. Control of conflict of interests. A member of the board shall not vote on any question involving his business or personal interests.

F-106.4. Enforcement of decision. Upon receipt of the written decision of the State Building Code Technical Review Board, the fire official shall take immediate action in accordance with the decision.

F-106.5. Court review. Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board may be presented to the court of the original jurisdiction in accordance with the provisions of the Administrative Process Act, Article 4 (§ 9-6.14.15 et seq.) of Chapter 1.1.1 of Title 9 of the Code of Virginia.

## SECTION F-107.0 F-106.0 . UNSAFE CONDITIONS.

F-107.1 F-106.1 . General. The fire official shall order the following dangerous or hazardous conditions or materials to be removed or remedied in accordance with the SFPC:

1. Dangerous conditions which are liable to cause or contribute to the spread of fire in or on said premises, building or structure or endanger the occupants thereof.
2. Conditions which would interfere with the efficiency and use of any fire protection equipment.
3. Obstructions to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with

# Final Regulations

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the egress of occupants or the operation of the fire department in case of fire.

4. Accumulations of dust or waste material in air conditioning or ventilating systems or grease in kitchen or other exhaust ducts.

5. Accumulations of grease on kitchen cooking equipment, or oil, grease or dirt upon, under or around any mechanical equipment.

6. Accumulations of rubbish, waste, paper, boxes, shavings, or other combustible materials, or excessive storage of any combustible material.

7. Hazardous conditions arising from defective or improperly used or installed electrical wiring, equipment or appliances.

8. Hazardous conditions arising from defective or improperly used or installed equipment for handling or using combustible, explosive or otherwise hazardous materials.

9. Dangerous or unlawful amounts of combustible, explosive or otherwise hazardous materials.

10. All equipment, materials, processes or operations which are in violation of the provisions and intent of this code.

**F-107.2 F-106.2 . Maintenance.** The owner shall be responsible for the safe and proper maintenance of any building, structure, premises or lot. In all new and existing buildings and structures, the fire protection equipment, means of egress, alarms, devices and safeguards required by the USBC shall be maintained in a safe and proper operating condition.

Note: Also see Sections F-501.4 F-504.4 and F-501.4.1 F-504.4.1 of this code for further information.

**F-107.3 F-106.3 . Occupant responsibility.** If an occupant of a building creates conditions in violation of this code, by virtue of storage, handling and use of substances, materials, devices and appliances, the occupant shall be held responsible for the abatement of said hazardous conditions.

**F-107.4 F-106.4 . Unsafe buildings.** All buildings and structures that are or shall hereafter become unsafe or deficient in adequate exit facilities or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or by reason of illegal or improper use, occupancy or maintenance or which have sustained structural damage by reason of fire, explosion, or natural disaster shall be deemed unsafe buildings or structures. A vacant building, or portion of a building, unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this code. Unsafe buildings shall be reported to the building or maintenance

code official who shall take appropriate action under the provisions of the USBC, Volume I - New Construction Code or Volume II - Building Maintenance Code, to secure abatement by repair and rehabilitation or by demolition.

**F-107.5 F-106.5 . Evacuation.** When, in the opinion of the fire official, there is actual and potential danger to the occupants or those in the proximity of any building, structure or premises because of unsafe structural conditions or inadequacy of any means of egress, the presence of explosives, explosive fumes or vapors, or the presence of toxic fumes, gases or materials, the fire official may order the immediate evacuation of the building, structure or premises. All notified occupants shall immediately leave the building, structure or premises, and no person shall enter until authorized to do so by the fire official.

**F-107.6 F-106.6 . Unlawful continuance.** It is deemed a violation of the SFPC for any person to refuse to leave, interfere with the evacuation of the other occupants or continue any operation after having been given an evacuation order except such work as that person is directed to perform to remove a violation or unsafe condition.

**F-107.7 F-106.7 . Notice of violation.** Whenever the fire official observes a violation of this code or ordinance under the fire official's jurisdiction, the fire official shall prepare a written notice of the violation describing the condition deemed unsafe, *citing the applicable code section* and specifying time limits for the required repairs or improvements to be made to render the building, structure or premises safe and secure. The written notice of violation of this code shall be served upon the owner, a duly authorized agent or upon the occupant or other person responsible for the conditions under violation. Such notice of violation shall be served either by delivering a copy of same to such persons by mail to the last known post office address, by delivering it in person, by delivering it to and leaving it in the possession of any person in charge of the premises, or, in case such person is not found upon the premises, by affixing a copy thereof in a conspicuous place at the entrance door or avenue of access; such procedure shall be deemed the equivalent of personal notice.

**F-107.8 F-106.8 . Failure to correct violations.** If the notice of violation is not complied with in the time specified by the fire official, the fire official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate any notice of violation which is not complied with in the specified time or require removal or termination of the unlawful use of the building or structure. The local law enforcement agency of the jurisdiction shall be requested by the fire official to make arrests for any offense against this code or orders of the fire official affecting the immediate safety of the public when the fire official is not certified in accordance with § 27-34.2 of the Code of Virginia.

F-107.9 F-106.9 . Issuing summons for violation. If certified in accordance with § 27-34.2 of the Code of Virginia, the fire official may issue a summons in lieu of the notice of violation.

F-107.10 F-106.10 . Penalty for violation. Violations are a Class 1 misdemeanor in accordance with § 27-100 of the Code of Virginia. Each day that a violation continues, after a service of notice as provided for in this code, shall be deemed a separate offense.

F-107.11 F-106.11 . Abatement of violation. Conviction of a violation of the SFPC shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of the SFPC relating to use of the building or premises.

## ADDENDUM 1. AMENDMENTS TO THE BOCA NATIONAL FIRE PREVENTION CODE/ 1990 1993 EDITION.

As provided in Section F-101.3 of the SFPC, the amendments noted in this addendum shall be made to the BOCA National Fire Prevention Code/ 1990 1993 Edition for use as part of the SFPC.

### ARTICLE CHAPTER 1. ADMINISTRATION AND ENFORCEMENT .

1. Article *Chapter 1, Administration and Enforcement*, is deleted in its entirety and replaced with Article *Chapter 1* of the SFPC.

### ARTICLE CHAPTER 2. DEFINITIONS.

1. A. Change Section F-200.3 F-201.3 to read:

F-200.3 F-201.3 . Terms defined in the other codes. Where terms are not defined in this code and are defined in the USBC, they shall have the meanings defined by the USBC.

2. B. Change the following definitions in Section F-201.0 F-202.0 , General Definitions, to read:

*Blasting agent* means any explosive material that has been tested and approved in accordance with the provisions of DOT 49 CFR which includes that the finished product, as mixed for use and shipment, cannot be detonated by a No. 8 test blasting cap when unconfined.

*Building code official* means the designated authority charged with the administration and enforcement of the USBC, Volume I - New Construction Code.

*Code official* means the designated authority charged with the administration and enforcement of the USBC, Volume II - Building Maintenance Code.

Note: When "code official" appears in the BOCA

National Fire Prevention Code, it shall mean "fire official."

"*Explosive*" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. The term "explosive" includes all materials classified as Class A, Class B, or Class C explosives by DOT regulations and includes, but is not limited to, dynamite, black powder, pellet powders, smokeless powder, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse igniters, fuse lighters, squibs, cordeau detonate fuse, instantaneous fuse, igniter cord and igniters.

"*Fireworks*" means any item known as firecracker, torpedo, skyrocket, or other substance or thing, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known, as fireworks and which explodes, rises into the air or travels laterally, or fires projectiles into the air. The term "fireworks" does not include auto flares, caps for pistols, pinwheels, sparklers, fountains or Pharaoh's Serpents provided, however, these permissible items may only be used, ignited or exploded on private property with the consent of the owner of such property.

"*Structure*" means an assembly of materials forming a construction for use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature. The word structure shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

3. C. Add these new definitions to Section F-201.0 F-202.0 , General Definitions:

*Agricultural blasting* means any blasting operation which is conducted on no less than five acres of real estate devoted to agricultural or horticultural use as defined in § 58.1-3230 of the Code of Virginia.

*Artificial barricade* means an artificial mound or revetted wall of earth of a minimum thickness of three feet.

*Barricaded* means the effective screening of a building containing explosive materials from the magazine or other building, railway, or highway by a natural or an artificial barrier. A straight line from the top of any sidewall of the building containing explosive materials to the eave line of any magazine or other building or to a point 12 feet above the center of a railway or highway shall pass through such barrier.

*Blaster* or *shot firer* means that qualified person in charge of, and responsible for, the loading and firing of an explosive or blasting agent.

# Final Regulations

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*"Building Code"* means the building code in effect at the time of construction.

*"Detonator"* means any device containing any initiating or primary explosive that is used for initiating detonation. A detonator may not contain more than 10 grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord delay connectors, and nonelectric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires. All types of detonators in strengths through No. 8 cap should be rated at 1 1/2 lbs. of explosives per 1,000 caps. For strengths higher than No. 8 cap, consult the manufacturer.

*"Explosive materials"* means explosives, blasting agents and detonators.

*"Fire official"* means the designated authority charged with the administration and enforcement of the SFPC.

*"Highway"* means any public street, public alley, or public road. "Public Highways Class A to D" are highways with average traffic volume of 3,000 or less vehicles per day as specified in "American Civil Engineering Practice" (Abbott, Vol. 1, Table 46, Sec. 3-74, 1956 Edition, John Wiley and Sons).

*"Inhabited building"* means a building regularly occupied in whole or part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosive materials.

*"Magazine"* means any building, structure, or container, other than an explosives manufacturing building, approved for the storage of explosive materials.

*"Natural barricade"* means natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

*"Peak particle velocity"* means the maximum component of the three mutually perpendicular components of motion at a given point.

*"Propellant-actuated power device"* means any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge. (See special industrial explosive device.)

*"Railway"* means any steam, electric, or other railroad or railway which carries passengers for hire.

*"Semitrailer"* means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight (and that of its own load) rests upon or is carried by another vehicle.

*"Tractor truck"* means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

*"Transport"* or *"transportation"* means any movement of property by any mode, and any packing, loading, unloading, identification, marking, placarding, or storage incidental thereto.

4. Delete the following definitions from Section F-201.0 F-202.0 , General Definitions:

Liquefied petroleum gas (LP-gas or LPG)

Liquefied petroleum gas equipment

## ARTICLE [ CHAPTER 3. ] GENERAL [ PRECAUTIONS AGAINST FIRE. ]

1. Change Section F-301.1 to read:

F-301.1. General. Open burning shall be allowed in accordance with the laws and regulations set forth by the State Air Pollution Control Board, the Department of Forestry, and as regulated by the locality.

2. [ Delete Section ] F-318.0 [ F-315.0 , Fire Safety During Construction, Alteration and Demolition. ]

## ARTICLE CHAPTER 4. HAZARD ABATEMENT IN EXISTING BUILDINGS. OPEN FLAMES OR BURNING.

Change Section F-403.1 to read:

F-403.1. General. Open burning shall be allowed in accordance with the laws and regulations set forth by the State Air Pollution Control Board, the Department of Forestry, and as regulated by the locality.

1. Delete Article 4, Hazard Abatement in Existing Buildings, as it is covered by Sections F-100.7 and F-100.8 of the SFPC and Volume I and Volume II of the USBC.

## ARTICLE CHAPTER 5. FIRE PROTECTION SYSTEMS.

1. Add new Section F-518.0 F-519.0 , Smoke Detectors for the Deaf and Hearing-impaired, to read:

SECTION F-518.0 F-519.0 .  
SMOKE DETECTORS FOR THE DEAF AND  
HEARING-IMPAIRED.

F-518.1 F-519.1 . Audible and visual alarms. Audible and visual alarms, meeting the requirements of UL Standard 1638, and installed in accordance with NFPA/ANSI 72G, shall be provided in occupancies housing the hard of hearing, as required by § 36-99.5 of the Code of Virginia; however, all visual alarms shall provide a minimum intensity of 100 candela. Portable alarms meeting these requirements shall be acceptable.

## ARTICLE CHAPTER 7. EMERGENCY PLANNING AND PREPAREDNESS.

1. Add new Section F-706.4 F-707.4 , Fire Exit Drills, to read:

F-706.4 F-707.4 . Fire exit drills. Fire exit drills shall be conducted annually by building staff personnel or the owner of the building in accordance with the fire safety plan and shall not affect other current occupants.

## ARTICLE 16. CHAPTER 18. OIL AND GAS PRODUCTION.

1. Delete Article 16 Chapter 18 , Oil and Gas Production, as it is covered by the Virginia Gas and Oil Act, [ Title 45.1, ] Chapter 22.1 [ (§ 45.1-361.1 et seq.) of Title 45.1 ] of the Code of Virginia.

## ARTICLE 26. CHAPTER 30. EXPLOSIVES, AMMUNITION AND BLASTING AGENTS.

1. Article 26 Chapter 30 , Explosives, Ammunition and Blasting Agents, is deleted in its entirety and replaced with Article 26 Chapter 30 of the SFPC, as follows:

### SECTION F-2600.0 F-3001.0 . GENERAL.

F-2600.1 F-3001.1 . Scope. The equipment, processes and operations involving the manufacture, possession, storage, sale, transportation and use of explosives and blasting agents shall comply with the applicable requirements of this code and the provisions of this article and shall be maintained in accordance with NFPA 495, NFPA 498, and DOT 49CFR listed in Appendix A except as herein specifically exempted or where provisions of this article do not specifically cover conditions and operations, and with the Institute of Makers of Explosives (IME) Safety Library Publications, with Regulations Governing the Transportation of Hazardous Materials as promulgated by the Virginia Waste Management Board, and with the Virginia Motor Carrier Regulations.

F-2600.2 F-3001.2 . Exceptions. Nothing in this article shall be construed as applying to the following explosive uses:

1. The Armed Forces of the United States or of a state.
2. Explosives in forms prescribed by the official

United States Pharmacopoeia.

3. The sale or use of fireworks which are regulated by Article 27 Chapter 31 .

4. Laboratories engaged in testing explosive materials.

5. The possession, storage and use of not more than five pounds (2.27 kg) of smokeless powder, black powder, and 1000 small arms primers for hand loading of small arms ammunition for personal use.

6. The manufacture, possession, storage and use of not more than five pounds (2.27 kg) of explosives or blasting agents in educational, governmental or industrial laboratories for instructional or research purposes when under the direct supervision of experienced, competent persons.

7. The transportation and use of explosives or blasting agents by [ the United States Department of Alcohol, Tobacco and Firearms, the United States Bureau of Mines, the Federal Bureau of Investigation, the United States Secret Service any federal agency ], the Virginia Department of State Police, or [ qualified ] fire and law-enforcement officials acting in their official capacity in the discharge of their duties; nor to the storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1 of the Code of Virginia (Department of Mines, Minerals and Energy).

F-2600.3 F-3001.3 . Permit required. A permit shall be obtained from the code official for any of the following conditions or operations:

1. To possess, store, or otherwise dispose of explosives or blasting agents.
2. To use explosives or blasting agents:
  - a. A permit shall be issued for each project.
  - b. The permit shall specify the type of blasting and any special conditions. To the extent that blasting will occur within any waters of the Commonwealth or in any of the waters under its jurisdiction, evidence of a valid Marine Resources Commission permit, or "no permit necessary" authorization, will be required.
3. To operate a terminal for handling explosives or blasting agents.
4. To manufacture explosives or blasting agents, providing the following conditions are met:
  - a. Registration with the Department of Housing and Community Development;
  - b. Valid license from the Bureau of Alcohol,

# Final Regulations

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Tobacco and Firearms; and

c. Valid license to do business in the Commonwealth of Virginia.

5. To sell explosives and blasting agents, providing the following conditions are met:

a. Registration with the Department of Housing and Community Development;

b. Valid license from the Bureau of Alcohol, Tobacco and Firearms; and

c. Valid license to do business in the Commonwealth of Virginia.

Exception: Annual permits for the use of explosives shall be issued to any state regulated public utility.

F-2600.3.1 F-3001.3.1 . Prohibited permits. Permits as required above shall not be issued for:

1. Liquid nitroglycerin and nitrate esters.

2. Dynamite (except gelatin dynamite) containing over 60% of liquid explosive ingredient.

3. Leaking, damaged, or defective packages or containers of high explosives.

4. Nitrocellulose in a dry and uncompressed condition to be shipped or transported.

5. Fulminate of mercury in a dry condition and fulminate of all other metals in any condition.

Exception. Fulminate of metals which is a component of manufactured articles not otherwise forbidden.

6. Explosive compositions that ignite spontaneously or undergo marked decomposition, rendering the products or their use more hazardous, when subjected for 48 consecutive hours or less to a temperature of 167°F (75°C).

7. New explosives until approved by DOT 49CFR listed in Appendix A, except for permits issued to educational, governmental or industrial laboratories for instructional or research purposes.

8. Explosives forbidden by DOT 49CFR listed in Appendix A.

9. Explosives not packed or marked in accordance with the requirements of DOT 49CFR listed in Appendix A.

10. Explosives containing an ammonium salt and a chlorate.

F-2600.4 F-3001.4 . Certification required. The use of explosive materials shall be conducted or supervised on-site by blasters certified in accordance with [ Part IV of ] the Virginia Certification Standards [ for Building and Amusement Device Inspectors, Blasters and Tradesmen (VR 394-01-2) ]. The blaster shall carry proof of certification during the loading or firing of explosive materials.

Exception: Individuals conducting agricultural blasting operations on their own property.

F-2600.4.1 F-3001.4.1 . Certification fee. The Department of Housing and Community Development shall charge a \$20 fee to applicants for *restricted blaster certification as a or unrestricted blaster certification*.

F-2600.5 F-3001.5 . Liability insurance. The company or individual applying for a permit to blast, manufacture, or sell explosives shall provide proof of insurance in an amount determined by the fire official but in no case less than \$500,000.

Exception: Liability insurance shall not be required with an agricultural blasting permit when the blast is conducted on the applicant's personal property.

## SECTION F-2601.0 F-3002.0 . GENERAL REQUIREMENTS.

F-2601.1 F-3002.1 . Storage. The storage of explosives and blasting agents is prohibited within the legal geographic boundaries of any district where such storage is prohibited by the authority having jurisdiction.

Exception: Temporary storage for use in connection with approved blasting operations; provided, however, this prohibition shall not apply to wholesale and retail stocks of small arms ammunition, explosive bolts, explosive rivets or cartridges for explosive actuated power tools in quantities involving less than 500 pounds (227 kg) of explosive material.

F-2601.2 F-3002.2 . Sale and display. Explosives shall not be sold, given, delivered, or transferred to any person or company not in possession of a valid permit. A person shall not sell or display explosives or blasting agents on highways, sidewalks, public property or in places of public assembly or education.

## SECTION F-2602.0 F-3003.0 . STORAGE OF EXPLOSIVE MATERIALS.

F-2602.1 F-3003.1 . General. Explosives, including special industrial high explosive materials, shall be stored in magazines which meet the requirements of this article. This shall not be construed as applying to wholesale and retail stocks of small arms ammunition, explosive bolts, explosive rivets or cartridges for explosive-actuated power tools in quantities involving less than 500 pounds (227 kg) of explosive material. Magazines shall be in the custody of

# Final Regulations

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a competent person at all times who shall be at least 21 years of age, and who shall be held responsible for compliance with all safety precautions.

**F-2602.2 F-3003.2 . Control in wholesale and retail stores.** Explosive materials shall not be stored within wholesale or retail stores. The storage of explosives for wholesale and retail sales shall be in approved outdoor magazines except that not more than 50 pounds of black or smokeless powder may be stored in a Type 4 indoor magazine.

**F-2602.3 F-3003.3 . Magazine clearances.** Magazines shall be located away from inhabited buildings, passenger railways, public highways and other magazines in conformance with Table F-2602 F-3003 , except as provided in Section F-2602.2 F-3003.2 .

**F-2602.4 F-3003.4 . Magazine construction.** Magazines shall be constructed and maintained in accordance with IME publication No. 1.

**Note:** Refer to Section F-2600.4 for the use of magazines.

**F-2602.4.1 F-3003.4.1 . Magazine heat and light.** Magazines shall not be provided with artificial heat or light, except that if artificial light is necessary, an approved electric safety flashlight or safety lantern shall be used.

**F-2602.5 F-3003.5 . Safety precautions.** Smoking, matches, open flames, spark producing devices and firearms shall be prohibited inside or within 50 feet (15.24m) of magazines. Combustible materials shall not be stored within 50 feet (15.24m) of magazines.

**F-2602.5.1 F-3003.5.1 . Surrounding terrain.** The land surrounding magazines shall be kept clear of brush, dried grass, leaves, trash and debris for a distance of at least 25 feet (7.62 m).

**F-2602.5.2 F-3003.5.2 . Locking security.** Magazines shall be kept locked except when being inspected or when explosives are being placed therein or being removed therefrom.

**F-2602.5.3 F-3003.5.3 . Magazine housekeeping.** Magazines shall be kept clean, dry and free of grit, paper, empty packages or rubbish.

**F-2602.5.4 F-3003.5.4 . Separation of detonators and explosives.** Blasting caps, electric blasting caps, detonating primers and primed cartridges shall not be stored in the same magazine with other explosives.

Table F-2602 F-3003(3)

TABLE OF DISTANCES FOR STORAGE OF EXPLOSIVES (2)

		DISTANCES IN FEET				
QUANTITY OF EXPLOSIVE MATERIALS (Notes 1,2,3,4)		Inhabited Buildings (Note 8)	Public Highways		Class A to D (Note 11)	
Pounds Over	Pounds Not Over	Barri-caded (8,7,8)	Unbarri-caded	Barri-caded (8,7,8)	Unbarri-caded	
2	0	5	70	140	30	60
5		10	90	180	35	70
10		20	110	220	45	90
20		30	125	250	50	100
30		40	140	280	55	110
40		50	150	300	60	120
50		75	170	340	70	140
75		100	190	380	75	150
100		125	200	400	80	160
125		150	215	430	85	170
150		200	235	470	95	190
200		250	255	510	105	210
250		300	270	540	110	220
300		400	295	590	120	240
400		500	320	640	130	260
500		600	340	680	135	270
600		700	355	710	145	290
700		800	375	750	150	300
800		900	390	780	155	310
900		1,000	400	800	160	320
1,000		1,200	425	850	165	330
1,200		1,400	450	900	170	340
1,400		1,600	470	940	175	350
1,600		1,800	490	980	180	360
1,800		2,000	505	1,010	185	370
2,000		2,500	545	1,090	190	380
2,500		3,000	580	1,160	195	390
3,000		4,000	635	1,270	210	420
4,000		5,000	685	1,370	225	450
5,000		6,000	730	1,460	235	470
6,000		7,000	770	1,540	245	490
7,000		8,000	800	1,600	250	500
8,000		9,000	835	1,670	255	510
9,000		10,000	865	1,730	260	520
10,000		12,000	875	1,750	270	540
12,000		14,000	885	1,770	275	550
14,000		16,000	900	1,800	280	560

# Final Regulations

16,000	18,000	940	1,800	285	570		10	20	81	162	10	20
18,000	20,000	975	1,950	290	580		20	30	93	186	11	22
20,000	25,000	1,055	2,000	315	630		30	40	103	206	12	24
25,000	30,000	1,130	2,000	340	680		40	50	110	220	14	28
30,000	35,000	1,205	2,000	360	720		50	75	127	254	15	30
35,000	40,000	1,275	2,000	380	760		75	100	139	278	16	32
40,000	45,000	1,340	2,000	400	800		100	125	150	300	18	36
45,000	50,000	1,400	2,000	420	840		125	150	159	318	19	38
50,000	55,000	1,460	2,000	440	880		150	200	175	350	21	42
55,000	60,000	1,515	2,000	455	910		200	250	189	378	23	46
60,000	65,000	1,565	2,000	470	940		250	300	201	402	24	48
65,000	70,000	1,610	2,000	485	970		300	400	221	442	27	54
70,000	75,000	1,655	2,000	500	1,000		400	500	238	476	29	58
75,000	80,000	1,695	2,000	510	1,020		500	600	253	506	31	62
80,000	85,000	1,730	2,000	520	1,040		600	700	266	532	32	64
85,000	90,000	1,760	2,000	530	1,060		700	800	278	556	33	66
90,000	95,000	1,790	2,000	540	1,080		800	900	289	578	35	70
95,000	100,000	1,815	2,000	545	1,090		900	1,000	300	600	36	72
100,000	110,000	1,835	2,000	550	1,100		1,000	1,200	318	636	39	78
110,000	120,000	1,855	2,000	555	1,110		1,200	1,400	336	672	41	82
120,000	130,000	1,875	2,000	560	1,120		1,400	1,600	351	702	43	86
130,000	140,000	1,890	2,000	565	1,130		1,600	1,800	366	732	44	90
140,000	150,000	1,900	2,000	570	1,140		1,800	2,000	378	756	45	90
150,000	160,000	1,935	2,000	580	1,160		2,000	2,500	408	816	49	98
160,000	170,000	1,965	2,000	590	1,180		2,500	3,000	432	864	52	104
170,000	180,000	1,990	2,000	600	1,200		3,000	4,000	474	948	58	116
180,000	190,000	2,010	2,000	605	1,210		4,000	5,000	513	1,026	61	122
190,000	200,000	2,030	2,000	610	1,220		5,000	6,000	546	1,092	65	130
200,000	210,000	2,055	2,000	620	1,240		6,000	7,000	573	1,146	68	136
210,000	230,000	2,100	2,100	635	1,270		7,000	8,000	600	1,200	72	144
230,000	250,000	2,155	2,155	650	1,300		8,000	9,000	624	1,248	75	150
250,000	275,000	2,215	2,215	670	1,340		9,000	10,000	645	1,290	78	156
275,000	300,000	2,275	2,275	690	1,380		10,000	12,000	687	1,374	82	164
.....							12,000	14,000	723	1,446	87	174
.....							14,000	16,000	756	1,512	90	180
.....							16,000	18,000	786	1,572	94	188
QUANTITY OF EXPLOSIVE MATERIALS <small>(Notes 1,2,3,4)</small>		Passenger Railways Public Highways with Traffic Volume of more than 3,000 Vehicles/Day <small>(Notes 10,11)</small>		Separation of Magazines <small>(Note 12 (1))</small>			18,000	20,000	813	1,626	98	196
							20,000	25,000	876	1,752	105	210
.....							25,000	30,000	933	1,866	112	224
Pounds Over	Pounds Not Over	Barri- caded <small>(Notes 7,8)</small>	Unbarri- caded	Barri- caded <small>(Notes 7,8)</small>	Unbarri- caded		30,000	35,000	981	1,962	119	238
							35,000	40,000	1,026	2,000	124	248
.....							40,000	45,000	1,068	2,000	129	258
2	0	5	51	102	6	12	45,000	50,000	1,104	2,000	135	270
5	10	64	128	8	16		50,000	55,000	1,140	2,000	140	280

# Final Regulations

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55,000	60,000	1,173	2,000	145	290
60,000	65,000	1,206	2,000	150	300
65,000	70,000	1,236	2,000	155	310
70,000	75,000	1,263	2,000	160	320
75,000	80,000	1,293	2,000	165	330
80,000	85,000	1,317	2,000	170	340
85,000	90,000	1,344	2,000	175	350
90,000	95,000	1,368	2,000	180	360
95,000	100,000	1,392	2,000	185	370
100,000	110,000	1,437	2,000	195	390
110,000	120,000	1,479	2,000	205	410
120,000	130,000	1,521	2,000	215	430
130,000	140,000	1,557	2,000	225	450
140,000	150,000	1,593	2,000	235	470
150,000	160,000	1,629	2,000	245	490
160,000	170,000	1,662	2,000	255	510
170,000	180,000	1,695	2,000	265	530
180,000	190,000	1,725	2,000	275	550
190,000	200,000	1,755	2,000	285	570
200,000	210,000	1,782	2,000	295	590
210,000	230,000	1,836	2,000	315	630
230,000	250,000	1,890	2,000	335	670
250,000	275,000	1,950	2,000	360	720
275,000	300,000	2,000	2,000	385	770

Numbers in ( ) refer to explanatory notes

NOTE 1 - "Explosive materials" means explosives; blasting agents and detonators.

NOTE 2 - "Explosives" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. A list of explosives determined to be within the coverage of "48 U.S.C. Chapter 40; Importation, Manufacture, Distribution and Storage of Explosive Materials" is issued at least annually by the Director of the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury. For quantity and distance purposes, detonating cord of 50 grains per foot should be calculated as equivalent to eight pounds of high explosives per 1,000 feet. Heavier or lighter core loads should be rated proportionately.

NOTE 3 - "Blasting agents" means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive; provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined.

NOTE 4 - "Detonator" means any device containing any initiating or primary explosive that is used for initiating detonation. A detonator may not contain more than 10 grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types; blasting caps for use with safety

fuses; detonating cord delay connectors; and nonelectric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires. All types of detonators in strengths through No. 8 cap should be rated at + 1/2 lbs. of explosives per 1,000 caps. For strengths higher than No. 8 cap, consult the manufacturer.

NOTE 5 - "Magazine" means any building, structure, or container, other than an explosives manufacturing building, approved for the storage of explosive materials.

NOTE 6 - "Natural barricade" means natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

NOTE 7 - "Artificial barricade" means an artificial mound or revetted wall of earth of a minimum thickness of three feet.

NOTE 8 - "Barricaded" means the effective screening of a building containing explosive materials from the magazine or other building, railway, or highway by a natural or an artificial barrier. A straight line from the top of any sidewall of the building containing explosive materials to the eave line of any magazine or other building or to a point 12 feet above the center of a railway or highway shall pass through such barrier.

NOTE 9 - "Inhabited building" means a building regularly occupied in whole or part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosive materials.

NOTE 10 - "Railway" means any steam, electric, or other railroad or railway which carries passengers for hire.

NOTE 11 - "Highway" means any public street, public alley, or public road. "Public highways Class A to D" are highways with average traffic volume of 3,000 or less vehicles per day as specified in "American Civil Engineering Practice" (Abbott, Vol. I, Table 46, See. 3-74, 1956 Edition, John Wiley and Sons).

NOTE 12 NOTE 1 - When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways, and highways, and, in addition, they should be separated from each other by not less than the distances shown for "Separation of Magazines," except that the quantity of explosive materials contained in detonator magazines shall govern in regard to the spacing of said detonator magazines from magazines containing other explosive materials. If any two or more magazines are separated from each other by less than the specified "Separation of Magazines" distances, then such two or more magazines, as a group, must be considered as one magazine, and the total quantity of explosive materials stored in such group must be treated as if stored in a single magazine located on the site of any magazine of the group and must comply with the minimum of distances specified from other magazines, inhabited buildings, railways, and highways.

NOTE 13 NOTE 2 - Storage in excess of 300,000 lbs. of explosive materials, in one magazine is generally not required for commercial enterprises.

NOTE 14 NOTE 3 - This table applies only to the manufacture and permanent storage of commercial explosive materials. It is not applicable to transportation of explosives or any handling or

# Final Regulations

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temporary storage necessary or incident thereto. It is not intended to apply to bombs, projectiles, or other heavily encased explosives.

F-2602.5.5 F-3003.5.5 . Explosive unpacking. Metal or wooden packages of explosives shall not be unpacked or repacked in a magazine nor within 50 feet (15.24m) of a magazine.

F-2602.5.6 F-3003.5.6 . Magazine contents. Magazines shall not be used for the storage of any metal tools or of any commodity except explosives, but this restriction shall not apply to the storage of blasting agents, blasting supplies and oxidizers used in compound blasting agents.

F-2602.6 F-3003.6 . Unstable explosives. When an explosive has deteriorated to an extent that it is in an unstable or dangerous condition, or if liquid leaks from any explosive, then the person in possession of such explosive shall immediately report that fact to the code official and upon his approval shall proceed to destroy such explosives and clean floors stained with nitroglycerin or other such liquids in accordance with the instructions of the manufacturer. Only qualified, experienced persons shall do the work of destroying explosives.

Note: Disposal of explosives as "waste" should be in accordance with the Department of Waste Management regulations.

F-2602.7 F-3003.7 . [ Class I ] Magazine warnings. Property upon which Class Type I magazines and outdoor magazines of Types 2, 4 and 5 are located shall be posted with signs reading stating "Explosives - Keep Off." Such signs shall be located so as to minimize such that the possibility of a bullet traveling in the direction of shot at the sign and hitting the magazine if anyone shoots at the sign is minimized .

F-2602.8. Class II magazine warnings. Class II magazines shall be painted red and shall bear lettering in white, on all sides and top at least three inches (76 mm) high, "Explosives - Keep Fire Away."

## SECTION F-2603.0 F-3004.0 . TRANSPORTATION OF EXPLOSIVES.

F-2603.1 F-3004.1 . General. The transportation of explosive materials shall comply with applicable provisions of the Regulations Governing the Transportation of Hazardous Materials as promulgated by the Virginia Waste Management Board.

F-2603.2 F-3004.2 . Enforcement. The Department of State Police, together with all law enforcement and peace officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation, Research and Special Programs, and Office of Hazardous Materials Transportations, in federal safety regulations and safety inspections procedures pertaining to

the transportation of hazardous materials, shall enforce the provisions of this section. Those officers shall annually receive in-service training in current federal safety standards and safety inspection procedures pertaining to the transportation of hazardous materials.

## SECTION F-2604.0 F-3005.0 . STORAGE OF BLASTING AGENTS AND SUPPLIES.

F-2604.1 F-3005.1 . General. Blasting agents or oxidizers, when stored in conjunction with explosives, shall be stored in the manner set forth in Section F-2602.0 F-3003.0 for explosives. The quantity of blasting agents and one half the quantity of oxidizers shall be included when computing the total quantity of explosives for determining distance requirements.

F-2604.2 F-3005.2 . Storage location. Buildings used for storage of blasting agents separate from explosives shall be located away from inhabited buildings, passenger railways and public highways in accordance with Table F-2602 F-3003 .

F-2604.3 F-3005.3 . Storage housekeeping. The interior of buildings used for the storage of blasting agents shall be kept clean and free from debris and empty containers. Spilled materials shall be cleaned up promptly and safely removed. Combustible materials, flammable liquids, corrosive acids, chlorates, nitrates other than ammonium nitrate or similar materials shall not be stored in any building containing blasting agents unless separated therefrom by construction having a fire-resistance rating of not less than one hour. The provisions of this section shall not prohibit the storage of blasting agents together with nonexplosive blasting supplies.

F-2604.4 F-3005.4 . Trailer storage requirements. Semitrailers or full trailers used for temporarily storing blasting agents shall be located away from inhabited buildings, passenger railways and public highways, in accordance with Table F-2602 F-3003 . Trailers shall be provided with substantial means for locking and trailer doors shall be kept locked except during the time of placement or removal of blasting agents.

F-2604.5 F-3005.5 . Oxidizers and fuels. Piles of oxidizers and buildings containing oxidizers shall be adequately separated from readily combustible fuels.

F-2604.6 F-3005.6 . Oxidizer handling. Caked oxidizer, either in bags or in bulk, shall not be loosened by blasting.

## SECTION F-2605.0 F-3006.0 . HANDLING OF EXPLOSIVES.

F-2605.1 F-3006.1 . Mixing blasting agents. Buildings or other facilities used for mixing blasting agents shall be located away from inhabited buildings, passenger railways and public highways, in accordance with Table F-2602 F-3003 .

F-2605.2 F-3006.2 . Quantity of mixing agents. Not more than one day's production of blasting agents or the limit determined by Table F-2602 F-3003 , whichever is less, shall be permitted in or near the building or other facility used for mixed blasting agents. Larger quantities shall be stored in separate buildings or magazines.

F-2605.3 F-3006.3 . Compounding standards. Compounding and mixing of recognized formulations of blasting agents shall be conducted in accordance with NFPA 495 and DOT 49CFR listed in Appendix A Chapter 44 .

F-2605.4 F-3006.4 . Ignition protection. Smoking or open flames shall not be permitted within 50 feet (15.24m) of any building or facility used for the mixing of blasting agents.

F-2605.4.1 F-3006.4.1 . Unpacking tools. Tools used for opening packages of explosives shall be constructed of nonsparking materials.

Exception. Metal slitters may be used for opening paper and fiberboard containers.

F-2605.5 F-3006.5 . Waste disposal. Empty oxidizer bags shall be disposed of daily by burning in a safe manner (in an open area and at a safe distance from buildings or combustible materials).

F-2605.5.1 F-3006.5.1 . Packing material disposal. Empty boxes and paper and fiber packing materials which have previously contained high explosives shall not be used again for any purpose, but shall be destroyed by burning at an approved, isolated location out-of-doors, and any person shall not be closer than 100 feet (30.48 m) during the course of said burning.

F-2605.6 F-3006.6 . Control. Explosives shall not be abandoned.

## SECTION F-2606.0 F-3007.0 . BLASTING.

F-2606.1 F-3007.1 . Time. Blasting operations shall be conducted during daylight hours except when otherwise approved.

F-2606.2 F-3007.2 . Personnel. The handling and firing of explosives shall be performed by the person certified as a blaster under Section F-2600.2.3 F-3001.4 of this code or by employees under that person's direct on-site supervision who are at least 21 years old.

1. A person shall not handle explosives while under the influence of intoxicants or narcotics.
2. A person shall not smoke or carry matches while handling explosives or while in the vicinity thereof.
3. An open flame light shall not be used in the vicinity of explosives.

F-2606.3 F-3007.3 . Clearance at site. At the site of blasting operations, Class II magazines shall be located as far away as practicable from neighboring inhabited buildings, railways, highways, and other magazines.

F-2606.4 F-3007.4 . Notice. Whenever blasting is being conducted within 200 feet of gas, electric, water, fire, alarm, telephone, telegraph or steam utilities, the blaster shall notify the appropriate representatives of such utilities at least 24 hours in advance of blasting, specifying the location and intended time of such blasting. Verbal notice shall be confirmed with written notice. This time limit shall not be waived except in an emergency as determined by the code official.

F-2606.5 F-3007.5 . Responsibility. Before a blast is fired, the person in charge shall make certain that all surplus explosives are in a safe place, all persons and vehicles are at a safe distance or under sufficient cover, and a warning signal has been sounded.

F-2606.6 F-3007.6 . Precautions. Due precautions shall be taken to prevent accidental discharge of electric blasting caps from current induced by radio or radar transmitters, lightning, adjacent power lines, dust storms or other sources of extraneous electricity. These precautions shall include:

1. The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electrical storm;
2. The posting of signs warning against the use of mobile radio transmitters on all roads within 350 feet (106.75m) of the blasting operations; and
3. Compliance with NFPA 495 listed in Appendix A when blasting within 1-1/2 miles (2.41 km) of broadcast or highpower short wave radio transmitters.
4. Misfires shall be handled as directed by equipment manufacturers with no one entering the blasting site, except the blaster, until the loaded charges have been made to function or have been removed.

F-2606.7 F-3007.7 . Congested areas. As required by the fire official, when blasting is done in congested areas or in close proximity to a building, structure, railway, highway or any other installation susceptible to damage, the blast shall be covered before firing, with a mat or earth, or both, so that it is capable of preventing rock from being thrown into the air out of the blast area.

F-2606.8 F-3007.8 . Blast records. A record of each blast shall be kept and retained for at least three years and shall be available for inspection by the fire official. These records shall contain the following minimum data:

1. Name of contractor.
2. Location and time of blast.

# Final Regulations

3. Name of certified blaster in charge.
4. Type of material blasted.
5. Number of holes bored and spacing.
6. Diameter and depth of holes.
7. Type and amount of explosives.
  - \* 8. Amount of explosives per delay of eight milliseconds or greater.
9. Method of firing and type of circuit.
10. Direction and distance in feet to nearest dwelling, public building, school, church, commercial or institutional building.
11. Weather conditions.
12. Whether or not mats or other precautions were used.
- \* 13. Type of detonators and delay periods.
14. Type and height of stemming.
15. Seismograph records where indicated.

\* - [ Items number eight (8) and thirteen (13) Subdivisions 8 and 13 of this section ] are not applicable to restricted blasters.

## SECTION F-2607.0 F-3008.0 . STANDARDS FOR CONTROL OF AIRBLAST AND GROUND VIBRATION.

**F-2607.1 F-3008.1 .** Airblast. This section shall apply to airblast effects as recorded at the location of any private dwelling, public building, school, church, and community or institutional building not owned or leased by the person conducting or contracting for the blasting operation. If requested by a property owner registering a complaint and deemed necessary by the fire official, measurements of three consecutive blasts, using approved instrumentation, shall be made near the structure in question.

**F-2607.1.1 F-3008.1.1 .** Maximum airblast. The maximum airblast at any inhabited building, resulting from blasting operations, shall not exceed 130 decibels peak, or 140 decibels peak at any uninhabited building, when measured by an instrument having a flat frequency response (+3 decibels) over a range of at least six to 200 Hertz.

**F-2607.2 F-3008.2 .** Ground vibration. This section shall provide for limiting ground vibrations at structures that are neither owned nor leased by the person conducting or contracting for the blasting operation. Engineered structures may safely withstand higher vibration levels based on an approved engineering study upon which the

fire official may then allow higher levels for such engineered structures.

Note: Each Table, F-2607A F-3008A to F-2607C F-3008C , has an increasing degree of sophistication and each can be implemented either by the fire official as a result of complaints or by the contractor to determine site specific vibration limits. The criteria in Tables F-2607 F-3008 A, B, and C and Section F-2607.3 F-3008.3 are intended to protect low-rise structures including dwellings.

**F-2607.2.1 F-3008.2.1 .** Blasting without instrumentation. Where no seismograph is used to record vibration effects, the explosive charge weight per delay (eight milliseconds or greater) shall not exceed the limits shown in Table F-2607A F-3008A . When charge weights per delay on any single delay period exceed 520 lbs., then ground vibration limits for structures shall comply with Tables F-2607B F-3008B , F-2607C F-3008C , or Section F-2607.3 F-3008.3 .

**F-2607.2.2 F-3008.2.2 .** Monitoring with instrumentation. Where a blaster determines that the charge weights per delay given in Table F-2607A F-3008A are too conservative, he may choose to monitor (at the closest conventional structure) each blast with an approved seismograph and conform to the limits set by Tables F-2607B F-3008B , F-2607C F-3008C , or Section F-2607.3 F-3008.3 .

Note: From this point on, the explosive charge weight per delay may be increased, but the vibration levels detailed in Tables F-2607B F-3008B , F-2607C F-3008C , or Section F-2607.3 F-3008.3 shall not be exceeded.

Table 2607 F-3008 A(a)  
CHARGE WEIGHT PER DELAY DEPENDENT ON  
DISTANCE

Distance to a Building	Weight of Explosives per Delay		Distance to a Building	Weight of Explosives per Delay	
	Feet over	Feet not over	Pounds	Feet over	Feet not over
0	5	1/4	250	260	45
5	10	1/2	260	280	49
10	15	3/4	280	300	55
15	60	Note (b)	300	325	61
60	70		325	350	69
70	80	7 1/4	350	375	79
80	90	9	375	400	85
90	100	10 1/2	400	450	98
100	110	12	450	500	115
110	120	13 3/4	500	550	135
120	130	15 1/2	550	600	155

130	140	17 1/2	600	650	175
140	150	19 1/2	650	700	195
150	160	21 1/2	700	750	220
160	170	23 1/4	750	800	240
170	180	25	800	850	263
180	190	28	850	900	288
190	200	30 1/2	900	950	313
200	220	34	950	1000	340
220	240	39	1000	1100	375
240	250	42	1100	1200	435
			1200	1300	493

Note a. Over 60 feet this table is based upon the formula:

$$W = D \cdot 1.5/90$$

Note b. One tenth of the pound of explosive per foot of distance to a building.

**Table 2607 F-3008 B  
PEAK PARTICLE VELOCITY DEPENDENT ON DISTANCE**

Distance	Peak Particle Velocity of Any One Component/a/	
Feet over	feet not over	Inches per second
0	100	2.00
100	500	1.50
500	1000	1.00
over	1000	0.75

Note [ a. ]The instrument's transducer shall be firmly coupled to the ground.

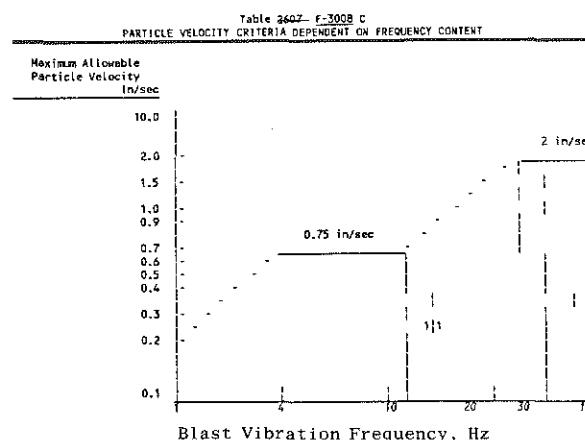
**F-2607.3 F-3008.3 . Response spectra.** A relative velocity of 1.5 inches per second or less, within the 4 to 12 Hertz range of natural frequencies for low rise structures, shall be recorded as determined from an approved response spectra.

**F-2607.4 F-3008.4 . Instrumentation.** A direct velocity recording seismograph capable of recording the continuous wave form of the three mutually perpendicular components of motion, in terms of particle velocity, shall be used and shall have the following characteristics:

1. Each seismograph shall have a frequency response from two to 150 Hertz or greater and a velocity range from 0.0 to 2.0 inches per second or greater, and shall adhere to design criteria for portable seismographs outlined in U.S. Bureau of Mines RI 5708, RI 6487, and RI 8506.

2. All field seismographs shall be capable of internal dynamic calibration and shall be calibrated according to the manufacturers' specifications at least once per year.

3. All seismographs shall be operated by competent people trained in their correct use and seismographs records shall be analyzed and interpreted as may be required by the fire official.



Note: This criteria is derived from the U.S. Bureau of Mines - RI 8507 (Appendix B) and provides a continuously variable particle velocity criteria dependent on the frequency content of the ground motion. The method of analysis shall be approved by the Fire Official and shall provide an analysis showing all the frequencies present over the 1-50 Hertz range.

**F-2607.5 F-3008.5 . Seismographic records.** A record of each blast shall be kept. All records, including seismograph reports, shall be retained for at least three years and shall be available for inspection. Records shall include the following information:

1. Name of company or contractor.
2. Location, date and time of blast.
3. Name, signature and social security number of blaster in charge.
4. Type of material blasted.
5. Number of holes bored and spacing.
6. Diameter and depth of holes.
7. Type of explosives used.
8. Total amount of explosives used.
9. Maximum amount of explosives per delay period of eight milliseconds or greater.

# Final Regulations

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10. Method of firing and type of circuit.
11. Direction and distance in feet to nearest dwelling house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blasting.
12. Weather conditions including such factors as wind direction, etc.
13. Height or length of stemming.
14. Type of protection, such as mats, that were used to prevent flyrock.
15. Type of detonators used and delay period used.
16. The exact location of the seismograph and the distance of the seismograph from the blast.
17. Seismograph readings, where required, shall contain:
  - a. Name and signature of person operating the seismograph.
  - b. Name of person analyzing the seismograph records.
  - c. Seismograph reading.
18. The maximum number of holes per delay period of eight milliseconds or greater.

## SECTION F-2608.0 F-3009.0 .

### THEFT OR , DISAPPEARANCE , OF EXPLOSIVES INJURIES OR PROPERTY DAMAGE .

F-2608.1 F-3009.1 . Reports of stolen explosives. Pursuant to § 27-97.1 of the Code of Virginia, any person holding a permit for the manufacture, storage, handling, use or sale of explosives issued in accordance with this code shall report to the State Police and the local law-enforcement agency any theft or other disappearance of any explosives or blasting devices from their inventory. In addition, notification shall be made to the fire official having issued the permit.

F-2608.2 F-3009.2 . Reports of injuries or property damage. The fire official shall be immediately notified of injuries to any person or damage to any property as a result of the functioning of the explosive.

F-2608.3 F-3009.3 . Relationship of local fire official and State Fire Marshal. The local fire official shall relay information obtained from reports required by Sections F-2608.1 F-3009.1 and F-2608.2 F-3009.2 to the Office of the State Fire Marshal.

## ARTICLE 27 CHAPTER 31 . FIREWORKS.

1. A. Change Section F-2700.1 F-3101.1 to read:

F-2700.1 F-3101.1 . Scope. The manufacture, transportation, display, sale or discharge of fireworks shall comply with the requirements of Chapter 11 of Title 59 of the Code of Virginia.

1. B. Delete Section F-3102.0, Definitions.

1. C. Delete Section F-2701.1 F-3103.1 , General.

1. D. Delete Section F-3103.2, Violations.

E. Delete Section F-3103.3, Display, and renumber subsection F-3103.3.1 to F-3103.3.

F. Delete Section F-2701.3 F-3103.5 , Exemptions Sale of fireworks .

## ARTICLE 28 CHAPTER 32 .

### FLAMMABLE AND COMBUSTIBLE LIQUIDS.

1. [ A. ] Change Section F-2803.5 F-3205.5 to read as follows:

F-2803.5 F-3205.5 . Fuel dispensing outside the building. Fuel dispensers outside the building shall be located a minimum of 10 feet (3048 mm) from the lot line and five feet (1524 mm) from any building opening. Where fuel is dispensed to motor vehicles, the motor vehicle being served shall be located on the premises.

1. B. Delete Section F-3205.8. Attendant. ]

## ARTICLE 30 CHAPTER 36 .

### LIQUEFIED PETROLEUM GASES.

1. Change Section F-3000.1 F-3601.1 as follows and delete the remainder of Article 30 Chapter 36 :

F-3000.1 F-3601.1 . Scope. The equipment, processes and operation for storage, handling, transporting by tank truck or tank trailer, and utilizing LP gases for fuel purposes, and for odorization of LP gases shall comply with the Virginia Liquefied Petroleum Gas Regulations in effect at the time of construction as provided for in Chapter 7 of Title 27 of the Code of Virginia.

V.A.R. Doc. No. R94-467; Filed January 11, 1994, 11:11 a.m.

\* \* \* \* \*

Title of Regulation: VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/ 1990 1993 .

Statutory Authority: §§ 36-98 and 36-102 of the Code of Virginia.

Effective Date: April 1, 1994.

## Summary:

*The amendments update the existing regulation to reflect the requirements of the 1993 Edition of the National Model Building Codes and Standards.*

**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 George W. Rickman, Jr., Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170. There may be a charge for copies.

VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1993.

## **ARTICLE CHAPTER 1.** **ADOPTION, ADMINISTRATION AND ENFORCEMENT.**

### **SECTION 100.0. GENERAL.**

100.1. Title. These regulations shall be known as Volume I - New Construction Code of the 1990 1993 edition of the Virginia Uniform Statewide Building Code. Except as otherwise indicated, USBC, and code, as used herein, shall mean Volume I - New Construction Code of the 1990 1993 edition of the Virginia Uniform Statewide Building Code.

Note: See Volume II - Building Maintenance Code for maintenance regulations applying to existing buildings.

100.2. Authority. The USBC is adopted under authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6 [ ; (*§ 36-97 et seq.*) of ] Title 36 [ ; of the ] Code of Virginia.

100.3. Purpose and scope. The purpose of the USBC is to ensure safety to life and property from all hazards incident to building design, construction, use, repair, removal or demolition. Buildings shall be permitted to be constructed at the least possible cost consistent with nationally recognized standards for health, safety, energy conservation, water conservation, adequate egress facilities, sanitary equipment, light and ventilation, fire safety, structural strength, and physically handicapped and aged accessibility. As provided in the Uniform Statewide Building Code Law, Chapter 6 [ ; (*§ 36-97 et seq.*) of ] Title 36 [ ; of the ] Code of Virginia, the USBC supersedes the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies, relating to any construction, reconstruction, alterations, conversion, repair or use of buildings and installation of equipment therein. The USBC does not supersede zoning ordinances or other land use controls

*that do not effect the manner of construction or materials to be used in the construction, alteration or repair of a building.*

100.4. Adoption. The 1990 1993 edition of the USBC was adopted by order of the Board of Housing and Community Development on [ November ] 19, 1990 [ *45 December 13* ] , 1993 . This order was prepared according to requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.5. Effective date. The 1990 1993 edition of the USBC shall become effective on [ March April ] 1, 1991 1994 .

100.6. Application. The USBC shall apply to all buildings, structures and associated equipment which are constructed, altered, repaired or converted in use after [ March April ] 1, 1991 1994 . Buildings and structures that were designed within one year prior to [ March April ] 1, 1991 1994 , shall be subject to the previous edition of the code provided that the permit application is submitted by [ March April ] 1, 1992 1995 . This provision shall also apply to subsequent amendments to this edition of the code based on the effective date of the amendments.

**Exception:** Buildings and structures for which a permit application is submitted after February 1, 1992, shall comply with applicable provisions of Section 512.0.

100.6.1. Industrialized buildings and manufactured homes. Industrialized buildings registered under the Virginia Industrialized Building Safety Law and manufactured homes labeled under the Federal Manufactured Housing Construction and Safety Standards shall be exempt from the USBC; however, the building official shall be responsible for issuing permits, inspecting the site work and installation of industrialized buildings and manufactured homes, and issuing certificates of occupancy for such buildings when all work is completed satisfactorily.

100.7. Exemptions. The following buildings, structures and equipment are exempted from the requirements of the USBC:

1. Farm buildings and structures not used for residential purposes; however, such buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to the applicable flood proofing or mudslide regulations.

2. Equipment installed by a provider of publicly regulated utility service and electrical equipment used for radio and television transmission. The exempt equipment shall be under the exclusive control of the public service agency and located on property by established rights; however, the buildings, including their service equipment, housing such public service agencies shall be subject to the USBC.

# Final Regulations

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3. Manufacturing and processing machines and [ equipment; however, the buildings, including the following ] service equipment [ , housing such machinery and equipment shall be subject to the USBC. All machines and equipment not supplied by the manufacturer of the manufacturing and processing machines and equipment as an integral part of the said machines and equipment are subject to the USBC. : ]

[ Note: It is intended that such items as sprinkler systems, piping systems, motor control centers, power panels, busways, feeders, branch circuits, service equipment, disconnect switches, starters, combination starters and HVAC systems which are not an integral part of the manufacturing and processing machines and equipment not provided by the maker of the manufacturing and process machines and equipment for integral use with said machines and equipment shall be subject to the USBC.

a. All electrical equipment connected after the last disconnecting means.

b. All plumbing appurtenance connected after the last shutoff valve or backflow protection device.

c. All plumbing appurtenance connected before the equipment drain trap.

d. All gas piping and equipment connected after the outlet shutoff valve.]

4. Parking lots and sidewalks; however, parking lots and sidewalks which form part of an accessible route, as defined by [ ANSI A117.1 - 1986 the Americans With Disabilities Act Accessibility Guidelines ] shall comply with the requirements of [ Section ] 512.0 Chapter 11 .

5. Recreational equipment such as swing sets, sliding boards, climbing bars, jungle gyms, skateboard ramps, and similar equipment when such equipment is a residential accessory use not regulated by the Virginia Amusement Device Regulations.

## SECTION 101.0. REFERENCE STANDARDS AND AMENDMENTS.

101.1. Adoption of model codes and standards. The following model building codes and all portions of other model codes and standards that are referenced in this Code are hereby adopted and incorporated in the USBC. Where differences occur between provisions of the USBC and the referenced model codes or standards, the provisions of the USBC shall apply. Where differences occur between the technical provisions of the model codes and their referenced standards, the provisions of the model code shall apply.

The referenced model codes are:

THE BOCA NATIONAL BUILDING CODE/ 1990 1993 EDITION

(also referred to herein as BOCA Code)

Published by:

Building Officials and Code Administrators International, Inc.  
4051 West Flossmoor Road  
Country Club Hills, Illinois 60478-5795  
Telephone No. (708) 799-2300

Note: The following major subsidiary model codes are among those included by reference as part of the BOCA National Building Code/ 1990 1993 Edition:

BOCA National Plumbing Code/ 1990 1993 Edition

BOCA National Mechanical Code/ 1990 1993 Edition

NFPA National Electrical Code/ 1990 1993 Edition

The permit applicant shall have the option to select as an acceptable alternative for detached one and two family dwellings and one family townhouses not more than three stories in height and their accessory structures the following standard:

CABO ONE AND TWO FAMILY DWELLING CODE/ 1989 1992 EDITION and 1990 1993 Amendments (also referred to herein as One and Two Family Dwelling Code)

Jointly published by:

Building Officials and Code Administrators International, Inc.

Southern Building Code Congress International, Inc. and International Conference of Building Officials.

101.2. General administrative and enforcement amendments to referenced codes. All requirements of the referenced model codes that relate to fees, permits, certification of fitness, unsafe notices, unsafe conditions, maintenance, disputes, condemnation, inspections, existing buildings, existing structures, certification of compliance, approval of plans and specifications and other procedural, administrative and enforcement matters are deleted and replaced by the provisions of Article Chapter 1 of the USBC.

Note: The purpose of this provision is to eliminate overlap, conflict and duplication by providing a single standard for administration and enforcement of the USBC.

101.3. Amendments to the BOCA Code. The amendments noted in Addendum 1 of the USBC shall be made to th

specified [ articles chapters ] and sections of the BOCA National Building Code/ 1990 1993 Edition for use as part of the USBC.

101.4. Amendments to the One and Two Family Dwelling Code. The amendments noted in Addendum 2 of the USBC shall be made to the indicated chapters and sections of the One and Two Family Dwelling Code/ 1989 1992 Edition and 1990 1993 Amendments for use as part of the USBC.

## SECTION 102.0. LOCAL BUILDING DEPARTMENTS.

102.1. Responsibility of local governments. Enforcement of the USBC Volume I shall be the responsibility of the local building department in accordance with § 36-105 of the Code of Virginia. Whenever a local government does not have such a building department, it shall enter into an agreement with another local government or with some other agency, or a state agency approved by the Virginia Department of Housing and Community Development for such enforcement. The local building department and its employees may be designated by such names or titles as the local government considers appropriate.

102.2. Building official. Each local building department shall have an executive official in charge, hereinafter referred to as the building official.

102.2.1. Appointment. The building official shall be appointed in a manner selected by the local government having jurisdiction. After appointment, he shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. The local government shall notify the Office of Professional Services Training and Certification Office within 30 days of the appointment or release of the building official. The building official must complete an orientation course approved by the Department of Housing and Community Development within 90 days after appointment. A Virginia certified building official shall complete an orientation course approved by the Department of Housing and Community Development within 90 days after appointment. A building official not certified by Virginia shall attend the core program of the Virginia Building Code Academy, or an approved regional academy, within 90 days after appointment.

102.2.2. Qualifications. The building official shall have at least five years of building experience as a licensed professional engineer or architect, building inspector, contractor or superintendent of building construction, with at least three years in responsible charge of work, or shall have any combination of education and experience which would confer equivalent knowledge and ability. The building official shall have general knowledge of sound engineering practice in respect to the design and construction of buildings, the basic principles of fire prevention, the accepted requirements for means of egress

and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

102.2.3. Certification. The building official shall be certified in accordance with Part III of the Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen [ (VR 394-01-2) ] within three years after the date of employment.

Exception: An individual employed as the building official in any locality in Virginia prior to April 1, 1983, shall be exempt from certification while employed as the building official in that jurisdiction. This exemption shall not apply to subsequent employment as the building official in another jurisdiction.

102.3. Qualifications of technical assistants. A technical assistant shall have at least three years of experience in general building construction. Any combination of education and experience which would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The local governing body may establish additional qualification requirements.

102.3.1. Certification of technical assistants. Any person employed by, or under contract to, a local governing body for determining compliance with the USBC shall be certified in [ their his ] trade field within three years after the date of employment in accordance with Part III of the Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen [ (VR 394-01-2) ].

Exception: An individual employed as the building, electrical, plumbing, mechanical, fire protection systems inspector or plans examiner in Virginia prior to March 1, 1988, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment as a technical assistant in another jurisdiction.

102.4. Relief from personal responsibility. The local building department personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees. The building official or subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the USBC as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees, whether or not said costs are covered by insurance. Any

# Final Regulations

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suit instituted against any officer or employee because of an act performed by that officer or employee in the discharge of official duties and under the provisions of the USBC may be defended by the department's legal representative.

102.5. Control of conflict of interests. The minimum standards of conduct for building officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 40.1 (*§ 2.1-639.1 et seq.*) of Title 2.1 of the Code of Virginia.

## SECTION 103.0. DUTIES AND POWERS OF THE BUILDING OFFICIAL.

103.1. General. The building official shall enforce the provisions of the USBC as provided herein and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

103.2. Modifications. The building official may grant modifications to any of the provisions of the USBC upon application by the owner or the owner's agent provided the spirit and intent of the USBC are observed and public health, welfare and safety are assured.

Note: The current editions of many nationally recognized model codes and standards are referenced by the Uniform Statewide Building Code. Future amendments do not automatically become part of the USBC; however, the building official should give consideration to such amendments in deciding whether a requested modification should be granted. See State Building Code Technical Review Board Interpretation Number 64/81 issued November 16, 1984.

103.2.1. Supporting data. The building official may require the application to include architectural and engineering plans and specifications that include the seal of a professional engineer or architect. The building official may also require and consider a statement from a professional engineer, architect or other competent person as to the equivalency of the proposed modification.

103.2.2. Records. The application for modification and the final decision of the building official shall be in writing and shall be officially recorded with the copy of the certificate of use and occupancy in the permanent records of the local building department.

103.3. Delegation of duties and powers. The building official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with the USBC.

103.4. Department records. The building official shall keep records of applications received, permits and certificates issued, reports of inspections, notices and orders issued

and such other matters as directed by the local government. A copy of the certificate of use and occupancy and a copy of any modification of the USBC issued by the building official shall be retained in the official records, as long as the building to which it relates remains in existence. Other records may be disposed of in accordance with the provisions of the Virginia Public Records Act [*§ 42.1-76 et seq. of the Code of Virginia*], (i) after one year in the case of buildings under 1,000 square feet in area and one and two family dwellings of any area, or (ii) after three years in the case of all other buildings.

## SECTION 104.0. FEES.

104.1. Fees. Fees may be levied by the local governing body in order to defray the cost of enforcement and appeals in accordance with § 36-105 of the Code of Virginia.

104.2. When payable. A permit shall not be issued until the fees prescribed by the local government have been paid to the authorized agency of the jurisdiction, nor shall an amendment to a permit be approved until any required additional fee has been paid. The local government may authorize delayed payment of fees.

104.3. Fee schedule. The local government shall establish a fee schedule. The schedule shall incorporate unit rates which may be based on square footage, cubic footage, cost of construction or other appropriate criteria.

104.4. Refunds. In the case of a revocation of a permit or abandonment or discontinuance of a building project, the local government shall provide fee refunds for the portion of the work which was not completed.

104.5. Fee levy. Local governing bodies shall charge each permit applicant an additional 1.0% [~~levy~~] of the total fee for each building permit. This additional 1.0% levy shall be transmitted quarterly to the Department of Housing and Community Development and shall be used to support the training programs of the Virginia Building Code Academy.

Exception: Localities which maintain training academies that are accredited by the Department of Housing and Community Development may retain such levy.

104.5.1. Levy adjustment. The Board of Housing and Community Development shall annually review the percentage of this levy and may adjust the percentage not to exceed 1.0%. The annual review shall include a study of the operating costs for the previous year's Building Code Academy, the current balance of the levy collected, and the operational budget projected for the next year of the Building Code Academy.

104.5.2. Levy cap. Annual collections of this levy which

exceed \$500,000, or any unobligated fund balance greater than one-third of that fiscal year's collections shall be credited against the levy to be collected in the next fiscal year.

## SECTION 105.0. APPLICATION FOR CONSTRUCTION PERMIT.

105.1. When permit is required. Written application shall be made to the building official when a construction permit is required. A permit shall be issued by the building official before any of the following actions subject to the USBC may be commenced:

1. Constructing, enlarging, altering, repairing, or demolishing a building or structure.
2. Changing the use of a building either within the same use group or to a different use group when the new use requires greater degrees of structural strength, fire protection, exit facilities, ventilation or sanitary provisions.
3. Installing or altering any equipment which is regulated by this code.
4. Removing or disturbing any asbestos containing materials during demolition, alteration, renovation of or additions to buildings or structures.

### Exceptions:

1. Ordinary repairs which do not involve any violation of the USBC shall be exempt from this provision. Ordinary repairs shall not include the removal, addition or relocation of any wall or partition, or the removal or cutting of any structural beam or bearing support, or the removal, addition or relocation of any parts of a building affecting the means of egress or exit requirements. Ordinary repairs shall not include the removal, disturbance, encapsulation, or enclosure of any asbestos containing material. Ordinary repairs shall not include additions, alterations, replacement or relocation of the plumbing, mechanical, or electrical systems, or other work affecting public health or general safety. The term "ordinary repairs" shall mean the replacement of the following materials with like materials:

- a. Painting.
- b. Roofing when not exceeding 100 square feet of roof area.
- c. Glass when not located within specific hazardous locations as defined in Section 2203.2 2405.2 of the BOCA Code and all glass repairs in Use Group R-3 and R-4 buildings.
- d. Doors, except those in fire-rated wall assemblies or exitways.

- e. Floor coverings and porch flooring.
  - f. Repairs to plaster, interior tile work, and other wall coverings.
  - g. Cabinets installed in residential occupancies.
  - h. Wiring and equipment operating at less than 50 volts.
2. A permit is not required to install wiring and equipment which operates at less than 50 volts provided the installation is not located in a noncombustible plenum, or is not penetrating a fireresistance rated assembly.
  3. Detached utility sheds 150 square feet or less in area and eight feet six inches or less in wall height when accessory to any Use Group R-3 or R-4 buildings building except Use Groups H and F .

105.1.1. Authorization of work. The building official may authorize work to commence pending receipt of written application.

105.2. Who may apply for a permit. Application for a permit shall be made by the owner or lessee of the building or agent of either, or by the licensed professional engineer, architect, contractor or subcontractor (or their respective agents) employed in connection with the proposed work. If the application is made by a professional engineer, architect, contractor or subcontractor (or any of their respective agents), the building official shall verify that the applicant is either licensed to practice in Virginia, or is exempt from licensing under the Code of Virginia. The full names and addresses of the owner, lessee and the applicant, and of the responsible officers if the owner or lessee is a corporate body, shall be stated in the application. The building official shall accept and process permit applications through the mail. The building official shall not require the permit applicant to appear in person.

105.3. Form of application. The application for a permit shall be submitted on forms supplied by the building official.

105.4. Description of work. The application shall contain a general description of the proposed work, its location, the use of all parts of the building, and of all portions of the site not covered by the building, and such additional information as may be required by the building official.

105.5. Plans and specifications. The application for the permit shall be accompanied by not less than two copies of specifications and of plans drawn to scale, with sufficient clarity and dimensional detail to show the nature and character of the work to be performed. Such plans and specifications shall include the seal and signature of the architect or engineer under whose supervision they were prepared, or if exempt under the provisions of state

# Final Regulations

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law, shall include the name, address, and occupation of the individual who prepared them. When quality of materials is essential for conformity to the USBC, specific information shall be given to establish such quality. In cases where such plans and specifications are exempt under state law, the building official may require that they include the signature and seal of a professional engineer or architect.

## Exceptions:

1. The building official may waive the requirement for filing plans and specifications when the work involved is of a minor nature.
2. Detailed plans may be waived by the building official for buildings in Use Group R-4, provided specifications and outline plans are submitted which satisfactorily indicate compliance with the USBC.

Note: Information on the types of construction exempted from the requirement for a professional engineer's or architect's seal and signature is included in *Addenda 4 and 10 Addendum 9*.

105.5.1. Site plan. The application shall also contain a site plan showing to scale the size and location of all the proposed new construction and all existing buildings on the site, distances from lot lines, the established street grades and the proposed finished grades. The building official may require that the application contain the elevation of the lowest floor of the building. It shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing buildings and construction that are to remain on the site. In the case of alterations, renovations, repairs and installation of new equipment, the building official may waive submission of the site plan or any parts thereof.

105.6. Plans review. The building official shall examine all plans and applications for permits within a reasonable time after filing. If the application or the plans do not conform to the requirements of the USBC, the building official shall reject such application in writing, stating the reasons for rejection. [ *Plans Any plan* ] review comments requiring[ : ] additional information, engineering details, or stating reasons for rejection of plans and specifications, shall be made in writing either by letter or a plans review form from the building official's office, in addition to notations or markings on the plans.

105.7. Approved plans. The building official shall stamp "Approved" or provide an endorsement in writing on both sets of approved plans and specifications. One set of such approved plans shall be retained by the building official. The other set shall be kept at the building site, open to inspection by the building official at all reasonable times.

105.8. Approval of partial plans. The building official may

issue a permit for the construction of foundations or any other part of a building before the plans and specifications for the entire building have been submitted, provided adequate information and detailed statements have been filed indicating compliance with the pertinent requirements of the USBC. The holder of such permit for the foundations or other part of a building shall proceed with construction operations at the holder's risk, and without assurance that a permit for the entire building will be granted.

105.9. Engineering details. The building official may require adequate details of structural, mechanical, plumbing, and electrical work to be filed, including computations, stress diagrams and other essential technical data. All engineering plans and computations shall include the signature of the professional engineer or architect responsible for the design. *Plans for buildings more than two stories in height, the building official may require that plans shall indicate where floor penetrations will be made for pipes, wires, conduits, and other components of the electrical, mechanical and plumbing systems [ when required ]. The plans shall show the material and methods for protecting such openings so as to maintain the required structural integrity, firerescistance ratings, and firestopping affected by such penetrations.*

105.10. Asbestos inspection in buildings to be renovated or demolished. A local building department shall not issue a building permit allowing a building for which an initial building permit was issued before January 1, 1978, to be renovated or demolished until the local building department receives a certification from the owner or the owner's his agent that the *affected portions of the building has have been inspected for the presence of asbestos by an individual licensed to perform such inspections pursuant to § 54.1-503 ; in accordance with standards developed pursuant to subdivision 1 of subsection A of § 2.1-526.14.1 [ of the Code of Virginia ] and that no asbestos-containing materials were found or that appropriate response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR 61, Subpart M) the management standards for asbestos-containing materials prepared by the Department of General Services in accordance with § 2.1-526.14.2 of the Code of Virginia , and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.58). Local educational agencies that are subject to the requirements established by the Environmental Protection Agency under the Asbestos Hazard Emergency Response Act (AHERA) shall also certify compliance with 40 CFR 763 and subsequent amendments thereto.*

## Exceptions:

1. Single family dwellings.
2. Residential housing with four or fewer units.

# Final Regulations

## 3. Farm buildings.

4. Buildings less than 3,500 square feet in area.

5. Buildings with no central heating system.

6. Public utilities required by law to give notification to the Commonwealth of Virginia and to the United States Environmental Protection Agency prior to removing asbestos in connection with the renovation or demolition of a building.

*The provisions of this section shall not apply to single-family dwellings or residential housing with four or fewer units unless the renovation or demolition of such buildings is for commercial or public development purposes. The provisions of this section shall not apply if the combined amount of regulated asbestos-containing material involved in the renovation or demolition is less than 260 linear feet on pipes or less than 160 square feet on other facility components or less than 35 cubic feet off facility components where the length or area could not be measured previously.*

105.10.1. Replacement of roofing, floorcovering, or siding materials. To meet the inspection requirements of Section 105.10 except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floorcovering, or siding materials may be satisfied by:

1. A statement that the materials to be repaired or replaced are assumed to contain asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor or a licensed asbestos roofing, flooring, siding contractor; or

2. A certification by the owner that sampling of the material to be renovated was accomplished by an RFS inspector as defined in § 54.1-500 of the Code of Virginia and analysis of the sample showed no asbestos to be present.

*105.10.2. Reoccupancy. An abatement area shall not be reoccupied until the building official receives certification from the owner that the response actions have been completed and final clearances have been measured. The final clearance levels for reoccupancy of the abatement area shall be 0.01 or fewer asbestos fibers per cubic centimeter if determined by Phase Contrast Microscopy analysis (PCM) or 70 or fewer structures per square millimeter if determined by Transmission Electron Microscopy analysis (TEM).*

105.11. Amendments to application. Amendments to plans, specifications or other records accompanying the application for permit may be filed at any time before completion of the work for which the permit is issued. Such amendments shall be considered part of the original application and shall be filed as such.

105.12. Time limitation of application. An application for a permit for any proposed work shall be considered to have been abandoned six months after notification by the building official that the application is defective unless the applicant has diligently sought to resolve any problems that are delaying issuance of the permit; except that for reasonable cause, the building official may grant one or more extensions of time.

## SECTION 106.0. PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES.

106.1. Special professional services; when required. The building official may require representation by a professional engineer or architect for buildings and structures which are subject to special inspections as required by Section 1008.0 1705.0 .

106.2. Attendant fees and costs. All fees and costs related to the performance of special professional services shall be the responsibility of the building owner.

## SECTION 107.0. APPROVAL OF MATERIALS AND EQUIPMENT.

107.1. Approval of materials; basis of approval. The building official shall require that sufficient technical data be submitted to substantiate the proposed use of any material, equipment, device or assembly. If it is determined that the evidence submitted is satisfactory proof of performance for the use intended, the building official may approve its use subject to the requirements of the USBC. In determining whether any material, equipment, device or assembly complies with the USBC, the building official shall approve items listed by nationally recognized research, testing and product certification organizations independent testing laboratories or may consider the recommendations of engineers and architects certified licensed in this state.

107.2. Used materials and equipment. Used materials, equipment and devices may be used provided they have been reconditioned, tested or examined and found to be in good and proper working condition and approved for use by the building official.

107.3. Approved materials and equipment. All materials, equipment, devices and assemblies approved for use by the building official shall be constructed and installed in accordance with the conditions of such approval.

## SECTION 108.0. INTERAGENCY COORDINATION - FUNCTIONAL DESIGN.

108.1. Functional design approval. Pursuant to § 36-98 of the Code of Virginia, certain state agencies have statutory authority to approve functional design and operation of building related activities not covered by the USBC. The building official may refuse to issue a permit until the

# Final Regulations

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applicant has supplied certificates of functional design approval from the appropriate state agency or agencies. State agencies with functional design approval are listed in Addendum § 4. For purposes of coordination, the local governing body may require reports to the building official by other departments as a condition for issuance of a building permit or certificate of use and occupancy. Such reports shall be based upon review of the plans or inspection of the project as determined by the local governing body.

## SECTION 109.0. CONSTRUCTION PERMITS.

109.1. Issuance of permits. If the building official is satisfied that the proposed work conforms to the requirements of the USBC and all applicable laws and ordinances, a permit shall be issued as soon as practicable. The building official may authorize work to commence prior to the issuance of the permit.

109.2. Signature on permit. The signature of the building official or authorized representative shall be attached to every permit.

109.3. Separate or combined permits. Permits for two or more buildings on the same lot may be combined. Permits for the installation of equipment such as plumbing, electrical or mechanical systems may be combined with the structural permit or separate permits may be required for the installation of each system. Separate permits may also be required for special construction considered appropriate by the local government.

109.4. Annual permit. The building official may issue an annual permit for alterations to an already approved equipment installation.

109.4.1. Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of all alterations to an approved equipment installation made under such annual permit. Such records shall be accessible to the building official at all times or shall be filed with the building official when so requested.

109.5. Posting of permit. A copy of the building permit shall be posted on the construction site for public inspection until the work is completed.

109.6. Previous permits. No changes shall be required in the plans, construction or designated use of a building for which a permit has been properly issued under a previous edition of the USBC, provided the permit has not been revoked or suspended in accordance with Section 109.7 or 109.8.

109.7. Revocation of permits. The building official may revoke a permit or approval issued under the provisions of the USBC in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based.

109.8. Suspension of permit. Any permit issued shall become invalid if the authorized work *on the site authorized by the permit* is not commenced within six months after issuance of the permit, or if the authorized work *on the site* is suspended or abandoned for a period of six months after the time of commencing the work; however, permits issued for building equipment such as plumbing, electrical and mechanical work shall not become invalid if the building permit is still in effect. *It shall be the responsibility of the permit applicant to prove to the building official that work has not been suspended or abandoned.* Upon written request the building official may grant one or more extensions of time not to exceed six months per extension.

109.9. Compliance with code. The permit shall be a license to proceed with the work in accordance with the application and plans for which the permit has been issued and any approved amendments thereto and shall not be construed as authority to omit or amend any of the provisions of the USBC, except by modification pursuant to Section 103.2.

## SECTION 110.0. INSPECTIONS.

110.1. Right of entry. The building official may inspect buildings for the purpose of enforcing the USBC in accordance with the authority granted by § 36-105 of the Code of Virginia. The building official and assistants shall carry proper credentials of office when inspecting buildings and premises in the performance of duties under the USBC.

Note: Section 36-105 of the Code of Virginia provides, pursuant to enforcement of the USBC, that any building may be inspected at any time before completion. It also permits local governments to provide for the reinspection of buildings.

110.2. Preliminary inspection. Before issuing a permit, the building official may examine all buildings and sites for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, demolish or change the use thereof.

110.3. Minimum inspections. Inspections shall include but are not limited to the following:

1. The bottom of footing trenches after all reinforcement steel is set and before any concrete is placed.
2. The installation of piling. The building official may require the installation of pile foundations be supervised by the owner's professional engineer or architect or by such professional service as approved by the building official.
3. Reinforced concrete beams, or columns and slabs after all reinforcing is set and before any concrete

placed.

4. Structural framing and fastenings prior to covering with concealing materials.
5. All electrical, mechanical and plumbing work prior to installation of any concealing materials.
6. Required insulating materials before covering with any materials.
7. Upon completion of the building, and before issuance of the certificate of use and occupancy, a final inspection shall be made to ensure that any violations have been corrected and all work conforms with the USBC.

110.3.1. Special inspections. Special inspections required by this code shall be limited to only those required by Section 1308.0 1705.0 .

110.4. Notification by permit holder. It shall be the responsibility of the permit holder or the permit holder's representative to notify the building official when the stages of construction are reached that require an inspection under Section 110.3 and to *confirm continuation of work per Section 109.8* or for other inspections as directed by the building official. All ladders, scaffolds and test equipment required to complete an inspection or test shall be provided by the property owner, permit holder or their representative.

110.5. Inspections to be prompt. The building official shall respond to inspection requests without unreasonable delay. The building official shall approve the work [*in writing*] or give written notice of defective work to the permit holder or the agent in charge of the work. Such defects shall be corrected and reinspected before any work proceeds that would conceal them.

Note: A reasonable response time should normally not exceed two working days.

110.6. Approved inspection agencies. The building official may accept reports from individuals or inspection agencies which satisfy qualifications and reliability requirements, and shall accept such reports under circumstances where the building official is unable to make the inspection by the end of the following working day. Inspection reports shall be in writing and shall be certified by the individual inspector or by the responsible officer when the report is from an agency. An identifying label or stamp permanently affixed to the product indicating that factory inspection has been made shall be accepted instead of the written inspection report, if the intent or meaning of such identifying label or stamp is properly substantiated.

110.7. In-plant inspections. When required by the provisions of this code, materials or assemblies shall be inspected at the point of manufacture or fabrication. The building official shall require the submittal of an evaluation report

of each prefabricated assembly, indicating the complete details of the assembly, including a description of the assembly and its components, the basis upon which the assembly is being evaluated, test results, and other data as necessary for the building official to determine conformance with this code.

110.8. Coordination with other agencies. The building official shall cooperate with fire, health and other state and local agencies having related maintenance, inspection or functional design responsibilities, and shall coordinate required inspections for new construction with the local fire official whenever the inspection involves provisions of the BOCA National Fire Prevention Code.

## SECTION 111.0. WORKMANSHIP.

111.1. General. All construction work shall be performed and completed so as to secure the results intended by the USBC.

## SECTION 112.0. VIOLATIONS.

112.1. Code violations prohibited. No person, firm or corporation shall construct, alter, extend, repair, remove, demolish or use any building or equipment regulated by the USBC, or cause same to be done, in conflict with or in violation of any of the provisions of the USBC.

112.2. Notice of violation. The building official shall serve a notice of violation on the person responsible for the construction, alteration, extension, repair, removal, demolition or use of a building in violation of the provisions of the USBC, or in violation of plans and specifications approved thereunder, or in violation of a permit or certificate issued under the provisions of the USBC. Such order shall reference the code section that serves as the basis for the violation and direct the discontinuance and abatement of the violation. Such notice of violation shall be in writing and be served by either delivering a copy of the notice to such [ persons person ] by mail to the last known address, [ delivered delivering the notice ] in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place at the entrance door or accessway if such person cannot be found on the premises.

112.3. Prosecution of violation. If the notice of violation is not complied with, the building official shall request, in writing, the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation or to require the removal or termination of the use of the building in violation of the provisions of the USBC. Compliance with a notice of violation notwithstanding, the building official may request legal proceedings be instituted for prosecution when a person, firm or corporation is served with three or more notices of violation within one calendar year for failure to obtain

# Final Regulations

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a required construction permit prior to commencement of work regulated under the USBC.

112.4. Violation penalties. Violations are a misdemeanor in accordance with § 36-106 of the Code of Virginia. Violators, upon conviction, may be punished by a fine of not more than \$2,500.

112.5. Abatement of violation. Conviction of a violation of the USBC shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of the USBC relating to construction and use of the building or premises.

## SECTION 113.0. STOP WORK ORDER.

113.1. Notice to owner. When the building official finds that work on any building is being executed contrary to the provisions of the USBC or in a manner endangering the general public, an order may be issued to stop such work immediately. The stop work order shall be in writing. It shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. It shall state the conditions under which work may be resumed. No work covered by a stop work order shall be continued after issuance, except under the conditions stated in the order.

113.2. Application of order limited. The stop work order shall apply only to the work that was being executed contrary to the USBC or in a manner endangering the general public, provided other work in the area would not cause concealment of the work for which the stop work order was issued.

## SECTION 114.0. POSTING BUILDINGS.

114.1. Use group and form of sign. Prior to its use, every building designed for Use Groups B, F, H, M or S shall be posted by the owner with a sign approved by the building official. It shall be securely fastened to the building in a readily visible place. It shall state the use group, the live load, the occupancy load, and the date of posting.

114.2. Occupant load in places of assembly. Every room constituting a place of assembly or education shall have the approved occupant load of the room posted on an approved sign in a conspicuous place, near the main exit from the room. Signs shall be durable, legible, and maintained by the owner or the owner's agent. Rooms or spaces which have multiple-use capabilities shall be posted for all such uses.

114.3. Street numbers. Each structure to which a street number has been assigned shall have the number displayed so as to be readable from the public right of way.

## SECTION 115.0. CERTIFICATE OF USE AND OCCUPANCY.

115.1. When required. Any building or structure constructed under this code shall not be used until a certificate of use and occupancy has been issued by the building official. *Final inspection approval(s) shall serve as the certificate of use or occupancy for any addition or alteration to a building or structure which already has a valid certificate of use or occupancy.*

115.2. Temporary use and occupancy. The holder of a permit may request the building official to issue a temporary certificate of use and occupancy for a building, or part thereof, before the entire work covered by the permit has been completed. The temporary certificate of use and occupancy may be issued provided the building official determines that such portion or portions may be occupied safely prior to full completion of the building.

115.3. Contents of certificate. When a building is entitled thereto, the building official shall issue a certificate of use and occupancy. The certificate shall state the purpose for which the building may be used in its several parts. When the certificate is issued, the building shall be deemed to be in compliance with the USBC. The certificate of use and occupancy shall specify the use group, the type of construction, the occupancy load in the building and all parts thereof, the edition of the USBC under which the building permit was issued, and any special stipulations, conditions and modifications.

115.4. Changes in use and occupancy. A building hereafter changed from one use group to another, in whole or in part, whether or not a certificate of use and occupancy has heretofore been issued, shall not be used until a certificate for the changed use group has been issued.

115.5. Existing buildings. A building constructed prior to the USBC shall not be prevented from continued use. The building official shall issue a certificate of use and occupancy upon written request from the owner or the owner's agent, provided there are no violations of Volume II of the USBC and the use of the building has not been changed.

115.6. Suspension or revocation of certificate of occupancy. The building official may suspend or revoke the certificate of occupancy for failure to correct repeated violations in apparent disregard for the provisions of the USBC.

## SECTION 116.0. LOCAL BOARD OF BUILDING CODE APPEALS.

116.1. Local board of building code appeals. Each local government shall have a local board of building code appeals to act on applications for appeals as required by § 36-105 of the Code of Virginia; or it shall enter into an agreement with the governing body of another county or municipality or with some other agency; or a State agency approved by the Virginia Department of Housing and

Community Development, to act on appeals.

**116.1. Separate divisions.** The local board of building code appeals may be divided into separate divisions to consider appeals relating to separate areas of regulation of the USBC. When separate divisions are created, the scope of each shall be clearly stated. The local board of appeals may permit appeals from a division to be submitted directly to the State Building Code Technical Review Board. Each division shall comply with the membership requirements and all other requirements of the USBC relating to the local board of building code appeals.

**116.2. Membership.** The local board of building code appeals shall consist of at least five members appointed by the local government. Members may be reappointed.

Note: In order to provide continuity, it is recommended that the terms of local board members be staggered so that less than half of the terms expire in any one year.

**116.2.1. Qualifications of board members.** Board members shall be selected by the local government on the basis of their ability to render fair and competent decisions regarding application of the code, and shall, to the extent possible, represent different occupational or professional fields. Employees or officials of the local government appointing the board shall not serve as board members.

Note: At least one member should be an experienced builder. At least one other member should be a licensed professional engineer or architect.

**116.3. Officers of the board.** The board shall select one of its members to serve as chairman. The building official shall designate an employee from the department to serve as secretary to the board. The secretary shall keep a detailed record of all proceedings on file in the local building department.

**116.4. Alternates and absence of members.** The local government may appoint alternate members who may sit on the board in the absence of any regular members of the board and, while sitting on the board, shall have the full power and authority of the regular member. A procedure shall be established for use of alternate members in case of absence of regular members.

**116.5. Control of conflict of interest.** A member of the board shall not vote on any appeal in which that member is currently engaged as contractor or material dealer, has prepared the plans or specifications, or has any personal interest.

**116.6. Notice of meeting.** The board shall meet upon notice of the chairman or at stated periodic meetings if warranted by the volume of work. The board shall meet within 30 calendar days of the filing of an appeal.

**116.7. Application for appeal.** The owner of a building, the

owner's agent, or any other person, firm or corporation directly involved in the design or construction of a building or structure may appeal to the local building code board of appeals within 90 calendar days from a decision of the building official when it is claimed that:

1. The building official has refused to grant a modification which complies with the intent of the provisions of the USBC; or
2. The true intent of the USBC has been incorrectly interpreted; or
3. The provisions of the USBC do not fully apply; or
4. The use of a form of construction that is equal to or better than that specified in the USBC has been denied.

**116.7.1. Form of application.** Applications for appeals shall be submitted in writing to the local building code board of appeals.

**116.8. Hearing open to public.** All hearings shall be public and conducted in accordance with the applicable provisions of the Administrative Process Act, § 9.6.14.1 et seq. of the Code of Virginia.

**116.9. Postponement of hearing.** When a quorum (more than 50%) of the board, as represented by members or alternates, is not present to consider a specific appeal, either the appellant, the building official or their representatives may, prior to the start of the hearing, request a single postponement of the hearing of up to 14 calendar days.

**116.10. Decision.** A vote equivalent to a majority of the quorum of the board is required to reverse or modify the decision of the building official. Every action of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the building official.

**116.11. Enforcement of decision.** The building official shall take immediate action in accordance with the decision of the board.

**116.12. Appeal by State Fire Marshal.** This section shall apply only to buildings subject to inspection by § 36.1-39.3 of the Code of Virginia. The State Fire Marshal, appointed pursuant to § 36.1-39.2 of the Code of Virginia, shall have the right to inspect applications for building permits or conversions of use group. The State Fire Marshal may appeal to the local building code board of appeals from the decision of the building official when it is claimed that the true intent of the USBC has been incorrectly interpreted as applied to the proposed construction or conversion. Such appeals shall be filed before the required permits are issued. The State Fire Marshal may also inspect the building during construction, repair or alteration and may appeal to the local building code board of appeals from the decision of the building official when

# Final Regulations

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it is claimed that the construction, repairs or alterations do not comply with the approved plans. Such appeals shall be filed prior to the issuance of the new or revised certificate of occupancy. Copies of all appeals shall be furnished to the building official and to the applicant for the building permit.

Note: The building official is encouraged to have plans submitted to the State Fire Marshal for buildings subject to state licensure in order to prevent delays in construction.

## SECTION 117.0: APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

117.1. Appeal to the State Building Code Technical Review Board. Any person aggrieved by a decision of the local board of building code appeals who was a party to the appeal may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 21 calendar days of receipt of the decision of the local appeals board by the aggrieved party.

117.2. Control of conflict of interest. A member of the State Technical Review Board shall not vote on any appeal in which that member is currently engaged as contractor or material dealer, has prepared plans or specifications, or has any personal interest.

117.3. Enforcement of decision. Upon receipt of the written decision of the State Building Code Technical Review Board, the building official shall take immediate action in accordance with the decision.

117.4. Court review. Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board may be presented to the court of the original jurisdiction in accordance with e location when not the provisions of the Administrative Process Act, Article 4 (§ 9.6-14.15 et seq.) of Chapter 1.1.1 of Title 9 of the Code of Virginia.

116.1. Local Board of Building Code Appeals (BBCA). Each jurisdiction shall have a BBCA to hear appeals as authorized herein [ or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a state agency approved by the Department of Housing and Community Development, to act on appeals ]. The BBCA shall also hear appeals under Volume II of the USBC, the Building Maintenance Code, if the jurisdiction has elected to enforce that code. The jurisdiction may have separate BBCAs provided that each BBCA complies with this section. An appeal case decided by a separate BBCA shall constitute an appeal in accordance with this section and shall be final unless appealed to the State Building Code Technical Review Board (TRB).

116.2. Membership of BBCA. The BBCA shall consist of at least five members appointed by the jurisdiction and having terms of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and, as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary, shall be maintained in the office of the jurisdiction. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

116.2.1. Chairman. The BBCA shall annually select one of its regular members to serve as chairman. In the event of the absence of the chairman at a hearing, the members present shall select an acting chairman.

116.2.2. Secretary. The jurisdiction shall appoint a secretary to the BBCA to maintain a detailed record of all proceedings.

116.3. Qualifications of BBCA members. BBCA members shall be selected by the jurisdiction on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall, to the extent possible, represent different occupational or professional fields relating to the construction industry. Employees or officials of the jurisdiction shall not serve as members of the BBCA. At least one member should be an experienced builder and one member a licensed professional engineer or architect.

116.4. Disqualification of member. A member shall not hear an appeal in which that member has [ any personal, professional, financial or any other a ] conflict of interest [ in accordance with the State and Local Government Conflict of Interests Act, Chapter 40.1 (§ 2.1-639 et seq.) of Title 2.1 of the Code of Virginia ].

116.5. Application for appeal. The owner of a building or structure, the owner's agent or any other person involved in the design or construction of the building or structure may appeal a decision of the [ jurisdiction building official ] concerning the application of the USBC or [ its his ] refusal to grant a modification to the provisions of the USBC covering the manner of construction or materials to be used in the erection, alteration or repair of that building or structure. The applicant shall submit a written request for appeal to the [ jurisdiction BBCA ] within 90 calendar days from the receipt of the decision to be appealed. The application shall contain the name and address of the owner of the building or structure and the person appealing if not the owner. A copy of the written decision of the [ jurisdiction building official ] shall be submitted along with the application for appeal and maintained as part of the record. The application shall be stamped or otherwise marked by the [ jurisdiction BBCA ] to indicate the date received. Failure to submit an application for appeal within the time limit established by

this section shall constitute acceptance of the [ jurisdiction's building official's ] decision.

116.6. Notice of meeting. The BBCA shall meet within 30 calendar days after the date of receipt of the application for appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing. Less notice may be given if agreed upon by the applicant.

116.7. Hearing procedures. All hearings before the BBCA shall be open to the public. The appellant, the appellant's representative, the jurisdiction's representative and any person whose interests are affected shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings.

116.7.1. Postponement. When five members of the BBCA are not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing. The [ jurisdiction BBCA ] shall reschedule the appeal within 30 calendar days of the postponement.

116.8. Decision. The BBCA shall have the power to reverse or modify the decision of the [ jurisdiction building official ] by a concurring vote of a majority of those present.

116.8.1. Resolution. The decision of the BBCA shall be by resolution signed by the chairman and retained as part of the record by the [ jurisdiction BBCA ]. The following wording shall be part of the [ decision resolution ]:

"Upon receipt of this [ decision resolution ], any person who was a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to the State [ Building Code Technical Review ] Board within 21 calendar days. Application forms are available from the Office of the [ State Building Code Technical ] Review Board, 501 North Second Street, Richmond, Virginia 23219, (804) 371-7170."

Copies of the [ decision resolution ] shall be furnished to all parties.

116.9. Appeal to the TRB. After final determination by the BBCA, any person who was a party to the local appeal may appeal to the TRB. Appeals by an involved state agency from the decision of the building official for state-owned buildings shall be made directly to the TRB. Application shall be made to the TRB within 21 calendar days of receipt of the decision to be appealed. Failure to submit an application for appeal within the time limit established by this section shall constitute an acceptance of the [ jurisdiction BBCA's resolution ] or building official's decision.

116.9.1. Information to be submitted. Copies of the decision of the [ jurisdiction building official ] and the resolution of the BBCA shall be submitted with the application for appeal. Upon request by the office of the [ Review Board TRB ], the jurisdiction shall submit a copy of all pertinent information from the record of the BBCA. In the case of state-owned buildings, the involved state agency shall submit a copy of the building official's decision and other relevant information.

116.9.2. Decision of TRB. Procedures of the TRB are in accordance with Article 2 [ (§ 36-108 et seq.) ] of Chapter 6 [ (§ 36-107.1 et seq.) ] of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom and the [ jurisdiction or ] building official shall take action accordingly.

## SECTION H8.0 117.0 . EXISTING BUILDINGS AND STRUCTURES.

H8.1 117.1 . Additions, alterations, and repairs. Additions, alterations or repairs to any structure shall conform to that required of a new structure without requiring the existing structure to comply with all of the requirements of this code. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building plus new additions shall not exceed the height, number of stories and area specified for new buildings. Alterations or repairs to an existing structure which are structural or adversely affect any structural member or any part of the structure having a fire resistance rating shall be made with materials required for a new structure.

Exception: Existing materials and equipment may be replaced with materials and equipment of a similar kind or replaced with greater capacity equipment in the same location when not considered a hazard.

Note 1: Alterations after construction may not be used by the building official as justification for requiring any part of the old building to be brought into compliance with the current edition of the USBC. For example, replacement of worn exit stair treads that are somewhat deficient in length under current standards does not, of itself, mean that the stair must be widened. It is the intent of the USBC that alterations be made in such a way as not to lower existing levels of health and safety.

Note 2: The intent of this section is that when buildings are altered by the addition of equipment that is neither required nor prohibited by the USBC, only those requirements of the USBC that regulate the health and safety aspects thereof shall apply. For example, a partial automatic alarm system may be installed when no alarm system is required provided it does not violate any of the electrical safety or other safety requirements of the code.

H8.1.1 117.1.1 . Damage, restoration or repair in flood

# Final Regulations

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hazard zones. Buildings located in any flood hazard zone which are altered or repaired shall comply with the floodproofing requirements applicable to new buildings in the case of damages or cost of reconstruction or restoration which equals or exceeds 50% of the market value of the building before either the damage occurred or the start of construction of the improvement.

## Exceptions:

1. Improvements required under Volume II of the USBC necessary to assure safe living conditions.
2. Alterations of historic buildings provided the alteration would not preclude the building's continued designation as an historic building.

**118.1.2 117.1.2 . Requirements for accessibility.** Buildings and structures which are altered or to which additions are added shall comply with applicable requirements of Section 512.0 *Chapter 11*.

**118.2 117.2 . Conversion of building use.** No change shall be made in the use of a building which would result in a change in the use group classification unless the building complies with all applicable requirements for the new use group classification in accordance with Section 105.1(2). An application shall be made and a certificate of use and occupancy shall be issued by the building official for the new use. Where it is impractical to achieve exact compliance with the USBC the building official shall, upon application, consider issuing a modification under the conditions of Section 103.2 to allow conversion.

**118.3 117.3 . Alternative method of compliance.** Compliance with the provisions of Article 32 *Chapter 34* for repair, alteration, change of use of, or additions to existing buildings shall be an acceptable method of complying with this code.

## SECTION 119.0 118.0 . MOVED BUILDINGS.

**119.1 118.1 . General.** Any building moved into or within the jurisdiction shall be brought into compliance with the USBC unless it meets the following requirements after relocation.

1. No change has been made in the use of the building.
2. The building complies with all state and local requirements that were applicable to it in its previous location and that would have been applicable to it if it had originally been constructed in the new location.
3. The building has not become unsafe during the moving process due to structural damage or for other reasons.
4. Any alterations, reconstruction, renovations or

repairs made pursuant to the move have been done in compliance with the USBC.

**119.2 118.2 . Certificate of use and occupancy.** Any moved building shall not be used until a certificate of use and occupancy is issued for the new location.

## SECTION 120.0 119.0 . UNSAFE BUILDINGS.

**120.1 119.1 . Right of condemnation before completion.** Any building under construction that fails to comply with the USBC through deterioration, improper maintenance, faulty construction, or for other reasons, and thereby becomes unsafe, unsanitary, or deficient in adequate exit facilities, and which constitutes a fire hazard, or is otherwise dangerous to human life or the public welfare, shall be deemed either a public nuisance or an unsafe building. Any such unsafe building shall be made safe through compliance with the USBC or shall be taken down and removed, as the building official may deem necessary.

**120.1.1 119.1.1 . Inspection of unsafe buildings; records.** The building official shall examine every building reported as unsafe and shall prepare a report to be filed in the records of the department. In addition to a description of unsafe conditions found, the report shall include the use of the building, and nature and extent of damages, if any, caused by a collapse or failure.

**120.1.2 119.1.2 . Notice of unsafe building.** If a building is found to be unsafe the building official shall serve a written notice on the owner, the owner's agent or person in control, describing the unsafe condition and specifying the required repairs or improvements to be made to render the building safe, or requiring the unsafe building or portion thereof to be taken down and removed within a stipulated time. Such notice shall require the person thus notified to declare without delay to the building official the acceptance or rejection of the terms of the notice.

**120.1.3 119.1.3 . Posting of unsafe building notice.** If the person named in the notice of unsafe building cannot be found after diligent search, such notice shall be sent by registered or certified mail to the last known address of such person. A copy of the notice shall be posted in a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

**120.1.4 119.1.4 . Disregard of notice.** Upon refusal or neglect of the person served with a notice of unsafe building to comply with the requirement of the notice to abate the unsafe condition, the legal counsel of the jurisdiction shall be advised of all the facts and shall be requested to institute the appropriate legal action to compel compliance.

**120.1.5 119.1.5 . Vacating building.** When, in the opinion of the building official, there is actual and immediate danger of failure or collapse of a building, or any part thereof, which would endanger life, or when any building or part

of a building has fallen and life is endangered by occupancy of the building, the building official may order the occupants to vacate the building forthwith. The building official shall cause a notice to be posted at each entrance to such building reading as follows. "This Structure is Unsafe and its Use or Occupancy has been Prohibited by the Building Official." No person shall thereafter enter such a building except for one of the following purposes: (i) to make the required repairs; (ii) to take the building down and remove it; or (iii) to make inspections authorized by the building official.

**120.1.6 119.1.6 .** Temporary safeguards and emergency repairs. When, in the opinion of the building official, there is immediate danger of collapse or failure of a building or any part thereof which would endanger life, or when a violation of this code results in a fire hazard that creates an immediate, serious and imminent threat to the life and safety of the occupants, he shall cause the necessary work to be done to the extent permitted by the local government to render such building or part thereof temporarily safe, whether or not legal action to compel compliance has been instituted.

**120.2 119.2 .** Right of condemnation after completion. Authority to condemn unsafe buildings on which construction has been completed and a certificate of occupancy has been issued, or which have been occupied, may be exercised after official action by the local governing body pursuant to § 36-105 of the Code of Virginia.

**120.3 119.3 .** Abatement or removal. Whenever the owner of a building that has been deemed to be a public nuisance or unsafe, pursuant to Section **120.1 119.1** or Section **120.2 119.2 ,** fails to comply with the requirements of the notice to abate, the building official may cause the building to be razed or removed.

Note: A local governing body may, after official action pursuant to § 15.1-29.21 or 15.1-11.2 of the Code of Virginia, maintain an action to compel a responsible party to abate, raze, or remove a public nuisance. If the public nuisance presents an imminent and immediate threat to life or property, then the governing body of the county, city or town may abate, raze, or remove such public nuisance, and a county, city or town may bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance.

## SECTION **121.0 120.0 .** DEMOLITION OF BUILDINGS.

**121.1 120.1 .** General. Demolition permits shall not be issued until the following actions have been completed:

1. The owner or the owner's agent has obtained a release from all utilities having service connections to the building stating that all service connections and

appurtenant equipment have been removed or sealed and plugged in a safe manner.

2. Any certificate required by Section 105.10 has been received by the building official.

3. The owner or owner's agent has given written notice to the owners of adjoining lots and to the owners of other lots affected by the temporary removal of utility wires or other facilities caused by the demolition.

**121.2 120.2 .** Hazard prevention. When a building is demolished or removed, the established grades shall be restored and any necessary retaining walls and fences shall be constructed as required by the provisions of Article 30 Chapter 33 of the BOCA Code.

## ADDENDUM 1. AMENDMENTS TO THE BOCA NATIONAL BUILDING CODE/ 1990 1993 EDITION.

As provided in Section 101.3 of the Virginia Uniform Statewide Building Code, the amendments noted in this addendum shall be made to the BOCA National Building Code/ 1990 1993 Edition for use as part of the USBC.

## ARTICLE CHAPTER 1. ADMINISTRATION AND ENFORCEMENT.

(A) Entire article chapter is deleted and replaced by Article Chapter 1, Adoption, Administration and Enforcement, of the Virginia Uniform Statewide Building Code.

## ARTICLE CHAPTER 2. DEFINITIONS.

(A) Change the following definitions in Section **201.0 202.0 ,** General Definitions, to read:

"Building" means a combination of any materials, whether portable or fixed, *having a roof to form that forms* a structure for the use or occupancy by persons or property; provided, however, that farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from the provisions of the USBC, but such buildings lying within a flood plain or in a mudslide-prone area shall be subject to flood proofing regulations or mudslide regulations, as applicable. The word building shall be construed as though followed by the words "or part or parts and fixed equipment thereof" unless the context clearly requires a different meaning. The word "building" includes the word "structure."

Dwellings:

"Boarding house" means a building arranged or used for lodging, with or without meals, for compensation and not occupied as a single family unit.

# Final Regulations

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**"Dormitory"** means a space in a building where group sleeping accommodations are provided for persons not members of the same family group, in one room, or in a series of closely associated rooms.

**"Hotel"** means any building containing six or more guest rooms, intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

**"Multi-family apartment house"** means a building or portion thereof containing more than two dwelling units and not classified as a one- or two-family dwelling.

**"One-family dwelling"** means a building containing one dwelling unit.

**"Two-family dwelling"** means a building containing two dwelling units.

**"Jurisdiction"** means the local governmental unit which is responsible for enforcing the USBC under state law.

**"Mobile unit"** means a structure of vehicular, portable design, built on a chassis and designed to be moved from one site to another, subject to the Industrialized Building and Manufactured Home Safety Regulations, and designed to be used without a permanent foundation.

**"Owner"** means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee or other person, firm or corporation in control of a building.

**"Structure"** means an assembly of materials forming a construction for use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature. The word structure shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

(B) Add these new definitions to Section 201.0 202.0 , General Definitions:

**"Family"** means an individual or married couple and the children thereof with not more than two other persons related directly to the individual or married couple by blood or marriage; or a group of not more than eight unrelated persons, living together as a single housekeeping unit in a dwelling unit.

**"Farm building"** means a structure located on a farm utilized for the storage, handling or production of agricultural, horticultural and floricultural products normally intended for sale to domestic or foreign markets and buildings used for the maintenance, storage or use of

animals or equipment related thereto.

**"Historic building"** means any building that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Federal Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on the Virginia Department of Historic Resources' inventory of historic places; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the Virginia Department of Historic Resources.

**"Local government"** means any city, county or town in this state, or the governing body thereof.

**"Manufactured home"** means a structure subject to federal regulations, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single family dwelling, with or without a permanent foundation when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

**"Night club"** means a place of assembly that provides exhibition, performance or other forms of entertainment; serves food or alcoholic beverages or both; and provides music and space for dancing.

**"Plans"** means all drawings that together with the specifications, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

**"Public nuisance"** means, for the purposes of this code, any public or private building, wall or structure deemed to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation, occupancy or use, or the condition of which constitutes a menace to the health and safety of the occupants thereof or to the public.

**"Skirting"** means a weather-resistant material used to enclose the space from the bottom of a manufactured home to grade.

# Final Regulations

"Specifications" means all written descriptions, computations, exhibits, test data and other documents that together with the plans, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

## ARTICLE CHAPTER 3. USE GROUP CLASSIFICATION OR OCCUPANCY .

(A) Change Section 307.2 Add an exception to Section 308.2 to read as follows:

307.2. Use Group I-1. This use group shall include buildings and structures, or parts thereof, which house six or more individuals who, because of age, mental disability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Where accommodating persons of the above description, the following types of facilities shall be classified as I-1 facilities: board and care facilities, half-way houses, group homes, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or less occupants shall be classified as a residential use group.

Exception: Group homes licensed by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services which house no more than eight mentally ill, mentally retarded, or developmentally disabled persons, with one or more resident counselors, shall be classified as Use Group R-3.

(B) Change Add new Section 309.4 [ 310.5.2 310.7 ] to read as follows:

[ 310.5.2. 310.7 ] Family day home. A family day home as defined by § 63.1-195 of the Code of Virginia shall be classified as Use Group R-3 [ or R-4 and shall comply with Section 1010.3 for Use Group R-3 ].

309.4. Use Group R-3 structures. This use group shall include all buildings arranged for the use of one or two-family dwelling units and multiple single-family dwellings where each unit has an independent means of egress and is separated by a two-hour fire separation assembly (see Section 909.0).

Exception: In multiple single-family dwellings which are equipped throughout with an approved automatic sprinkler system installed in accordance with Section 1004.2.1 or 1004.2.2, the fire resistance rating of the dwelling unit separation shall not be less than one hour. Dwelling unit separation walls shall be constructed as fire partitions (see Section 910.0).

## ARTICLE 4. TYPES OF CONSTRUCTION CLASSIFICATION.

(A) Add the following to line 5 of Table 401.

Dwelling unit separations for buildings of Type 2C, 3B and 5B construction shall have fire resistance ratings of not less than one-half hour in buildings sprinklered throughout in accordance with Section 1004.2.1 or 1004.2.2.

## ARTICLE 5. GENERAL BUILDING LIMITATIONS.

(A) Change Section 502.3 to read:

502.3. Automatic sprinkler system. When a building of other than Use Group H is equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2, the area limitation specified in Table 501 shall be increased by 200% for one-and two-story buildings and 100% for buildings more than two stories in height. An approved limited area sprinkler system is not considered as an automatic sprinkler system for the purpose of this section.

(B) Change Section 503.1 to read:

503.1. Automatic sprinkler system. When a building is equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, the building height limitation specified in Table 501 shall be increased one story and 20 feet (6096mm). This increase shall not apply to buildings of Use Group I-2 of Types 2C, 3A, 4 and 5A construction nor to buildings of Use Group H. An approved limited-area sprinkler system is not considered an automatic sprinkler system for the purpose of this section. The building height limitations for buildings of Use Group R specified in Table 501 shall be increased one story and 20 feet, but not to exceed a height of four stories and 60 feet, when the building is equipped with an automatic sprinkler system in accordance with Section 1004.2.2.

(C) Replace Section 512.0, Physically Handicapped and Aged with the following new section:

## SECTION 512.0. ACCESSIBILITY FOR DISABLED.

512.1. General. This section establishes requirements for accessibility by individuals with disabilities to be applied during the design, construction and alteration of buildings and structures.

512.2. Where required. The provisions of this section shall apply to all buildings and structures, including their exterior sites and facilities.

Exceptions:

1. Buildings of Use Group R-3 and accessory structures and their associated site and facilities.
2. Buildings and structures classified as Use Group U.

# Final Regulations

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3. These buildings or structures or portions thereof which are expressly exempted in the standards incorporated by reference in this section;

4. These buildings or structures or portions thereof which are used exclusively for either private club or religious worship activities.

512.2.1. Identification of parking spaces. All spaces reserved for the use of handicapped persons shall be identified by an above grade sign with the bottom edge no lower than four feet nor higher than seven feet above the parking surface.

512.3. Referenced standards. The following standards or parts thereof are hereby incorporated by reference for use in determining compliance with this section:

1. Title 24 Code of Federal Regulations, Chapter 1 - Fair Housing Accessibility Guidelines, Sections 2 through 5, 56 F.R. 9499-9515 (March 6, 1991).

2. Title 28 Code of Federal Regulations, Part 36 - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Subpart A - General, § 36.104 Definitions and Subpart D - New Construction and Alterations, 56 F.R. 35593-35594 and 35599-35602 (July 26, 1991).

## ARTICLE 6 CHAPTER 4. SPECIAL USE AND OCCUPANCY REQUIREMENTS .

(A) Add an exception to Section 417.6 to read as follows:

*Exception: The storage, dispensing and utilization of flammable and combustible liquids, in excess of the exempt amounts, at automotive service stations shall be in accordance with the fire prevention code listed in Chapter 35.*

(A) (B) Change Section 610.2.1 420.0 to read as follows:

610.2.1. Waiting areas. Waiting areas shall not be open to the corridor, except where all of the following criteria are met:

1. The aggregate area of waiting areas in each smoke compartment does not exceed 600 square feet ( $56 \text{ m}^2$ );

2. Each area is located to permit direct visual supervision by facility staff;

3. Each area is equipped with an automatic fire detection system installed in accordance with Section 1017.0;

4. Each area is arranged so as not to obstruct access to the required exits; and

5. The walls and ceilings of the space are constructed as required for corridors.

(B) Delete Section 610.2.2, Waiting areas on other floors, but do not renumber remaining sections.

(C) Change Section 610.2.3 to read as follows:

610.2.3. Waiting areas of unlimited area. Spaces constructed as required for corridors shall not be open to a corridor, except where all of the following criteria are met:

1. The spaces are not used for patient sleeping rooms, treatment rooms or specific use areas as defined in Section 313.1.4.1;

2. Each space is located to permit direct visual supervision by the facility staff;

3. Both the space and corridors that the space opens into in the same smoke compartment are protected by an automatic fire detection system installed in accordance with Section 1017.0; and

4. The space is arranged so as not to obstruct access to the required exits.

(D) Change Section 610.2.5 to read as follows:

610.2.5. Mental health treatment areas. Areas wherein only mental health patients who are capable of self-preservation are housed, or group meeting or multipurpose therapeutic spaces other than specific use areas as defined in Section 313.1.4.1, under continuous supervision by facility staff, shall not be open to the corridor, except where all of the following criteria are met:

1. Each area does not exceed 1,500 square feet ( $140 \text{ m}^2$ );

2. The area is located to permit supervision by the facility staff;

3. The area is arranged so as not to obstruct any access to the required exits;

4. The area is equipped with an automatic fire detection system installed in accordance with Section 1017.0;

5. Not more than one such space is permitted in any one smoke compartment; and

6. The walls and ceilings of the space are constructed as required for corridors.

(E) Change Section 610.3 and subsection 610.3.1 to read as follows:

610.3. Corridor walls. Corridor walls shall form a barrier to limit the transfer of smoke. The walls shall extend from the floor to the underside of the floor or roof deck above or to the underside of the ceiling above where the

ceiling membrane is constructed to limit the transfer of smoke.

610.3.1 Corridor doors. All doors shall conform to Section 916.0. Corridor doors, other than those in a wall required to be rated by Section 313.1.4.1 or for the enclosure of a vertical opening, shall not have a required fire resistance rating, but shall provide an effective barrier to limit the transfer of smoke.

(F) Change Section 610.5 to read as follows:

610.5. Automatic fire detection. An automatic fire detection system shall be provided in corridors and common spaces open to the corridor as permitted by Section 610.2.

(G) Delete Section 610.5.1, Rooms, and Section 610.5.2, Corridors.

(H) Add new Section 618.10 to read as follows:

## SECTION 618.10. MAGAZINES.

618.10. Magazines. Magazines for the storage of explosives, ammunition and blasting agents shall be constructed in accordance with the Statewide Fire Prevention Code as adopted by the Board of Housing and Community Development.

(I) Change Section 619.1 to read as follows:

619.1. Reference codes. The storage systems for flammable and combustible liquids shall be in accordance with the mechanical code and the fire prevention code listed in Appendix A.

Exception: Aboveground tanks which are used to store or dispense motor fuels, aviation fuels or heating fuels at commercial, industrial, governmental or manufacturing establishments shall be allowed when in compliance with NFPA 30, 30A, 31 or 407 listed in Appendix A.

(J) Change Section 620.0 to read as follows:

## SECTION 620.0 420.0. MOBILE UNITS AND MANUFACTURED HOMES.

620.1 420.1. General. Mobile units, as defined in Section 201.0 202.0, shall be designed and constructed to be transported from one location to another and not mounted on a permanent foundation. Manufactured homes shall be designed and constructed to comply with the Federal Manufactured Housing Construction and Safety Standards and used with or without a permanent foundation.

620.2 420.2. Support and anchorage of mobile units. The manufacturer of each mobile unit shall provide with each unit specifications for the support and anchorage of the mobile unit. The manufacturer shall not be required to

provide the support and anchoring equipment with the unit. Mobile units shall be supported and anchored according to the manufacturer's specifications. The anchorage shall be adequate to withstand wind forces and uplift as required in Article 11 Chapter 16 for buildings and structures, based upon the size and weight of the mobile unit.

620.3 420.3. Support and anchorage of manufactured homes. The manufacturer of the home shall provide with each manufactured home printed instructions specifying the location, required capacity and other details of the stabilizing devices to be used with or without a permanent foundation (i.e., tie-downs, piers, blocking, footings, etc.) based upon the design of the manufactured home. Manufactured homes shall be supported and anchored according to the manufacturer's printed instructions or supported and anchored by a system conforming to accepted engineering practices designed and engineered specifically for the manufactured home. Footings or foundations on which piers or other stabilizing devices are mounted shall be carried down to the established frost lines. The anchorage system shall be adequate to resist wind forces, sliding and uplift as imposed by the design loads.

620.3.1 420.3.1. Hurricane zone. Manufactured homes installed or relocated in the hurricane zone shall be of Hurricane and Windstorm Resistive design in accordance with the Federal Manufactured Housing Construction and Safety Standards and shall be anchored according to the manufacturer's specifications for the hurricane zone. The hurricane zone includes the following counties and all cities located therein, contiguous thereto, or to the east thereof. Accomack, King William, Richmond, Charles City, Lancaster, Surry, Essex, Mathews, Sussex, Gloucester, Middlesex, Southampton, Greensville, Northumberland, Westmoreland, Isle of Wight, Northampton, York, James City, New Kent, King & Queen and Prince George.

620.3.2 420.3.2. Flood hazard zones. Manufactured homes and mobile units which are located in a flood hazard zone shall comply with the requirements of Section 2101.6 3107.1.

Exception: Manufactured homes installed on sites in an existing manufactured home park or subdivision shall be permitted to be placed no less than 36 inches above grade in lieu of being elevated at or above the base flood elevation provided no manufactured home at the same site has sustained flood damage exceeding 50% of the market value of the home before the damage occurred.

620.4 420.4. Used mobile/manufactured homes. When used manufactured homes or used mobile homes are being installed or relocated and the manufacturer's original installation instructions are not available, installations complying with the applicable portions of NCSBCS/ANSI A225.1 listed in Appendix A Chapter 35 shall be accepted as meeting the USBC.

# Final Regulations

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**620.5 420.5.** Skirting. Manufactured homes installed or relocated after July 1, 1990, shall have skirting installed within 60 days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of 18 inches in any dimension and not less than three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the USBC.

(C) Add new Section 422.0 to read as follows:

## SECTION 422.0. MAGAZINES.

**422.1. Magazines.** Magazines for the storage of explosives, ammunition and blasting agents shall be constructed in accordance with the Statewide Fire Prevention Code as adopted by the Board of Housing and Community Development.

(K) (D) Add new Section 627.0 423.0 to read as follows:

## SECTION 627.0 423.0. UNDERGROUND STORAGE TANKS.

**627.1 423.1.** General. The installation, upgrade, or closure of any underground storage tanks containing an accumulation of regulated substances, shall be in accordance with the Underground Storage Tank Regulations adopted by the State Water Control Board. Underground Storage tanks containing flammable or combustible liquids shall also comply with the applicable requirements of Section 610.0 Sections 417.0 and 418.0.

## ARTICLE 7. INTERIOR ENVIRONMENTAL REQUIREMENTS.

(A) Add new Section 706.2.3 as follows:

**706.2.3. Insect screens.** Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(B) Change Section 714.0 to read as follows:

## SECTION 714.0.

### SOUND TRANSMISSION CONTROL IN RESIDENTIAL BUILDINGS.

**714.1. Scope.** This section shall apply to all common interior walls, partitions and floor-ceiling assemblies between adjacent dwellings or between a dwelling and adjacent public areas such as halls, corridors, stairs or service areas in all buildings of Use Group R.

**714.2. Airborne noise.** Walls, partitions and floor-ceiling assemblies separating dwellings from each other or from public or service areas shall have a sound transmission class (STC) of not less than 45 for airborne noise when tested in accordance with ASTM E90 listed in Appendix A. This requirement shall not apply to dwelling entrance doors, but such doors shall be tight-fitting to the frame and sill. **714.3. Structure borne sound.** Floor-ceiling assemblies between dwellings and between a dwelling and a public or service area within the structures shall have an impact insulation class (IC) rating of not less than 45 when tested in accordance with ASTM E492 listed in Appendix A.

**714.4. Tested assemblies.** Where approved, assemblies of building construction listed in GA 600, NCMA TEK 69A and BIA TN 5A listed in Appendix A shall be accepted as having the STC and IC ratings specified therein for determining compliance with the requirements of this section.

(C) Add new Section 715.0 to read as follows:

## SECTION 715.0. HEATING FACILITIES.

**715.1. Residential buildings.** Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

**Exception:** When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

**715.2. Other structures.** Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupant thereof; and every occupant of any structure or part thereof who rents or leases said structure or part thereof on terms, either express or implied, to supply its own heat, shall supply sufficient heat during the period

# Final Regulations

from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C) during all working hours in all enclosed spaces or rooms where persons are employed and working. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

## Exceptions:

1. Processing storage and operations areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

## ARTICLE 8. MEANS OF EGRESS.

(A) Change Exception 6 of Section 813.4.1 to read as follows:

6. Devices such as double cylinder dead bolts which can be used to lock doors to prevent egress shall be permitted on egress doors in Use Groups B, E, M or S. These doors may be locked from the inside when all of the following conditions are met:

a. The building is occupied by employees only and all employees have ready access to the unlocking device.

b. The locking device is of a type that is readily distinguished as locked, or a "DOOR LOCKED" sign with red letters on white background is installed on the locked doors. The letters shall be six inches high and 3/4 of an inch wide.

c. A permanent sign is installed on or adjacent to lockable doors stating "THIS DOOR TO REMAIN UNLOCKED DURING PUBLIC OCCUPANCY." The sign shall be in letters not less than one-inch high on a contrasting background.

(B) Add new Exception 7 to Section 813.4.1 to read as follows:

## Exception

7. Locking arrangements conforming to Section 813.4.5.

(C) Add new Section 813.4.5 to read as follows:

813.4.5. Building entrance doors. In Use Groups A, B, E, M, R-1 and R-2, the building entrance doors in a means of egress are permitted to be equipped with an approved entrance and egress control system which shall be installed in accordance with items 1 through 6 below.

1. A sensor shall be provided on the egress side arranged to detect an occupant approaching the doors. The doors shall be arranged to unlock by a signal

from or loss of power to the sensor.

2. Loss of power to that part of the access control system which locks the doors shall automatically unlock the doors.

3. The doors shall be arranged to unlock from a manual exit device located 48 inches (1219 mm) vertically above the floor and within five feet (1524 mm) of the secured doors. The manual exit device shall be readily accessible and clearly identified by a sign. When operated, the manual exit device shall result in direct interruption of power to the lock independent of the access control system electronics and the doors shall remain unlocked for a minimum of 30 seconds.

4. Activation of the building fire protective signaling system, if provided, shall automatically unlock the doors, and the doors shall remain unlocked until the fire protective signaling system has been reset.

5. Activation of the building sprinkler or detection system, if provided, shall automatically unlock the doors. The doors shall remain unlocked until the fire protective signaling system has been reset.

6. The doors shall not be secured from the egress side in Use Groups A, B, E and M during periods when the building is accessible to the general public.

## SECTION 826.0 EXTERIOR DOORS.

826.1. Swinging entrance doors. Exterior swinging doors of each dwelling unit in buildings of Use Group R-2 shall be equipped with a dead bolt lock, with a throw of not less than one inch, and shall be capable of being locked or unlocked by key from the outside and by turn-knob from the inside.

826.2. Exterior sliding doors. In dwelling units of Use Group R-2 buildings, exterior sliding doors which are one story or less above grade, or shared by two dwelling units, or are otherwise accessible from the outside, shall be equipped with locks. The mounting screws for the lock case shall be inaccessible from the outside. The lock bolt shall engage the strike in a manner that will prevent its being disengaged by movement of the door.

Exception: Exterior sliding doors which are equipped with removable metal pins or chain bars.

826.3. Entrance doors. Entrance doors to dwelling units of Use Group R-2 buildings shall be equipped with door viewers with a field of vision of not less than 180 degrees.

Exception: Entrance doors having a vision panel or side vision panels.

# Final Regulations

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## ARTICLE 10 CHAPTER 9. FIRE PROTECTION SYSTEMS.

(A) Delete Section 1000.3.

(B) Change Section 1002.6 to read as follows:

1002.6. Use Group I. Throughout all buildings with a Use Group I fire area.

Exception: Use Group I-2 child care facilities located at the level of exit discharge and which accommodate 100 children or less. Each child care room shall have an exit door directly to the exterior.

(C) Change Section 1002.8 to read as follows:

1002.8. Use Group R-1. Throughout all buildings of Use Group R-1.

Exception: Use Group R-1 buildings where all guestrooms are not more than three stories above the lowest level of exit discharge of the exits serving the guestroom. Each guestroom shall have at least one door opening directly to an exterior exit access which leads directly to the exits.

(D) (A) Change Section 1002.9 904.9 Exceptions to read as follows:

The following exceptions may be applied only when adequate municipal water supply is not available at the proposed building site.

[ For the purposes of this section "adequate" means the necessary water pressure and volume provided by a water purveyor. ]

1002.9. Use Group R-2. Throughout all buildings of Use Group R-2.

Exceptions.

1. Use Group R-2 buildings where all dwelling units are not more than one story above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit. Buildings which do not exceed two stories, including basements which are not considered as a story above grade, and with a maximum of 12 dwelling units per fire area. Each dwelling unit shall have at least one door opening to an exterior exit access that leads directly to the exits required to serve that dwelling unit.

2. Use Group R-2 buildings Buildings where all dwelling units or bedrooms are not more than three stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit or bedrooms of a dormitory or boarding house and every

two dwelling units or bedrooms of a dormitory or boarding house are separated from other dwelling units or bedrooms of a dormitory or boarding house in the building by fire separation assemblies (see Sections 909.0 and 913.0 709.0 and 713.0 ) having a fireresistance rating of not less than two hours.

(E) (B) Add new Section 1002.12 904.12 to read as follows:

1002.12 904.12 . Use Group B, when more than 50 feet in height. Fire suppression systems shall be installed in buildings and structures of Use Group B, when more than 50 feet in height and less than 75 feet in height according to the following conditions:

1. The height of the building shall be measured from the point of the lowest grade level elevation accessible by fire department vehicles at the building or structure to the floor of the highest occupiable story of the building or structure.
2. Adequate public water supply is available to meet the needs of the suppression system.
3. Modifications for increased allowable areas and reduced fire ratings permitted by Sections 502.3, 503.1, 905.2.2, 905.3.1, 921.7.2, 921.7.2.2, 922.8.1 503.3, 504.2, 506.3, 705.2.3, 705.3.1, 720.7.1, 720.7.2, 803.4.3 , and any others not specifically listed shall be granted.
4. The requirements of Section 602.0 403.0 for high-rise buildings, such as, but not limited to voice alarm systems, central control stations, and smoke control systems, shall not be applied to buildings and structures affected by this section.

(F) Change Sections 1004.1 through 1004.2.2 to read as follows:

1004.1. General: Automatic sprinkler systems shall be approved and shall be designed and installed in accordance with the provisions of this code.

1004.2. Equipped throughout: Where the provisions of this code require that a building or portion thereof be equipped throughout with an automatic sprinkler system, the system shall be designed and installed in accordance with Section 1004.2.1, 1004.2.2 or 1004.2.3.

Exception: Where the use of water as an extinguishing agent is not compatible with the fire hazard (see Section 1003.2) or is prohibited by a law, statute or ordinance, the affected area shall be equipped with an approved automatic fire suppression system utilizing a suppression agent that is compatible with the fire hazard.

1004.2.1. NFPA 13 systems: The systems shall be designed and installed in accordance with NFPA 13 listed in Appendix A.

**Exception:** In Use Group R fire areas, sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area and are located within individual dwelling units or guestrooms.

**1004.2.1.1.** Quick response sprinklers. NFPA 13 systems installed in Use Group I-2 fire areas shall use quick response sprinklers in patient sleeping rooms.

**1004.2.2.** NFPA 13R systems. In buildings four stories or less in height, systems designed and installed in accordance with NFPA 13R listed in Appendix A shall be permitted in Use Group I-1 fire areas in buildings with not more than 16 occupants, and in Use Group R fire areas.

**Exception:** Sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area and are located within individual dwelling units or guestrooms.

(G) Add new Section 1004.2.3 to read as follows:

**1004.2.3.** NFPA 13D systems. In Use Group I-1 fire areas in buildings with not more than eight occupants, systems designed and installed in accordance with NFPA 13D listed in Appendix A shall be permitted.

**Exceptions:**

1. Sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area.

2. A single fire protection water supply shall be permitted to serve not more than eight dwelling units.

(C) Change Section 917.4.6 to read as follows:

**917.4.6.** Use Group R-2. A fire protective signaling system shall be installed and maintained in all buildings of Use Group R-2 where any dwelling unit or bedroom is located three or more stories above the lowest level of exit discharge or more than one story below the highest level of exit discharge of exits serving the dwelling unit or bedroom.

(H) (D) Add new Section 1018.3.5 917.8.3 to read as follows:

**1018.3.5 917.8.3.** Smoke detectors for the deaf and hearing impaired. Smoke detectors for the deaf and hearing impaired shall be provided as required by § 36-99.5 of the Code of Virginia.

**CHAPTER 10.**  
**MEANS OF EGRESS.**

(A) Change Section 1017.4.1 Exception 6 to read as follows:

6. Devices such as double cylinder dead bolts which can be used to lock doors to prevent egress shall be

permitted on egress doors in Use Groups B, F, M or S. These doors may be locked from the inside when all of the following conditions are met:

a. The building is occupied by employees only and all employees have ready access to the unlocking device.

b. The locking device is of a type that is readily distinguished as locked, or a "DOOR LOCKED" sign with red letters on white background is installed on the locked doors. The letters shall be six inches high and 3/4 of an inch wide.

c. A permanent sign is installed on or adjacent to lockable doors stating "THIS DOOR TO REMAIN UNLOCKED DURING PUBLIC OCCUPANCY." The sign shall be in letters not less than one-inch high on a contrasting background.

(B) Add [ the ] new Section 1017.4.4.1.

**1017.4.4.1.** Exterior sliding doors. In dwelling units of Use Group R-2 buildings, exterior sliding doors which are one story or less above grade, or shared by two dwelling units, or are otherwise accessible from the outside, shall be equipped with locks. The mounting screws for the lock case shall be inaccessible from the outside. The lock bolt shall engage the strike in a manner that will prevent its being disengaged by movement of the door.

**Exception:** Exterior sliding doors which are equipped with removable metal pins or charlie bars.

(C) Add new Section 1017.4.4.2.

**1017.4.4.2.** Entrance doors. Entrance doors to dwelling units of Use Group R-2 buildings shall be equipped with door viewers with a field of vision of not less than 180 degrees.

**Exception:** Entrance doors having a vision panel or side vision panels.

**CHAPTER 11.**  
**ACCESSIBILITY.**

*Entire Chapter 11 is deleted and replaced with the following new Chapter 11.*

**1101.1. General.** This chapter establishes requirements for accessibility by individuals with disabilities to be applied during the design, construction and alteration of buildings and structures.

**1101.2. Where required.** The provisions of this chapter shall apply to all buildings and structures, including their exterior sites and facilities.

**Exceptions:**

# Final Regulations

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1. Buildings of Use Group R-3 and accessory structures and their associated site and facilities.
2. Buildings and structures classified as Use Group U.
3. Those buildings or structures or portions thereof which are expressly exempted in the standards incorporated by reference in this section.
4. Those buildings or structures or portions thereof which are used exclusively for either private club or religious worship activities.

1101.2.1. Identification of parking spaces. All spaces reserved for the use of handicapped persons shall be identified by an above grade sign with the bottom edge no lower than four feet nor higher than seven feet above the parking surface.

512.3. Referenced standards. The following standards or parts thereof are hereby incorporated by reference for use in determining compliance with this section:

1. Title 24 Code of Federal Regulations, Chapter 1 - Fair Housing Accessibility Guidelines, Sections 2 through 5, 56 F.R. 9499-9515 (March 6, 1991).
2. Title 24 Code of Federal Regulations, Part 36 - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Subpart A - General, § 36.104 Definitions and Subpart D - New Construction and Alterations, 56 F.R. 35593-35594 and 35599-35602 (July 26, 1991).

## CHAPTER 12. INTERIOR ENVIRONMENT.

(A) Add new Section 1208.5 as follows:

1208.5. Insect screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(B) Add new Section 1216.0 as follows:

## SECTION 1216.0. HEATING FACILITIES.

1216.1. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m.

of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

1216.2. Other structures. Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupant thereof; and every occupant of any structure or part thereof who rents or leases said structure or part thereof on terms, either express or implied, to supply its own heat, shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C), during all working hours in all enclosed spaces or rooms where persons are employed and working. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

### Exceptions:

1. Processing, storage and operations areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

## [ CHAPTER 13.]

### ENERGY CONSERVATION.

Entire Chapter 13 is deleted and replaced with the following new Chapter 13.

1301.1. General. This chapter establishes the requirements for energy conservation to be applied during the design, construction and alteration of buildings and structures.

1301.2. Scope. The provisions of this chapter shall apply to all buildings and structures.

1301.3. Referenced standard. The following standard is hereby incorporated by reference for use in determining compliance with this section:

CABO Model Energy Code (MEC) 1993 Edition ]

## CHAPTER 16. STRUCTURAL LOADS.

(A) Revise Section 1612.1 by adding Exception 5 to read:

5. [ Building Buildings ] assigned to seismic performance Category B, according to Section 1612.1.7 and [ are to ] seismic hazard exposure group I according to Section 1612.1.5, which comply with all

# Final Regulations

of the following, need only comply with Section 1612.3.6.1.

a. The height of the building does not exceed four stories.

b. The height of the building does not exceed 40 feet.

c. AvS is less than 0.10 and the soil profile type has been verified.

d. If the building is more than one story in height, it does not have a vertical irregularity of Type 5 in Table 1612.3.4.2.

(B) Revise Section 1612.3.5.2 by adding an exception to read:

*Exception: Regular or irregular buildings assigned to Category B which are seismic hazard exposure group I are not required to be analyzed for seismic forces for the building as a whole, providing all of the following apply:*

1. The height of the building does not exceed four stories.

2. The height of the building does not exceed 40 feet.

3. AvS is less than 0.10 and the soil profile type has been verified.

4. If the building is more than one story in height, it does not have a vertical irregularity of Type 5 in Table 1612.3.4.2.

(C) Revise Section 1612.3.6.2 by adding an exception to read:

*Exception: Category B buildings which are seismic hazard exposure group I which are exempt from a seismic analysis for the building as a whole by Section 1612.3.5.2 need only comply with Section 1612.3.6.1.*

## ARTICLE 12. FOUNDATION SYSTEMS.

(A) Add new provision to Section 1205.0, Depth of Footings:

1205.4. Small storage sheds. The building official may accept utility sheds without footings when they are used for storage purposes and do not exceed 150 square feet in gross floor area when erected or mounted on adequate supports.

## ARTICLE 13 CHAPTER 17. MATERIALS AND TESTS STRUCTURAL TESTS AND INSPECTIONS .

(A) Add new Section 1300.4 1701.4 to read as follows:

1300.4 1701.4. Lead based paint. Lead based paint with a lead content of more than .06% by weight shall not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

(B) Change Section 1308.1 1705.1 to read as follows:

1308.1 1705.1. General. The permit applicant shall provide special inspections where application is made for construction as described in this section. The special inspectors shall be provided by the owner and shall be qualified and approved for the inspection of the work described herein.

*Exception: Special inspections are not required for buildings or structures unless the design involves the practice of professional engineering or architecture as required by §§ 54.1-401, 54.1-402 and 54.1-406 of the Code of Virginia.*

(C) Delete Section 1308.8 1705.12 , Special cases.

## ARTICLE 17. WOOD.

(A) Change Section 1702.4.1 to read as follows:

1702.4.1. General. Where permitted for use as a structural element, fire-retardant treated wood shall be defined as any wood product which, when impregnated with chemicals by a pressure process in accordance with AWPA C20 or AWPA C27 listed in Appendix A or other means during manufacture, shall have, when tested in accordance with ASTM E84 listed in Appendix A, a flame spread rating not greater than 25 when the test is continued for a period of 30 minutes, without evidence of significant progressive combustion and the flame front shall not progress more than 10.5 feet (3200 mm) beyond the centerline of the burner at any time during the test. Fire-retardant treated wood shall be dried to a moisture content of 19% or less for lumber and 15% or less for plywood before use.

(B) Add new Sections 1702.4.1.1 and 1702.4.1.2 as follows:

1702.4.1.1. Strength modifications. Design values for untreated lumber, as specified in Section 1701.1, shall be adjusted when the lumber is pressure impregnated with fire-retardant chemicals. Adjustments to the design values shall be based upon an approved method of investigation which takes into consideration the effects of the anticipated temperature and humidity to which the fire-retardant treated wood will be subjected, the type of treatment, and the redrying procedures.

1702.4.1.2. Labeling. Fire-retardant treated lumber and plywood shall bear the label of an approved agency in accordance with Section 1307.3.2. Such label shall contain the information required by Section 1307.3.3.

# Final Regulations

## ARTICLE 21. EXTERIOR WALLS.

(A) Delete Section 2101.6.9 Alterations and repairs, but do not renumber remaining sections.

## ARTICLE 25. MECHANICAL EQUIPMENT AND SYSTEMS.

(A) Change Section 2500.2 to read as follows:

2500.2. Mechanical code. All mechanical equipment and systems shall be constructed, installed and maintained in accordance with the mechanical code listed in Appendix A, as amended below:

1. Delete Article 17, Air Quality.

2. Add Note to M-2000.2 to read as follows:

Note: Boilers and pressure vessels constructed under this article shall be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

## ARTICLE 27. ELECTRIC WIRING AND EQUIPMENT.

(A) Add Section 2700.5 to read as follows:

2700.5. Telephone outlets. Each dwelling unit shall be prewired to provide at least one telephone outlet. All dwelling unit telephone wiring shall be a minimum of two-pair twisted wire cable. In multifamily dwellings, the telephone wiring shall terminate inside or outside of the building at a point prescribed by the telephone company.

## CHAPTER 21. MASONRY.

Revise Section 2104.2 by adding an exception to read:

Exception: Category B buildings which are seismic hazard exposure group I which are exempt from a seismic analysis for a building as a whole by Section 1612.3.5.2 are permitted to be designed in accordance with the requirements of either Section 2101.1 or 2101.2.

## [ CHAPTER 23.

### WOOD.

Add new Section 2310.2.3 to read as follows:

2310.2.3. Acceptance. Fire retardant-treated plywood shall not be used as roof sheathing without providing the building official with nationally recognized test results, satisfactory past product performance, or equivalent indicators of future product performance that address longevity of service under typical conditions of proposed

installation as well as the degree to which it retards fire, structural strength, and other characteristics. ]

## CHAPTER 27. ELECTRIC WIRING, EQUIPMENT AND SYSTEMS.

[ (A) Change Section 2701.1 to read as follows:

2701.1. Scope. The provisions of this chapter shall control the design and construction of all new installations of electrical conductors, equipment and systems in buildings or structures, and all alterations to existing wiring systems therein to ensure safety. All such installations shall conform to the provisions of NFPA 70 listed in Chapter 35 as amended below:

Change Section 550-23(a) Exception 2 by deleting item (a).

(B) Add Section 2701.5 to read as follows:

2701.5. Telephone outlets. Each dwelling unit shall be prewired to provide at least one telephone outlet. All dwelling unit telephone wiring shall be a minimum of two-pair twisted wire cable. In multifamily dwellings, the telephone wiring shall terminate inside or outside of the building at a point prescribed by the telephone company.

## CHAPTER 28. MECHANICAL SYSTEMS.

(A) Change Section 2801.2 to read as follows:

2801.2. Mechanical code. All mechanical equipment and systems shall be constructed, installed and maintained in accordance with the mechanical code listed in Chapter 35, as amended below:

1. Delete Chapter 17, Air Quality.

2. Add note to M-601.1 to read as follows:

Note: Boilers and pressure vessels constructed under this chapter shall [ also ] be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

[ 3. Change Section M-813.3 to read as follows:

M-813.3. Compressed natural gas vehicular fuel systems. Compressed natural gas (CNG) fuel dispensing systems for CNG vehicles shall be designed and installed in accordance with NFPA 52 listed in Chapter 21. The referenced standard within NFPA 52 Section 2-11.5 and 6-1.2.6., shall be AGA/CGA NGV 1, Compressed Natural Gas Vehicles (NGV) Fueling Connection Devices. ]

## ARTICLE 28 CHAPTER 29. PLUMBING SYSTEMS.

(A) Change Section 2800.1 2901.1 to read as follows:

# Final Regulations

2800.1 2901.1 . Scope. The design and installation of plumbing systems, including sanitary and storm drainage, sanitary facilities, water supplies and storm water and sewage disposal in buildings shall comply with the requirements of this article chapter and the plumbing code listed in Appendix A Chapter 35 (BOCA National Plumbing Code/ 1998 1993 ) as amended below:

1. Change Section P-303.1 P-304.1 to read as follows:

P-303.1 P-304.1 . General. The water distribution and drainage system of any building in which plumbing fixtures are installed shall be connected to public water main and sewer respectively, if available. Where a public water main is not available, an individual water supply shall be provided. Where a public sewer is not available, a private sewage disposal system shall be provided conforming to the regulations of the Virginia Department of Health.

2. Change Section P-303.2 P-304.3 to read as follows:

P-303.2 P-304.3 . Public systems available. A public water supply system or public sewer system shall be deemed available to premises used for human occupancy if such premises are within (number of feet and inches as determined by the local government) measured along a street, alley, or easement, of the public water supply or sewer system, and a connection conforming with the standards set forth in the USBC may be made thereto.

3. Change Section P-308.3 P-309.4 to read as follows:

P-308.3 P-309.4 . Freezing. Water service piping and sewers shall be installed below recorded frost penetration but not less than (number of feet and inches to be determined by the local government) below grade for water piping and (number of feet and inches to be determined by the local government) below grade for sewers. In climates with freezing temperatures, plumbing piping in exterior building walls or areas subjected to freezing temperatures shall be adequately protected against freezing by insulation or heat or both.

4. Delete Section P-311.0 P-312.0 , Toilet Facilities for Workers.

5. Add new Section P-604.2.1 P-606.2.3 to read as follows:

P-604.2.1 P-606.2.3 . Alarms. Malfunction alarms shall be provided for sewage pumps or sewage ejectors rated at 20 gallons per minute or less when used in Use Group R-3 buildings.

6. Add the following exception to Section P-1001.1:

4. A grease interceptor listed for use as a fixture trap may serve a single fixture or a combination sink of not more than three compartments when the vertical distance of the fixture drain to the inlet of

the grease interceptor does not exceed 30 inches and the horizontal distance does not exceed 60 inches.

7. Change Note d of Table P-1202.1 to read:

Note d. For attached one and two family dwellings one automatic clothes washer connection shall be required per 20 dwelling units. Automatic clothes washer connections are not required for Use Group R-4.

8. Revise Table P-1202.1 for Building Use Groups A-1, A-3, A-4 and A-5:

Building Use Group P1218.2)	Water Closets (Urinals see Section	
	Males	Females
A-1 Assembly, theaters 65	+ per 125	+ per
A-2 Assembly, nightclubs 40	+ per 40	+ per
A-3 Assembly, restaurants 75	+ per 75	+ per
A-3 Assembly, halls, museums, etc. 65	+ per 125	+ per
A-4 Assembly, churches(b) 75	+ per 150	+ per
A-5 Assembly, stadiums, pools, etc. 50	+ per 100	+ per

9. Add Note e to Table P-1202.1 to reference Use Group I-2 day nurseries to read as follows:

Note e. Day nurseries shall only be required to provide one bathtub or shower regardless of the number of occupants.

- 10 6 . Delete Section P-1203.0 P-1205.0 , Handicap Accessible Plumbing Facilities ; but do not renumber the remaining sections in the article .

- 11 7 . Add new Section P-1501.3 P-1503.3 :

P-1501.3 P-1503.3 . Public water supply and treatment. The approval, installation and inspection of raw water collection and transmission facilities, treatment facilities and all public water supply transmission mains shall be governed by the Virginia Waterworks Regulations. The internal plumbing of buildings and structures, up to the point of connection to the water meter shall be governed by this code. Where no meter is installed, the point of demarcation shall be at the point of connection to the

# Final Regulations

public water main; or, in the case of an owner of both public water supply system and the building served, the point of demarcation is the point of entry into the building.

Note: See Memorandum of Agreement between the Board of Housing and Community Development and the Virginia Department of Health, signed July 21, 1980.

**12. Add the following exception to P-1503.8:**

**Exception:** Pursuant to § 36.99.10 of the Code of Virginia, based upon the lack of present or future water supply, local government may elect to apply the provisions of Section P-1503.9 to all or a portion of their locality.

**13. Add new Section P-1503.9 to read as follows:**

**P-1503.9. Maximum flow and water consumption:** The maximum water consumption flow rates and quantities for all plumbing fixtures and fixture fittings shall be in accordance with Table P-1503.9. Water consumption for water closets listed in the exceptions below shall use a maximum of four gallons per flushing cycle. Water consumption for urinals listed in the exceptions below shall use a maximum of 1 1/2 gallons per flush.

**Exceptions:**

1. Blowout design fixtures.
2. Penalware.
3. Clinical sinks.
4. Service sinks.
5. Emergency showers.
6. Water closets provided for public use in buildings of Use Groups A-1, A-2, A-3, and A-5.
7. Water closets provided for patients and residents in buildings of Use Group I-2.
8. Water closets provided for inmates and residents in buildings of Use Group I-3.

**Table P-1503.9.**  
**Maximum Flow Rates and Consumption for Plumbing Fixtures and Fixture Fittings.**

PLUMBING FIXTURE OR FIXTURE FITTING	MAXIMUM FLOW RATE OR QUANTITY
Water closet	1.0 gallon per flushing cycle
Urinal	1.0 gallon per flushing cycle
Shower head	2.5 gallon per minute at 60 psi

Lavatory nonpublic	2.2 gallon per minute at 60 psi
Lavatory public	0.5 gallon per minute at 60 psi
Lavatory public self-closing	metering 0.25 gallon per metering cycle
Sink faucet	2.2 gallon per minute at 60 psi

**14. 8 . Add Note to P-1506.3 P-1508.4 to read as follows:**

**Note:** Water heaters which have a heat input of greater than 200,000 BTU per hour, a water temperature of over 210°F, or contain a capacity of more than 120 gallons shall be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

**15. 9 . Delete Article Chapter 16, Individual Water Supply.**

**(B) Change Section 2804.3 2905.3 to read as follows:**

**2804.3 2905.3 . Private water supply.** When public water mains are not used or available, a private source of water supply may be used. The [ Health State ] Department [ of Health ] shall approve the location, design and water quality of the source prior to the issuance of the permit. The building official shall approve all plumbing, pumping and electrical equipment associated with the use of a private source of water.

**(C) Change Section 2807.1 2906.1 to read as follows:**

**2807.1 2906.1 . Private sewage disposal.** When water closets or other plumbing fixtures are installed in buildings which are not located within a reasonable distance of a sewer, suitable provisions shall be made for disposing of the building sewage by some method of sewage treatment and disposal satisfactory to the administrative authority having jurisdiction. When an individual sewage system is required, the control and design of this system shall be as approved by the State Department of Health, which must approve the location and design of the system and septic tanks or other means of disposal. Approval of pumping and electrical equipment shall be the responsibility of the building official. Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of a building. Temporary recreational use buildings shall mean any building occupied intermittently for recreational purposes only.

**ARTICLE 29 CHAPTER 31 .  
SIGNS SPECIAL CONSTRUCTION .**

**(A) Delete Section 2901.1, Owner's consent.**

**(B) (A) Delete Section 2901.2 3102.4.1 , New signs.**

# Final Regulations

(C) Delete Section 2906.0, Bonds and Liability Insurance.

(B) Delete Section 3102.4.4, Construction Documents and Owner's Consent.

[ (C) Delete Section 3107.10, Alterations and Repairs. ]

## ARTICLE 30 CHAPTER 33. PRECAUTIONS DURING BUILDING OPERATIONS SITEWORK, DEMOLITION AND CONSTRUCTION

(A) Change Section 3000.1 3301.1 to read as follows:

3000.1 3301.1 . Scope. The provisions of this article shall apply to all construction operations in connection with the erection, alteration, repair, removal or demolition of buildings and structures. It is applicable only to the protection of the general public. Occupational health and safety protection of building-related workers are regulated by the Virginia Occupational Safety and Health Standards for the Construction Industry, which are issued by the Virginia Department of Labor and Industry.

## APPENDIX A CHAPTER 35. REFERENCED STANDARDS.

(A) Add the following standards standard :

NCSBCS/ANSI A225.1-87

Manufactured Home Installations (referenced in Section 620.4 420.4 ).

NFPA 13D-89

Installation of Sprinkler Systems in One- and Two-Family Dwellings and Mobile Homes (referenced in Section 1004.2.3)

NFPA 30A-87

Automotive and Marine Service Station Code (referenced in Section 619.1).

NFPA 31-87

Installation of Oil Burning Equipment (referenced in Section 619.1)

NFPA 407-90

Aircraft Fuel Servicing (referenced in Section 619.1)

## ADDENDUM 2. AMENDMENTS TO THE CABO ONE AND TWO FAMILY DWELLING CODE/ 1989 1992 EDITION AND 1990 1993 AMENDMENTS.

As provided in Section 101.4 of the Virginia Uniform Statewide Building Code, the amendments noted in this

addendum shall be made to the CABO One and Two Family Dwelling Code/ 1989 1992 Edition and 1990 1993 Amendments for use as part of the USBC.

## PART I. ADMINISTRATIVE.

### Chapter 1. Administrative.

(A) Any requirements of Sections R-101 through R-113 R-117 that relate to administration and enforcement of the CABO One and Two Family Dwelling Code are superseded by Article Chapter 1, Adoption, Administration and Enforcement of the USBC.

## PART II. BUILDING PLANNING.

### Chapter 2. Building Planning.

(A) Change Section R-203.5 to read as follows:

R-203.5. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

(A) (B) Add Section R-203.5 R-203.6 , Insect Screens:

R-203.5 R-203.6 . Insect Screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(B) (C) Change Section R-206 to read as follows:

## SECTION R-206. SANITATION.

Every dwelling unit shall be provided with a water closet, lavatory and a bathtub or shower.

# Final Regulations

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Each dwelling unit shall be provided with a kitchen area and every kitchen area shall be provided with a sink of approved nonabsorbent material.

All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system.

All plumbing fixtures shall be connected to an approved water supply and provided with hot and cold running water, except water closets may be provided with cold water only.

Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of the building.

(C) (D) Add to Section R-211:

Key operation is permitted from a dwelling unit provided the key cannot be removed when the door is locked from the side from which egress is to be made.

(D) (E) Change Section R-214.2 to read as follows:

R-214.2. Guardrails. Porches, balconies or raised floor surfaces located more than 30 inches above the floor or grade below shall have guardrails not less than 36 inches in height.

Required guardrails on open sides of stairways, raised floor areas, balconies and porches shall have intermediate rails or ornamental closures which will not allow passage of an object six inches or more in diameter.]

[ (E) (F) ] Change Section R-215.1 to read:

R-215.1. Smoke detectors required. Smoke detectors shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms and on each story of the dwelling, including basements and cellars, but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels, a smoke detector need be installed only on the upper level, provided the lower level is less than one full story below the upper level, except that if there is a door between levels then a detector not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

## PART III. CONSTRUCTION.

### Chapter 3. Foundations.

(A) Add Section R-301.6 to read as follows:

R-301.6. Floodproofing. All buildings or structures located in areas prone to flooding as determined by the governing

body having jurisdiction shall be floodproofed in accordance with the provisions of Section 2101.6 3107.0 of the 1990 1993 BOCA National Building Code.

## Chapter 9. Chimneys and Fireplaces.

(A) Add Section R-903.10 as follows:

R-903.10. Spark arrester. Spark arrester screens shown in Figure R-904 are optional unless specifically required by the manufacturer of the fireplace stove or other appliance utilizing a chimney.

## PART IV. MECHANICAL.

(A) Add new Section M-1101.1:

M-1101.1. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

## PART V. PLUMBING.

### Chapter 22. Plumbing, Drainage, Waste and Vent Systems (DWV).

(A) Change Section P-2206.8.2 to read as follows:

P-2206.8.2. Sewage ejectors or sewage pumps. A sewage ejector, sewage pump or grinder pump receiving discharge from a water closet shall have a minimum discharge velocity of 1.0 feet per second throughout the discharge piping to the point of connection with a gravity building drain, gravity sewer or pressure sewer system. A nongrinding pump or ejector shall be capable of passing a 1 1/2 inch-diameter solid ball, and the discharge piping shall have a minimum diameter of two inches. The discharge piping of grinder pumps shall have a minimum diameter of 1 1/4 inches. All pumps shall be protected from backflow by a backwater or check valve. Malfunction alarms shall be provided on sewage pumps or sewage ejectors rated at 20 gallons per minute or less.

(B) Change Section P-2301 - Fixtures, fittings and

# Final Regulations

appurtenances to read as follows:

P-2301.1. General. Plumbing fixtures, fittings, and appurtenances shall conform to the standards specified in Table No. P-2301 and shall be provided with an adequate supply of potable water to flush and keep the fixtures in a clean and sanitary condition without danger of backflow or cross-connection.

Exception: Pursuant to § 36-99.10 of the Code of Virginia, based upon the lack of present or future water supply, local government may elect to apply the provisions of Section P-2301.2 to all or a portion of their locality.

P-2301.2. Maximum flow and water consumption. The maximum water consumption flow rates and quantities for all plumbing fixtures and fixture fittings shall comply with the following criteria:

1. Shower heads shall be of the water conserving type, which deliver a maximum flow rate of 2.5 gpm at 80 psi.
2. Faucets on lavatories shall be of the water conserving type, which deliver a maximum flow rate of 2.2 gpm at 60 psi.
3. Water closets shall be of the 1.6 gpf type and shall be provided with a flush tank or similar device designed and installed to supply water in sufficient quantity and flow to flush the contents of the fixture and refill the fixture trap.
4. Sink faucets shall be of the water conserving type, which deliver a minimum flow rate of 2.2 gpm at 60 psi.

## PART VI. ELECTRICAL.

(A) Revise Part VI as follows:

The electrical installations shall conform to the Electrical Code for One and Two Family Dwellings (NEPA 70A-1990), published by the National Fire Protection Association.

## PART VII. ENERGY CONSERVATION.

(A) Revise Part VII as follows:

The energy conservation requirements shall conform to Article 31 Chapter 13 of the [ BOCA National Building Code ] 1990 [ 1993 USBC, Volume I ].

V.A.R. Doc. No. R94-464; Filed January 11, 1994, 11:12 a.m.

\* \* \* \* \*

Title of Regulation: VR 394-01-22. Virginia Uniform

Statewide Building Code, Volume II - Building Maintenance Code/ 1990 1993 .

Statutory Authority: §§ 36-98, 36-102 and 36-103 of the Code of Virginia.

Effective Date: April 1, 1994.

## Summary:

*The amendments update the existing regulation to reflect the requirements of the 1993 Edition of the National Model Building Maintenance Codes and Standards.*

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 George W. Rickman, Jr., Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170. There may be a charge for copies.

VR 394-01-22. Virginia Uniform Statewide Building Code - Volume II - Building Maintenance Code/1993.

## Article Chapter 1. Adoption, Administration and Enforcement .

### SECTION 100.0. GENERAL.

100.1. Title: These regulations shall be known as Volume II - Building Maintenance Code of the 1990 1993 edition of the Virginia Uniform Statewide Building Code (USBC). Except as otherwise indicated, Building Maintenance Code [ (BMC) ] or code, shall mean Volume II - Building Maintenance Code of the 1990 1993 edition of the USBC.

Note: See Volume I - New Construction Code of the USBC for regulations applicable to new construction.

100.2. Authority: The Building Maintenance Code is adopted according to regulatory authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia.

100.3. Adoption: The Building Maintenance Code was adopted by order of the Board of Housing and Community Development on [ November ] 19, 1990 [ 15 December 13 ] , 1993 . This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.4. Effective date: The Building Maintenance Code shall

# Final Regulations

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become effective on [ March April ] 1, 1994 .

100.5. Effect on other codes: The Building Maintenance Code shall apply to all buildings and structures as defined in the Uniform Statewide Building Code Law, Chapter 6 [ ; § 36-97 et seq.) of ] Title 36 of the Code of Virginia. The Building Maintenance Code supersedes all building maintenance codes and regulations of the counties, municipalities political subdivisions and state agencies that have been or may be enacted or adopted, except as modified by Section 100.6, below.

Note: This will not prevent adoption in accordance with Chapter 1 [ ; (§ 15.1-1 et seq.) of ] Title 15.1 of the Code of Virginia or other special or general legislation, or requirements by local governments which do not affect the manner of construction or materials to be used in the erection, alteration, repair, maintenance or use of a building or structure.

100.6. Application to pre-USBC buildings: Buildings or portions thereof constructed, altered, converted or repaired before the effective date of the initial edition of the USBC shall be maintained in compliance with the Building Maintenance Code. No provisions of the Building Maintenance Code shall require alterations to buildings or equipment unless an unsafe or unhealthy condition exists.

100.6.1. Hotels and motels: Pre-USBC hotels and motels shall also comply with applicable provisions of Section [ 100.0 108.0 ].

100.6.2. Nursing homes and homes for adults: Pre-USBC nursing homes licensed by the Virginia Department of Health, and pre-USBC homes for adults licensed by the Virginia Department of Social Services shall also comply with applicable provisions of Section [ 100.0 108.0 ].

[ 100.6.3. Family day homes: Pre-USBC family day homes as defined in § 63.1-195 of the Code of Virginia shall comply with the applicable provisions of Section 108.0. ]

100.7. Application to post-USBC buildings: Buildings or portions thereof that were subject to the USBC when constructed, altered, converted or repaired shall be maintained in compliance with the Building Maintenance Code and with the edition of the USBC that was in effect at that time.

100.7.1. Hotels and motels: Post-USBC hotels and motels shall also comply with applicable provisions of Section [ 100.0 108.8 ].

100.7.2. Nursing homes and homes for adults: Post-USBC nursing homes licensed by the Virginia Department of Health, and post-USBC homes for adults licensed by the Virginia Department of Social Services shall also comply with applicable provisions of Section [ 100.0 108.0 ].

[ 100.7.3. Family day homes: Post-USBC family day homes as defined in § 63.1-195 of the Code of Virginia shall

comply with the applicable provisions of Section 108.0. ]

100.8. Exemptions for certain equipment: The provisions of the Buildings Maintenance Code shall not apply to equipment installed by a provider of publicly regulated utility services, or to electrical equipment used for radio and television transmission. The exempt equipment shall be under the exclusive control of the public service agency and located on property by established rights.

Exception: Buildings or service equipment associated with the exempt equipment.

100.9. Exemptions for farm structures: Farm structures not used for residential purposes shall be exempt from the provisions of the Building Maintenance Code.

Exception: Farm structures lying within a flood plain or in a mudslide prone area shall be subject to floodproofing regulations or mudslide regulations, as applicable.

100.10. Purpose: The purpose of the Building Maintenance Code is to ensure public safety, health and welfare through proper building maintenance and use and continued compliance with minimum standards of building construction, energy conservation, water conservation, and physically handicapped and aged accessibility. Proper building maintenance shall be deemed to include the maintenance and inspection of building equipment defined by § 36-97(13) of the Code of Virginia.

## SECTION 101.0. REQUIREMENTS.

101.1. Adoption of model code: The following model code, as amended by Sections 101.2 and 101.3, is hereby adopted and incorporated in the Building Maintenance Code.

### THE BOCA NATIONAL PROPERTY MAINTENANCE CODE/ 1990 1993 EDITION

Published by:

Building Officials and Code  
Administrators International, Inc.  
4051 West Flossmoor Road  
County Club Hills, Illinois 60478-5795

101.2. Administrative and enforcement amendments to the referenced model code: All requirements of the referenced model code and of standards referenced therein that relate to administrative and enforcement matters are deleted and replaced by [ Article Chapter ] 1 of the Building Maintenance Code.

101.3. Other amendments to the referenced model code: The amendments noted in Addendum 1 shall be made to the specified articles chapters and sections of the BOCA National Property Maintenance Code/ 1990 1993 edition for use as part of this code.

101.4. Limitation of application of model code: No

provision of the model code may be used to require alterations to the design or equipment of any portion of a building that was subject to the USBC when constructed, altered or converted as to use group, and which is occupied in accordance with the certificate of occupancy issued under the applicable edition of the USBC. In the application of the model code to other buildings, no requirement of the current edition of Volume I, New Construction Code of the USBC shall be exceeded.

## SECTION 102.0. LOCAL ENFORCING AGENCY.

102.1. Enforcement by local governments: Any local government may, after official action, enforce the Building Maintenance Code, or any portion of the code. The local governing body may assign responsibility for enforcement of the Building Maintenance Code, or any portion thereof, to a local agency or agencies of its choice. The terms "enforcing agency" and "code official" are intended to apply to the agency or agencies to which responsibility for enforcement has been assigned. The terms "building official" or "building department" apply only to the local building official or building department.

102.2. Right of inspection: The local governing body may inspect existing buildings to enforce the Building Maintenance Code, as authorized by § 36-105 of the Code of Virginia.

102.3. Interagency coordination: When enforcement of any portion of the Building Maintenance Code is assigned to an agency other than the building department, that agency shall coordinate its reports of inspection with the building department. All required alterations, repairs, installations or constructions shall be subject to the building permit and certificate of use and occupancy provisions of Volume I of the USBC.

102.4. Code official: Each local enforcing agency shall have an executive official in charge, hereinafter referred to as the code official.

102.4.1. Appointment: The code official shall be appointed in a manner selected by the local government having jurisdiction. The local government shall notify the Training and Certification Office within 30 days of the appointment or release of the code official. The code official shall complete an orientation course approved by the Department of Housing and Community Development within 90 days of appointment.

102.4.2. Qualifications: The code official shall have at least five years of experience as a licensed professional engineer, building inspector, fire inspector, housing inspector, contractor or superintendent of building construction, with at least three years in responsible charge of work, or shall have any combination of education and experience which would confer equivalent knowledge and ability. The code official shall have general knowledge with respect to the design and construction of buildings, the basic principles of fire prevention, plumbing,

electrical and mechanical systems, building safety, and other accepted requirements for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

102.4.3. Certification: The code official shall be certified in accordance with [ Part VII of ] the Virginia Certification Standards [ (VR 394-01-2) ] within three years from the date of employment.

Exception: An individual employed as the code official in any locality in Virginia prior to April 1, 1995, shall be exempt from certification while employed as the code official in that jurisdiction. This exemption shall not apply to subsequent employment in another jurisdiction.

102.5. Qualifications of local enforcing agency personnel: The local government shall establish qualifications for the code official and technical assistants adequate to ensure proper administration and enforcement of the Building Maintenance Code.

(Note: It is recommended that the code official have at least five years of building maintenance related experience. Consideration should be given to the use of certification programs offered by the Department of Housing and Community Development.)

102.5. Qualifications of technical assistants: A technical assistant shall have at least three years in general building construction, building, fire or housing inspections, and general knowledge of plumbing, electrical and mechanical systems. Any combination of education and experience which would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The local governing body may establish additional qualification requirements.

102.5.1. Certification of technical assistants: Any person employed by, or under contract to, a local enforcing agency for determining compliance with the Building Maintenance Code shall be certified in accordance with the Virginia Certification Standards [ (VR 394-01-2) ] within three years from the date of employment.

Exception: An individual employed as the technical assistant in any locality in Virginia prior to April 1, 1995, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment in another jurisdiction.

102.6. Relief from personal responsibility: The local enforcing agency personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the

# Final Regulations

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department as employees. The code official or the code official's subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the USBC as a result of any act required or permitted in the discharge of official duties while assigned to the enforcing agency as employees, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed by such officer or employee in the discharge of official duties and under the provisions of the Building Maintenance Code may be defended by the enforcing agency's legal representative.

**102.7. Control of conflict of interest:** The minimum standards of conduct for officials and employees of the enforcing agency shall be in accordance with the provisions of the [ Virginia Comprehensive State and Local Government ] Conflict of [ Interest Interests ] Act [ § 2.1-639.1 et seq. of the Code of Virginia ].

**102.8. Assistance by state:** Upon notification of appointment of a code official, the Professional Services Office shall advise the official of all services offered and will keep the official continually informed of developments affecting the code and its interpretation and administration.

## SECTION 103.0. DUTIES AND POWERS OF THE CODE OFFICIAL.

**103.1. General:** The code official shall enforce the provisions of the Building Maintenance Code as provided herein and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

Note: Section 36-105 of the Code of Virginia provides that fees may be levied by the local governing body in order to defray the cost of enforcement and appeals.

**103.2. Notices and orders:** The code official shall issue all necessary notices or orders to ensure compliance with the requirements of this code for the health, safety and general welfare of the public.

**103.3. Delegation of duties and powers:** The code official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with the code.

**103.4. Modifications:** The code official may grant modifications to any of the provisions of this code upon application by the owner or the owner's agent provided the spirit and intent of the Building Maintenance Code are observed and public health, welfare, and safety are assured. A copy of the application for a modification and a copy of the final decision of the code official shall be kept in the permanent records of the enforcing agency.

**103.5. Unsafe conditions not related to maintenance:** When the code official finds a condition that constitutes a serious

and dangerous hazard to life or health in a building which was constructed, altered, converted, or repaired before the effective date of the initial edition of the USBC, and when such condition was not caused by faulty maintenance, or by failure to comply with the applicable state and local regulations that were in effect at the time, the official may order the minimum changes needed to remedy the hazardous condition.

Note: The Building Maintenance Code does not generally provide for retrofitting existing buildings. However, conditions may exist in older buildings, because of faulty design or equipment, that constitute such serious and dangerous hazards that correction is necessary to protect life and health. It is not the intent of this section that such changes comply fully with the requirements of the current edition of the USBC. Only those changes that are needed to remedy the serious and dangerous hazards to life or health may be required by the code official. Reference is also made to Section 103.2 of the administrative provisions of the Volume I of the USBC, which provides authority for modifications to be issued for alternate means to be used that provide the same level of safety.

**103.6. Enforcing agency records:** The code official shall keep records of reports of inspections, notices and orders issued and such other matters as directed by the local government. Records may be disposed of in accordance with the provisions of the Virginia Public Records Act [ § 42.1-76 et seq. of the Code of Virginia ], (a) after one year in the case of buildings under 1,000 square feet in area and one and two family dwellings of any area, and (b) after three years in the case of all other buildings.

## SECTION 104.0. VIOLATIONS.

**104.1. Code violations prohibited:** Buildings and equipment in violation of the provisions of this code shall not be used except as approved by the code official.

**104.2. Notice of violation:** The code official shall serve a notice of violation on the person responsible for maintenance or use of a building in violation of the provisions of this code. Such order shall reference the code section that serves as a basis for the violation and specify a time limit for the discontinuance or abatement of the violation. Such notice of violation shall be in writing, and be served by either delivering a copy of the notice to such person by mail to the last known post office address, delivered *delivering* in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place at the entrance door or accessway if such person cannot be found on the premises.

**104.3. Prosecution of violation:** If the notice of violation is not complied with, the code official shall request, in writing, the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation; or to require the removal or termination of

the use of the building in violation of the provisions of this code.

104.4. Violation penalties: Violations of this code are a misdemeanor in accordance with § 36-106 of the Code of Virginia, and upon conviction, may be punished by a fine of not more than \$2,500.

104.5. Abatement of violation: Conviction of a violation of this code shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of this code relating to maintenance and use of the building or premises.

104.6. Suspension or revocation of certificate of occupancy: The code official may suspend or revoke the certificate of occupancy for failure to correct repeated violations in apparent disregard for the provisions of the USBC.

## SECTION 105.0. UNSAFE BUILDINGS.

105.1. General: This section shall apply to buildings and their equipment that fail to comply with the Building Maintenance Code through damage, deterioration, infestation, improper maintenance, or for other reasons, and thereby become unsafe, unsanitary, or deficient in adequate exit facilities, or which constitute a hazard or public nuisance, or are otherwise dangerous to human life, health or safety, or the public welfare. All such buildings or other structures declared by the code official to be a public nuisance or unfit for human habitation shall either be: made safe through compliance with this code, or be vacated and secured against public entry, or taken down and removed as determined by the code official. A vacant building, unsecured or open at door or window, may be deemed a fire hazard and unsafe within the meaning of this section.

105.2. Inspection of unsafe buildings: The code official shall examine any building reported as unsafe, and shall prepare a report to be filed in the records of the enforcing agency. In addition to a description of unsafe conditions found, the report shall include the use of the building, and nature and extent of damages, if any, caused by a collapse or failure.

105.3. Notice of unsafe buildings: If a building is found to be unsafe, the code official shall serve a notice to the owner, the owner's agent or person in control of the unsafe building. The notice shall specify the required repairs or improvements to be made to the building, or require the unsafe building, or portion of the building to be taken down and removed within a stipulated time. Such notice shall require the person notified to declare to the designated official without delay acceptance or rejection of the terms of the notice.

Note: Whenever possible, the notice of unsafe building should also be given to the tenants of the unsafe building.

105.4. Posting of unsafe building notice: If the person named in the notice of an unsafe building cannot be found, the notice shall be sent by registered or certified mail to the last known address of such person. A copy of the notice shall be posted in a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

105.5. Disregard of notice: If the person served with a notice of unsafe building refuses or neglects to comply with requirements of the notice to abate the unsafe condition, the code official may revoke the certificate of occupancy. In the case of a vacant building, including one vacated through revocation of the certificate of occupancy, the code official may cause the building to be closed through any available means.

105.6. Authority to vacate building: When in the opinion of the code official, there is actual and immediate danger of failure or collapse of a building or any part of a building which would endanger life; or when any building or part of a building has fallen and life is endangered by occupancy of the building; or when any other hazardous condition poses an immediate and serious threat to life; or when a building or other structure is declared a public nuisance, or unfit for human habitation, the code official may order the occupants to vacate the building. The code official shall post a notice at each entrance to such building that reads: "THIS STRUCTURE IS UNSAFE OR UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL." Upon the posting of the notice, no person shall enter such a building except upon authorization of the code official for one of the following purposes: (i) to make the required repairs; (ii) to take the building down and remove it; or (iii) to make inspections.

105.7. Temporary safeguards and emergency repairs: When, in the opinion of the code official, there is immediate danger of collapse or failure of a building or any part of a building which would endanger life, or when a violation of this code results in a hazard that creates an immediate, serious and imminent threat to the life and safety of the occupants, the code official shall have the necessary work done to the extent permitted by the local government to make such building or part of the building temporarily safe, whether or not legal action to force compliance has begun.

105.8. Abatement or removal: Whenever the owner of a building or structure that has been deemed to be a public nuisance pursuant to § 105.1 fails to comply with the requirements of the notice to abate, the code official may cause the building to be razed or removed.

Note: A local governing body may, after official action pursuant to § 15.1-29.21 or 15.1-11.2 of the Code of Virginia, maintain an action to compel a responsible party to abate, raze, or remove a public nuisance. If the public nuisance presents an imminent and immediate threat to life or property, then the governing body of the county,

# Final Regulations

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city or town may abate, raze, or remove such public nuisance, and a county, city or town may bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance.

## SECTION 106.0. APPEAL TO THE LOCAL BOARD OF BUILDING CODE APPEALS.

[ 106.1. *Procedures:* Appeals from the application of the Building Maintenance Code may be made by the owner of a building or structure to the local board of building code appeals (BBCA) of the jurisdiction established under Volume I of the USBC, including the right of appeal to the State Building Code Technical Review Board after final determination by the BBCA. Those procedures established in Volume I shall be used. ]

**Grounds for appeal:** The owner of a building or the owner's agent may appeal from a decision of the code official to the local Building Code Board of Appeals established under Volume I of the USBC within 21 calendar days after the notice is served when it is claimed that:

1. The code official has refused to grant a modification of the provisions of the code;
2. The true intent of this code has been incorrectly interpreted; jurisdiction and any other person whose interest may be affected by the matter on appeal, shall be given an opportunity to be heard;
3. The provisions of this code do not fully apply;
4. The use of a form of compliance that is equal to or better than that specified in this code has been denied.

106.2. **Form of application:** Applications for appeals shall be submitted in writing to the Local Building Code Board of Appeals.

106.3. **Notice of meeting:** The board shall meet upon notice of the chairman or at stated periodic meetings if warranted by the volume of work. The board shall meet within 30 calendar days of the filing of an appeal.

106.4. **Hearing open to public:** All hearings shall be public in accordance with the Virginia Freedom of Information Act. The appellant, the appellant's representative, the code official of the jurisdiction and any other person whose interest may be affected by the matter on appeal, shall be given an opportunity to be heard.

106.5. **Postponement of hearing:** A quorum shall be more than 50% of the board. When a quorum of the board, as represented by members or alternates, is not present to consider a specific appeal, either the appellant, the building official or their representatives may, prior to the

start of the hearing, request a single postponement of the hearing of up to 14 calendar days. A vote equivalent to a majority of the quorum of the board is required to reverse or modify the decision of the building official.

106.6. **Form of decision, notification:** Every action of the board on an appeal shall be by resolution. Certified copies shall be furnished to the appellant, to the building official, and to the code official.

106.7. **Enforcement of decision:** The code official shall take immediate action in accordance with the decision of the board.

## SECTION 107.0. APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

107.1. **Appeal to the State Building Code Technical Review Board:** Any person aggrieved by a decision of the local Board of Building Code Appeals, who was a party to the appeal, may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 21 calendar days of receipt of the decision of the local appeals board by the aggrieved party.

107.2. **Enforcement of decision:** Upon receipt of the written decision of the State Building Code Technical Review Board, the code official shall take immediate action in accordance with the decision.

107.3. **Court review:** Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board shall be to the circuit court of original jurisdiction in accordance with the provisions of the Administrative Process Act; Article 4 of Chapter 1.1:1 of Title 8 of the Code of Virginia.

[ 106.1 *Local Board of Building Code Appeals (BBCA):* Each jurisdiction shall have a BBCA to hear appeals as authorized herein or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a state agency approved by the Department of Housing and Community Development, to act on appeals. The jurisdiction may have separate BBCA's provided that each BBCA complies with this section. An appeal case decided by a separate BBCA shall constitute an appeal in accordance with this section and shall be final unless appealed to the State Building Code Technical Review Board (TRB). ]

106.2 *Membership of BBCA:* The BBCA shall consist of at least five members appointed by the jurisdiction and who shall have terms of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and, as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary, shall be

*maintained in the office of the jurisdiction. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.*

**106.2.1. Chairman:** *The BBCA shall annually select one of its regular members to serve as chairman. In the event of the absence of the chairman at a hearing, the members present shall select an acting chairman.*

**106.2.2. Secretary:** *The jurisdiction shall appoint a secretary to the BBCA to maintain a detailed record of all proceedings.*

**106.3. Qualifications of BBCA members:** *BBCA members shall be selected by the jurisdiction on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall, to the extent possible, represent different occupational or professional fields relating to the construction industry. Employees or officials of the jurisdiction shall not serve as members of the BBCA. At least one member should be an experienced builder and one member a licensed professional engineer or architect.*

**106.4. Disqualification of member:** *A member shall not hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act, Chapter 40.1 (§ 2.1-639.1 et seq.) of Title 2.1 of the Code of Virginia.*

**106.5. Application for appeal:** *The owner of a building or structure or the owner's agent may appeal a decision of the code official concerning the application of the BMC or his refusal to grant a modification to the provisions of the BMC covering the manner of maintenance or use or the materials to be used in the maintenance or repair of that building or structure. The applicant shall submit a written request for appeal to the BBCA within 21 calendar days from the receipt of the decision to be appealed. The application shall contain the name and address of the owner of the building or structure and the person appealing if not the owner. A copy of the written decision of the code official shall be submitted along with the application for appeal and maintained as part of the record. The application shall be stamped or otherwise marked by the BBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of the code official's decision.*

**106.6. Notice of meeting:** *The BBCA shall meet within 30 calendar days after the date of receipt of the application for appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing. Less notice may be given if agreed upon by the applicant.*

**106.7. Hearing procedures:** *All hearings before the BBCA shall be open to the public. The appellant, the appellant's*

*representative, the jurisdiction's representative and any person whose interests are affected shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings.*

**106.7.1. Postponement:** *When five members of the BBCA are not present to hear an appeal, either the appellant or the appellant's representative shall have right to request a postponement of the hearing. The BBCA shall reschedule the appeal within 30 calendar days of the postponement.*

**106.8. Decision:** *The BBCA shall have the power to reverse or modify the decision of the code official by a concurring vote of a majority of those present.*

**106.8.1. Resolution:** *The decision of the BBCA shall be by resolution signed by the chairman and retained as part of the record by the BBCA. The following wording shall be part of the resolution:*

*"Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to the State Building Code Technical Review Board within 21 calendar days. Application forms are available from the Office of the State Building Code Technical Review Board, 501 North Second Street, Richmond, Virginia 23219, (804) 371-7170."*

*Copies of the resolution shall be furnished to all parties.*

**106.9. Appeal to the State Building Code Technical Review Board (TRB):** *After final determination by the BBCA, any person who was a party to the local appeal may appeal to the TRB. Application shall be made to the TRB within 21 calendar days of receipt of the decision to be appealed. Failure to submit an application for appeal within the time limit established by this section shall constitute an acceptance of the BBCA's resolution.*

**106.9.1. Information to be submitted:** *Copies of the decision of the code official and the resolution of the BBCA shall be submitted with the application for appeal. Upon request by the office of the TRB, the jurisdiction shall submit a copy of all pertinent information from the record of the BBCA.*

**106.9.2. Decision of TRB:** *Procedures of the TRB are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom and the code official shall take action accordingly. ]*

## SECTION 106.0 107.0 . DEMOLITION OF BUILDINGS.

**107.1 . Procedures for demolition:** *Whenever a building is to be demolished pursuant to any provision of this code, the work shall be carried out in compliance*

# Final Regulations

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with the requirements of Volume I of the USBC.

## SECTION 108.0 SPECIAL PROVISIONS.

**108.1** General: The provisions of this section contain requirements for improving the safety of certain buildings by requiring the installation of materials or equipment not originally required. Unless otherwise noted, these provisions shall apply equally to both pre- and post-USBC buildings.

**108.2** Hotels and motels: Existing hotels and motels shall comply with the provisions of this section.

**108.2.1** Fire sprinkler system: An automatic sprinkler system meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment (effective date March 1, 1990), for Use Group R-1, shall be installed throughout existing hotels and motels by either March 1, 1997, or within seven years of the date upon which an adequate water supply is made available to meet the needs of the suppression system, whichever is later.

Exceptions:

1. Hotels and motels that are equipped throughout with an automatic sprinkler system.

2. Hotels and motels which are three stories or less in height.

**108.2.2** [ **108.2.2**. Single and multiple station smoke detectors: Single and multiple station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment, for Use Group R-1, shall be installed in existing hotels and motels . ] by March 1, 1993.

[ Exception: Hotels and motels that are equipped throughout with single and multiple station smoke detectors. ]

**108.3** Nursing homes and nursing facilities: Existing nursing homes and nursing facilities licensed by the Virginia Department of Health shall comply with the provisions of this section.

**108.3.1** [ **108.3.1**. Automatic sprinkler system: An automatic sprinkler system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment (effective date October 1, 1990), for Use Group I-2, shall be installed in existing nursing homes and nursing facilities ] by January 1, 1993, [ as follows:

1. NFPA 13D Standard for one story buildings.
2. NFPA 13R Standard for buildings two or three stories in height.
3. NFPA 13 Standard for buildings four or more stories in height.

Exceptions:

1. Nursing homes and nursing facilities which are equipped throughout with an automatic sprinkler system.

2. Nursing facilities consisting of certified long-term care beds located on the ground floor of general hospitals. ]

**108.3.1.1** [ **108.3.1.1**. Quick response sprinklers: Quick response sprinklers shall be installed in patient sleeping rooms of buildings subject to Section 109.3.1.]

**108.3.1.2** [ **108.3.1.2**. Exceptions provided for: Buildings equipped throughout with an automatic fire sprinkler system meeting the requirements of NFPA 13 shall be permitted to use the exceptions provided in the USBC, Volume I, 1987 Edition, Third Amendment including, but not limited to, the following:

1. Section 502.3 (Area Increase)
2. Section 503.1 (Height Increase)
3. Section 610 (Use Group I-2 Areas)
4. Section 807 (Types and Location of Means of Egress)
5. Section 808 (Capacity of Egress Components)
6. Section 809 (Number of Exits)
7. Section 810 (Exit Access Passageways and Corridors)
8. Section 921 (Firestopping and Draftstopping) ]

**108.3.2** [ **108.3.2** **108.3.2** ]. Fire protective signaling system: A fire protective signaling system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by August 1, 1994.

Exception: Nursing homes and nursing facilities that are equipped throughout with an automatic fire protective signaling system.

**108.3.3** [ **108.3.2.2** **108.3.3** ]. Fire detection system: An automatic fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by August 1, 1994.

**108.3.3.1** [ **108.3.2.2.1** **108.3.3.1** ]. Fire detection system in existing sprinklered facilities: Nursing homes and nursing facilities that are exempt from Section [ **108.3.1** **108.3.1** ] because of an existing automatic sprinkler system shall install a fire detection system meeting the requirements of

# Final Regulations

the USBC, Volume I, 1987 Edition, Second Amendment, for Use Group I-2.

~~109.4 108.4~~ Homes for Adults: Existing Homes for Adults licensed by the Virginia Department of Social Services shall comply with this section.

~~109.4-1 108.4.1~~ Fire protective signaling system and fire detection system: A fire protective signaling system and an automatic fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in Homes for Adults by August 1, 1994.

Exception: Homes for Adults that are equipped throughout with a fire protective signaling system and an automatic fire detection system.

~~109.4-2 108.4.2~~ Single and multiple station smoke detectors: Battery or AC-powered single and multiple station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in Homes for Adults by August 1, 1994.

Exception: Homes for Adults that are equipped throughout with single and multiple station smoke detectors.

~~109.5. [ 108.5. Identification of handicapped parking spaces: All spaces reserved for the use of handicapped persons shall be identified by an above grade sign with a bottom edge no lower than four feet nor higher than seven feet above the parking surface. Such signs shall be installed in accordance with applicable provisions of the current edition of Volume I of the USBC ] by January 1, 1993 .~~

[ *108.6. Family day homes: Family day homes as defined in § 63.1-195 of the Code of Virginia shall be provided with at least one exterior exit door from each floor used for the care of children. ]*

## ADDENDUM 1.

### AMENDMENTS TO THE BOCA NATIONAL PROPERTY MAINTENANCE CODE/ 1990 1993 EDITION.

As provided in Section 101.3 of Volume II - Building Maintenance Code of the 1990 1993 edition of the USBC, the amendments noted in this Addendum shall be made to the BOCA National Property Maintenance Code/ 1990 1993 edition for use as part of the Building Maintenance Code.

#### ARTICLE CHAPTER 1. ADMINISTRATION AND ENFORCEMENT.

(A) Article Chapter 1, Administration and Enforcement, is deleted in its entirety and replaced with Article Chapter 1 of the Building Maintenance Code.

#### ARTICLE CHAPTER 3. ENVIRONMENTAL REQUIREMENTS.

(A) Delete Section ~~PM-301-1 PM-303.1~~ .

(B) Delete Section ~~PM-301-4 PM-303.4~~ .

(C) Delete Section ~~PM-301.5 PM-303.5~~ .

(D) Delete Section ~~PM-301-8 PM-303.8~~ .

Note: The above sections of this code have been deleted because the agency's Attorney General representative advises that they cannot be interpreted as building regulations under the current language of § 36-97(7) of the Code of Virginia.

(E) Change Section ~~PM-302.1 PM-304.1~~ to read:

~~PM-302.1 PM-304.1~~ . General: The exterior of all structures, occupied, vacant or otherwise, shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

(F) Change Section ~~PM-302.12 PM-304.12~~ to read:

~~PM-302.12 PM-304.12~~ . Insect screens: During the period from April 1 to December 1 every door, window and other outside opening required for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device in good working condition.

Exception: Screen doors shall not be required for out-swinging doors or other types of openings which make screening impractical, provided other approved means, such as air curtains or insect repellent fans are employed.

(G) Change Section ~~PM-303.4 PM-305.4~~ to read as follows:

~~PM-303.4 PM-305.4~~ . Lead-based paint: Interior and exterior painted surfaces of dwellings, child and day care facilities, including fences and outbuildings, that contain in excess of 0.5% lead by weight shall be removed or covered in an approved manner.

(H) Delete Section ~~PM-306.2~~ .

(I) Delete Section ~~PM-306.3~~ .

#### ARTICLE CHAPTER 4. LIGHT, VENTILATION AND SPACE REQUIREMENTS OCCUPANCY LIMITATIONS .

(A) Change Section ~~PM-401.1 PM-403.1~~ to read:

# Final Regulations

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**PM-401.1 PM-403.1** . Habitable spaces: Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total window area, measured between stops, for every habitable space shall be 4.0% of the floor area of such room, except in kitchens when artificial light may be provided in accordance with the provisions of the building code. Whenever walls or other portions of a structure face a window of any other room and such obstructions are located less than three feet (914 mm) from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.

(B) Delete Section **PM-403.10 PM-405.10** .

## ARTICLE CHAPTER 6.

### MECHANICAL AND ELECTRICAL REQUIREMENTS.

(A) Change Section **PM-601.1 PM-602.2** to read:

**PM-601.1 PM-602.2** . Residential buildings: Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guest room on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C) in all habitable rooms, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls. When the outdoor temperature is below the outdoor design temperature required for the locality by the mechanical code listed in *Appendix A Chapter 8*, the owner or operator shall not be required to maintain the minimum room temperatures, provided the heating system is operating at full capacity, with supply valves and dampers in a full open position.

(B) Delete Sections **PM-602.2.1 and PM-602.2.2**.

(B) (C) Change Section **PM-601.2 PM-602.3** to read:

**PM-601.2 PM-602.3** . Nonresidential structures: Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C) during all working hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls.

Exceptions:

1. Processing, storage and operation areas that require

cooling or special temperature conditions.

2. Areas in which persons are primarily engaged in vigorous physical activities.

(C) (D) Add new Section **PM-603-3 PM-606.3** to read:

**PM-603.3 PM-606.3** . Inspection: Routine and periodic inspections shall be performed in accordance with Part X of ASME A-17.1 listed in *Appendix A Chapter 8*.

## ARTICLE CHAPTER 7. FIRE SAFETY REQUIREMENTS.

(a) Add new section **PM-704.5.2 PM-705.5.4** .

**PM-704.5.2 PM-705.5.4** . Visual and audible alarms: Visual and audible alarms meeting the requirements of ANSI/UL Standard 1638 and ANSI/NFPA 72G shall be provided in occupancies housing the hard of hearing as required by § 36-99.5 of the Code of Virginia; however, all visual alarms shall provide a minimum intensity of 100 candela. Portable alarms meeting these requirements shall be accepted.

## ARTICLE 8.

(A) Delete Section **PM-801.2**.

(B) Delete Section **PM-801.3**.

## ARTICLE 9.

(A) Delete Article 9.

## APPENDIX A CHAPTER 8. REFERENCED STANDARDS.

(A) Change Appendix A as follows:

1. (A) Delete standard reference number BOCA NBC 90-93, BOCA National Building Code and substitute the Virginia Uniform Statewide Building Code, Volume I 1990 1993 edition.

2. (B) Delete standard reference number BOCA NFPC 90-93, BOCA National Fire Prevention Code and substitute the Virginia Statewide Fire Prevention Code/ 1990 1993 Edition.

V.A.R. Doc. No. R94-463; Filed January 11, 1994, 11:13 a.m.

\* \* \* \* \*

Title of Regulation: VR 394-01-31. Virginia Industrialized Building and Manufactured Home Safety Regulations/1993.

Statutory Authority: §§ 36-73 and 36-85.7 of the Code of Virginia.

Effective Date: April 1, 1994.

## Summary:

The amendments update the existing regulation to reflect the requirements of the 1993 edition of the National Model Building Maintenance Codes and Standards.

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 George W. Rickman, Jr., Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170. There may be a charge for copies.

VR 394-01-31. Virginia Industrialized Building and Manufactured Home Safety Regulations/1993.

## PART ONE. INDUSTRIALIZED BUILDINGS.

### ARTICLE 1. ADMINISTRATION.

#### SECTION 100.0. GENERAL.

100.1. Title: Articles 1 through 6 of these regulations shall be known as the Virginia Industrialized Building and Manufactured Home Safety Regulations - Part One. Except as otherwise indicated, regulations, or these regulations, as used in Articles 1 through 6, shall mean the Virginia Industrialized Building and Manufactured Home Safety Regulations - Part One.

100.2. Authority: These regulations are adopted according to the authority granted the Board of Housing and Community Development by the Virginia Industrialized Building Safety Law, Chapter 4 [ ; (*§ 36-70 et seq.*) of ] Title 36 of the Code of Virginia.

100.3. Adoption: The Virginia Industrialized Building and Manufactured Home Safety Regulations were adopted by order of the Board of Housing and Community Development on November 19 [ December 13 ], 1990 1993. This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.4. Application: Part One shall apply to industrialized buildings, as defined in Section 200.0.

100.5. Effective date: The effective date of Part One of these regulations is [ March April ] 1, 1991 1994.

100.5.1. Compliance after effective date: No person, firm

or corporation shall offer for sale or rental, or sell or rent, any industrialized building produced after the effective date of any provision of these regulations unless it conforms with such provision of the regulations.

100.6. Continued compliance: Industrialized buildings and mobile homes subject to any edition of these regulations when constructed shall be maintained in compliance with the applicable edition by the owners and/or occupants.

100.6.1. Relocated industrialized buildings and mobile homes: Industrialized buildings and mobile homes constructed prior to the effective date of the first edition of these standards (January 1, 1972) when relocated shall be subject to Section [ 110.0 118.0 ] of the Virginia Uniform Statewide Building Code, Volume I.

100.7. Purpose: The purpose of these regulations is to ensure safety to life, health, and property through compliance with uniform statewide construction standards for industrialized buildings.

#### SECTION 101.0. ENFORCEMENT GENERALLY.

101.1. General: These regulations shall be enforced as authorized by Chapter 4 [ (*§ 36-70 et seq.*) ] of Title 36 of the Code of Virginia. [ *Note: See Addendum 1* [ ; "Virginia Industrialized Building Safety Law." ] ]

101.2. Inspection and enforcement: The Code Enforcement and Manufactured Housing Office is designated as the administrator's representative for the enforcement of these regulations. It shall have authority to make such inspections and to take such other actions as are required to enforce the regulations.

Note: The Code Enforcement and Manufactured Housing Office shall act as the Building Official for registered industrialized buildings.

101.2.1. Factory inspections: The administrator's representative shall, during reasonable hours, make such inspections of factories producing industrialized buildings as may be necessary to determine whether the compliance assurance agency having jurisdiction is performing its evaluation and compliance assurance functions in a satisfactory manner.

101.2.2. Field inspections: The administrator's representative may, during reasonable hours, make inspections to determine whether industrialized buildings, not at the time occupied as dwellings, are in compliance with these regulations. Such inspections may include but are not limited to: industrialized buildings on dealer lots, or industrialized buildings that are otherwise offered for sale to the public. Industrialized buildings that are occupied as dwellings may be inspected at the request of the owners or occupants.

101.2.3. Notice of violation: Where the administrator finds any violation of the provisions of these regulations, a

# Final Regulations

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notice of violation shall be issued. This notice of violation shall order the party responsible to bring the unit into compliance, within a reasonable time.

101.2.4. Placarding units in violation: Wherever the administrator finds any violations of the regulations, placards may be required on the noncomplying unit. Such placards shall not be removed except upon permission of the administrator. The placard shall list the violations and may prohibit the use of any unit, until the necessary corrections have been made.

101.2.5. Referral to local building officials: If the nature of the violation is such that it may be remedied under Section 102.0 of these regulations, the administrator may refer the matter to the local building official for enforcement.

101.3. Appeals: Local Appeals from local building officials, compliance assurance agencies or manufacturers of industrialized buildings may appeal concerning the department's application of these regulations[ : ] or notice of violation to will be heard by the State Building Code Technical Review Board (TRB) established by § 36-108 of the Code of Virginia. Such appeals shall be according to the procedures and time limits established in the Uniform Statewide Building Code, Volume I - New Construction, Section 117.0. upon application by the aggrieved party. The application shall be submitted to the office of the [ Technical Review Board (TRB) TRB ] within 21 calendar days of receipt of the decision by the department. A copy of the decision of the department to be appealed shall be submitted with the application for appeal. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of the department's decision. [ Decision of TRB procedures of the TRB are in accordance with Article 2 (§ 36-107.1 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom. ]

101.3.1. [ Enforcement of decision: Upon receipt of the written decision of the State Building Code Technical Review Board, the administrator shall take immediate action in accordance with the decision. Decision of TRB: Procedures of the TRB are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom. ]

[ 101.3.2. Court review: Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board may be presented to the court of the original jurisdiction in accordance with the provisions of the Administrative Process Act, Article 4, § 9-6.14.1 of Title 9 of the Code of Virginia. ]

101.4. Limitation of manufacturer's liability: The manufacturer of the building shall not be required to remedy violations caused by on-site work by others not

under his control or violations involving components and materials furnished by others and not included with the registered industrialized building.

101.5. Penalty for violation: Any person, firm or corporation violating any provisions of these regulations shall be considered guilty of a Class 1 misdemeanor and, upon conviction, shall be fined not more than \$1,000 (§ 36-83 of the Code of Virginia).

## SECTION 102.0. ENFORCEMENT IN LOCALITIES.

102.1. Responsibility of local building officials: Every local building official is authorized to and shall enforce the provisions of these regulations within the limits of his jurisdiction. He shall not permit the use of any industrialized building that does not comply with these regulations.

102.2. Registered industrialized buildings: Industrialized buildings that are registered shall be accepted in all localities as meeting the requirements of this law. Notwithstanding this provision, local building officials are authorized to carry out the following functions that apply to registered industrialized buildings provided such functions do not involve disassembly of the registered building or change of design, or result in the imposition of more stringent conditions than those required by the compliance assurance agency or by these regulations.

1. They shall verify that it has not been damaged in transit to a degree that would render it unsafe. Where indicated, this may include tests for tightness of plumbing systems and gas piping and tests for shorts at the meter connection in the electrical system.
2. They shall verify that supplemental components required by the label or by these regulations are properly provided.
3. They shall verify that the instructions of the label for installation and erection are observed.
4. They shall verify that any special conditions or limitations of use that are stipulated by the label in accordance with the standards of Article 3 of these regulations are observed.
5. They may require submission and approval of plans and specifications for the supporting structures, foundations including anchorages, and all other components necessary to form the completed building. They may require such architectural and engineering services as may be specifically authorized by the standards of Article 3 of these regulations to assure that the supporting structures, foundations including anchorages, and other components necessary to form the completed building are designed in accordance with these regulations.
6. They shall enforce applicable requirements of these

regulations and the USBC - Volume I for alterations and additions to the units or to the buildings. As an aid, they may require submission of plans and specifications of the model of the unit. Such plans and specifications may be furnished on approved microfilm.

7. They shall enforce the requirements of the Uniform Statewide Building Code applicable to utility connections, site preparation, fire limits, building permits, certificates of use and occupancy, and all other applicable requirements of the USBC, except those governing the design and construction of the registered building.

8. They shall verify that the building displays the required state registration seal and the proper label of the compliance assurance agency.

102.3. Unregistered industrialized buildings: The building official shall determine whether any unregistered industrialized building complies with these regulations and shall require any noncomplying unregistered building to be brought into compliance with these regulations. The building official shall enforce all applicable requirements of these regulations including those relating to the sale, rental and disposition of noncomplying buildings. The building official may require submission of full plans and specifications for each building. Concealed parts of the building may be exposed to the extent necessary to permit inspection to determine compliance with the applicable requirements. [ The government of any locality for which a building official has not been appointed may exercise the powers of enforcement for unregistered industrialized buildings that are granted to the local building official, except for inspection. ]

102.3.1. Unregistered industrialized buildings offered for sale: Unregistered industrialized buildings offered for sale by dealers in this Commonwealth shall be marked by a warning sign to prospective purchasers that the building is not registered in accordance with these regulations and must be inspected and approved by the local building official having jurisdiction. The sign shall be of a size and form approved by the administrator and shall be conspicuously posted on the exterior of the unit near the main entrance door.

102.4. Disposition of noncomplying building: When a building is found to be in violation of these regulations, the local building official may require the violations to be corrected before occupancy of the building is permitted and may require the building to be conspicuously placarded to indicate that it may not be used in this Commonwealth until the corrections have been made. If the building is moved to another locality before the violations are corrected, such placard shall not be removed except upon permission of the building official in the new locality. If such locality has no building official, permission shall be obtained from the department before the placard is removed.

102.5. Report to the Code Enforcement and [ Manufacturing Manufactured ] Housing Office: If the building is moved from the jurisdiction before the violations have been corrected, the local building official shall make a prompt report of the circumstances to the Code Enforcement and [ Manufacturing Manufactured ] Housing Office. The report shall include the following:

1. A list of the uncorrected violations.
2. All information contained on the label pertinent to the identification of the building, the manufacturer and the compliance assurance agency.
3. The number of the Virginia registration seal.
4. The new destination of the building, if known.
5. The party responsible for moving the building.
6. Whether the building was placarded for violation.

## SECTION 103.0. MODIFICATION OF THE REGULATIONS.

103.1. When modification may be granted: The administrator shall have the power upon request in specific cases to authorize modification of the regulations so as to permit certain specified alternatives where the objectives of this law can still be fulfilled. Such request shall be in writing and shall be accompanied by the plans, specifications and other information necessary for an adequate evaluation of the modification requested.

103.1.1. Input by local building official: Before a modification is authorized, the building official having local jurisdiction may be afforded an opportunity to present his views and recommendations.

## ARTICLE 2. DEFINITIONS.

### SECTION 200.0. DEFINITIONS.

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

**"Administrator"** means the Director of the Department of Housing and Community Development or his designee.

**"Approved"** as applied to a material, device, method of construction, registered building or as otherwise used in these regulations means approved by the administrator, unless the context clearly indicates another meaning.

**"Board"** means the Board of Housing and Community Development.

**"Code Enforcement Office Code Enforcement and [ Manufacturing Manufactured ] Housing Office"** means the

# Final Regulations

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office of the Department of Housing and Community Development which has been designated to carry out the state plan for enforcement of the Virginia Industrialized Building and Manufactured Home Safety Regulations.

*"Compliance assurance agency"* means an architect or professional engineer registered in Virginia, or an organization, determined by the department to be specially qualified by reason of facilities, personnel, experience and demonstrated reliability, to investigate, test and evaluate industrialized buildings; to list such buildings complying with standards at least equal to those promulgated by the board; to provide adequate follow-up services at the point of manufacture to ensure that production units are in full compliance; and to provide a label as evidence of compliance on each manufactured section or module.

*"Department"* means the Department of Housing and Community Development.

*"Industrialized building"* means a combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Manufactured homes defined in § 36-85.3 and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act shall not be considered industrialized buildings for the purpose of this law.

*"Local building official"* means an official designated by any city, town, or county to enforce structural, plumbing, electrical, mechanical or other building regulations for safety to life, health and property.

*"Model"* means a specific design, as designated by the producer, of an industrialized building. Production buildings of any model may include variations and options that do not affect compliance with the standards governing structural, plumbing, mechanical or electrical systems or any other items governed by these regulations.

*"Registered"* means an industrialized building which displays a registration seal issued by the Department of Housing and Community Development in accordance with Article 5 of these regulations.

*"Regulations"* means regulations as defined by Section 100.1.

*"State building official"* means the Code Enforcement and Manufactured Housing Office.

*"The law"* or *"this law"* means the Virginia Industrialized Building Safety Law as embraced in Chapter 4 (§ 36-70 et seq.) of the Code of Virginia.

## ARTICLE 3. SAFETY STANDARDS FOR INDUSTRIALIZED

### BUILDINGS.

#### SECTION 300.0. REQUIREMENTS.

300.1. Hazards prohibited and standards specified: Industrialized buildings produced after the effective date of these regulations shall be reasonably safe for the users and shall provide reasonable protection to the public against hazards to life, health and property. Compliance with all applicable requirements of the codes and standards specified in Section 301.0, subject to the specified time limitations, shall be acceptable evidence of compliance with this provision.

#### SECTION 301.0. REFERENCE STANDARDS.

301.1. Reference standards and time limits established: The standards and time limitations specified below are those referred to in Section 300.0:

##### BOCA NATIONAL BUILDING CODE

Published by: Building Officials and Code Administrators International, Inc. (BOCA), 4051 West Flossmoor Road, Country Club Hills, Illinois 60477-5795

1. 1987 1990 Edition - until April June 1, 1991 1994

2. 1990 1993 Edition - no time limit

##### BOCA NATIONAL PLUMBING CODE

1. 1984 1990 Edition - until April June 1, 1991 1994

2. 1990 1993 Edition - no time limit

##### BOCA NATIONAL MECHANICAL CODE

1. 1987 1990 Edition - until April June 1, 1991 1994

2. 1990 1993 Edition - no time limit

##### NATIONAL ELECTRICAL CODE – NFPA NO. 70

Published by: National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269

1. 1987 1990 Edition - until April June 1, 1991 1994

2. 1990 1993 Edition - no time limit

301.2. Optional standard: The following standard may be used for one and two family dwellings only, as an alternative to the standards specified in Section 301.1.

##### ONE AND TWO FAMILY DWELLING CODE

Jointly published by: BOCA; Southern Building Code Congress International, 900 Montclair Road, Birmingham, Alabama 35213; International Conference

of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601

1. *1986 1989 Edition and 1987 Supplement 1990 Amendments - until April June 1, 1991 1994*

2. *1989 1992 Edition and 1990 Supplement 1993 Amendments - no time limit*

301.3. General administrative amendment to reference codes and standards: All requirements of the referenced model codes and standards that relate to fees, permits, certificates of use and occupancy, approval of plans and specifications and other procedural, administrative and enforcement matters are deleted and replaced by the procedural, administrative and enforcement provisions of these regulations and the applicable provisions of Article Chapter 1 of the Virginia Uniform Statewide Building Code.

301.3.1. *Technical amendments to referenced codes and standards: The 1993 editions of the standards listed in Section 301.1 are amended as per USBC, Volume I, Addendum 1.*

301.3.2. *Technical amendments to optional standard: The 1992 edition and 1993 amendments of the standard listed in Section 301.2 are amended as per USBC, Volume I, Addendum 2.*

301.5. Insect screens: Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

## ARTICLE 4. COMPLIANCE ASSURANCE AGENCIES.

### SECTION 400.0. PROCEDURES FOR APPROVAL.

400.1. Application to administrator: Application may be made to the administrator for acceptance as a compliance assurance agency as defined in Article 2 Section 200.0. Application shall be made under oath and shall be accompanied by information and evidence that is adequate for the administrator to determine whether the applicant is specially qualified by reason of facilities, personnel, experience and demonstrated reliability to investigate, test and evaluate industrialized buildings for compliance with these regulations, and to provide adequate follow-up and compliance assurance services at the point of manufacture.

Note: A suggested format for the application for acceptance as a compliance assurance agency may be obtained from the Code Enforcement and Manufactured Housing Office.

400.2. Freedom from conflict of interest: A compliance assurance agency shall not be affiliated with nor influenced or controlled by producers, suppliers, or vendors of products in any manner which might affect its capacity to render reports of findings objectively and without bias. A compliance assurance agency is judged to be free of such affiliation, influence, and control if it complies with all of the following conditions:

1. It has no managerial affiliation with producers, suppliers or vendors, and is not engaged in the sale or promotion of any product or material.
2. The results of its work accrue no financial benefits to the agency through stock ownership and the like, of any producer, supplier or vendor of the product involved.
3. Its directors and other management personnel, in such capacities, receive no stock option, or other financial benefit from any producer, supplier, or vendor of the product involved.
4. It has sufficient interest or activity that the loss or award of a specific contract to determine compliance of a producer's, supplier's or vendor's product with these regulations would not be a determining factor in its financial well-being.
5. The employment security status of its personnel is free of influence or control by producers, suppliers, or vendors.

400.3. Information required by the administrator: The following information and criteria will be considered by the administrator in designating compliance assurance agencies:

1. Names of officers and location of offices.
2. Specification and description of services proposed to be furnished under these regulations.
3. Description of qualifications of personnel and their responsibilities. Personnel involved in system analysis, design and plans review, compliance assurance inspections, and their supervisors shall meet the requirements of the American Society for Testing and Materials (ASTM) Standards E-541-84, Criteria for Agencies Engaged in System Analysis and Compliance Assurance for Manufactured Buildings.
4. Summary of experience within the organization.
5. General description of procedures and facilities to be used in proposed services, including evaluation of the model, factory follow-up, quality assurance, labeling of production buildings, and specific information to be furnished on or with labels.
6. Procedures to deal with any defective buildings

# Final Regulations

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resulting from oversight.

7. Acceptance of these services by independent accrediting organizations and by other jurisdictions.
8. Proof of independence and absence of conflict of interest.

## ARTICLE 5. LABELING, REGISTRATION AND FEES.

### SECTION 500.0. LABELS.

500.1. Minimum information required: Every registered industrialized building shall be marked with a label, seal, or similar evidence of compliance supplied by the compliance assurance agency that includes the following information directly or by reference:

1. Name and address of compliance assurance agency.
2. List of codes and standards for which the building has been evaluated, inspected and found in compliance by the compliance assurance agency and the type of construction classification, the use group classification and occupancy under those codes and standards.
3. Serial number of label.
4. Special instructions for handling, installation and erection, or list of such instructions that are furnished separately with the building.
5. Special conditions or limitations of use of the building under the standards for which the building has been evaluated, or list of such conditions and limitations that are furnished separately with the building.

500.2. Mounting of label: To the extent practicable, the label shall be so installed that it cannot be removed without destroying it. It shall be applied in the vicinity of the electrical distribution panel or other location that is readily accessible for inspection. When a building is comprised of more than one section or module, the required label may be furnished as a single label for the entire building, provided each section or module is marked by the compliance assurance agency in a clearly identifiable manner that is listed with the label.

500.3. Manufacturer's data plate and other markings: The following information shall be placed on one or more permanent manufacturer's data plates in the vicinity of the electrical distribution panel or in some other location that is readily accessible for inspection. The compliance assurance agency shall approve the form, completeness and location of the data plate to include the information listed below:

1. Manufacturer's name and address.

2. Serial number of the label of the compliance assurance agency.
3. Serial number of the building.
4. Name of manufacturer and model designation of major factory installed appliances.
5. Where applicable, identification of permissible type of gas for appliances, designation of electrical ratings for single and multiple cord entrance, and directions for water and drain connections.
6. Serial number of the registration seal.
7. Seismic design zone number.
8. Design loads: live load, dead load, snow load, and wind load.

500.4. Label control: The labels shall be under direct control of the compliance assurance agency until applied by the manufacturer to buildings that comply fully with these regulations. The manufacturer shall place its order for labels with the compliance assurance agency. The manufacturer is not permitted to acquire labels from any other source. Each compliance assurance agency shall keep a list of the serial numbers of labels issued to each manufacturer's plant in such manner that a copy of the record can be submitted to the administrator upon request.

### SECTION 501.0. REGISTRATION OF LABELED UNITS.

501.1. Industrialized buildings eligible for registration: Any industrialized building must meet the following requirements to be registered and eligible for a Virginia Registration Seal:

1. The design of the building has been found by a compliance assurance agency to be in full compliance with these regulations; and
2. The compliance assurance agency has conducted any necessary testing and evaluation of the building and its component parts; and
3. The compliance assurance agency has provided the required inspections and other quality assurance follow-up services at the point of manufacture to assure the building complies with these regulations; and
4. The building has been provided with appropriate evidence of such compliance with a label, seal or similar device permanently affixed by the compliance assurance agency.

501.2. Registration seal for industrialized buildings: Registered industrialized buildings shall be marked with an approved registration seal issued by the department. The

seal shall be applied by the manufacturer to a registered industrialized building intended for sale or use in Virginia prior to the shipment of the building from the place of manufacture.

501.2.1. Number of seals required: Registered industrialized buildings shall bear a registration seal for each dwelling unit in residential occupancies. For nonresidential occupancies, a registration seal is required for each registered building of a single occupancy and use group.

501.3. Purchase of registration seals: Approved registration seals may be purchased from the Department of Housing and Community Development in advance of use. The fee for each registration seal shall be [ set by the board \$50 ]. Checks shall be made payable to "Treasurer of Virginia." Payment for the seals shall (must) be received by the administrator before the seals can be sent to the user.

501.4. Mounting of registration seal: To the extent practicable, the registration seal shall be installed so that it cannot be removed without destroying it. It shall be installed near the label applied by the compliance assurance agency.

## ARTICLE 6. INSTALLATION REQUIREMENTS.

### SECTION 600.0. MANUFACTURER'S INSTRUCTIONS.

600.1. General: The manufacturer of each industrialized building shall provide with each building, specifications or instructions, or both, for handling, installing or erecting the building. Such instructions may be included as part of the label from the compliance assurance agency or may be furnished separately by the manufacturer of the building. The manufacturer shall not be required to provide the foundation and anchoring equipment for the industrialized building.

600.2. Installations: Persons or firms installing or erecting registered industrialized buildings shall install or erect the building in accordance with the manufacturer's instructions.

## PART TWO. MANUFACTURED HOMES SUBJECT TO FEDERAL REGULATIONS.

### ARTICLE 11. ADMINISTRATION.

#### SECTION 1100.0. GENERAL.

1100.1. Title: Articles 11 through 14 shall be known as the Virginia Industrialized Building and Manufactured Home Safety Regulations - Part Two. Part Two shall mean the Virginia Industrialized Building and Manufactured Home Safety Regulations - Part Two.

1100.2. Authority: These regulations are adopted according

to the authority granted the Board of Housing and Community Development by the Virginia Manufactured Housing Construction and Safety Standards Law, Chapter 4.1 [ ; (§ 36-85.2 *et seq.*) of ] Title 36 of the Code of Virginia.

1100.3. Application: Part Two shall apply to manufactured homes as defined in Section 1200.0.

1100.4. Effective date: The effective date of Part Two of these regulations is [ March 1, 1994 April 1, 1994 ].

### SECTION 1101.0. ENFORCEMENT GENERALLY.

1101.1. Federal regulation: Enforcement of Part Two shall be in accordance with the Federal Manufactured Home Procedural and Enforcement Regulations, enacted May 13, 1976, under authority granted by Section 625 of the Act, and designated as Part 3282, Chapter XX, Title 24 of the department's regulations. (Part 3282 consists of subparts A through L, with Sections numbered 3282.1 through 3282.554, and has an effective date of June 15, 1976.)

1101.2. Delegation of authority: The Department of Housing and Community Development is delegated all lawful authority for the enforcement of the federal standards pertaining to manufactured homes by the administrator according to § 36-85.5 of the Code of Virginia. The Division of Building Regulatory Services of the Department of Housing and Community Development is designated as a state administrative agency in the HUD enforcement program, and shall act as an agent of HUD. The administrator is authorized to perform the activities required of an SAA by the HUD enforcement plan, including (but not limited to) investigation, citation of violations, handling of complaints, conducting hearings, supervising remedial actions, monitoring, and making such reports as may be required.

### SECTION 1102.0. ENFORCEMENT IN LOCALITIES.

1102.1. Responsibility of local building officials: All local building officials are authorized by § 36-85.11 of the Code of Virginia to enforce the provisions of Part Two within the limits of their jurisdiction. Such local building officials shall enforce Part Two, subject to the general oversight of the division, and shall not permit the use of any manufactured home containing a serious defect or imminent safety hazard within their jurisdiction.

1102.2. Effect of label: Manufactured homes displaying the HUD label shall be accepted in all localities as meeting the requirements of this Law, which supersede the building codes of the counties, municipalities and state agencies. Notwithstanding this provision, local building officials are authorized to carry out the following functions with respect to manufactured homes displaying the HUD label, provided such functions do not involve disassembly of the units or parts of the units, change of design, or result in the imposition of more stringent conditions than those required by the federal regulations:

# Final Regulations

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1. They shall verify that it has not been damaged in transit to a degree that would render it unsafe. Where indicated, tests may be made for tightness of plumbing systems and gas piping, and electrical short circuits at meter connections.
2. They shall verify that supplemental components required by the label or Part Two are properly provided.
3. They shall verify that installation or erection instructions are observed.
4. They shall verify that any special conditions or limitations of use stipulated by the label in accordance with the standards or Part Two are observed.
5. They shall enforce applicable requirements of Part Two and the USBC - Volume I for alterations and additions to manufactured homes, and may enforce the USBC - Volume II for maintenance of the homes.
6. They shall enforce the requirements of the Uniform Statewide Building Code applicable to utility connections, site preparation, fire limits, building permits, skirting, certificates of use and occupancy, and all other applicable requirements, except those governing the design and construction of the labeled units.
7. They may verify that a manufactured home displays the required HUD label.
8. They may verify that nonconforming items have been corrected.

1102.3. Action upon noncompliance: Whenever any local building official finds that a manufactured home delivered for use in his jurisdiction is in violation of Part Two, he shall initiate the corrective procedure required, in accordance with Part Two.

1102.4. Report to the department: Whenever any manufactured home is moved from a local jurisdiction before a noted violation has been corrected, the building official shall make a prompt report of the circumstances to the administrator. The report shall include a list of uncorrected violations, all information pertinent to identification and manufacture of the home contained on the label and the data plate, the destination of the home if known, and the name of the party responsible for moving it.

## SECTION 1103.0. DISTRIBUTORS AND DEALERS.

1103.1. Alterations: No distributor or dealer shall perform or cause to be performed any alteration affecting one or more requirements set forth in the federal standards, except those alterations approved by the administrator.

1103.1.1. Assistance from local building officials: In

handling and approving dealer requests for alterations, the administrator may be assisted by local building officials. The building officials shall report violations of this section and failures to conform to the terms of their approval to the administrator.

1103.2. Installations: Distributors or dealers installing or setting up a manufactured home shall perform such installation in accordance with the manufacturer's installation instructions or other support and anchoring system approved by the building official in accordance with Section 620.0 420.0 of the USBC - Addendum + Volume I .

1103.3. Prohibited resale: No distributor or dealer shall offer for resale any manufactured home possessing a serious defect or imminent safety hazard.

## SECTION 1104.0. CONTINUING ENFORCEMENT.

1104.1. Inspections: At any time during regular business hours when a manufactured home is located on a dealer's or distributor's lot and offered for sale, the administrator shall have authority to inspect such home for transit damages, seal tampering, violations of the federal standards and the dealer's or distributor's compliance with applicable state and federal laws and regulations.

The administrator shall give written notice to the dealer or distributor when any home inspected does not comply with the federal standards.

## SECTION 1105.0. CONSUMER COMPLAINTS.

1105.1. Reports: The administrator shall receive all consumer complaints on manufactured homes reported to the department by owners, dealers, distributors, code officials, and other state or federal agencies. The administrator may request such reports to be submitted by letter or on a report form supplied by the department.

1105.2. Inspections: The administrator may conduct, or cause to be conducted, an on-site inspection of a manufactured home at the request of the owner reporting a complaint with the home or under the following conditions with the permission of the owner of the home.

1. The dealer, distributor or manufacturer requests an on-site inspection; or
2. The reported complaint indicates extensive and serious noncompliances; or
3. Consumer complaints lead the SAA to suspect that classes of homes may be similarly affected; or
4. Review of manufacturer's records, corrective action, and consumer complaint records leads the administrator to suspect secondary or associated noncompliances may also exist in a class of homes.

1105.2.1. Coordination of inspections: When conducting an on-site inspection of a home involving a consumer complaint, the administrator may request the dealer, distributor, and manufacturer of the home to have a representative present to coordinate the inspection and investigation of the consumer complaint.

1105.3. Determination: After reviewing the complaint report or the on-site inspection of the home involved, the administrator shall, where possible, indicate the cause of any nonconformance and, where possible, indicate the responsibility of the manufacturer, dealer, distributor or owner for the noncompliance and any corrective action necessary.

1105.4. Referral: The administrator shall refer to the manufacturer of the home, in writing, any consumer complaint concerning that home reported to the administrator. The administrator may refer any such reported complaint to HUD, to the SAA in the state where the manufacturer is located and to the inspection agency involved with certifying the home.

[ 1105.4.1. Referral to the Virginia ] Department of Motor Vehicles [ *Manufacturing Housing Board* : When a review of the reported complaint or the on-site investigation of the complaint indicates a dealer or distributor is in violation of or has violated these regulations, the administrator shall refer the complaint to the ] DMV [ *Virginia Manufacturing Housing Board* and shall provide such assistance and reports as requested by ] DMV [ *Virginia Manufacturing Housing Board* in their handling of the complaint. ]

1105.5. Follow-up: The administrator shall assist the owner, dealer, distributor and manufacturer in resolving consumer complaints. The administrator shall monitor the manufacturer's performance to assure compliance with Subpart I of the federal regulations for consumer complaint handling and shall take such actions as are necessary to assure compliance of all involved parties with applicable state and federal regulations.

## ARTICLE 12. DEFINITIONS.

### SECTION 1200.0. DEFINITIONS.

1200.1. Definitions from Part One: Terms defined in Part One (Article 2) shall have the same meaning in Part Two, unless otherwise specifically indicated. Terms defined within the Federal Manufactured Home Construction and Safety Standards and the Federal Manufactured [ *Home Homes* ] Procedural and Enforcement Regulations, as adopted by the United States Department of Housing and Urban Development, shall have the same meanings in these regulations.

1200.2. Additional definitions:

"*Act*" or "*The Act*" means the National Manufactured

Housing Construction and Safety Standards Act of 1974, Title VI of the Housing and Community Development Act of 1974 (42 U.S.C. 5401, et seq.).

"Administrator" means the Director of the Department of Housing and Community Development or his designee.

"Dealer" means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

"Defect" means a failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part of the home unfit for the ordinary use of which it was intended, but does not result in an imminent risk of death or severe personal injury to occupants of the affected home.

"Distributor" means any person engaged in the sale and distribution of manufactured homes for resale.

"HUD" means the United States Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured home construction or safety standard.

"Label" or "certification label" means the approved form of certification by the manufacturer that, under Section 3282.362(c)(2)(i) of the Manufactured Homes Procedural and Enforcement Regulations, is permanently affixed to each transportable section of each manufactured home manufactured for sale to a purchaser in the United States.

"Manufactured home" means a structure subject to federal regulation which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

"Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes.

"Noncompliance" means a failure of a manufactured home to comply with a federal manufactured home construction or safety standard that does not constitute a defect, serious defect, or imminent safety hazard.

# Final Regulations

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*"Purchaser"* means the first person purchasing a manufactured home in good faith for purposes other than resale.

*"Secretary"* means the Secretary of the United States Department of Housing and Urban Development.

*"Serious defect"* means any failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home.

*"Standards"* or *"federal standards"* means the Federal Manufactured Home Construction and Safety Standards adopted by HUD, in accordance with authority in the Act. Said standards were enacted December 18, 1975, and amended May 11, 1976, to become effective June 15, 1976.

*"State administrative agency"* or *"SAA"* means the Department of Housing and Community Development which is responsible for the administration and enforcement of this law throughout Virginia and of the plan authorized by § 36-85.5 of the Code of Virginia.

## ARTICLE 13. SAFETY STANDARDS.

### SECTION 1300.0. FEDERAL STANDARDS.

1300.1. Compliance required: Manufactured homes produced on or after June 15, 1976, shall conform to all the requirements of the federal standards, as amended.

### SECTION 1301.0. MOUNTING AND ANCHORING.

1301.1. Reference to Uniform Statewide Building Code: Mounting and anchoring of manufactured homes shall be in accordance with the applicable requirements of the 1990 1993 Edition of the Virginia Uniform Statewide Building Code, *Volume I*.

## ARTICLE 14. VIOLATIONS.

### SECTION 1400.0. VIOLATIONS.

1400.1. Notice of violation: Where the administrator finds any violation of the provisions of these regulations, a notice of violation shall be issued. This notice of violation shall order the party responsible to bring the unit into compliance, within a reasonable time.

1400.2. Appeals to notice of violation: Parties aggrieved by the findings of the notice of violation may appeal to the State Building Code Technical Review Board, which shall act on the appeal in accordance with the provisions of the USBC - Volume I. The aggrieved party shall file the appeal within 10 days of the receipt of the notice of

violation. Unless, the notice of violation is revoked by the review board, the aggrieved party shall comply with the stipulations of the notice of violation.

1400.3. Penalty: Any person, firm or corporation violating any provisions of these regulations shall, upon conviction, be considered guilty of a misdemeanor in accordance with § 36-85.12 of the Code of Virginia.

## 1990 EDITION:

### VIRGINIA INDUSTRIALIZED BUILDING AND MANUFACTURED HOME SAFETY REGULATIONS: ADDENDA.

#### ADDENDUM 1: REQUIREMENTS FOR MOUNTING AND ANCHORING MOBILE UNITS AND MANUFACTURED HOMES.

The following requirements are from the 1990 Edition of the Virginia Uniform Statewide Building Code:

#### SECTION 620.0. MOBILE UNITS AND MANUFACTURED HOMES.

620.1. General: Mobile units, as defined in Section 201.0 shall be designed and constructed to be transported from one location to another and not mounted on a permanent foundation. Manufactured homes shall be designed and constructed to comply with the Federal Manufactured Housing Construction and Safety Standards and used with or without a permanent foundation.

620.2. Support and anchorage of mobile units: The manufacturer of each mobile unit shall provide with each unit specifications for the support and anchorage of the mobile unit. The manufacturer shall not be required to provide the support and anchorage equipment with the unit. Mobile units shall be supported and anchored according to the manufacturer's specifications. The anchorage shall be adequate to withstand wind forces and uplift as required in Article 11 for buildings and structures, based upon the size and weight of the mobile unit.

620.3. Support and anchorage of manufactured homes: The manufacturer of the home shall provide with each manufactured home printed instructions specifying the location, required capacity and other details of the stabilizing devices to be used with or without a permanent foundation (i.e., tie-downs, piers, blocking, footings, etc.) based upon the design of the manufactured homes. Manufactured homes shall be supported and anchored according to the manufacturer's printed instructions or supported and anchored by a system conforming to accepted engineering practices designed and engineered specifically for the manufactured home. Footings or foundations on which piers or other stabilizing devices are mounted shall be carried down to the established frost lines. The anchorage system shall be adequate to resist

# Final Regulations

wind forces, sliding and uplift as imposed by the design loads.

620.3.1. Hurricane zone: Manufactured homes installed or relocated in the hurricane zone shall be of hurricane and windstorm resistive design in accordance with Federal Manufactured Housing Construction and Safety Standards and shall be anchored according to the manufacturer's specifications for the hurricane zone.

The hurricane zone includes the following counties and cities located therein, contiguous thereto, or to the east thereof:

Accomack, King William, Richmond, Charles City, Lancaster, Surry, Essex, Mathews, Sussex, Gloucester, Middlesex, Southampton, Greensville, Northumberland, Westmoreland, Isle of Wight, Northampton, York, James City, New Kent, King & Queen, Prince George.

620.4. Used mobile/manufactured homes: When used manufactured homes or used mobile homes are being installed or relocated and the manufacturer's original installation instructions are not available, installations complying with the applicable portions of NCSBCS/ANSI A225.1 listed in Appendix A shall be accepted as meeting the USBC.

620.5. Skirting: Manufactured homes installed or relocated after July 1, 1990, shall have skirting installed within 60 days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of 18 inches in any dimension and not less than three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the USBC.

V.A.R. Doc. No. R94-465; Filed January 11, 1994, 11:14 a.m.

\* \* \* \* \*

Title of Regulation: VR 394-01-200. Virginia Private Activity Bond Regulations.

Statutory Authority: § 15.1-1399.15 of the Code of Virginia.

Effective Date: April 1, 1994.

Summary:

*The amendment will change the priority of year-end carryforward allocation.*

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 George W. Rickman, Jr., Department of Housing and Community Development, Jackson Street, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170. There may be a charge for copies.

VR 394-01-200. Virginia Private Activity Bond Regulations.

## PART I. DEFINITIONS.

### § 1.1. Definitions.

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

"Allocation" or "award" means the notice given by the Commonwealth to provide a project with a specified amount from the state ceiling for a specific issue of bonds.

"Carryforward purpose" means certain projects that are eligible to receive an allocation during a calendar year and issue the bonds from the allocation in a later year pursuant to § 146 of the Code.

"Code" means the Internal Revenue Code of 1986, as amended, together with the regulations and rulings issued pursuant thereto.

"Department" means the Virginia Department of Housing and Community Development.

"Exempt project" means a project requiring allocation from the state ceiling for financing of any of the following:

1. Sewage, solid waste, and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas;
2. Facilities for the furnishing of water (including irrigation systems);
3. Mass commuting facilities; and
4. Local district heating and cooling facilities.

"Governing body" means the board of supervisors of each county and the council of each city and of each town.

"Housing bonds" means multifamily housing bonds and single family housing bonds requiring allocation from the state ceiling.

# Final Regulations

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*"Industrial development bond"* means any obligation requiring allocation from the state ceiling for financing any of the following:

1. Manufacturing facility,
2. Exempt project.

*"Issued"* means that the private activity bonds have been issued within the meaning of § 103 of the Code.

*"Issuing authority"* means any political subdivision, governmental unit, authority, or other entity of the Commonwealth which is empowered to issue private activity bonds.

*"Local housing authority"* means any issuer of multifamily housing bonds or single family housing bonds, created and existing under the laws of the Commonwealth, excluding the Virginia Housing Development Authority.

*"Locality"* or *"localities"* means the individual and collective cities, towns and counties of the Commonwealth.

*"Manufacturing facility"* means any facility which is used in the manufacturing or production of tangible personal property, including the processing resulting in a change of condition of such property.

*"Multifamily housing bond"* means any obligation which constitutes an exempt facility bond under federal law for the financing of a qualified residential rental project within the meaning of § 142 of the Code.

*"Population"* means the most recent estimate of resident population for Virginia and the counties, cities, and towns published by the United States Bureau of the Census or the Center for Public Service of the University of Virginia before January 1 of each calendar year.

*"Private activity bond"* means a part or all of any bond (or other instrument) required to obtain an allocation from the Commonwealth's volume cap pursuant to § 146 of the Code in order to be tax exempt, including but not limited to the following:

1. Exempt project bonds;
2. Manufacturing facility bonds;
3. Industrial development bonds;
4. Multifamily housing bonds;
5. Single family housing bonds;
6. Student loan bonds; and
7. Any other bond eligible for a tax exemption as a private activity bond pursuant to § 141 of the Code.

*"Project"* means the facility (as described in the application) proposed to be financed, in whole or in part, by an issue of bonds.

*"Qualified mortgage bond"* means any obligation described as a qualified mortgage bond in § 143 of the Code.

*"Qualified redevelopment bond"* means any bond requiring an allocation from the state ceiling to be used for one or more redevelopment purposes in any designated blighted area in accordance with § 144(c) of the Code.

*"State allocation"* means the portion of the state ceiling set aside for projects of state issuing authorities and for projects of state or regional interest as determined by the Governor.

*"State ceiling"* means the amount of private activity bonds that the Commonwealth may issue in any calendar year under the provisions of the Code.

*"Student loan bond"* means an issue to finance student loans as defined in § 144(b) of the Code.

## PART II. ADMINISTRATION.

### § 2.1. Department of Housing and Community Development.

The department shall administer the private activity bond program in the Commonwealth. In administering the program, the department's activities shall include, but are not limited to, the following:

A. To determine the state ceiling on private activity bonds each year based on the federal per capita limitation on private activity bonds and the population.

B. To set aside the proper amount of the state ceiling on private activity bonds for each project type as specified in state legislation, Chapter 33.2 (§§ 15.1-1399.10 through 15.1-1399.17) of Title 15.1 of the Code of Virginia.

C. To receive and review project applications for private activity bond authority to be awarded from the portion of the state ceiling not distributed to the state allocation, the Virginia Housing Development Authority or the Virginia Education Loan Authority.

D. To allocate private activity bond authority to projects requesting bond authority from the portion of the state ceiling not distributed to the state allocation, the Virginia Housing Development Authority or the Virginia Education Loan Authority.

### § 2.2. State allocation.

Pursuant to [ Title 15.1, ] Chapter 33.2 [ ; (§ 15.1-1399.10 et seq.) of Title 15.1 ] of the Code of Virginia, a portion of

the annual state ceiling on private activity bonds will be reserved for allocations to projects of state issuing authorities and projects of state or regional interest as determined by the Governor. Requests for private activity bond authority from the state allocation may be made through direct correspondence with the Governor's office. The Governor may transfer any portion of the state allocation to the department for allocation in accordance with the provisions of these regulations.

#### § 2.3. Virginia Housing Development Authority.

A portion of the annual state ceiling on private activity bonds shall be allocated to the Virginia Housing Development Authority to be used to finance multifamily or single family residential projects, or both, pursuant to the restrictions provided by federal law. The Virginia Housing Development Authority shall develop project allocation criteria and housing bond authority carryforward procedures that will assure compliance with federal regulations.

#### § 2.4. Program dates.

The following is a listing of important application and allocation dates and deadlines concerning the portion of the state ceiling administered by the department:

##### January 1 - December 15

Specified amounts of the state ceiling are reserved for different project types in the Commonwealth by either state law or Governor's Executive Order in each calendar year. Allocations of private activity bond authority will be awarded - by the department - to projects in accordance with state law or Governor's Executive Order and these regulations. The set-aside for specified project types ends on December 15 of each calendar year; however, no allocation of private activity bond authority awarded for single family housing purposes or for multifamily housing purposes may be used after November 15.

##### November 15

Last day for the issuance of private activity bonds by a local housing authority for single family housing and multifamily housing.

##### November 1 - December 15

The \$10 million limitation on allocations from the state ceiling for exempt projects will be removed during this period of time to allow financing these projects in the calendar year the allocation is made.

##### December 1

Last day applications will be accepted for year-end carryforward purposes.

##### December 15

Last day for the issuance of private activity bonds for projects that received allocations from the state ceiling prior to this date; except for single family housing and multifamily housing projects, as provided above.

##### December 20 - 31

Allocations shall be made to year-end carryforward purposes in accordance with the priority system established by these regulations.

#### § 2.5. Weekend and holiday deadline dates.

If any deadline dates specified are on a weekend or a holiday, the deadline shall be moved to the next following regular state working day [ ; ] except where federal law precludes such extension.

#### § 2.6. State regulations to change as federal law determines eligibility.

If federal law terminates the eligibility or terminates and reauthorizes the eligibility for private activity bond financing for any "private activity bond" as defined in § 1.1 of these regulations, the effect shall be to exclude or include, as the case may be, that portion of the "private activity bond" from these regulations.

### PART III. ALLOCATIONS TO [ INDIVIDUALS INDIVIDUAL PROJECTS ] BY THE DEPARTMENT.

#### § 3.1. State private activity bond legislation.

Chapter 33.2 (§§ 15.1-1399.10 through 15.1-1399.17) of Title 15.1 of the Code of Virginia sets aside specified amounts of the Commonwealth's limited private activity bond issuing authority for different types of projects.

A portion of the private activity bond state ceiling is reserved each calendar year pursuant to §§ 15.1-1399.12 through 15.1-1399.14 of the Code of Virginia for the issuance of tax-exempt housing bonds. The primary purpose of providing a set-aside of private activity bond authority for these bonds is to increase the availability and affordability of housing opportunities in Virginia. Private activity housing bonds will be issued by local housing authorities and by the Virginia Housing Development Authority.

A portion of the private activity bond state ceiling is also reserved by state legislation to provide economic development in the Commonwealth and to provide facilities needed in the Commonwealth to improve public health, safety, and convenience. A separate amount of the state ceiling is reserved each year pursuant to §§ 15.1-1399.12 through 15.1-1399.14 of the Code of Virginia for manufacturing and exempt facility projects.

# Final Regulations

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A portion of the private activity bond state ceiling is reserved for the issuance of student loan bonds by the Virginia Education Loan Authority.

## § 3.2. Order in which allocations shall be awarded.

Bond allocations shall be made by the department in chronological order of receipt of complete applications (including documentation specified in § 5.3 of these regulations) until the bond authority reserved for the project type is completely allocated. Applications of projects that do not receive allocations will be maintained by the department during the year and allocations will be made to the projects in chronological order of receipt of applications as bond authority is returned to the department from projects that received allocation awards but were unable to issue bonds.

## § 3.3. Limitation on size of allocations.

All industrial development bond allocations awarded by the department prior to November 1 of each year shall be limited to \$10 million per project. There shall be no limitation on the size of allocations awarded for housing bond projects during a calendar year. If federal law terminates the eligibility of manufacturing facilities for private activity bond financing, exempt facility projects may receive allocations in excess of \$10 million prior to November 1 of each calendar year upon approval by the Board of Housing and Community Development.

## § 3.4. Effective period of allocations.

An allocation for each project, other than single family housing and multifamily housing projects, shall be effective 90 days after the allocation award date or until December 15, whichever is earlier. An allocation of private activity bond authority for single family housing and multifamily housing shall be effective for 90 days after the allocation award date or until November 15, whichever is earlier.

## § 3.5. Reapplying for a second allocation for the same project.

A project that receives an allocation and is unable to issue bonds within the effective period of the award may reapply for another allocation upon the expiration or return of the original allocation. The reapplication will be dated by the department as received on the date the reapplication request is submitted and no portion of the original allocation is outstanding. Each project shall be limited to two allocations during any calendar year. An exempt project that receives an allocation in excess of \$10 million prior to December 15 shall not be eligible to receive a carryforward purpose allocation at the end of the calendar year.

## PART IV. YEAR-END ALLOCATIONS TO CARRYFORWARD PURPOSES.

### § 4.1. Local housing authorities.

In order to allow the Commonwealth to effectively utilize all of its annual private activity bond capacity, any bond issuing authority remaining in the portion of the state ceiling reserved for local housing authorities after November 15 shall be transferred to the Virginia Housing Development Authority upon their written request after notification by the department on the amount of bond authority available. Any bond authority that remains with the department shall be allocated to other carryforward purposes.

### § 4.2. Virginia Housing Development Authority.

Any portion of the state ceiling reserved for the Virginia Housing Development Authority during the year that has not been issued by December 15 shall be retained by the Virginia Housing Development Authority to carryforward pursuant to the Code, or shall be transferred by the Virginia Housing Development Authority on December 15 to the department to be allocated to other carryforward purposes.

### § 4.2:1. Virginia Education Loan Authority.

Any portion of the state ceiling reserved for the Virginia Education Loan Authority during the year that has not been issued by December 15 may be retained by the Virginia Education Loan Authority for student loan bond carryforward purposes or transferred by the Virginia Education Loan Authority to the department to be allocated to other carryforward purposes.

### § 4.3. Department of Housing and Community Development.

Any bond issuing authority remaining after December 15 will be awarded beginning December 20 to applications (including all documentation specified in § 5.3 of this regulation) on file with the department before December 1 in the following priority order:

*I. Virginia Education Loan Authority up to \$25 million.*

*A. 2. Local government projects for the following exempt facilities:*

*1. a. Sewage, solid waste and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas;*

*2. b. Facilities for the furnishing of water, including irrigation facilities.*

*B. 3. Governmental bond projects in which the private use portion of the issue exceeds \$15 million.*

*C. 4. Public utility projects for the following facilities:*

# Final Regulations

4. a. Sewage, solid waste, and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas;

2. b. Facilities for the furnishing of water, including irrigation facilities.

D. 5. Private sector projects for the following facilities:

4. a. Sewage, solid waste, and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas.

2. b. Facilities for the furnishing of water, including irrigation facilities.

E. 6. All other eligible exempt projects, and qualified redevelopment bonds.

F. Student loan bonds.

G. 7. Virginia Housing Development Authority bonds.

## PART V. APPLICATION PROCEDURE.

### § 5.1. Project approval.

All projects must be approved by the governing body of the locality in which the project is to be located prior to submitting an application to the department for bond authority. Any local housing authority, after the approval of the local governing body, may file an application with the department to request an allocation of housing bond authority. A city or town manager or county administrator, after the approval of the local governing body, may file an application for bond authority with the department for any private activity bond project to be located within the jurisdiction of the requesting locality. Any state issuing authority, after the approval of the Governor, may file an application with the department for an industrial development bond project prior to December 15 or for a year-end carryforward purpose allocation prior to December 1.

### § 5.2. Where to apply.

Projects of state issuing authorities and projects of state or regional interest may request private activity bond authority from the state allocation through direct correspondence with the Governor's office. Housing projects to be financed by the Virginia Housing Development Authority shall request private activity bond authority from the state ceiling through direct correspondence with the Virginia Housing Development Authority. All other project allocations shall be submitted to the department.

### § 5.3. Application forms.

A. All projects seeking an allocation of private activity bond authority from the department must file an application. Application forms are available from the Department of Housing and Community Development, [Community Financial Assistance Office, 205 501 ] North [Fourth Second] Street, Richmond, Virginia 23219.

### A. B. The application forms to be used are as follows:

1. Local housing authorities seeking an allocation of bond authority for housing projects shall file Form HB.

2. Manufacturing and exempt facility projects, allocation requests for the private use portion of a governmental bond in excess of \$15 million, student loan bonds, and qualified redevelopment bonds shall file Form IDB.

### B. C. All applications and requests for private activity bond authority from the department shall be accompanied by the following documentation for each project:

1. Inducement resolutions or other preliminary approvals;

2. Documentation of the appropriate elected body's or official's approval of such projects;

3. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Code and that an allocation of bond issuing authority from the state ceiling is required;

4. A definite and binding financial commitment agreement from a buyer of the bonds or a firm commitment from a financial institution to provide a letter of credit for the project.

### § 5.4. When to apply.

Project applications may be submitted to the department during each calendar year at any time prior to December 15 of each year, except for single family housing and multifamily housing as provided in § 2.4 of these regulations. Applications for year-end allocations to carryforward purposes will be accepted by the department through December 1 of each calendar year.

## PART VI. REPORTING REQUIREMENTS FOR ALLOCATIONS BY DEPARTMENT.

### § 6.1. Reporting bond issuance.

For all private activity bonds issued in the Commonwealth from the portion of the state ceiling not allocated to the state allocation, the Virginia Housing Development Authority or the Virginia Education Loan Authority during any calendar year, a copy of the federal Internal Revenue Service (IRS) Form 8038 must be

# Final Regulations

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received by the department by 5 p.m. on the expiration date of the allocation award. Bond authority that has not been documented as having been issued by the filing of IRS Form 8038 with the department by this deadline will revert to the department for reallocation to other projects.

## § 6.2. When to file IRS Form 8038.

IRS 8038 forms shall not be filed with the department prior to the date of issuance of the bonds.

V.A.R. Doc. No. R94-461; Filed January 11, 1994, 11:16 a.m.

FORM IDB  
Page One

PROJECT INFORMATION SHEET  
REQUEST FOR INDUSTRIAL DEVELOPMENT BOND ALLOCATION

1. GENERAL INFORMATION

A. Issuing Authority \_\_\_\_\_

B. Name of Project \_\_\_\_\_

C. Use of Bond Proceeds

Manufacturing

Exempt Facility

Private use portion of Governmental Bond  
over \$15 million threshold

Student loan bond

Qualified redevelopment bond

2. DESCRIPTION OF THE PROJECT

A. General Description of the Project.

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FORM IDB  
Page Two

B. Location of Project (City, County or Town)

C. Name, address, phone number and tax ID number of each  
proposed borrower and developer.

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D. Name, address and phone number of bond counsel.

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E. Bond allocation requested \$\_\_\_\_\_

F. Projected closing date for issuance  
of the bonds \_\_\_\_\_

3. PROJECT INFORMATION

Number of jobs to be created (net) or retained \_\_\_\_\_

4. ATTACHMENTS

ALL FOUR ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM.

ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE  
BEEN RECEIVED.

A. Copy of inducement resolution or other preliminary  
approval.

B. Copy of Governing Body's formal approval of the  
project.

# Final Regulations

FORM IDB  
Page Three

- C. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Internal Revenue Code of 1986, as amended, and that an allocation of bond issuing authority from the state ceiling on private activity bonds is required.
  - D. A definite and binding financial commitment agreement from a bond purchaser(s) agreeing to purchase the bond(s), or a firm commitment from a financial institution to issue a letter of credit. The purchase agreement or letter of credit shall be for an amount equal to or greater than the amount of bond authority requested by this application.
5. CERTIFICATION

I hereby certify that the information filed herewith is accurate to the best of my knowledge.

Signature of City Manager, Town Manager or  
County Administrator \_\_\_\_\_

Date \_\_\_\_\_

FORM HB  
Page One

PROJECT INFORMATION SHEET  
REQUEST FOR HOUSING BOND ALLOCATION

1. GENERAL INFORMATION

- A. Issuing Authority \_\_\_\_\_  
B. Name of Project \_\_\_\_\_  
C. Type of Project

Single Family  Multifamily

Number of Units Number of Units

2. DESCRIPTION OF THE PROJECT

- A. General Description of the Project
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please check the appropriate response for the low income set aside requirement if the project is a multifamily rental project.

- 40 % of the units will be occupied by persons having incomes of 60% of area median income or less.  
 20% of the units will be occupied by persons having incomes of 50% of area median income or less.

FORM HB  
Page Two

B. Location of Project (City, County or Town) \_\_\_\_\_

C. Name, address, phone number and tax ID number of each proposed borrower and developer.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Name, address and phone number of bond counsel.

\_\_\_\_\_  
\_\_\_\_\_

E. Housing Bond allocation requested \$ \_\_\_\_\_

F. Projected closing date for issuance of the housing bonds \_\_\_\_\_

3. ATTACHMENTS

ALL FOUR ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM.  
ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE BEEN RECEIVED.

A. Copy of inducement resolution or other preliminary approval.

FORM HB  
Page Three

B. Copy of Governing Body's formal approval of the project.

C. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Internal Revenue Code of 1986, as amended, and that an allocation of bond issuing authority from the state ceiling on private activity bonds is required.

D. A definite and binding financial commitment agreement from a bond purchaser(s) agreeing to purchase the bond(s), or a firm commitment from a financial institution to issue a letter of credit for the project. The purchase agreement or letter of credit should be for an amount equal to or greater than the amount of bond authority requested by this application.

4. CERTIFICATION

I hereby certify that the information filed herewith is accurate to the best of my knowledge.

Signature of Chairman or Director of Issuing Authority

\_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

# Final Regulations

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## VIRGINIA MANUFACTURED HOUSING BOARD

**Title of Regulation:** VR 449-01-01. Public Participation Guidelines.

**Statutory Authority:** §§ 9-6.14:7.1 and 36-85.18 of the Code of Virginia.

**Effective Date:** April 1, 1994.

### Summary:

*The amendments provide for public petition of the Virginia Manufactured Housing Board to develop or amend a regulation and clarify under what conditions the board believes the use of advisory committees to be appropriate.*

**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 George W. Rickman, Jr., Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170. There may be a charge for copies.

VR 449-01-01. Public Participation Guidelines.

## 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 Manufactured Housing Board.

*"Department"* means Department of Housing and Community Development.

*"Guidelines"* means the regulations adopted by the Manufactured Housing Board for public participation in the formulation, promulgation and adoption of regulations.

*"Staff"* means employees of the Department of Housing and Community Development or Manufactured Housing Board.

### § 1.2. Application.

These guidelines apply to all regulations adopted by the board. They will be used whenever regulations are hereafter adopted, amended or deleted.

### § 1.3. Periodic review.

It is the intent of the board to conduct a periodic review of all regulations that have been adopted under

state law. Such reviews will be undertaken at appropriate intervals as needed to keep the regulations up-to-date. These guidelines will be used in the review process.

## PART II. PUBLIC PARTICIPATION.

### § 2.1. Mailing lists.

The department will maintain lists of individuals, businesses, associations, agencies, and public interest groups which have expressed an interest, or which could reasonably be expected to have an interest, in the board's regulations. The lists will be updated and expanded as new interested parties are identified. Deletions will be made when lack of interest is determined.

### § 2.2. Notification.

The lists will be used to notify and solicit input to the regulatory revision process from interested parties. Selected mailings will be made independently of notices in The Virginia Register of Regulations and of notices in newspapers. Advertising in department newsletters, in trade and professional publications, and in public interest group publications will be used when appropriate.

### § 2.3. Solicitation of input.

*The staff of the department will continually receive, retain and compile all suggestions for changes and improvements to the regulations. Any person may petition the board to request the board to develop a new regulation or amend an existing regulation. The board shall receive, consider, and respond to the petition within 180 days. In addition, a Notice of intent to adopt or amend regulations Intended Regulatory Action will be published in The Virginia Register of Regulations to solicit public input before drafting the proposals.*

### § 2.4. Regulatory review workshops.

Before adoption or revision of the regulations, the board may conduct one or more meetings for the general public to explain the review process and to solicit proposals for needed changes. At least [ thirty ] day's [ 30 ] days notice of such meetings will be published in The Virginia Register of Regulations and in a newspaper of general circulation published in the region in which the meeting is to be held, and in a newspaper of general circulation published in Richmond, Virginia. Press releases and other media will be used as needed. Selected interested persons and groups will be notified by mail.

### § 2.5. Preparation of preliminary draft.

The board will prepare a preliminary draft of proposed amendments to the regulations based on public input received and on the results of its own study of the regulations.

# Final Regulations

## § 2.6. Ad hoc committee review.

The board may intends to establish an standing or ad hoc advisory committee committees consisting of invited representatives of all groups believed to be affected by the regulations and the proposed amendments or individuals registering interest in working with the board. The board believes the use of standing or ad hoc committees to be appropriate when the subject matter is of an unusual technical nature or when the regulation has significant impact on a regulated community . The board will give consideration to recommendations received from the committee or committees , and will make appropriate revisions to the draft.

## § 2.7. Public hearings.

Prior to completion of a final draft, the board will convene at least one public hearing in accordance with the procedures required by the Administrative Process Act and the Virginia Register Act , except for those regulations which may be adopted without public comment pursuant to § 9.6-14.4.1 of the Code of Virginia .

## PART III. ACTION ON COMMENTS OF GOVERNOR AND LEGISLATURE.

### § 3.1. When Governor suspends process.

If the Governor suspends the regulatory process to require solicitation of additional public comment, the board will do so in the manner prescribed by the Governor. If no specific method is required, the board will employ one or more of the following procedures, as deemed necessary:

1. Consult with affected persons and groups.
2. Reconvene the ad hoc review committee for further consultation.
3. Advertise and conduct an additional public hearing under the procedures prescribed by the Administrative Process Act and the Virginia Register Act.

### § 3.2. Other legislative and executive comments.

If the Governor does not require solicitation of additional public comment, but does provide suggestions, or if further suggestions are received from the required legislative review during the [ thirty day 30-day ] final adoption period, the board will determine whether solicitation of additional public comments should be undertaken. If needed, one or more of the procedures described above may be used.

V.A.R. Doc. No. R94-460; Filed January 11, 1994, 11:17 a.m.

\* \* \* \* \*

Title of Regulation: VR 449-01-02. Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Statutory Authority: §§ 36-85.18 and 36-85.36 of the Code of Virginia.

Effective Date: April 1, 1994.

### Summary:

*The regulations provide for the licensing of manufactured housing dealers, brokers and salespeople being transferred to the Department of Housing and Community Development from the Department of Motor Vehicles and the additional requirement for licensing of manufacturers of the home. The regulations also include warranty requirements and provide additional consumer protection through the Transaction Recovery Fund being established.*

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 George W. Rickman, Jr., Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170. There may be a charge for copies.

VR 449-01-02. Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

## PART I. GENERAL.

### § 1.1. Definitions.

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

*"Board"* means the Virginia Manufactured Housing Board.

*"Buyer"* means the person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

*"Claimant"* means any person who has filed a verified claim under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36 of the Code of Virginia.

*"Code"* means the appropriate standards of the Virginia Uniform Statewide Building Code and the Industrialized Building and Manufactured Home Safety Regulations adopted by the Board of Housing and Community Development and administered by the Department of Housing and Community Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 for manufactured homes.

# Final Regulations

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**"Dealer/manufacturer sales agreement"** means a written contract or agreement between a manufactured housing manufacturer and a manufactured housing dealer whereby the dealer is granted the right to engage in the business of offering, selling, and servicing new manufactured homes of a particular line or make of the stated manufacturer of such line or make. The term shall include any severable part or parts of such sales agreement which separately provides for selling or servicing different lines or makes of the manufacturer.

**"Defect"** means any deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any failure of any structural element, utility system or the inclusion of a component part of the manufactured home which fails to comply with the Code.

**"Department"** means the Department of Housing and Community Development.

**"Director"** means the Director of the Department of Housing and Community Development, or his designee.

**"Fund"** or **"recovery fund"** means the Virginia Manufactured Housing Transaction Recovery Fund.

**"HUD"** means the United States Department of Housing and Urban Development.

**"Licensed"** means the regulant has met all applicable requirements of these regulations, paid all required fees, and been authorized by the board to manufacture or offer for sale or sell manufactured homes in accordance with these regulations.

**"Manufactured home"** means a structure constructed to federal standards, transportable in one or more sections, which, in the traveling mode is eight feet or more in width and is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

**"Manufactured home broker"** or **"broker"** means any person, partnership, association or corporation who, for compensation or valuable consideration, sells or offers for sale, buys or offers to buy, negotiates the purchase or sale or exchange, or leases or offers to lease used manufactured homes that are owned by a party other than the broker.

**"Manufactured home dealer"** or **"dealer"** means any person engaged in the business of buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in Virginia. Any person who buys, sells, or deals in three or more manufactured homes

in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

**"Manufactured home manufacturer"** or **"manufacturer"** means any persons, resident or nonresident, who manufacture or assemble manufactured homes for sale in Virginia.

**"Manufactured home salesperson"** or **"salesperson"** means any person who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a manufactured home dealer to sell or offer to sell; or to buy or offer to buy; or to negotiate the purchase, sale or exchange; or to lease or offer to lease new or used manufactured homes.

**"New manufactured home"** means any manufactured home which (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been previously occupied as a place of habitation, (iii) has not been previously used for commercial purposes such as offices or storage, and (iv) has not been titled by the Virginia Department of Motor Vehicles.

**"Person"** means any individual, natural person, firm, partnership, association, corporation, legal representative, or other recognized legal entity.

**"Regulant"** means any person, firm, corporation, association, partnership, joint venture, or any other legal entity required by Chapter 4.2 (§ 36-85.16 et seq.) of Title 36 of the Code of Virginia to be licensed by the board.

**"Regulations"** or **"these regulations"** means the Virginia Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

**"Relevant market area"** means the geographical area established in the dealer/manufacturer sales agreement and agreed to by both the dealer and the manufacturer in the agreement.

**"Responsible party"** means a manufacturer, dealer, or supplier of manufactured homes.

**"Set-up"** means the operations performed at the occupancy site which render a manufactured home fit for habitation. Such operations include, but are not limited to, transportation, positioning, blocking, leveling, supporting, anchoring, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the State Corporation Commission.

# Final Regulations

"Standards" means the Federal Manufactured Home Construction and Safety Standards adopted by the U. S. Department of Housing and Urban Development.

"Statement of Compliance" means the statement that the regulant licensed by the board will comply with the Manufactured Housing Licensing and Transaction Recovery Fund Law, the regulations and the orders of the board.

"Supplier" means the original producers of completed components, including refrigerators, stoves, water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, panelling, siding, trusses, and similar materials, which are furnished to a manufacturer or a dealer for installation in the manufactured home prior to sale to a buyer.

"Used manufactured home" means any manufactured home other than a new home as defined in this section.

"Warranty" means any written assurance of the manufacturer, dealer or supplier or any promise made by a regulant in connection with the sale of a manufactured home that becomes part of the basis of the sale. The term "warranty" pertains to the obligations of the regulant in relation to materials, workmanship, and fitness of a manufactured home for ordinary and reasonable use of the home for the term of the promise or assurance.

## PART II. LICENSES.

### Article 1. Manufacturers.

#### § 2.1. License required; annual renewal.

A. Each manufacturer located in or outside of the Commonwealth delivering in or shipping into the Commonwealth manufactured homes for sale, shall apply to the board for a license. The license shall be displayed at the place of business. The license shall be issued for a term of one year from the date of issuance.

B. Each licensed manufacturer shall apply for license renewal annually, by application and accompanied by the required fee. Applicants for license renewal shall meet all the criteria for original licensing. Upon failure to renew, the license shall automatically expire.

C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after

expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for the new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of these regulations were in compliance with the requirements of these regulations. Upon application and payment of the renewal fee and any penalty by a manufacturer, the board may renew an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a manufacturer in Virginia after expiration of the license or agrees to the conditions imposed by the board, and is otherwise eligible for a license under these regulations.

D. For licensing purposes, a manufacturer operating more than one manufacturing facility shall have each location treated as a separate entity and shall adhere to all requirements for manufacturer licensing at each location.

#### § 2.2. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department. All information required on the form shall be furnished by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by § 7.1 A 1.
2. Licensing fee required by § 2.19 A 1.
3. Copy of the manufacturer's homeowner and installation manual(s).
4. Statement of Compliance.

C. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by § 2.19 A 2.
2. If revised, a copy of the revised homeowner and installation manual(s).
3. Statement of Compliance.

#### § 2.3. Statement of Compliance.

The Statement of Compliance shall be signed by the person or responsible officer having full authority to commit his firm to the conditions of compliance and shall not be transferable. Violation of the Statement of Compliance is ground for suspension of the license.

### Article 2.

# Final Regulations

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Dealers.

## § 2.4. License required; annual renewal.

A. Any person buying or selling or offering or displaying manufactured homes for sale in Virginia and meeting the definition of a dealer in § 1.1 shall apply to the board for a license. The license shall be displayed to the public in the office of the business location. The license shall be issued for a term of one year from the date of issuance.

B. Each licensed dealer shall apply for license renewal annually, by application and accompanied by the required fee. Applicants for license renewal shall meet all the criteria for original licensing. Upon failure to renew, the license shall automatically expire.

C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for a new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of these regulations were in compliance with the requirements of these regulations. Upon application and payment of the renewal fee and any penalty by a dealer, the board may renew an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a dealer in Virginia after expiration of the license or agrees to the conditions imposed by the board, and is otherwise eligible for a license under these regulations.

D. For licensing purposes, a dealer operating more than one retail location shall have each location treated as a separate entity and shall adhere to all requirements for dealer licensing at each location.

E. Each dealer licensed under these regulations shall also obtain a certificate of dealer registration from the Virginia Department of Motor Vehicles. The certificate of registration shall be renewed annually and shall be maintained in effect with the Department of Motor Vehicles as long as the dealer is licensed under these regulations.

## § 2.5. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department. All information required on the form shall be furnished by the applicant for the

board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by § 7.1 A 2.
2. Licensing fee required by § 2.19 A 3.
3. Statement of Compliance.
4. Verification of a business office with all utilities, including a business telephone, and where the required business records are maintained.
5. Verification of a permanent business sign, in view of public traffic, bearing the name of the firm.
6. List of salespeople employed with the following biographical information for each:

Date of Birth

Sex

Weight

Height

Eye/hair color

7. Name of the owner, principal, manager, agent or other person designated as the holder of the dealer's license for the specific location and the names of other partners or principals in the dealership.

Photographs of the front of the business office and required sign may be considered as verification required by this subsection.

C. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by § 2.19 A 4.
2. Statement of Compliance.
3. Notification of any significant changes to the office or the business sign.
4. Updated list of salespeople employed.
5. Any changes of officers or directors of the company or corporation.
6. A copy of the dealer's current certificate of registration from the Department of Motor Vehicles.

D. Any change in the form of ownership of the dealer or any changes (deletions or additions) in the partners or

principals of the dealer shall be submitted to the board with an application and fee for a new license. If the new owner(s) assume the liabilities of the previous owner(s), then a new recovery fund assessment is not required. New recovery fund assessments shall be required when the new owner(s) do not assume the liabilities of the previous owner(s).

The board shall be notified immediately by the dealer of any change in the operating name of the dealer. The director shall endorse the change on the license without requiring an additional fee.

The board shall be notified immediately by the dealer of any change in the location of the dealer. The dealer shall pay a fee of \$50 for the change of location on the license, but shall not be required to pay an additional assessment to the recovery fund for the change of location only.

## § 2.6. Statement of Compliance.

The Statement of Compliance shall be signed by the person or responsible officer having full authority to commit the dealer to the conditions of compliance and shall not be transferable. Violation of the Statement of Compliance is ground for suspension of the license.

## § 2.7. Dealer responsibility for inspections; other items.

A. The dealer shall inspect every new manufactured home unit upon delivery from a manufacturer. If a dealer becomes aware of a noncompliance or an imminent safety hazard, as defined in Section 1200.2 of the Industrialized Building and Manufactured Home Safety Regulations, in a manufactured home, the dealer shall contact the manufacturer, provide full information concerning the problem, and request appropriate action by the manufacturer. No dealer shall sell a new manufactured home if he becomes aware that it contains a noncompliance or an imminent safety hazard.

B. The dealer shall inspect every new manufactured home unit prior to selling to determine that all items of furniture, appliances, fixtures and devices are not damaged and are in place and operable.

C. A dealer shall not alter or cause to be altered any manufactured home to which a HUD label has been affixed if such alteration or conversion causes the manufactured home to be in violation of the standards.

D. If the dealer provides for the installation of any manufactured home he sells, the dealer shall be responsible for making sure the installation of the home meets the manufacturer's installation requirements and the Code.

E. On each home sold by the dealer, the dealer shall collect the applicable title fees and title tax for the manufactured home and forward such fees and taxes to the Virginia Department of Motor Vehicles.

## Article 3. Brokers.

### § 2.8. License required; annual renewal.

A. Any person buying or selling, negotiating the purchase or sale or exchange of, or leasing used manufactured homes and meeting the definition of broker in § 1.1 shall apply to the board for a license. The license shall be displayed to the public in the office of the business location. The license shall be issued for a term of one year from the date of issuance.

B. Each licensed broker shall apply for license renewal annually, by application and accompanied by the required fee. Applicants for license renewal shall meet all the criteria for original licensing. Upon failure to renew, the license shall automatically expire.

C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for a new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of these regulations were in compliance with the requirements of these regulations. Upon application and payment of the renewal fee and any penalty by a broker, the board may review an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a broker in Virginia after expiration of the license or agrees to the conditions imposed by the board, and is otherwise eligible for a license under the regulations.

D. For licensing purposes, a broker operating more than one business location shall have each location treated as a separate entity and shall adhere to all requirements for broker licensing at each location.

E. Each broker licensed under these regulations shall also obtain a certificate of dealer registration from the Virginia Department of Motor Vehicles. The certificate of registration shall be renewed annually and shall be maintained in effect with the Department of Motor Vehicles as long as the broker is licensed under these regulations.

### § 2.9. Application for licensing; renewal.

A. Application for license or renewal shall be on forms

# Final Regulations

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supplied by the department. All information required on the form shall be furnished by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by § 7.1 A 3.

2. Licensing fee required by § 2.19 A 5.

3. Statement of Compliance.

4. Verification of a business office with all utilities, including a business telephone, and where the required business records are maintained.

5. Verification of a permanent business sign, in view of public traffic, bearing the name of the firm.

6. Name of the owner, principal, manager, agent or other person designated as the holder of the broker's license for the specific location and the names of the partners or principals in the broker's firm.

Photographs of the front of the business office and required sign may be considered as verification required by this subsection.

C. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by § 2.19 A 6.

2. Statement of Compliance.

3. Notification of any significant changes to the office or the business sign.

4. Any changes of officers or directors of the company or corporation.

5. A copy of the broker's current certificate of registration from the Department of Motor Vehicles.

D. Any change in the form of ownership of the broker or any changes (deletions or additions) in the partners or principals of the broker shall be submitted to the board with an application and fee for a new license. If the new owner(s) assume the liabilities of the previous owner(s), then a new recovery fund assessment is not required. New recovery fund assessments shall be required when the new owner(s) do not assume the liabilities of the previous owner(s).

The board shall be notified immediately by the broker of any change in the operating name of the broker. The director shall endorse the change on the license without requiring an additional fee.

The board shall be notified immediately by the broker of any change in location of the broker. The broker shall pay a fee of \$50 for the change of location on the license, but shall not be required to pay an additional assessment to the recovery fund for the change of location only.

## § 2.10. Statement of Compliance.

The Statement of Compliance shall be signed by the person or responsible officer having full authority to commit the broker to the conditions of compliance and shall not be transferable. Violation of the Statement of Compliance is ground for suspension of the license.

## § 2.11. Broker responsibility for inspections; other items.

A. The broker shall inspect every used manufactured home unit prior to completion of sale. No broker shall sell a used manufactured home, if he becomes aware that it contains an imminent safety hazard as defined in Section 1200.2 of the Industrialized Building and Manufactured Home Safety Regulations.

Exception: A broker may sell a used manufactured home in which he is aware of an imminent safety hazard if the buyer is advised of the imminent safety hazard in writing by the broker and is further advised that building permits may be required from the local building official for repair of the imminent safety hazard.

B. A broker shall not alter or cause to be altered any manufactured home to which a HUD label has been affixed if such alteration or conversion causes the manufactured home to be in violation of the standards.

C. If the broker provides for the installation of any manufactured home he sells, the broker shall be responsible for making sure the installation of the home meets the manufacturer's installation requirements and the Code.

D. On each home sold by the broker, the broker shall collect the applicable title tax and title fees for the manufactured home and forward such fees and taxes to the Virginia Department of Motor Vehicles.

## Article 4. Salespeople.

### § 2.12. License required; annual renewal.

A. Any person employed by a dealer, buying or selling or negotiating the purchase, sale or exchange of new or used manufactured homes and meeting the definition of a salesperson in § 1.1 shall apply to the board for a license. The salesperson's license shall be displayed in the dealer's office in public view. The license shall be issued for a term of one year from the date of issuance. A separate salesperson's license shall be required for each dealer location at which the salesperson works. A salesperson shall be allowed to engage in business as a licensed

salesperson after applying for a license, but prior to receiving the license back from the board.

B. Each licensed salesperson shall apply for license renewal annually, by application and accompanied by the required fee. Applicants for license renewal shall meet all criteria for original licensing. Upon failure to renew, the license shall automatically expire.

C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for a new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of these regulations were in compliance with the requirements of these regulations. Upon application and payment of the renewal fee and any penalty by a salesperson, the board may renew an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a salesperson in Virginia after expiration of the license and prior to application for renewal or agrees to the conditions imposed by the board, and is otherwise eligible for a license under these regulations.

#### § 2.13. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department. All information required on the form shall be supplied by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by § 7.1 A 4.
2. Licensing fee required by § 2.19 A 7.
3. Statement of Compliance.

C. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by § 2.19 A 8.

2. Statement of Compliance.

#### § 2.14. Termination of employment; notification to

department.

Whenever the salesperson's employment with a dealer is terminated, the salesperson shall immediately send his license to the department. The license shall be marked "Employment terminated on Date" with the date given that the salesperson stopped working for the dealer. The dealer also shall notify the department of the salesperson's termination of employment no later than the tenth day of the month following the month of termination.

#### Article 5. Special License.

##### § 2.15. Special license; applications; fees.

A. The board may approve applications from regulants for special licenses, not to exceed 10 days in duration, for a temporary place of business operated or proposed by the regulant. The temporary location shall not be contiguous to other premises for which a license is issued, except that contiguous locations may be licensed for dealer and manufacturer product shows.

B. The application for special licenses shall be submitted on forms supplied by the department. All information required with the application shall be furnished by the applicant for the board's review. Applications shall be submitted to the board at least 30 days prior to the requested effective date of the special license.

C. The application shall be accompanied by the required fee in § 2.19 B.

#### Article 6. Violations and Hearings.

##### § 2.16. Prohibited conduct; grounds for denying, suspending or revoking license.

A. The following acts by regulants are prohibited and may be considered by the board as grounds for action against the regulant:

1. Engaging in business as a manufactured home manufacturer, dealer or broker without first obtaining a license from the board.
2. Engaging in business as a manufactured home salesperson without first applying to the board for a license.
3. Making a material misstatement in an application for license.
4. Failing to pay a required assessment to the Transaction Recovery Fund.
5. Failing to comply with the warranty service obligations and claims procedures required by these regulations.

# Final Regulations

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6. *Failing to comply with the set-up and tie-down requirements of the Code.*
  7. *Knowingly failing or refusing to account for or pay over money or other valuables belonging to others which have come into the regulant's possession due to the sale of a manufactured home.*
  8. *Using unfair methods of competition or unfair or deceptive commercial acts or practices.*
  9. *Failing to comply with the advertising provisions in Part IV of these regulations.*
  10. *Defrauding any buyer to the buyer's damage, and any other person in the conduct of the regulant's business.*
  11. *Employing an unlicensed salesperson.*
  12. *Knowingly offering for sale a manufactured home produced by a manufacturer which is not licensed as a manufacturer under these regulations.*
  13. *Knowingly selling a manufactured home to a dealer who is not licensed as a dealer under these regulations.*
  14. *Failing to appear before the board upon due notice.*
  15. *Failing to comply with orders issued by the board pursuant to these regulations.*
  16. *Failing to renew a license and continuing to engage in business as a manufacturer, dealer, broker or salesperson after the expiration of any license.*
  17. *A salesperson selling, exchanging or offering to sell or exchange a manufactured home for any dealer or broker other than the licensed dealer employing the salesperson.*
  18. *A salesperson offering, transferring or assigning any negotiated sale or exchange of a manufactured home to another dealer, broker or salesperson.*
  19. *Failing to comply with the Statement of Compliance.*
  20. *Failing to notify the board of a change of location or address of the business office.*
  21. *Failing to comply with any provisions of these regulations.*
- B. *The board may deny, suspend, revoke or refuse to renew the license of a regulant because of, but not limited to, one or more of the following grounds:*
1. *Having had a license previously denied, revoked or suspended under these regulations.*
  2. *Having a license denied, suspended or revoked by a similar licensing entity in another state.*
  3. *Engaging in conduct in another state which would have been a violation of these regulations if the actions were committed in Virginia.*
  4. *Failing to obtain a required certification of registration from the Department of Motor Vehicles, failing to renew the annual certificate of registration, or having the certificate of registration suspended or revoked by the Department of Motor Vehicles.*

## § 2.17. Penalties; notice to regulant.

- A. *The board shall have the power to deny, suspend, revoke or refuse to renew the license of a regulant found to be engaging in prohibited conduct or otherwise failing to comply with these regulations or orders of the board.*
- B. *The board shall have the authority to levy assessments in addition to or instead of denying, suspending, revoking or refusing to renew a regulant's license. Such assessments shall include the following:*
  1. *Transaction Recovery Fund assessments of up to \$2,500 for each violation by a manufacturer.*
  2. *Transaction Recovery Fund assessments of up to \$2,500 for each violation by a dealer or broker.*
  3. *Transaction Recovery Fund assessments of up to \$2,500 for each violation by a salesperson.*

C. *The board shall notify the regulant, in writing, of any complaint directed against him. The notice shall include the time and place of a conference or hearing on the complaint. No penalties shall be imposed by the board until after the conference or hearing.*

## § 2.18. Conference; hearing; service of notice.

- A. *The board, or department acting on the board's behalf, shall send notice of the conference or hearing to the regulant at least 15 calendar days prior to the date of the conference or hearing. The notice shall be sent by certified mail to the address of the regulant, as shown on the license or other record of information in possession of the board.*
- B. *The conference or hearing shall be conducted by the board according to the applicable provision of the Administrative Process Act and shall be open to the public. The regulant or applicant shall have the right to be heard in person or by counsel, and to provide evidence and witnesses on his behalf.*
- C. *After the conference or hearing has been completed, if the board determines that the regulant or applicant has*

engaged in prohibited conduct, or is in violation of these regulations or orders of the board, or otherwise determines that it has grounds to impose any penalties under § 2.17, the board shall immediately notify the regulant or applicant in writing, by certified mail, of the action imposed by the board. The department shall be responsible for carrying out the board's decision. The department shall also notify the Department of Motor Vehicles of the suspension or revocation of any dealer's or broker's license under these regulations.

D. The decision of the board shall be final if no appeal is made. An appeal from the decision of the board may be filed with a court in accordance with the Administrative Process Act.

## Article 7. License Fees.

### § 2.19. Fee schedules.

A. The following fees are set by the board for annual licenses and renewals issued in accordance with these regulations.

1. The manufacturer's original license fee shall be \$600.
2. The manufacturer's renewal license fee shall be \$600.
3. The dealer's original license fee shall be \$500.
4. The dealer's renewal license fee shall be \$500.
5. The broker's original license fee shall be \$500.
6. The broker's renewal license fee shall be \$500.
7. The salesperson's original license fee shall be \$50.
8. The salesperson's renewal license fee shall be \$50.

The license fees listed in this subsection shall be paid by the applicant either in full at the time of application for licensure or one-half of the fee at the time of application and the remaining half of the fee six months after the date of issue of the license.

B. The following fees apply to special licenses issued by the board in accordance with Article 5 of this part of these regulations:

1. Manufacturer's special license fee shall be \$25.
2. Dealer's special license fee shall be \$25.
3. Broker's special license fee shall be \$25.
4. Salesperson's special license fee shall be \$10.

## PART III. DEALER/MANUFACTURER SALES AGREEMENTS.

### § 3.1. Filing of dealer/manufacturer sales agreements; contents.

A. Each licensed manufacturer shall file with the board a true copy of each new, amended, modified, or different form of dealer/manufacturer sales agreement to be offered to a dealer or prospective dealer in the Commonwealth prior to the date the sales agreement is offered. The department shall review the form for terms inconsistent with the requirements of these regulations. Any forms found to contain inconsistent terms shall be reported to the board for review and notification. The department shall notify the manufacturer of the inconsistent terms and its report to the board.

B. The sales agreement between the manufacturer and the dealer shall not include terms that are contrary to, prohibited by, or otherwise inconsistent with the requirements of these regulations.

C. The manufacturer shall include in any sales agreement with a dealer the following language or words to that effect:

"If any provision herein contravenes the laws or regulations of Virginia, or denies access to the procedures, hearings, or remedies provided by the laws or regulations of Virginia, such provision shall be deemed to be modified to conform to those laws and regulations, and all other terms and provisions of the agreement shall remain in full force."

### § 3.2. Coercion of dealer by manufacturer prohibited.

A. A manufacturer shall not coerce or attempt to coerce any dealer or prospective dealer to sell, assign, or transfer any sales contract obtained by the dealer for any manufactured home produced by the manufacturer, to a specified finance company, or class of finance companies or to any other specified persons by any of the following:

1. By any statement, suggestion, promise or threat that the manufacturer will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is express or implied or made directly or indirectly.
2. By any act that will benefit or injure the dealer.
3. By any contract, or any express or implied offer of contract, made directly or indirectly to the dealer, for handling the manufactured home on the condition that the dealer sell, assign, or transfer his sales contract on the manufactured home to a specified [ finance company ] company or class of finance companies or to any other specified persons.
4. By any express or implied statement or

# Final Regulations

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*representation made directly or indirectly that the dealer is under any obligation to sell, assign, or transfer any of his sales contracts because of any relationship or affiliation between the manufacturer and the finance company or persons.*

*B. A manufacturer shall not coerce or attempt to coerce any dealer to accept delivery of any manufactured home or homes, parts or accessories which have not been ordered by the dealer.*

*C. A manufacturer shall not coerce or attempt to coerce any dealer to enter into an agreement with the manufacturer, or do any other act unfair to the dealer, by threatening to cancel any sales agreement existing between the manufacturer and the dealer.*

*D. A manufacturer shall not coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising association.*

*E. A manufacturer shall not require or otherwise coerce a dealer to underutilize a dealer's facilities.*

**§ 3.3. Grant, transfer, succession to and cancellation of dealer/manufacturer sales agreements: delivery of homes, parts, accessories.**

*A. Prior to granting an additional dealer/manufacturer sales agreement for a particular line of manufactured home in a relevant market area in which a dealer or dealers are already located, a manufacturer shall notify, in writing, all other dealers in the line of homes in that relevant market area. Any dealer in the same line of homes in the relevant marketing area may request a conference or hearing before the board within 30 days of receipt of the manufacturer's notice of intention to establish the additional dealer/manufacturer sales agreement. The additional sales agreement may be established at the proposed site if, after the conference or hearing, the board determines that there is reasonable evidence that after the grant of the new sales agreement, the market will support all of the dealers in that line of homes in the relevant market area. Establishing a dealer/manufacturer sales agreement in a relevant market area to replace a dealer that has ceased operation shall constitute the establishment of a new dealer/manufacturer sales agreement subject to the terms of this section.*

**EXCEPTIONS:**

*1. The relocation of an existing dealer within that dealer's relevant market area if the relocation site is to be more than 25 miles from any other dealer in the same line of homes.*

*2. The relocation of an existing dealer within that dealer's relevant market area if the relocation site will be further away from all other dealers of the same line of homes in that relevant market area than the relocating dealer's current site.*

*3. The relocation of an existing dealer within two miles of that dealer's current site.*

*B. A dealer shall give written notice to the manufacturer at least 90 days prior to the sale, assignment, or transfer of the dealer/manufacturer sales agreement. The notice shall include the identity, financial ability, and qualifications of the proposed transferee. The sale or transfer of the sales agreement or business shall not involve a relocation of the sales agreement without the manufacturer's consent. The manufacturer shall not prevent or refuse to approve the sale or transfer of the ownership of a dealer by the sale of the business, stock transfer, or otherwise, or the sale, transfer, or assignment of a dealer/manufacturer sales agreement or a change in the executive management or principal operator of the dealership, unless the manufacturer provides written notice to the dealer of its objections and the reasons therefor at least 30 days prior to the proposed effective date of the sale, transfer, assignment, or change. The dealer shall have 30 days from receipt of the manufacturer's objection to file a written request for a conference or hearing by the board. At the conference or hearing, the manufacturer and the dealer shall be allowed to present their reasons for and objections to the sale or transfer. The board shall determine whether the manufacturer's objection to the sale, assignment, transfer or change of the dealership is reasonable or unreasonable. The sale, transfer, assignment or change of the dealer/manufacturer sales agreement shall be allowed if the board determines the objection is unreasonable.*

*C. A dealer shall be allowed to designate a member of his family as a successor to the dealer/manufacturer sales agreement in the event of the death or incapacity of the dealer by providing written notice to the manufacturer of the identity, financial ability, and qualifications of the member of the family designated as successor. The manufacturer shall have the right to prevent or refuse to honor the succession to the sales agreement by notifying the family member in writing of its objections and of the person's right to request a conference or hearing on the matter before the board. The dealer shall have 30 days from receipt of the manufacturer's notice to file a written request to the board for a conference or hearing. At the conference or hearing, the dealer and manufacturer shall be allowed to present their reasons for and objections to the succession. The board shall determine if the manufacturer's objection to the succession is reasonable. The designated succession shall be allowed if the board determines the manufacturer's objection is unreasonable.*

*D. A dealer/manufacturer sales agreement may be cancelled or terminated at any time by mutual consent.*

*E. A manufacturer may terminate, cancel, or refuse to renew the sales agreement of a dealer with good cause. At least 60 days prior to the effective date of such termination, cancellation, or the expiration date of the sales agreement the manufacturer shall give written notice of his intentions to the dealer and the board, setting forth*

*the specific grounds for the action. Within the 60-day period, the dealer may request, in writing, a conference or hearing before the board to determine if there is good cause for the termination, cancellation, or nonrenewal of the sales agreement. When the dealer has requested a board conference or hearing, the sales agreement in question shall continue in effect until the board issues a finding of good cause for the action.*

*If a manufacturer neither advises a dealer that it does not intend to renew a sales agreement nor takes any action to renew a sales agreement beyond its expiration date, the sales agreement in question shall continue in effect on the terms last agreed to by the parties.*

*A manufacturer may provide written notice of termination, cancellation or nonrenewal to a dealer not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal when the grounds for such action are any of the following:*

- 1. Insolvency of the dealer or filing of any petition by or against the dealer, under any bankruptcy or receivership law, leading to liquidation or which is intended to lead to liquidation of the dealer's business.*
- 2. Failure of the dealer to conduct its customary sales and service operations during its established business hours for 10 consecutive business days, except where the failure results from acts of God or circumstances beyond the direct control of the dealer.*
- 3. Revocation of any license which the dealer is required to have to operate a dealership.*
- 4. Conviction of the dealer or any principal of the dealer of a felony, during the term of the sales agreement.*

*F. The change or discontinuance of a marketing or distribution system of a particular line of manufactured homes by a manufacturer, while the name identification of the home is continued in substantial form by the same or different manufacturer, may be considered to be a sales agreement termination, cancellation, or nonrenewal. A manufacturer shall provide continued parts and service support to a dealer for a discontinued line of homes for at least five years from the date of such discontinuance.*

#### *§ 3.4. Dealer/manufacturer sales agreement warranties.*

*Any warranty agreements or contracts included in the sales agreement shall comply with the warranty and service requirements of Part V of these regulations.*

#### *§ 3.5. Operation of dealership by manufacturer.*

*A manufacturer shall not own, operate or control a dealership in the Commonwealth except under the following conditions:*

- 1. A manufacturer may operate a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another;*
- 2. A manufacturer may own or control a dealership while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership; or*
- 3. A manufacturer may own, operate, or control a dealership if the board determines, after a conference or hearing at the request of any party, that there is no dealer independent of the manufacturer available in the relevant market area to own and operate the dealer/manufacturer sales agreement in a manner consistent with the public interest.*

#### *§ 3.6. Conferences, hearings and other remedies.*

*A. In every case of a conference or hearing before the board authorized by this part of the regulations, the board shall give reasonable notice of each conference or hearing to all interested parties. The board's decision shall be binding on the parties, subject to the rights of judicial review and appeal.*

*Conferences or hearings before the board under this part shall commence within 90 days of the request for the conference or hearing. The board's decision shall be rendered within 60 days from the conclusion of the conference or hearing.*

*B. The board shall initiate investigations, conduct conferences or hearings, and determine the rights of parties under this part whenever they are provided sufficient information indicating a possible violation of this part or these regulations.*

*C. For purposes of any matter brought to the board under § 3.3 in which the board is to determine whether there is good cause for a proposed action or whether it would be unreasonable under the circumstances, the board shall consider:*

- 1. The volume of the affected dealer's business in the relevant market area;*
- 2. The nature and extent of the dealer's investment in its business;*
- 3. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;*
- 4. The effect of the proposed action on the community;*
- 5. The extent and quality of the dealer's service under warranties in Part V of these regulations.*
- 6. The dealer's performance under the terms of its dealer/manufacturer sales agreement;*

# Final Regulations

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7. Other economic and geographical factors reasonably associated with the proposed action; and

8. The recommendations, if any, of the department personnel requested to investigate the matter.

## PART IV. ADVERTISING.

### § 4.1. Prohibited practices.

For the purposes of this part and these regulations, the following regulated advertising practices by manufacturers, dealers, brokers, or salespersons are prohibited and shall be considered by the board to be unfair methods of competition or unfair or deceptive commercial acts or practices:

1. Advertising a manufactured home as a "new manufactured home" when the home does not meet all of the requirements for the definition of a new manufactured home in § 1.1.

2. Advertising a used manufactured home by misleading or confusing terms rather than "used" or such other term that is clearly understood to mean that the home is used. Once a title has been issued to a purchaser by the Department of Motor Vehicles, the home is considered as a used home and must be advertised as such.

3. Advertising finance charges or other interest rates when there are costs to buy down the charges or rates which are passed on to the buyer, in whole or in part.

4. Advertising terms, conditions and disclosures which are not stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information, but the disclaimer shall not contradict or change the meaning of the advertised statement.

5. Advertising a "sale" when the expiration date is not clearly and conspicuously stated.

6. Advertising "list price" in terms other than the manufacturer's suggested retail price for the new home or the dealer's own usual and customary price for the home, whichever is applicable.

7. Advertising which uses terms such as "at cost," "below cost," "dollars off cost" and "direct from manufacturer." Terms such as "invoice price" or "dollars over invoice" may be used, provided the invoice referred to is the manufacturer's factory invoice which is available for customer inspection upon request.

8. Advertising specific price or credit terms when the manufactured home is not clearly identified as to year

and model.

9. Advertising a policy to match or better a competitor's price when the terms of the offer are not specific, verifiable and reasonable. Any such advertisement shall fully disclose, as a part of the ad, any material or significant conditions which must be met or the evidence the buyer must present to take advantage of the offer.

10. Advertising which includes "dealer rebates" or "manufacturer's rebate."

11. Advertising any "free" or "at no cost" (or other words to that effect) offers of equipment or accessories in a negotiated sale. No equipment or accessory shall be described as "free" or "at cost" if its cost or any part of its cost is included in the price of the home, or if the home can be purchased for a lesser price without accepting the free offer, or if a purchase is required in order to receive the free offer.

12. Advertising which is determined to be "bait advertising" such as advertising homes, equipment, accessories or prices which are not available at the dealer, or advertising homes of a specific price but having available for sale only homes equipped with dealer added cost options which increase the selling price above the advertised price. If any home is available only by order, then that shall be clearly and conspicuously disclosed in the advertisement.

13. Advertising as "repossessed" any manufactured home which has not been previously sold, titled and then taken back from the buyer. Proof of repossession shall be provided by the advertiser upon request.

14. Advertising special dealer arrangements such as "big volume buying power," "manufacturer's outlet," "factory authorized outlet" and "factory wholesale outlet." Any term that gives the buyer the impression the dealer has a special arrangement with the manufacturer compared to similarly situated dealers is misleading and shall be prohibited.

15. Advertising the length of a manufactured home as including the towing assembly or hitch.

16. Advertising in any newspaper, periodical or sign which omits the name of the firm from the advertisement.

### § 4.2. Records retention.

Advertisers shall maintain a copy of all media advertising for a period of not less than 60 days after the expiration date of the advertisement. For the purposes of this section, the expiration date of the advertisement shall be the last date the advertisement runs or the expiration date of the advertised sale, whichever is later.

### § 4.3. Violations; penalties.

A. The first violation of any regulated advertising practice may, at the discretion of the board, be addressed by a written warning to the regulant, advising the regulant of the prohibited conduct and the possible actions by the board if such conduct is continued or repeated.

B. Any violation of regulated advertising practices in this part may be considered as prohibited conduct under § 2.16 of these regulations and subject to the board's actions contained therein.

### § 4.4. Conferences or hearings.

Conferences or hearings on any complaint or notice of violation of advertising practices contained in this part shall be conducted according to the procedures established in § 2.18 of these regulations.

## PART V. WARRANTY, SERVICE AND ALTERATIONS.

### § 5.1. Warranties; provisions.

A. Each manufacturer located in or outside of the Commonwealth delivering in or shipping into the Commonwealth manufactured homes for sale shall issue with each new home a warranty to the buyer, in writing, setting forth the following terms:

1. That all structural elements; plumbing systems; heating, cooling (if any), and fuel burning systems; electrical systems; and any other components included by the manufacturer are manufactured and installed free from defect.

2. That the manufacturer shall take appropriate corrective action at the site of the manufactured home, except for components which can be removed for service without undue inconvenience to the buyer, in instances of defects which become evident after the date of delivery of the home to the buyer, provided the buyer gives notice of the defects to the manufacturer at the manufacturer's business address.

3. That the manufacturer shall take such actions deemed necessary as ordered by the board under these regulations.

B. Each dealer shall issue with each manufactured home a warranty to the buyer, in writing, setting forth the following terms:

1. That any modifications or alterations made to the home by the dealer or authorized by the dealer are free from defects. Alterations or modifications made by the dealer, without written permission of the manufacturer, shall relieve the manufacturer of the warranty requirements of subsection A of this section

for the item altered or modified and any damage resulting from the alteration or modification.

2. That set-up operations performed by the dealer or by persons under contract to the dealer on the manufactured home are completed in compliance with the applicable Code requirements for the installation of manufactured homes.

3. That during the course of transportation and set-up operations performed by the dealer or by persons under contract to the dealer, defects do not occur to the manufactured home.

4. That the dealer shall take appropriate corrective action at the site of the manufactured home, except for components which can be removed for service without undue inconvenience to the buyer, if such defects become evident after the date of delivery of the home to the buyer, provided the buyer gives notice of the defects to the dealer at the dealer's place of business.

5. That the dealer shall take such actions deemed necessary as ordered by the board under these regulations.

C. Any warranties generally offered by suppliers in the ordinary sale of their products to consumers shall be extended to buyers of manufactured homes. The warranty by the manufacturer of the home shall remain in effect notwithstanding the existence of the suppliers' warranty.

D. The regulant's warranty shall be in addition to, and not in detraction of, all other rights and privileges which the buyer may have under any other law or regulation. The regulant shall not require the buyer to waive his rights under this part and any such waiver shall be deemed contrary to public policy and shall be unenforceable and void.

### § 5.2. Duration of warranties.

All warranties provided by regulants as required by § 5.1 shall be for a period of not less than 12 months, measured from the date of delivery of the home to the buyer. The date of delivery shall be the date on which all terms or conditions of the sales contract agreed to or required of the regulant have been completed.

### § 5.3. Presenting warranty claims.

To invoke a regulant's warranty under § 5.1, the buyer shall notify the regulant within a reasonable time after discovering the defect and not later than 90 days after the expiration of the stated term of the warranty. The regulant shall make a record of the name and address of each claimant and the date, substance, and disposition of each claim about the defect. The regulant may request that a warranty claim be made in writing; however, the regulant shall record any claim received as noted above

# Final Regulations

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and shall not delay service pending receipt of the written claim.

## § 5.4. Service agreements; determination of responsible party.

A. If a service agreement exists between or among the manufacturer, the dealer, and the supplier to provide warranty services on a manufactured home, the service agreement shall specify which of the regulants shall be the responsible party for remedying defects reported in the home. All service agreements shall be in writing. No service agreement shall relieve a regulant, determined by the board to be the responsible party for remedying the defect, of the responsibility for performing warranty service; however, any regulant accepting the responsibility to perform the warranty service obligations of other regulants under the service agreement shall be responsible to both the buyer and the other regulant to perform adequate warranty service.

B. If there is no warranty or service agreement between or among the regulants, the board shall have the authority to designate the responsible party for each defect given in the claim. The board may use reports and recommendations from the department staff investigating consumer complaints under the applicable provisions of the Code or may request staff to make a specific on-site inspection to determine the responsible party for remedying the defect.

C. If a warranty claim is made to a regulant that is not the responsible party for remedying the defect, that regulant shall immediately notify the claimant, in writing of that fact, and shall also notify, in writing, the regulant that is the responsible party for the defect, forwarding to the responsible party all available information about the claimant and the substance of the warranty claim.

D. If a defect is the responsibility of more than one regulant, each regulant shall be deemed to be a responsible party for the defect. A responsible party shall not fail to remedy defects because other regulants may also have joint responsibility for the defect or defects; however, nothing in these regulations shall prevent a responsible party from obtaining compensation by way of contribution or subrogation from another responsible party in accordance with any other provision of law or contracts between the regulants.

E. If a regulant corrects a defect under a warranty claim and the board determines that the regulant is not the responsible party, then that regulant shall be entitled to reasonable compensation for the warranty service performed. The compensation shall be from the responsible party for the defect.

F. It shall be a violation of this part for a regulant to coerce or require a nonresponsible party to perform warranty service under these regulations. Any regulant or responsible party may file a complaint to the board if

warranty service obligations under these regulations are not being completed or enforced.

## § 5.5. Warranty service; time limits; rejection of claim.

A. Any defect which is determined to be an imminent safety hazard as defined in Section 1200.2 of the Industrialized Building and Manufactured Home Safety Regulations to life and health shall be remedied within three days of receipt of the written notice of the warranty claim. Defects which may be considered as imminent safety hazards to life and health include, but are not limited to, any of the following:

1. Inadequate heating in freezing weather.
2. Failure of sanitary facilities.
3. Electrical shock hazards.
4. Leaking gas.
5. Major structural failure.

The board may suspend this three-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural disasters.

B. All other defects shall be remedied within 45 days of receipt of the written notice of the warranty claim unless a bona fide reason exists for not remedying the defect within the time period. If the responsible party has a bona fide reason for not meeting the 45-day time period, he shall respond to the claimant in writing, with a copy to the board, explaining the reason or reasons and stating what further action is contemplated regarding the warranty service.

C. Department staff handling consumer complaints under the Code shall also review the complaints for warranty service obligations under this part, and shall make initial determinations of defects and imminent safety hazards to life and health as defined by the Code. Any disagreements between department staff and regulants or responsible parties regarding these determinations shall be resolved by the board. If a regulant or responsible party disputes the determination of an imminent safety hazard to life or health by the staff and asks for a ruling by the board, the three-day time period for remedying the hazard shall not be enforced unless the board agrees to the determination. If the board determines that the defect is an imminent safety hazard, it shall immediately notify the responsible party of the determination. The responsible party shall have three days from receipt of this notice to remedy the hazard.

D. Within the time limits specified in subsections A and B of this section, the responsible party shall either resolve the claim or determine that it is not justified. Whenever a regulant determines that a claim for warranty service is not justified, in whole or in part, he shall immediately

notify the claimant in writing that the claim or a part of the claim is rejected. This notice shall explain to the claimant why the claim or specific parts of the claim are rejected and that the claimant is entitled to complain or file an appeal to the board. The notice shall provide the claimant with the complete address of the board.

## § 5.6. Records; available to board.

The board or the board's representative shall be authorized to inspect the pertinent service records of a manufacturer, dealer, supplier, or broker relating to a written warranty claim or complaint made to the board regarding that manufacturer, dealer, supplier, or broker. Such inspection shall be allowed by the regulant during reasonable business hours. Upon request by the board, every regulant shall send to the board within 10 days a true copy of any and all documents or records pertinent to the claim for service or complaint.

## § 5.7. Alterations; by dealer; by owner.

A. Unless authorized by these regulations or by the manufacturer, a dealer shall not make any alterations or modifications to a manufactured home after shipment from the manufacturer's facility. If a dealer performs an unauthorized alteration or modification in or to a manufactured home, the dealer then shall bear primary warranty responsibility for the altered or modified item(s). If the manufacturer remedies or is required by the board to remedy any warranty claim on the altered or modified item(s), then that manufacturer shall be entitled to recover damages in the amount of his costs, including attorney's fees, from the dealer responsible for the alteration or modification.

B. Unless authorized by the manufacturer, the owner or person(s) working for the owner shall not make alterations or modifications to a manufactured home after shipment from the manufacturer's facility. Any unauthorized alteration or modification made by the owner or person(s) working for the owner shall relieve the manufacturer of the responsibility to remedy any defects caused by such alteration or modification. All manufacturers shall display clearly and conspicuously on the face of their warranty to the buyer a statement explaining that the owner shall be responsible for remedying any defects caused by unauthorized alterations or modifications done by the owner or person(s) working for the owner. The statement shall also include a warning specifying any alterations or modifications which should be performed only by qualified personnel in order to preserve their warranty protection.

## § 5.8. Qualifications of personnel performing alterations.

All persons responsible for performing alterations under this part shall be deemed "qualified personnel" only when approved or certified by the manufacturer of the home.

## PART VI. MISCELLANEOUS PROVISIONS.

## § 6.1. Set-up requirements; effect on insurance policies.

A. Manufactured homes shall be set-up in accordance with the Code.

B. In the event that a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage of a nature that indicated the home was not set-up in the manner required by this section, the insurer issuing the home owner's insurance policy on the home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the manufactured home was not properly set up.

## § 6.2. Limitation on damages retained by dealer; disclosure to buyer.

A. If a buyer fails to accept delivery of a manufactured home, the dealer may retain actual damages according to the following terms:

1. If the manufactured home is in the dealer's stock and is not specially ordered from the manufacturer for the buyer, the maximum retention shall be \$500.
2. If the manufactured home is a single section unit and is specially ordered from the manufacturer for the buyer, the maximum retention shall be \$1,000.
3. If the manufactured home is a multi-section home (two or more sections) and is specially ordered from the manufacturer for the buyer, the maximum retention shall be \$5,000.

B. A dealer shall provide a written disclosure to the buyer at the time of the sale of a manufactured home alerting the buyer to the actual damages that may be assessed of the buyer by the dealer, as listed in subsection A of this section, for failure to take delivery of the manufactured home as purchased.

## § 6.3. Other remedies not excluded.

Nothing in these regulations, nor any decision by the board, shall limit any right or remedy available to the buyer through common law or under any other statute.

## PART VII. TRANSACTION RECOVERY FUND.

## § 7.1. Recovery fund established; assessments.

A. In accordance with § 36-85.31 of the Code of Virginia, the board shall establish a Manufactured Housing Transaction Recovery Fund. Any manufacturer, dealer, broker or salesperson licensed by the board under these regulations to operate in the Commonwealth of Virginia shall pay an initial assessment fee of the following amount into the fund:

# Final Regulations

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1. Manufacturer - \$4,000 for each separate manufacturing facility payable in one installment or \$4,400 payable at \$2,200 per year with the second payment due one year after initial licensing.

2. Dealer - \$500 per retail location.

3. Broker - \$500 per sales office.

4. Salesperson - \$50 per individual.

B. After the initial assessments have been paid, the board shall review the balance in the fund. In accordance with § 36-85.31 of the Code of Virginia, the minimum balance of the fund shall be \$250,000. If the initial assessments fail to achieve this minimum balance, or if future payments from the fund deplete the fund below this minimum balance, the board shall set and collect reassessment fees to achieve and maintain this minimum balance. Before setting any reassessments, the board shall notify all regulants at least 30 days prior to any meeting to set reassessment fees, advising the regulants of the purpose of the meeting and the regulants' opportunity to provide comments and suggestions prior to and at the meeting. Failure to pay any reassessment fees assessed by the board shall result in suspension of the regulant's license until such time as the regulant pays the reassessment fee.

C. All initial assessments and reassessments collected by the board under these regulations shall be deposited in an interest earning, special fund account by the State Treasurer in accordance with § 36-85.31 of the Code of Virginia. The board shall make appropriations from the fund in accordance with the express purposes set forth in Chapter 4.2 (§ 36-85.16 et seq.) of Title 36 of the Code of Virginia and these regulations. Interest earned on the deposits of the fund shall accrue to the fund or may be used by the board to provide educational programs about manufactured homes to consumers.

## § 7.2. Filing claims; investigations; conference or hearing on claim.

A. Any buyer of a manufactured home who suffers any loss or damage by an act of a regulant that constitutes a violation of this law or these regulations shall have the right to file a claim for recovery from the fund. The department shall provide forms for filing claims. As a minimum, the following information shall be furnished with the claim:

1. The names and addresses of the regulants involved in the claim.

2. The identification of the home including the serial number, HUD label number(s), and model designations.

3. A complete explanation of the issues or actions which constitute the basis for the claim, along with

copies of pertinent documents.

4. The name, address and telephone number of the claimant and the location of the home if different from the claimant's address.

B. Upon receipt of a claim, the board shall review the claim and may conduct, or cause to be conducted, an on-site inspection of the home. All regulants involved in a claim shall be notified of any on-site inspections by the board or the department under these regulations and shall be requested to have a representative present during the inspection. The person(s) conducting the inspection for the board or the department shall prepare a written report of the findings of the inspection, citing any defects or violations of the Code or these regulations with a reference to the specific section of the Code or regulation which serves as the basis for the violation, and identifying the regulant responsible for the defect or violation. Copies of this report shall be provided to the regulants, the claimant, and the board.

C. The board shall hold a conference or hearing on a claim for damages. The board, or the department acting on the board's behalf, shall send written notice of the conference or hearing to all involved regulants, stating the purpose of the conference or hearing and the time and place of the conference or hearing. The notice shall be sent to the regulant(s) at least 15 calendar days prior to the date of the conference or hearing. The notice shall be sent by certified mail to the address of the regulant(s), as shown on the license or other record or information in possession of the board. The conference or hearing shall be conducted by the board according to the applicable provisions of the Administrative Process Act and shall be open to the public. The regulant(s) shall have the right to be heard in person or by counsel, and to provide evidence and witnesses on his behalf.

D. After the conference or hearing, if the board finds that the buyer has suffered a loss or damages due to the acts of a regulant that constitute a violation of these regulations, the board shall determine the amount of damages to be awarded to the claimant. The amount of damages awarded by the board shall be limited to actual compensatory damages and shall not include attorney's fees for representation before the board. The board shall order the responsible manufacturer, dealer, broker, or salesperson to pay the awarded amount to the claimant. The board's written order shall be sent by certified mail to the regulant responsible for paying the awarded amount. Within 30 days of receipt of the board's decision, the responsible regulant shall pay the awarded amount to the claimant, unless an appeal is pending.

## § 7.3. Appeals of the board's decision.

[ A. ] Appeals of the decision of the board shall be to a circuit court with jurisdiction in the Commonwealth. The appeal shall be filed by the regulant within 30 days of the date of the board's order, and shall stay the board's order

for payment of the awarded amount. Neither the regulant nor the board shall be required to pay damages to the claimant until such time as the final order of the court is issued. In accordance with § 36-85.35 of the Code of Virginia, the court may award reasonable attorney's fees and court costs to be paid by the recovery fund.

#### § 7.4. Payment of damages; limitations; conditions.

A. If a regulant has not paid the awarded amount within 30 days as provided in § 7.2 or filed an appeal to the circuit court as provided in § 7.3, the board shall, upon request of the claimant pay the awarded amount to the claimant from the recovery fund under the following conditions:

1. The maximum claim of one claimant against the fund because of a single violation by one regulant shall be limited to \$20,000;
2. The fund balance is sufficient to pay the awarded amount;
3. The claimant has assigned the board all rights and claims against the regulant; and
4. The claimant agrees to subrogate to the board all rights of the claimant to the extent of payment.

B. The aggregate amount of claims paid from the fund for violations by any one regulant during any license period shall be as follows:

1. For a manufacturer – \$75,000.
2. For a dealer – \$35,000.
3. For a broker – \$35,000.
4. For a salesperson – \$25,000.

If the board has reason to believe there may be additional claims against the fund from other transactions by the same regulant, the board may withhold any payments, involving that regulant, from the fund for a period of not more than one year from the date the board approved the original claimant's award. After this one-year period, if the aggregate of claims against the same regulant exceeds the limitations of this section, the aggregate amount shall be prorated by the board among the claimants and paid from the fund in proportion to the amounts of their awards remaining unpaid.

#### § 7.5. Revocation of license.

Upon payment to a claimant from the fund, the board shall immediately revoke the license of the regulant whose conduct resulted in the payment from the fund. Any regulant whose license is revoked under this section shall not be eligible to apply for a new license or renewal license until he has repaid the fund the full amount of the

payments from the fund on his amount, plus interest, calculated at the rate of interest the recovery fund was earning at the time of the payment from the fund.

#### § 7.6. Other disciplinary action not voided.

The board may take other disciplinary actions against any regulant for any violation of Chapter 4.2 (§ 36-85.16 et seq.) of Title 36 of the Code of Virginia, or these regulations. Full repayment of the amount paid from the fund for the regulant's actions shall not nullify, modify or prohibit the affect of any disciplinary proceeding by the board against that regulant for any violations.

V.A.R. Doc. No. R94-466; Filed January 11, 1994, 11:19 a.m.

## DEPARTMENT OF STATE POLICE

**REGISTRAR'S NOTICE:** This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(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 State Police will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation** VR 545-01-1. Motor Carrier Safety Regulations.

**Statutory Authority:** § 52-8.4 of the Code of Virginia.

**Effective Date:** March 9, 1994.

#### Summary:

Amendment 4 adopts and incorporates, by reference, changes made by the U.S. Department of Transportation, Federal Highway Administration, to Title 49, Code of Federal Regulations (CFR), Parts 390 through 397 promulgated and in effect as of January 19, 1994. These changes include (i) amending 49 CFR 390.3, general applicability, to make conforming changes to the references concerning accident reporting requirements; (ii) amending 49 CFR 390.5 by defining "accident," "disabling damage," "fatality," "medical examiner," "principal place of business," and "radar detector"; (iii) amending 49 CFR 390.15 requiring motor carriers to make records pertaining to accidents available to authorized representative and what accident information must be maintained; (iv) amending 49 CFR 391.43 by changing the term "health care professional" to "medical examiner" and allowing current examination forms to be used until depleted or until November 8, 1994, whichever comes first, provided the medical examiner writes down in pen and ink any applicable information contained in

# Final Regulations

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the instructions and new form; (v) amending 49 CFR 391.85 by defining "non-suspicion-based-post-accident testing"; (vi) amending 49 CFR 391.89 clarifying who has access to individual test results or test findings; (vii) amending 49 CFR 391.113 clarifying the requirements of post-accident testing; (viii) amending 49 CFR 392 by adding 392.71 which bans the use of radar detectors in all commercial motor vehicles as defined in 49 CFR 390.50; (ix) amending 49 CFR 394 by removing and reserving that part and eliminating the requirement that motor carriers submit accident reports to the FHWA and notify the agency of fatal accidents; (x) amending 49 CFR 395.1 to add a provision for motor carriers and drivers in the state of Alaska that was omitted when the exceptions, previously scattered, were consolidated; (xi) amending 49 CFR 395.8 to remove the description for recording total mileage today, home terminal address, and origin and destination; (xii) deleting the definition of a "reportable accident" in Part I of these regulations as the new accident definition adopted by FHWA is incorporated by reference; and (xiii) deleting old Article 7 concerning Part 394, as it has been removed by FHWA and, renumbering those sections after the deletion in proper numeric order.

VR 545-01-1. Motor Carrier Safety Regulations.

## PART I. DEFINITIONS.

### § 1.1. Definitions.

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

"*Commercial motor vehicle*" means any self-propelled or towed vehicle used on the highways in interstate or intrastate commerce to transport passengers or property if (i) such vehicle has a gross vehicle weight rating or gross combination weight rating of more than 26,000 pounds, (ii) is designed to transport more than 15 passengers, including the driver, regardless of weight or (iii) is used to transport hazardous materials in a quantity requiring placards by regulations issued under authority of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Transportation of Hazardous Materials.

"*Motor carrier*" means a common carrier by motor vehicle, a contract carrier by motor vehicle or a private carrier of property by motor vehicle. This term also encompasses any agent, officer, representative or employee who is responsible for hiring, supervision, training, assignment or dispatching of drivers.

"*Reportable accident*" as it relates to Motor Carrier Safety Regulations means an occurrence involving a commercial motor vehicle engaged in interstate or intrastate operations of a motor carrier who is subject to these regulations resulting in (i) the death of a human

being, (ii) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident or (iii) total damage to all property aggregating \$4,400 or more based upon actual costs or reliable estimates.

"*Safety inspections*" means the detailed examination of a vehicle for compliance with safety regulations promulgated under § 52-8.4 of the Code of Virginia and includes a determination of the qualifications of the driver and his hours of service.

"*Superintendent*" means the Superintendent of the Department of State Police of the Commonwealth of Virginia.

"*Transport vehicle*" means any vehicle owned or leased by a motor carrier used in the transportation of goods or persons.

## PART II. GENERAL INFORMATION AND LEGISLATIVE AUTHORITY.

### § 2.1. Authority for regulation.

A. These regulations are issued under authority of § 52-8.4 of the Code of Virginia, Powers and duties to promulgate regulations; inspection of certain records.

B. Section 52-8.4 of the Code of Virginia mandates that the Superintendent of State Police, with the cooperation of such other agencies of the Commonwealth as may be necessary, shall promulgate regulations pertaining to commercial motor vehicle safety pursuant to the United States Motor Carrier Act of 1984.

C. These regulations, as promulgated, shall be no more restrictive than the applicable provisions of the Federal Motor Carrier Safety Regulations of the United States Department of Transportation.

### § 2.2. Purpose of regulations.

These regulations shall set forth criteria relating to driver, vehicle, and cargo safety inspections with which motor carriers and transport vehicles shall comply.

### § 2.3. Application of regulations.

A. These regulations and those contained in Title 49, Code of Federal Regulations, Parts 40 and 390 through 397, unless excepted, shall be applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate and intrastate commerce.

B. These regulations shall not apply to hours worked by any carrier when transporting passengers or property to or from any portion of the Commonwealth for the purpose of providing relief or assistance in case of earthquake, flood,

# Final Regulations

fire, famine, drought, epidemic, pestilence, major loss of utility services or other calamity or disaster. The suspension of the regulation provided for in § 52-8.4 A shall expire if the Secretary of the United States Department of Transportation determines that it is in conflict with the intent of Federal Motor Carrier Safety Regulations.

## § 2.4. Enforcement.

The Department of State Police, together with all other law-enforcement officers of the Commonwealth who have satisfactorily completed forty 40 hours of on-the-job training and a course of instruction as prescribed by the U.S. Department of Transportation, Federal Highway Administration, Office of Motor Carriers, in federal motor carrier safety regulations, safety inspection procedures, and out-of-service criteria shall enforce the regulations and other requirements promulgated pursuant to § 52-8.4 of the Code of Virginia. Those law-enforcement officers certified to enforce the regulations and other requirements promulgated pursuant to § 52-8.4 shall annually receive in-service training in current federal motor carrier safety regulations, safety inspection procedures, and out-of-service criteria.

## § 2.5. Inspection of records.

Any records required to be maintained by motor carriers pursuant to regulations promulgated by the Superintendent under the authority of § 52-8.4 A of the Code of Virginia, shall be open to inspection during a carrier's normal business hours by specially trained members of the Department of State Police designated for that purpose by the Superintendent shall also be authorized, with consent of the owner, operator or agent in charge or with an appropriate warrant obtained under the procedure prescribed in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2 of the Code of Virginia, to go upon the property of motor carriers to verify the accuracy of maintenance records by an inspection of the vehicles to which those records relate.

## § 2.6. Penalties.

Any violation of the provisions of the regulations adopted pursuant to § 52-8.4 of the Code of Virginia, shall constitute a traffic infraction punishable by a fine of not more than \$1,000 for the first offense or by a fine of not more than \$5,000 for a subsequent offense. Each day of violation shall constitute a separate offense.

## PART III. INCORPORATION BY REFERENCE.

### Article 1. Compliance with Federal Regulations.

#### § 3.1. Compliance.

A. Every person and commercial motor vehicle subject

to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Highway Administration, with amendments promulgated and in effect as of October 1, 1992 January 19, 1994, pursuant to the United States Motor Carrier Safety Act found in Title 49, Code of Federal Regulations (CFR), Parts 390 through 397, which are incorporated in these regulations by reference, with certain exceptions, as set forth below.

B. Those persons required to comply with subsection A shall also comply with Procedures for Transportation Workplace Drug Testing Program promulgated by the United States Department of Transportation, with amendments and in effect as of the date in subsection A and found in Title 49 of the Code of Federal Regulations, Part 40, which is incorporated in these regulations by reference as set forth below.

### Article 2.

#### Part 40 - Procedures for Transportation Workplace Drug Testing Programs.

#### § 3.2. Drug testing procedures.

Incorporated with no exceptions as it relates to Title 49 of the Code of Federal Regulations, Part 391, Subpart H - Controlled Substance Testing (§ 391.81 et seq.).

### Article 3.

#### Part 390 - General.

#### § 3.3. Minimum levels of financial responsibility for motor carriers - § 390.3 (c).

A commercial motor vehicle used wholly in intrastate commerce is not subject to this section unless transporting hazardous materials, hazardous substances or hazardous waste as set forth in Title 49, Code of Federal Regulations, Part 387.3, (b) and (c).

#### § 3.4. Exempt intra-city zone - § 390.5.

This term does not include a driver or vehicle used wholly in intrastate commerce.

### Article 4.

#### Part 391 - Qualifications of Drivers.

#### § 3.5. Minimum age - § 391.11.

A driver may be 18 years old if operating wholly in intrastate commerce and is not subject to Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Regulations Governing the Transportation of Hazardous Materials.

#### § 3.6. Investigations and inquiries - § 391.23.

# Final Regulations

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Except as provided in subpart G of this part, each intrastate motor carrier shall make investigations and inquiries required by paragraphs (1) and (2) of this section with respect to each driver it employs, other than a person who has been a regularly employed driver of the intrastate motor carrier for a continuous period which began before July 9, 1986.

§ 3.7. Resolution of conflicts of medical evaluation - § 391.47.

The superintendent reserves the right to resolve medical conflicts involving those drivers used wholly in intrastate commerce.

§ 3.8. Waiver of certain physical defects - § 391.49.

A person who is not physically qualified to drive under § 391.41 (b) (1) or (b) (2) or (b) (3) or (b) (10), and is not subject to Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Regulations Governing the Transportation of Hazardous Materials, and who is otherwise qualified to drive a property-carrying motor vehicle, may drive a property-carrying motor vehicle in intrastate commerce if granted a waiver by the superintendent.

§ 3.9. Driver qualification files - § 391.51.

The applicable date referred to in § 391.51 (b) and (c) shall be July 9, 1986, for drivers used wholly in intrastate commerce. The superintendent's letter granting a waiver of a physical disqualification to an intrastate driver, if a waiver was issued under § 391.49, shall be in the driver qualification files.

§ 3.10. Subpart G - Limited exemptions - § 391.61.

The applicable date referred to in § 391.61 shall be July 9, 1986, for drivers used wholly in intrastate commerce.

§ 3.11. Subpart H - Controlled substance testing - § 391.81 et seq.

Intrastate motor carriers shall implement Subpart H effective November 15, 1991. Ninety days will be allowed for affected intrastate motor carriers to comply.

## Article 5.

### Part 392 - Driving of Motor Vehicles.

§ 3.12. Driving of motor vehicles.

Incorporated with no exceptions.

## Article 6.

### Part 393 - Parts and Accessories Necessary for Safe Operation.

§ 3.13. Parts and accessories.

Incorporated with no exceptions.

## Article 7.

### Part 394 - Notification and Reporting of Accidents.

§ 3.14. Notification and accident reporting.

Intrastate motor carriers and drivers need only comply with § 46.2-371 of the Code of Virginia and Article 11 (§ 46.2-894 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

## Article 8.

### Part 395 - Hours of Service of Drivers.

§ 3.15. 3.14. Drivers declared out of service - § 395.13 (a).

Law-enforcement officers of the Department of State Police specifically designated by the superintendent are authorized to declare a driver out of service and to notify the motor carrier of that declaration, upon finding at the time and place of examination that the driver has violated the out-of-service criteria as set forth in § 395.13 (b).

§ 3.16. 3.15. Responsibilities of motor carriers - § 395.13 (c) (2).

A motor carrier shall complete the "Motor Carrier's Report of Compliance with this Notice" portion of form S.P. 233-A (Virginia State Police Motor Carrier Safety Inspection) and deliver the copy of the form either personally or by mail to the Department of State Police, Office of Administrative Coordinator, Motor Carrier Safety, at the address specified upon the form within 15 days following the date of the examination. If the motor carrier mails the form, delivery is made on the date it is postmarked.

## Article 9.

### Part 396 - Inspection, Repair, and Maintenance.

§ 3.17. 3.16. Inspection of motor vehicles in operation - § 396.9 (a).

Law-enforcement officers of the Department of State Police specifically designated by the superintendent are authorized to enter upon and perform inspections of motor carrier vehicles in operation.

§ 3.18. 3.17. Motor vehicles declared "out of service" - § 396.9 (c).

Authorized personnel defined in § 3.17 3.16 above shall declare and mark "out of service" any motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or a breakdown. An "Out of Service Vehicle" sticker shall be used to mark vehicles "out of service."

§ 3.19. 3.18. Motor carrier's disposition - § 396.9 (d) (3) (ii).

# Final Regulations

Motor carriers shall return the completed form S.P. 233 (Virginia State Police Motor Carrier Safety Inspection) to the Department of State Police at the address indicated on the report.

Article 10. 9.  
Part 397 - Transportation of Hazardous Materials;  
Driving and Parking Rules.

§ 3.20. 3.19. Driving and parking rules - § 397.

Incorporated with no exceptions.

V.A.R. Doc. No. R94-515; Filed January 18, 1994, 2:07 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 28, 1994

Colonel Carl R. Baker, Superintendent  
Department of State Police  
7700 Midlothian Turnpike  
Richmond, Virginia 23235

Re: VR 545-01-1 - Motor Carrier Safety Regulations

Dear Colonel Baker:

This will acknowledge receipt of the above-referenced regulations from the Department of State Police.

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 black ink, appearing to read "Joan W. Smith".

Joan W. Smith  
Registrar of Regulations

JWS/jbc

# STATE CORPORATION COMMISSION

.....AT RICHMOND, JANUARY 7, 1994

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

## ORDER GRANTING PETITION FOR RECONSIDERATION

On January 7, 1994, The Chesapeake and Potomac Telephone Company of Virginia ("C&P") filed its Petition for Reconsideration of the Commission's Final Order of December 17, 1993, asking that one provision of paragraph 17 of Attachment A be modified. C&P asked that the last sentence of the next to the last subparagraph of paragraph 17 be altered so as not to require a full general rate case in any hearing resulting from Virginia Code § 56-237.2 for revenue neutral rate changes.

Pursuant to the terms of Commission Rule of Practice and Procedure 8:9, the Commission is of the opinion that C&P's Petition for Reconsideration should be granted and that, pending our consideration of this one issue, the effect of the one sentence of paragraph 17 mentioned above should be suspended. Accordingly,

### IT IS THEREFORE ORDERED:

(1) That C&P's petition for reconsideration is hereby granted;

(2) That the effect of the final sentence of the next to the last subparagraph of paragraph 17 of Attachment A of our Final Order of December 17, 1993, is hereby suspended pending our reconsideration; and

(3) That in all other respects, the Final Order of December 17, 1993, remains unaltered.

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

32203-1837; 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. Flippin, 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 Charles H. Tenser, III, Esquire, Mays & 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.

V.A.R. Doc. No. R94-514; Filed January 18, 1994, 2:24 p.m.

# MARINE RESOURCES COMMISSION

## MARINE RESOURCES COMMISSION

**NOTICE:** The Marine Resources Commission is exempt from the Administrative Process Act (§ 9.6.14:1 et seq. of the Code of Virginia); however, it is required by § 9.6.14:22 B to publish all final regulations.

**Title of Regulation:** VR 450-01-0004. Pertaining to the Licensing of Fixed Fishing Devices.

**Statutory Authority:** § 28.2-201 of the Code of Virginia.

**Effective Date:** January 1, 1994.

### Preamble:

*This regulation establishes the procedures associated with licensing fixed fishing devices. This regulation also establishes the procedures used to determine priority rights of fixed fishing device licensees.*

VR 450-01-0004. Pertaining to the Licensing of Fixed Fishing Devices.

### § 1. Authority, prior regulation, effective date.

A. This regulation is promulgated pursuant to the authority contained in § 28.1-23 28.2-201 of the Code of Virginia.

B. This regulation *supersedes provisionally amends* the previous regulation IV, VR 450-01-0004, Pertaining to the Licensing of Fixed Fishing Devices, which was promulgated by the Marine Resources Commission and made effective December 28, 1976. January 23, 1985. The *provisional amendments to this regulation will exist as long as the moratorium on the American shad, specified by VR 450-01-0069, is in effect.*

C. The effective date of this regulation is January 23, 1985 I, 1994.

### § 2. Purpose.

The purpose of this regulation is to set forth the procedures pertaining to the licensing of fixed fishing devices and the priority rights of holders of fixed fishing device licenses.

### § 3. Definitions.

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

**"Fixed fishing device"** means any fishing device used for the purpose of catching fish requiring the use of more than two poles or stakes which have been pushed or pumped into the bottom.

**"Fyke net"** means a round stationary net distended by a

series of hoops or frames, covered by web netting or wire mesh and having one or more internal funnel-shaped throats whose tapered ends are directed away from the mouth of the net. The net, leader or runner is held in place by stakes or poles which have been pushed or pumped into the bottom and has one or two wings and a leader or runner to help guide the fish into the net.

**"Inspector"** "Officer" means the District Inspector for the marine patrol officer in charge of the district within which the fixed fishing device is located.

**"Pound net"** means a stationary fishing device supported by stakes or poles which have been pushed or pumped into the bottom consisting of an enclosure identified as the head or pocket with a netting floor, a heart, and a straight wall, leader or runner to help guide the fish into the net.

**"Staked gill net"** means a fixed fishing device consisting of an upright fence of netting fastened to poles or stakes which have been pushed or pumped into the bottom.

### § 4. Location and measurements.

A. A fixed fishing device shall be perpendicular to the shoreline insofar as possible.

B. In determining compliance with law the requirements prescribing minimum distances between fixed fishing devices, measurement shall be made from the center line of each device.

C. An applicant shall state the desired length of the fixed fishing device, which shall not exceed the maximum limit prescribed by law. Such length shall be stated on any license issued by the Inspector officer. A licensee may apply for a new license to include a greater length provided such additional length does not make the device violate exceed the maximum legal length or the legal requirement of a minimum distance between successive fishing structures in the same row. In the event a licensee fishes a length less than that stated on the license, the unfished length shall be subject to the provisions of paragraph 6(B) § 6 B of this regulation.

### § 5. Priority rights; general.

Except as may be otherwise provided herein, chronological order of receipt of applications shall be used to establish priority rights of any applicant to any fixed fishing device location. In those instances of simultaneous receipt, priority shall be determined by lottery.

### § 6. Priority rights; renewal by current licensee.

A. Applications for renewal of license for existing fixed fishing devices may be accepted by the Inspector officer beginning at 9 a.m. on December 1 of the current license year through noon on January 10 of the next license year providing the applicant has met all the requirements of law and this regulation. Any location not relicensed during

# Marine Resources Commission

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the above period of time shall be considered vacant and available to any qualified applicant after noon on January 10.

B. Except as provided in subsection C of this section, a currently licensed fixed fishing device must have been fished during the current license year in order for the licensee to maintain his priority right to such location. It shall be mandatory for the licensee to notify the **District Inspector officer**, on forms provided by the commission, when the fixed fishing device is ready to be fished in the location applied for, by a complete system of nets and poles, for the purpose of visual inspection by the **District Inspector officer**. Either the failure of the licensee to notify the **District Inspector officer** when the fixed fishing device is ready to be fished or the failure by the licensee actually to fish the licensed device, by use of a complete system of nets and poles, shall terminate his right or privilege to renew the license during the period set forth in paragraph 6(A) subsection A of this section of this regulation, and he shall not become a qualified applicant for such location until 9 a.m. on February 1. Any application received from an unqualified applicant under this paragraph subsection shall be considered as received at 9 a.m. on February 1; however, in the event of the death of a current license holder, the priority right to renew the currently held locations of the deceased licensee shall not expire by reason of failure to fish said locations during the year for which they were licensed, but one additional year shall be and is hereby granted to the personal representative or lawful beneficiary of the deceased licensee to license the location in the name of the estate of the deceased licensee for purposes of fishing said location or making valid assignment thereof.

C. During the effective period of VR 450-01-0069, which establishes a moratorium on the taking and possession of American shad in the Chesapeake Bay and its tributaries, any person licensed during 1993 to set a staked gill net who chooses not to set that net during the period of the moratorium may maintain his priority right to the stake net's 1993 location by completing an application for a fixed fishing device and submitting it to the officer. No license fee shall be charged for the application.

§ 7. Priority rights; licensed location, request by other than current licensee.

Applications for license for currently licensed fixed fishing device locations by persons other than the current licensee shall not be accepted by the **Inspector officer** during the year any current license is valid.

§ 8. Priority rights; vacant location.

Application from any qualified applicant for any fixed fishing device at a vacant and unlicensed location may be accepted by the **Inspector officer** at any time during the year for which the license is intended, and only for the year during which the license is intended, except that any application received prior to noon on January 10 for any

location believed to be vacant and unlicensed pursuant to paragraph 6(B) § 6 B shall be considered as received at noon on January 10, and in chronological order of receipt.

## § 9. Transfer and vested rights.

A. A current fixed fishing device license, and the rights to renew same, may be transferred by the present licensee provided all parties comply with the existing statutes and regulations. Any transferee takes the license subject to all of the duties of the transferor.

B. Any rights a licensee may have, upon his death, shall be vested in his personal representative or lawful beneficiary.

/s/ William A. Pruitt  
Commissioner

V.A.R. Doc. No. R94-469; Filed January 14, 1994, 2:17 p.m.

\* \* \* \* \*

**Title of Regulation:** VR 450-01-0081. Pertaining to Summer Flounder.

**Statutory Authority:** § 28.2-201 of the Code of Virginia.

**Effective Date:** January 1, 1994.

### Preamble:

This regulation establishes limitations on the commercial and recreational harvest of Summer Flounder in order to reduce the fishing mortality rate and to rebuild the severely depleted stock of Summer Flounder. The limitations include a commercial harvest quota, recreational bag and commercial trip limits, and minimum size limits.

VR 450-01-0081. Pertaining to Summer Flounder.

### § 1. Authority, prior regulation, effective date.

A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.

B. VR 450-01-0053, Pertaining to the Taking of Summer Flounder, VR 450-01-0056, Pertaining to Recreational Flounder Fishing, and VR 450-01-0071, Pertaining to the Alteration of Summer Flounder are hereby repealed. This regulation amends VR 450-01-0081 which was promulgated by the Marine Resources Commission and made effective January 1, 1993.

C. The effective date of this regulation is January 1, 1993 1994.

### § 2. Purpose.

The purpose of this regulation is to reduce commercial

# Marine Resources Commission

and recreational fishing mortality in order to rebuild the severely depleted stocks of Summer Flounder.

## § 3. Commercial harvest quotas.

A. During the period of January 1, 1993 1994 , through December 31, 1993 1994 , commercial landing of Summer Flounder shall be limited to 2,667,612 3,411,000 pounds and shall be distributed as follows:

1. The commercial harvest of Summer Flounder from Virginia tidal waters for the period of January 1, 1993 1994 , through December 31, 1993 1994 , shall be limited to 567,701 300,000 pounds.

2. During the period of January 1, 1993 1994 , through March 31, 1993 1994 , landings of Summer Flounder harvested outside the Virginia shall be limited to 1,092,110 2,000,000 pounds.

3. During the period of April 1, 1993 1994 , through June 30, 1993 1994 , landing of Summer Flounder harvested outside of Virginia shall be limited to 63,006 200,000 pounds.

4. During the period of July 1, 1993 1994 , through September 30, 1993 1994 , landing of Summer Flounder harvested outside of Virginia shall be limited to 63,006 200,000 pounds.

5. During the period of October 1, 1993 1994 , through December 31, 1993 1994 , landings of Summer Flounder harvested outside of Virginia shall be limited to 861,087 711,000 pounds.

B. It shall be unlawful for any person to harvest for commercial purposes or to land Summer Flounder for sale after the commercial harvest or landing quota as described in subsection A of this section, has been attained.

## § 4. Commercial trip limitation.

A. During the period periods (quarters) of April January 1, 1993 1994 , through September 30, 1993 March 31, 1994 , and October 1, 1994 , through December 31, 1994 , a commercial trip limit of 1,500 2,500 pounds of Summer Flounder harvested outside of, and landed in, Virginia is shall be imposed , when it is projected that 85% of the quarterly quota has been taken .

B. During the above period; it shall be unlawful for any person fishing outside of Virginia waters to land from a vessel any amount of Summer Flounder exceeding 1,500 pounds period of April 1, 1994, through September 30, 1994, a commercial trip limit of 2,500 pounds of Summer Flounder harvested outside of, and landed in, Virginia is imposed.

C. During the above periods, as described in subsections A and B of this section, it shall be unlawful for any

person, fishing outside of Virginia waters, to land from a vessel any amount of Summer Flounder exceeding 2,500 pounds.

## § 5. Minimum size limits.

A. The minimum size for Summer Flounder harvested by commercial fishing gear shall be 13 inches, total length.

B. The minimum size of Summer Flounder harvested by recreational fishing gear, including but not limited to, hook-and-line, rod-and-reel, spear and gig, shall be 14 inches, total length.

C. It shall be unlawful for any person to catch and retain possession of any Summer Flounder smaller than the designated minimum size limit except as provided in subsection D of this section.

D. The harvest of Summer Flounder by pound net may consist of up to 10%, by weight, of Summer Flounder less than 13 inches in length. It shall be unlawful for any person to possess Summer Flounder taken by pound net which consists of more than 10%, by weight, of Summer Flounder less than 13 inches in length. Whenever any person has possession of more than 100 pounds of Summer Flounder harvested by pound net, a lot of 100 pounds may be separated by the Marine Patrol Officer from the whole quantity for the purposes of determining whether more than 10% are under the lawful size.

E. Length shall be measured in a straight line from tip of nose to tip of tail.

## § 6. Daily bag limit.

A. It shall be unlawful for any person fishing with hook-and-line, rod-and-reel, spear, gig or other recreational gear, or licensed for commercial hook-and-line fishing, to catch and retain possession of more than 10 Summer Flounder per day. Any Summer Flounder taken after the daily limit has been reached shall be returned to the water immediately.

B. The daily bag limit of Summer Flounder when fishing from a boat shall be equal to the number of persons on board multiplied by 10. Retention of the legal number of Summer Flounder is the responsibility of the boat captain or operator.

## § 7. Penalty.

As set forth in § 28.2-201 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 1 3 misdemeanor.

/s/ William A. Pruitt  
Commissioner

V.A.R. Doc. No. R94-470; Filed January 14, 1994, 2:18 p.m.

# GOVERNOR

## EXECUTIVE MEMORANDUM 5-93

### Subject:

Establishing and Maintaining Official Abbreviations for State Agency Names.

### Preface:

There are over 200 state agencies cited in the 1992-94 Appropriation Act. Approximately 30% of those agencies have been identified by different abbreviations in various state publications. Needless confusion and misunderstanding have resulted from state agencies being identified by different abbreviations in written, printed, audiovisual, and other communications.

The general public, legislative branch agencies, judicial branch agencies, independent agencies, private sector entities, and executive branch agencies will benefit from the use of standardized agency abbreviations.

### Purpose:

This memorandum is intended to end inconsistency and the potential for confusion in the use of state agency abbreviations. This memorandum has attached to it an initial list of official state agency abbreviations, except for the exemption provided herein for access codes and agency identifiers assigned by the Department of Information Technology, which must be used by all executive branch agencies whenever abbreviations are utilized in written, printed, audiovisual, and other communications. In addition, this memorandum establishes a procedure for maintaining the accuracy and currency of state agency abbreviations.

### General Policy:

Each executive branch agency shall begin on January 1, 1994, to adhere to the use of the abbreviations specified in the initial list of state agency abbreviations attached to this memorandum. No agency shall change its abbreviation unless the agency name changes.

### Applicability:

A. This memorandum applies to all executive branch agencies. In recognition of the general benefit to be derived from standardizing state agency abbreviations, legislative branch agencies, judicial branch agencies, independent agencies, and others are encouraged to use the abbreviations in the initial list of agency abbreviations attached to this memorandum.

B. This memorandum does not apply to alphanumeric codes or other identifiers assigned by the Department

of Information Technology to state agencies and other entities to control access to data processing systems and telecommunications networks.

### Implementation:

A. Responsibility for maintaining the list of abbreviations is assigned to the Department of Planning and Budget (DPB). Specifically, DPB is directed to:

1. Use the official abbreviations in the index to the 1994 Budget Bill and in the index to all subsequent editions of that document;
2. Include in Section 4-8.00 of the 1994 Budget Bill and in all subsequent editions of that document, a reporting requirement that DPB submit to the Governor on May 1 of each year any change or addition in agency names and their abbreviations; and
3. Submit a copy of that report to the State Comptroller, Director of the Department of Personnel and Training, Director of the Department of Information Technology, and the Chairmen of the House Appropriations and Senate Finance Committees.

B. The Department of Personnel and Training is directed to use the list of official abbreviations in its publication, Recruit.

C. The Department of Information Technology is directed to incorporate the list of official abbreviations in all future editions of the Commonwealth of Virginia Telephone Directory.

D. Any other executive branch agency which proposes to promulgate or use agency abbreviations in any of its publications shall utilize only those abbreviations on the initial list of agency abbreviations attached to this memorandum or a subsequently updated official list.

### Continuation:

This Executive Memorandum shall be effective January 1, 1994, and shall remain in full force and effect until superseded or rescinded by further executive action. Given under my hand this 28th day of December, 1993.

/s/ Lawrence Douglas Wilder  
Governor

ATTACHMENT TO EXECUTIVE MEMORANDUM 5-93  
VIRGINIA STATE AGENCY ABBREVIATIONS

EXECUTIVE DEPARTMENT

AGENCY NAMES AS LISTED  
IN THE APPROPRIATION ACT

OFFICIAL  
ABBREVIATIONS

# Governor

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Office of the Governor	GOV	John Tyler Community College	JTCC
Lieutenant Governor	LTGOV	Lord Fairfax Community College	LFCC
Secretary of the Commonwealth	SOC	Mountain Empire Community College	MECC
Virginia Liaison Office	VLO	New River Community College	NRCC
Interstate Organization Contributions	IOC	Northern Virginia Community College	NVCC
<b>ATTORNEY GENERAL AND DEPARTMENT OF LAW</b>			
AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS		
Attorney General	ATG	Patrick Henry Community College	PHCC
Division of Debt Collection	DDC	Piedmont Virginia Community College	PDCCC
<b>SECRETARY OF ADMINISTRATION</b>			
AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS		
Secretary of Administration	SOA	Rappahannock Community College	RCC
Virginia Veterans Care Center Board of Trustees	VVCC	Southside Virginia Community College	SSVCC
Council on Human Rights	CHR	Southwest Virginia Community College	SWVCC
Department of Personnel and Training	DPT	Thomas Nelson Community College	TNCC
Department of Employee Relations Counselors	DERC	Tidewater Community College	TWCC
Department of General Services	DGS	Virginia Highlands Community College	VHCC
State Board of Elections	SBE	Virginia Western Community College	VWCC
Virginia Retirement System	VRS	Wytheville Community College	WCC
Compensation Board	CB	University of Virginia	UVA
Commission on Local Government	CLG	University of Virginia/Academic Division	UVA/AD
Department of Information Technology	DIT	University of Virginia/Medical Center	UVAH
Council on Information Management	CIM	Clinch Valley College	CVC
Department of Veterans' Affairs	DVA	Virginia Polytechnic Institute and State University	VPISU
<b>SECRETARY OF COMMERCE AND TRADE</b>			
AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS		
Secretary of Commerce and Trade	SCT	Virginia Polytechnic Institute and State	VPISU/ID
Department of Housing and Community Development	DHCD	University/Instruction Division	
Department of Economic Development	DED	Virginia Polytechnic Institute and State	
Department of Minority Business Enterprise	DMBE	University/Extension Division	VPISU/EXT
Department of Labor and Industry	DOLI	Virginia Polytechnic Institute and State	
Department of Professional and Occupational Regulation	DPOR	University/Research Division	VPISU/RESRD
Department of Agriculture and Consumer Services	VDACS	Virginia Commonwealth University	VCU
Virginia Agricultural Council	VAC	Virginia Commonwealth University/Academic	
Milk Commission	SMC	Division	VCU/AD
Department of Mines, Minerals and Energy	DMME	Medical College of Virginia Hospital	MCV
Virginia Employment Commission	VEC	Old Dominion University	ODU
Department of Forestry	DOF	George Mason University	GMU
Virginia Port Authority	VPA	College of William and Mary in Virginia	CWM
Virginia Racing Commission	VRC	Richard Bland College	RBC
<b>SECRETARY OF EDUCATION</b>			
AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS		
Secretary of Education	SOE	Virginia Institute of Marine Science	VIMS
Department of Education	DOE	James Madison University	JMU
Department of Education/Central Office	DOE/COO	Christopher Newport University	CNU
Operations	DOE/DAPE	Longwood College	LC
Department of Education/Direct Aid to Public Education	VSDBS	Mary Washington College	MWC
Virginia School for the Deaf and Blind at Staunton	VSDBH	Melchers-Monroe Memorials	MMM
Virginia School for the Deaf and Blind at Hampton	SCHEV	Norfolk State University	NSU
State Council of Higher Education for Virginia	VCCS	Radford University	RU
Virginia Community College System	BRCC	Virginia Military Institute	VMI
Blue Ridge Community College	CVCC	Virginia State University	VSU
Central Virginia Community College	DSLCC	Virginia State Library and Archives	VSLA
Dabney S. Lancaster Community College	DCC	Virginia Museum of Fine Arts	VMFA
Danville Community College	ESCC	Science Museum of Virginia	SMV
Eastern Shore Community College	GCC	Jamestown-Yorktown Foundation	JYF
Germanna Community College	JSRCC	Frontier Culture Museum of Virginia	FCMV
J. Sergeant Reynolds Community College		Gunston Hall Plantation	GH
<b>SECRETARY OF FINANCE</b>			
AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS		
Secretary of Finance	DOE	Southeastern Universities Research Association, Inc.	SURA
Department of Planning and Budget	DOA	Southwest Virginia Higher Education Center	SWHEC
<b>SECRETARY OF HEALTH AND HUMAN RESOURCES</b>			
AGENCY NAMES AS LISTED	OFFICIAL		

# Governor

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## IN THE APPROPRIATION ACT

	ABBREVIATIONS
Secretary of Health and Human Resources	SHHR
Department for the Aging	VDA
Virginia Board for People with Disabilities	VBPD
Department for the Rights of Virginians with Disabilities	DRV
Department for the Deaf and Hard-of-Hearing	VDDHH
Department of Health Professions	DHP
Department of Health	VDH
Department of Medical Assistance Services	DMAS
Virginia Health Services Cost Review Council	VHSCRC
Department of Mental Health, Mental Retardation and Substance Abuse Services	DMHMRSSAS
Department of Mental Health, Mental Retardation and Substance Abuse Services/Central Office	DMHMRSSAS/CO
Department of Mental Health, Mental Retardation and Substance Abuse Services/Grants to Localities	DMHMRSSAS/GTL
Hiram W. Davis Medical Center	HDMC
Central State Hospital	CSH
Eastern State Hospital	ESH
Western State Hospital	WSH
Southwestern Virginia Mental Health Institute	SWMHI
Northern Virginia Mental Health Institute	NVMHI
Southern Virginia Mental Health Institute	SVMHI
Central Virginia Training Center	CVTC
Northern Virginia Training Center	NVTC
Southeastern Virginia Training Center	SEVTC
Southside Virginia Training Center	SVTC
Southwestern Virginia Training Center	SWTC
Catawba Hospital	CH
Piedmont Geriatric Hospital	PGH
DeJarnette Center	DeJ
Department of Rehabilitative Services	DRS
Woodrow Wilson Rehabilitation Center	WWRC
Department of Social Services	DSS
Virginia Department for the Visually Handicapped	DVH
Virginia Rehabilitation Center for the Blind	VRCB
Governor's Employment and Training Department	GETD
Virginia Council on Child Day Care and Early Childhood Programs	CCDCECP

## SECRETARY OF NATURAL RESOURCES

AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS
Secretary of Natural Resources	SNR
Chippokes Plantation Farm Foundation	CPFF
Department of Historic Resources	DHR
Department of Conservation and Recreation	DCR
Department of Environmental Quality	DEQ
Department of Game and Inland Fisheries	DGIF
Marine Resources Commission	MRC
Chesapeake Bay Local Assistance Department	CBLAD
Virginia Museum of Natural History	VMNH

## SECRETARY OF PUBLIC SAFETY

AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS
Secretary of Public Safety	SPS
Department of Criminal Justice Services	DCJS
Commonwealth's Attorneys' Services Council	CASC
Department of Fire Programs	DFP
Department of State Police	VSP
Department of Corrections	DOC
Department of Corrections/Central Activities	DOC/CA
Employee Relations and Training Division	ERT
Division of Institutions	DOC/DI
Division of Community Corrections	DOC/DCC
Powhatan Reception and Classification Center	PRCC
Southampton Reception and Classification Center	SRCC

Augusta Correctional Center	ACC
Bland Correctional Center	BCC
Brunswick Correctional Center	BWCC
Buckingham Correctional Center	BUC
Culpeper Deep Meadow Correctional Prototype No. 4	CDMP
Deep Meadow Correctional Center	DMCC
Deerfield Correctional Center	DFCC
Dillwyn Correctional Center	DWCC
Greensville Correctional Center	GRCC
Haynesville Correctional Center	HCC
Indian Creek Correctional Center	ICCC
James River Correctional Center	JRCC
Keen Mountain Correctional Center	KMCC
Marion Correctional Treatment Center	MCTC
Mecklenburg Correctional Center	MCC
Nottoway Correctional Center	NCC
Powhatan Correctional Center	PCC
Southampton Correctional Center	SHCC
Southampton Intensive Treatment Center	SITC
St. Brides Correctional Center	SBCC
Staunton Correctional Center	STCC
Virginia Correctional Center for Women	VCCW
Western Region Correctional Field Units	WRFCU
Northern Region Correctional Field Units	NRFCU
Central Region Correctional Field Units	CRFCU
Eastern Region Correctional Field Units	ERFCU
Virginia Correctional Enterprises	DOC/CE
Department of Correctional Education	DCE
Virginia Parole Board	VPB
Department of Youth and Family Services	DYFS
Department of Alcoholic Beverage Control	ABC
Department of Emergency Services	VDES
Department of Military Affairs	DMA

## SECRETARY OF TRANSPORTATION

AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS
Secretary of Transportation	STO
Department of Aviation	DOAV
Department of Transportation	VDOT
Department of Rail and Public Transportation	DRPT
Department of Motor Vehicles	DMV

## LEGISLATIVE DEPARTMENT

AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS
General Assembly of Virginia	GAV
Senate	SEN
House of Delegates	HDEL
Division of Legislative Services	DLS
Virginia Code Commission	VCC
Virginia Coal and Energy Commission	VCEC
State Water Commission	SWC
National Conference of Commissioners on Uniform State Laws	NCCUSL
Virginia Housing Study Commission	VHSC
Virginia State Crime Commission	VSCC
Virginia Commission on Youth	VCOY
Commission on Population Growth and Development	CPGD
Chesapeake Bay Commission	CBC
Joint Commission on Health Care	JCHC
Division of Legislative Automated Systems	DLAS
Joint Legislative Audit and Review Commission	JLARC
Auditor of Public Accounts	APA
Virginia Commission on Intergovernmental Cooperation	VCIC
Division of Capitol Police	DCP
Commission on the Virginia Alcohol Safety Action Program	VASAP
Legislative Department Reversion Clearing Account	LDRCA

# Governor

JUDICIAL DEPARTMENT	
AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS
Supreme Court	SUPCT
Court of Appeals of Virginia	CAV
Circuit Courts	CCV
General District Courts	GDC
Juvenile and Domestic Relations District Courts	JDRC
Combined District Courts	CDC
Magistrate System	MAG
Judicial Inquiry and Review Commission	JIRC
Virginia State Bar	VSB
State Board of Bar Examiners	BBE
Public Defender Commission	PDC
INDEPENDENT AGENCIES	
AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS
State Corporation Commission	SCC
Virginia Workers' Compensation Commission	VWC
State Lottery Department	SLD
OTHER STATE-ESTABLISHED AGENCIES	
AGENCY NAMES AS LISTED IN THE APPROPRIATION ACT	OFFICIAL ABBREVIATIONS
Chesapeake Bay Bridge and Tunnel Commission	CBBTC
Virginia Student Assistance Authorities	VSAA
State Education Assistance Authority	SEAA
Virginia Education Loan Authority	VELA
Virginia Agricultural Development Authority	VADA
Virginia Housing Development Authority	VHDA
Virginia Resources Authority	VRA

V.A.R. Doc. No. R94-521; Filed January 20, 1994, 11:21 a.m.

## EXECUTIVE MEMORANDUM 6-93

### Subject:

Stimulating Recycling Markets

### Purpose:

This memorandum communicates statewide policy to implement a purchase program to stimulate the market for recycled goods and other environmentally preferable products.

### Preface:

The Commonwealth seeks to promote the efficient use of our natural resources by enhancing and stabilizing markets for recycled goods and environmentally preferable products. By strengthening the purchasing role of the Commonwealth through greater preference and demand for recycled goods and environmentally preferable products, agencies of the Commonwealth will demonstrate a commitment toward effective recycling practices in Virginia.

### Applicability:

This memorandum applies to all executive branch agencies and institutions.

### Effective Date:

December 10, 1993

### Requirements:

By virtue of the authority vested in me by Code of Virginia Section 2.1-41.1, and in furtherance of the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, I hereby require the implementation of a purchase program for recycled goods and other environmentally preferable products. I hereby direct all state agencies participating in the Virginia Recycling Markets Development Council and all other state agencies and institutions to carry out their legally established duties in a manner consistent with the policies set forth in this memorandum and in a manner which promotes coordination among those agencies and institutions in achieving the goals and objectives of this memorandum as well as those set out in Code of Virginia Sections 9-145.47, 10.1-1425.6, 10.1-1425.7, 10.1-1425.8, 11-41.01, 11-47, and 11-47.2.

### I. Responsibility of the Department of Environmental Quality:

With advice from the Virginia Recycling Markets Development Council, prepare a definition, as well as develop and maintain criteria and procedures, for environmentally preferable products, and advise the Department of General Services concerning the designation of these products. In cooperation with the Department of General Services, heighten state agency awareness of the benefits of using such products.

### II. Responsibilities of the Department of General Services:

- A. Ensure the Commonwealth's procurement guidelines for state agencies promote the use of environmentally preferable products.
- B. Promote the Commonwealth's interest in the use of recycled products to vendors.
- C. Regularly inform agencies which products and materials are considered environmentally preferable. In addition, make agencies aware of the availability of such products, including those which use post-consumer and other recovered material processed by Virginia-based companies.

### III. Responsibilities of all state agencies:

- A. To the greatest extent possible, adhere to the procurement program guidelines for recycled products to be established by the Department of General Services.

# Governor

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B. At a minimum, meet these goals beginning in 1994 and increasing by ten percent every two years through 1998, as described below. Such goals will result in an average 30 percent increase of recycled product procurement of these materials. Procurement of these items is required, provided that such purchases do not exceed by more than 15 percent the allocated budget for these items.

<u>Item</u>	<u>Percent Purchase Required With Recycled Post- Consumer Content By December 31 of each of the following years:</u>
1. Copy Paper (xerographic paper)	25% / 35% / 45%
2. Letterhead Stationery	10% / 20% / 30%
3. White Wove Envelopes	5% / 15% / 25%
4. Business Cards	10% / 20% / 30%

Minimum content standards for recycled materials will correspond to U.S. Environmental Protection Agency guidelines for these materials.

This Executive Memorandum shall remain in full force and effect unless amended or rescinded by further executive action.

/s/ Lawrence Douglas Wilder  
Governor  
December 16, 1993

V.A.R. Doc. No. R94-458; Filed January 6, 1994, 3:20 p.m.

## EXECUTIVE MEMORANDUM 1-94

Subject:

Compliance with the Americans with Disabilities Act.

Preface:

The Office of the Governor is composed of the following offices: the Secretary of Administration, the Secretary of Commerce and Trade, the Secretary of the Commonwealth, the Secretary of Education, the Secretary of Finance, the Secretary of Health and Human Resources, the Secretary of Natural Resources, the Secretary of Public Safety and the Secretary of Transportation, Press, Constituent Affairs, Policy, Chief of Staff, and the Liaison Office. As a functional unit this office has completed requisite measures of the Americans with Disabilities Act assuring a practice of non-discrimination toward people with disabilities.

Purpose:

This memorandum serves as a notice to Virginians with disabilities, advocates, and their family members

that the Office of the Governor values their participation in all phases of its operation.

### Applicability:

This memorandum applies to all entities covered within the Office of the Governor and serves as a notice to the citizens of the Commonwealth.

### General Policy:

The Office of the Governor realizes its leadership responsibilities to assure non-discrimination toward people with disabilities and has complied with the Code of Virginia (§ 51.5-40) and the Americans with Disabilities Act.

Part of this compliance effort is manifested in the designation, hereby, of the Director of Constituent Affairs as the Americans with Disabilities Act Coordinator. All requests for accommodation and, any grievances related to such requests, concerning activities of the Office of the Governor should be referred to the Coordinator. To contact the Coordinator, call (804) 786-2211 or (804) 371-8015 (Voice/TDD) write to the Office of the Governor, Constituent Affairs, State Capitol, Richmond, Virginia 23212.

Requests for accommodations for persons with disabilities, except in special or extraordinary circumstances, should be made at least five (5) working days prior to the event or activity requiring accommodations.

### Implementation:

Each administrative office or a unit of the Office of the Governor is responsible for the implementation of this policy in the particular office or unit.

### Effective Date and Continuation:

This Executive Memorandum shall be immediately effective and remain in full force and effect until superseded or rescinded by further Executive Memorandum. Given under my hand and under the seal of the Commonwealth of Virginia this 14th day of January, 1994.

/s/ Lawrence Douglas Wilder  
Governor

V.A.R. Doc. No. R94-519; Filed January 20, 1994, 11:21 a.m.

## EXECUTIVE ORDER NUMBER EIGHTY-THREE (94)

DECLARATION OF A STATE OF EMERGENCY ARISING FROM A SEVERE WINTER STORM WHICH THREATENED THE COMMONWEALTH

An unusually severe winter storm warning was issued by the National Weather Service at 2:00 P.M., January 3, 1994, which predicted heavy amounts of snow, up to two feet, in the western portions of the state. Accordingly, I verbally declared a state of emergency on January 3, 1994, for the purposes of (1) placing key state agencies on alert to render all possible assistance to citizens; and (2) authorizing the pre-positioning of heavy equipment belonging to the Virginia Army National Guard in certain areas of the Commonwealth to facilitate the potential evacuation of persons who might be marooned and stranded by the storm. Although the anticipated full effects of this particular storm ultimately failed to materialize in Virginia, the declaration of emergency is considered prudent in view of the requirements in (1) and (2), above.

The health and general welfare of the citizens of the affected jurisdictions in the area described above required that state actions be taken to help alleviate the conditions which could have been a result of this situation. I found that these wintry conditions could have constituted a natural disaster wherein human life could be imperiled, as contemplated by Section 44-75.1 (4) of the Code of Virginia.

Therefore, by virtue of the authority vested in me by Section 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Services, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by Section 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I do hereby confirm, ratify and memorialize in writing my verbal orders issued January 3, 1994, wherein I proclaimed that a state of emergency exists in the affected areas of the Commonwealth and directed that appropriate assistance be rendered by the agencies of the state government to alleviate these conditions. Pursuant to Section 44-75.1 (4) of the Code of Virginia, I also directed that the Virginia National Guard be called forth to assist in providing such aid, as may be required by the Coordinator of the Department of Emergency Services, in consultation with the Secretary of Public Safety and the Adjutant General of Virginia.

The following conditions apply to the employment of the Virginia National Guard:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Services and with the approval of the Secretary of Public Safety, shall make available on state active duty such units and members of the Virginia National Guard and such equipment as may be desirable to assist in alleviating the human suffering and damage to property as a result of the heavy snow and wintry conditions.

2. In all instances, members of the Virginia National Guard shall remain subject to military command as prescribed by Section 44-78.1 of the Code of Virginia

and not subject to the civilian authorities of the state or local governments.

3. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

- (a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act; and, in addition,

- (b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to Section 44-14 of the Code of Virginia, and subject to the concurrence of the Board of Military Affairs, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

4. The cost incurred by the Virginia Department of Military Affairs in performing this mission shall be paid out of the sum sufficient appropriation for Disaster Planning and Operations contained in Item 555 of Chapter 994 of the 1993 Acts of Assembly, with any reimbursement thereof from nonstate agencies for partial or full reimbursement of this cost to be paid to the general fund of the state treasury.

This Executive Order shall be retroactively effective to January 3, 1994, upon its signing, and shall remain in full force and effect until June 30, 1994, unless sooner amended or rescinded by further executive order. That portion providing for benefits for members of the National Guard in the event of injury or death shall continue to remain in effect after termination of this Executive Order as a whole.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 14th day of January, 1994.

/s/ Lawrence Douglas Wilder

# Governor

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Governor

V.A.R. Doc. No. R94-520; Filed January 20, 1994, 3:21 p.m.

## EXECUTIVE ORDER NUMBER ONE (94)

### CREATING A BLUE RIBBON STRIKE FORCE: THE GOVERNOR'S COMMISSION ON GOVERNMENT REFORM

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and, including, but not limited to Section 2.1-51.36 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby create the Governor's Commission on Government Reform.

The Commission is classified as a gubernatorial advisory commission in accordance with Sections 2.1-51.35 and 9-6.25 of the Code of Virginia.

The Commission shall have the responsibility to advise the Governor on opportunities for structural and regulatory reform in state government. The Commission shall have the following specific responsibilities:

1. To challenge and question the basic assumptions underlying all state agencies and services offered by the state and to identify those that are vital to the best interests of the people of the Commonwealth and those that no longer meet that goal;
2. To evaluate the effectiveness with which state agencies operate their programs, and identify and recommend ways to eliminate waste and duplication;
3. To identify any program or service now offered by an agency that can be eliminated or transferred to the private sector without injury to the public good and well-being; and
4. To recommend ways to eliminate unnecessary, costly or burdensome regulations.

The Commission shall review every aspect of the executive branch of state government, and hold public hearings to identify citizen and private sector concerns. The Commission shall provide the Governor with periodic progress reports on issues related to the reform of State government.

The Commission shall be composed of 60 members appointed by the Governor and serving at his pleasure. The Governor shall designate a Chair and an Executive Committee to guide the reform effort.

Such staff support as is necessary for the conduct of the Commission's work during the term of its existence shall be furnished by the Office of the Governor, the Offices of

the Governor's Secretaries, the Department of Planning and Budget, and such other executive agencies as the Governor may designate. Such funding as is necessary for the term of the Commission's existence shall be provided from such sources, both state appropriations and private contributions, as authorized by Section 2.1-51.37 of the Code of Virginia. Expenditures for the Commission's work are estimated to be \$35,000, exclusive of costs related to personnel.

The Commission shall complete its examinations of these matters and report to the Governor no later than December, 1994. It may issue interim reports and make recommendations at any time it deems necessary.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until January 15, 1995, unless amended or rescinded by further executive order.

Given under my hand and the Seal of the Commonwealth of Virginia this 15th day of January, 1994.

/s/ George F. Allen  
Governor

V.A.R. Doc. No. R94-473; Filed January 17, 1994, 4:54 p.m.

## EXECUTIVE ORDER NUMBER TWO (94)

### EQUAL OPPORTUNITY

By virtue of the authority vested in me as Governor, I hereby declare that it is the firm and unwavering policy of the Commonwealth of Virginia to assure equal opportunity in all facets of state government.

This policy specifically prohibits discrimination on the basis of race, sex, color, national origin, religion, age, or political affiliation, or against otherwise qualified persons with disabilities.

State appointing authorities and other management principals are hereby directed to take affirmative measures, as determined by the Director, Department of Personnel and Training, to emphasize the recruitment of qualified minorities, women, disabled persons, and older Virginians to serve at all levels of state government. This directive does not permit or require the lowering of bona fide job requirements, performance standards, or qualifications to give preference to any state employee or applicant for state employment.

Allegations of violations of this policy shall be brought to the attention of the Office of Equal Employment Services of the Department of Personnel and Training. No state appointing authority, other management principals, or supervisors shall take retaliatory actions against persons making such allegations.

Any state employee found in violation of this policy shall be subject to appropriate disciplinary action.

The Secretary of Administration is directed to review annually state procurement, employment and other relevant policies for compliance with the non-discrimination mandate contained herein, and shall report to the Governor his findings together with such recommendations as he deems appropriate. The Director, Department of Personnel and Training shall assist in this review.

This Executive Order supersedes and rescinds Executive Order Number One (90), Equal Employment Opportunity, issued by Governor Lawrence Douglas Wilder on January 13, 1990.

This Executive Order shall become effective upon its signing and will remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 15th day of January, 1994.

/s/ George F. Allen  
Governor

V.A.R. Doc. No. R94-522; Filed January 20, 1994, 11:21 a.m.

## EXECUTIVE ORDER NUMBER THREE (94)

### AUTHORITY AND RESPONSIBILITY OF CHIEF OF STAFF

By virtue of the authority vested in me as Governor by Article V, Sections 1, 7, 8, and 10 of the Constitution of Virginia and Sections 2.1-38 and 2.1-39.1 of the Code of Virginia, and subject always to my continuing ultimate authority and responsibility to act in such matters and to powers and duties enumerated below:

1. To direct, as the deputy planning and budget officer, the administration of the state government planning budget process, except as to the responsibilities enumerated below, which are retained by me:

- a. Submission of the budget and accompanying documents to the General Assembly;
- b. Final review and determination of all proposed expenditures and of estimated revenues and borrowings to be included in the Executive Budget for each state department, division, office, board, commission, institution, or other agency or undertaking;
- c. Amendment of Maximum Employment Levels;
- d. Authorization of deficits; and

e. Appointment of the Director of the Department of Planning and Budget.

2. To direct, as the deputy personnel officer, the administration of the state government personnel system, except as to the responsibilities enumerated below, which are retained by me:

a. Final determination with respect to employee compensation plans;

b. Submission of reports to the General Assembly by the Governor as required by law;

c. Issuance, amendment or suspension of the Rules for the Administration of the Virginia Personnel Act;

d. Final action on appeals from appointing authorities to the Governor; and

e. Appointment of the Director of the Department of Personnel and Training.

3. To review, in the event of my absence or unavailability, major planning, budgetary, personnel policy and legislative matters which require my decision and to review, in the event of my absence or unavailability, policy differences which may arise among or between my Secretaries.

4. To act as chief liaison officer with members of the General Assembly of Virginia.

5. To act as Senior Executive Assistant with responsibilities that include, but are not limited to, the direction and supervision of the Governor's Office, as well as budgetary and personnel authority for the office.

This Executive Order shall become effective January 15, 1994, and remain in full force and effect until January 16, 1998, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 15th day of January, 1994.

/s/ George F. Allen  
Governor

V.A.R. Doc. No. R94-523; Filed January 20, 1994, 3:21 p.m.

# Governor

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## GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.129.1 of the Code of Virginia)

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: VR 115-01-01. Guidelines for Public Participation (REPEAL).

Title of Regulation: VR 115-01-01:1. Public Participation Guidelines.

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval of the proposal will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-483; Filed January 18, 1994, 2:22 p.m.

### Pesticide Control Board

Title of Regulation: VR 115-04-21. Public Participation Guidelines.

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval of the proposal will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-482; Filed January 18, 1994, 2:22 p.m.

### ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulation: VR 125-01-3. Tied House.

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 12, 1994

V.A.R. Doc. No. R94-486; Filed January 18, 1994, 2:21 p.m.

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Title of Regulation: VR 125-01-4. Requirements for Product Approval.

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 12, 1994

V.A.R. Doc. No. R94-487; Filed January 18, 1994, 2:21 p.m.

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Title of Regulation: VR 125-01-5. Retail Operations.

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 12, 1994

V.A.R. Doc. No. R94-488; Filed January 18, 1994, 2:21 p.m.

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Title of Regulation: VR 125-01-6. Manufacturers and Wholesalers Operations.

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 12, 1994

V.A.R. Doc. No. R94-475; Filed January 18, 1994, 2:22 p.m.

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Title of Regulation: VR 125-01-7. Other Provisions.

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

# Governor

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 12, 1994

V.A.R. Doc. No. R94-474; Filed January 18, 1994, 2:22 p.m.

## VIRGINIA ASBESTOS LICENSING BOARD

Title of Regulation: VR 190-05-01. Asbestos Licensing Regulations (REPEAL).

Title of Regulation: VR 137-01-02. Virginia Asbestos Licensing Regulations.

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval of the regulations will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 11, 1994.

V.A.R. Doc. No. R94-457; Filed January 12, 1994, 3:27 p.m.

## DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: VR 230-01-001. Public Participation Guidelines.

Governor's Comment:

The proposed regulations would enable the agency to comply with recent changes to the public participation portion of the Administrative Process Act (Section 9-6.14:7.1 of the Code of Virginia). Hence, I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-477; Filed January 18, 1994, 2:22 p.m.

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Title of Regulation: VR 230-30-005. Guide for Minimum Standards in Design and Construction of Jail Facilities (REPEAL).

Governor's Comment:

I do not object to the repeal of the agency's minimum standards in the design and construction of local jail facilities since these standards would be replaced by new ones. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-476; Filed January 18, 1994, 2:22 p.m.

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Title of Regulation: VR 230-30-008. Regulations for State Reimbursement of Local Correctional Facility Costs (REPEAL).

Governor's Comment:

I do not object to the repeal of the agency's regulations for state reimbursement of local correctional facility costs since these regulations would be replaced by new ones under separate cover. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-479; Filed January 18, 1994, 2:22 p.m.

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: VR 270-01-0042:1. Regulations Governing the Employment of Professional Personnel.

Governor's Comment:

The proposal would enable the State Board of Education to enhance its existing regulations governing the employment of professionals by local school boards. However, we recommend that final approval of the proposal be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 11, 1994

V.A.R. Doc. No. R94-456; Filed January 12, 1994, 3:27 p.m.

## BOARD OF HEALTH PROFESSIONS

Title of Regulation: VR 365-01-2. Regulations Governing Practitioner Self-Referral.

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

# Governor

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Date: January 14, 1994

V.A.R. Doc. No. R94-480; Filed January 18, 1994, 2:22 p.m.

## BOARD FOR HEARING AID SPECIALISTS

Title of Regulation: VR 375-01-1. Public Participation Guidelines (REPEAL).

Title of Regulation: VR 375-01-1:1. Public Participation Guidelines.

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor

Date: January 14, 1994

V.A.R. Doc. No. R94-484; Filed January 18, 1994, 2:22 p.m.

## STATE LOTTERY BOARD

Title of Regulation: VR 447-01-2. Administration Regulations.

Governor's Comment:

The proposal would enhance the state's lottery operations. Hence, I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor

Date: January 8, 1994

V.A.R. Doc. No. R94-455; Filed January 12, 1994, 3:28 p.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-03-3.1100. Amount, Duration and Scope of Services.

VR 460-03-3.1102. Case Management Services.

VR 460-04-8.12. Regulations for Home and Community-Based Care Services for Individuals with Mental Retardation.

VR 460-04-8.1500. Community Mental Health and Mental Retardation Services: Amount, Duration and Scope of Services.

Governor's Comment:

I do not object to the initial draft of the proposal. However, my final approval will be contingent upon a review of the public's comments and the concurrence of

the Health Care Financing Administration of the U.S. Department of Health and Human Services.

/s/ Lawrence Douglas Wilder  
Governor

Date: January 8, 1994

V.A.R. Doc. No. R94-453; Filed January 12, 1994, 3:28 p.m.

\* \* \* \* \*

Title of Regulation: VR 460-05-1000.0000. State/Local Hospitalization Program.

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

/s/ Lawrence Douglas Wilder  
Governor

Date: January 14, 1994

V.A.R. Doc. No. R94-478; Filed January 18, 1994, 2:22 p.m.

## DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-46-02. Assessment and Case Management in Adult Care Residences.

Governor's Comment:

I do not object to the initial draft of these regulations since it is required by state law to ensure appropriate care for residents in licensed adult care residences. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor

Date: January 14, 1994

V.A.R. Doc. No. R94-481; Filed January 18, 1994, 2:22 p.m.

## DEPARTMENT OF TAXATION

Title of Regulation: VR 630-10-2.2. Retail Sales and Use Tax: Adult Care Facilities.

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor

Date: January 14, 1994

V.A.R. Doc. No. R94-507; Filed January 18, 1994, 2:22 p.m.

# Governor

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Title of Regulation: VR 630-10-5. Retail Sales and Use Tax: Agricultural and Seafood Processing.

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-506; Filed January 18, 1994, 2:22 p.m.

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Title of Regulation: VR 630-10-6. Retail Sales and Use Tax: Aircraft Sales, Leases and Rentals, Repair and Replacement Parts and Maintenance Materials.

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-505; Filed January 18, 1994, 2:22 p.m.

\* \* \* \* \*

Title of Regulation: VR 630-10-24.1. Retail Sales and Use Tax: Commercial Watermen.

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-504; Filed January 18, 1994, 2:22 p.m.

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Title of Regulation: VR 630-10-26. Retail Sales and Use Tax: Containers, Packaging Materials, and Equipment.

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-503; Filed January 18, 1994, 2:23 p.m.

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Title of Regulation: VR 630-10-33. Retail Sales and Use Tax: Dentists, Dental Laboratories and Dental Supply Houses.

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-502; Filed January 18, 1994, 2:23 p.m.

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Title of Regulation: VR 630-10-39. Retail Sales and Use Tax: Federal Areas (REPEAL).

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-501; Filed January 18, 1994, 2:23 p.m.

\* \* \* \* \*

Title of Regulation: VR 630-10-39.2. Retail Sales and Use Tax: Flags (REPEAL).

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-500; Filed January 18, 1994, 2:23 p.m.

\* \* \* \* \*

Title of Regulation: VR 630-10-45. Retail Sales and Use Tax: Governments.

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-499; Filed January 18, 1994, 2:23 p.m.

\* \* \* \* \*

Title of Regulation: VR 630-10-45.1. Retail Sales and Use

# Governor

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**Tax: Harvesting of Forest Products.**

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-498; Filed January 18, 1994, 2:23 p.m.

\* \* \* \* \*

**Title of Regulation: VR 630-10-47. Retail Sales and Use Tax: Hospitals, Nursing Homes and Other Medical Related Facilities.**

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-497; Filed January 18, 1994, 2:23 p.m.

\* \* \* \* \*

**Title of Regulation: VR 630-10-64.1. Retail Sales and Use Tax: Medical Equipment and Supplies.**

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-496; Filed January 18, 1994, 2:23 p.m.

\* \* \* \* \*

**Title of Regulation: VR 630-10-65. Retail Sales and Use Tax: Medicines and Drugs.**

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-495; Filed January 18, 1994, 2:23 p.m.

\* \* \* \* \*

**Title of Regulation: VR 630-10-83. Retail Sales and Use Tax: Physicians, Surgeons, and Other Practitioners of the**

**Healing Arts.**

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-494; Filed January 18, 1994, 2:23 p.m.

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**Title of Regulation: VR 630-10-85.1. Retail Sales and Use Tax: Prescription Medical Appliances - Visual and Audio.**

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-493; Filed January 18, 1994, 2:23 p.m.

\* \* \* \* \*

**Title of Regulation: VR 630-10-92. Retail Sales and Use Tax: Research.**

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-490; Filed January 18, 1994, 2:23 p.m.

\* \* \* \* \*

**Title of Regulation: VR 630-10-97.1. Retail Sales and Use Tax: Services.**

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-492; Filed January 18, 1994, 2:23 p.m.

\* \* \* \* \*

**Title of Regulation: VR 630-10-98. Retail Sales and Use Tax: Ships or Vessels Used or to be Used Exclusively or Principally in Interstate or Foreign Commerce.**

# Governor

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**Governor's Comment:**

No objections to the proposed regulations.

**Governor**

Date: January 14, 1994

V.A.R. Doc. No. R94-485; Filed January 18, 1994, 2:22 p.m.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-491; Filed January 18, 1994, 2:23 p.m.

\* \* \* \* \*

**Title of Regulation: VR 630-10-108.1. Retail Sales and Use**

**Tax: Typesetting.**

**Governor's Comment:**

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: January 14, 1994

V.A.R. Doc. No. R94-489; Filed January 18, 1994, 2:23 p.m.

**STATE WATER CONTROL BOARD****Title of Regulation: VR 680-14-20. General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Nonmetallic Mineral Mining.****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: January 8, 1994

V.A.R. Doc. No. R94-454; Filed January 12, 1994, 3:28 p.m.

**BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS****Title of Regulation: VR 675-01-01. Public Participation Guidelines (REPEAL).****Title of Regulation: VR 675-01-01:1. Public Participation Guidelines.****Governor's Comment:**

I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder

# GENERAL NOTICES/ERRATA

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

## GENERAL NOTICES

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### † General Notice

On January 15, 1994, the Department of Environmental Quality published a notice in the Richmond Times-Dispatch and other Virginia newspapers announcing the availability of the list of sources or source categories required to file applications for federal air operating permits. The notice stated that the application priority list would be published in the February 7, 1994, issue of The Virginia Register.

This application list is not being published at this time but will be published in the near future. For additional information, contact Robert Beasley at (804) 527-5164.

#### 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.

#### VIRGINIA CODE COMMISSION

#### NOTICE TO STATE AGENCIES

**Mailing Address:** Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow up with a mailed copy. Our FAX number is: 371-0169.

#### FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in The Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

#### FORMS:

# General Notices/Errata

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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.

## Corrections to Final Regulation:

Page 1834, § 1.1, definition of "Board," after "means the" delete "State"

Page 1835, § 1.2 A, line 7, change "Department of Health Regulatory Boards" to "Department of Health Professions"

Page 1842, § 2.4 B, line 1, after "withdrawal" delete "or" and insert "of"

Page 1843, § 3.1 H 2, line 2, change "3.1 I 1" to 3.1 H 1"

Page 1843, § 3.3 C 3, line 3, after "licensure" insert "form directly to the board office"

Page 1845, § 5.2, line 3, after "§§" insert "54.1-3024,"

Page 1846, § 5.3 B 5, line 3, change "483151" to "483.151"

Page 1849, § 5.3 G 1, after "80" insert "clock"

## ERRATA

### BOARD OF DENTISTRY

Title of Regulation: VR 255-01-2. Public Participation Guidelines.

Publication: 10:8 V.A.R. 1974 January 10, 1994.

#### Correction to Written Comment Date:

Page 1974, Public Hearing Date information should read as follows:

Public Hearing Date: N/A – Written comments may be submitted until March 26, 1994.

## MARINE RESOURCES COMMISSION

Title of Regulation: VR 450-01-0034. Pertaining to the Taking of Striped Bass.

Publication: 10:7 V.A.R. 1886-1891 December 27, 1993.

#### Correction to Final Regulation:

Page 1886, § 3 B, line 2, after "and Rappahannock Rivers including all" delete "their"

Page 1887, column 1, paragraph 1, line 3 (§ 4 D 3), after "directly to the fish" delete "as required by the jurisdiction of origin"

Page 1889, § 10 A 6, line 3, change "Schedule 3" to "Schedule C"

## BOARD OF NURSING

Title of Regulation: VR 495-01-1. Board of Nursing Regulations.

Publication: 10:7 V.A.R. 1834-1852 December 27, 1993.

# 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

### VIRGINIA AGRICULTURAL COUNCIL

† March 28, 1994 - 8:30 a.m. -- Open Meeting  
† March 29, 1994 - 8:30 a.m. -- Open Meeting  
Sheraton Inn, 2350 Seminole Trail, Charlottesville, Virginia.  
☞ (Interpreter for the deaf provided upon request)

A meeting to hear and act upon project proposals for financial assistance through the Virginia Agricultural Council. The council will entertain public comment at the close of all other business for a period not to exceed 30 minutes. Any person who needs accommodation in order to participate during the meeting should contact the Assistant Secretary to the Virginia Agricultural Council at least 10 days before the meeting date so that suitable arrangements can be made for appropriate accommodation.

Contact: Thomas R. Yates, Assistant Secretary, Virginia Agricultural Council, 1100 Bank Street, Suite 203, Richmond, VA 23219, telephone (804) 786-6060.

### 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,

## Calendar of Events

Halifax, VA 24558, telephone (804) 572-4568.

### Virginia Dark-Fired Tobacco Board

**February 25, 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 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.

### Virginia Marine Products Board

**† March 8, 1994 - 5:30 p.m. - Open Meeting**  
Kiln Creek Golf and Country Club, 1003 Brick Kiln Boulevard, Newport News, Virginia. ☎

A meeting to receive reports from the Executive Director of the Virginia Marine Products Board on: finance, marketing, past and future program planning, publicity/public relation, and old/new business.

Any person who needs any accommodation in order to participate at the meeting should contact Shirley Estes at least 10 days before the meeting date so that suitable arrangements can be made. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Boulevard, Suite B, Newport News, VA 23602, telephone (804) 874-3474.

### STATE AIR POLLUTION CONTROL BOARD

**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 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

## Calendar of Events

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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 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 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

# Calendar of Events

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.

## ALCOHOLIC BEVERAGE CONTROL BOARD

- † February 7, 1994 - 9:30 a.m. - Open Meeting
- † February 23, 1994 - 9:30 a.m. - Open Meeting
- † March 7, 1994 - 9:30 a.m. - Open Meeting
- † March 21, 1994 - 9:30 a.m. - Open Meeting
- † April 4, 1994 - 9:30 a.m. - Open Meeting
- † April 18, 1994 - 9:30 a.m. - Open Meeting  
Alcoholic Beverage Control Board, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Road, Richmond, VA 23261, telephone (804) 367-0616.

## 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.

## Board for Architects

- † February 24, 1994 - 9 a.m. - Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to (i) approve minutes from November 18, 1993, meeting; (ii) review correspondence; (iii) review applications; and (iv) review enforcement files.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

## Board for Interior Designers

- † February 11, 1994 - 2 p.m. - Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to approve minutes and review applications.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, 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

## Calendar of Events

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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: Meredith 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: Meredith 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.

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.

# Calendar of Events

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 3, 1994 - 10 a.m. - Open Meeting

Science Museum of Virginia Conference Room, 2500 West 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 East Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

## Central Area Review Committee

† February 16, 1994 - 10 a.m. - Open Meeting

† March 17, 1994 - 10 a.m. - Open Meeting

Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the Central Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the 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 ☎

## Northern Area Review Committee

February 10, 1994 - 10 a.m. - Open Meeting

† March 17, 1994 - 2 p.m. - Open Meeting

Chesapeake Bay Local Assistance Department, 805 East 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 East 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 10, 1994 - 9:30 a.m. - Open Meeting

Theater Row Building, 730 East Broad Street, Lower Level, Conference Room 1, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss issues, concerns and programs that impact child day centers, camps, school-age programs and preschool/nursery schools. The public comment period will be 10 a.m. Please call ahead of time for possible changes in meeting time. Contingent snow date is Friday, February 18, 1994.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad Street, Richmond, Virginia, 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 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

# Calendar of Events

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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

### Falls of the James Scenic River Advisory Board

† **February 18, 1994 - Noon** – Open Meeting

† **March 18, 1994 - Noon** – Open Meeting

City Hall, Planning Commission Conference Room, Fifth Floor, Richmond, Virginia.

A review of river issues and programs.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor Street, Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

### 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 OF CORRECTIONS

† **February 16, 1994 - 10 a.m.** – Open Meeting  
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia. ☎

A meeting to discuss matters as may be presented.

**Contact:** Vivian Tolier, Secretary to the Board, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3235.

### 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)

## Calendar of Events

367-8509.

† February 14, 1994 - 10 a.m. - Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

A nail cut score study.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2039.

† March 7, 1994 - 10 a.m. - Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2039.

### 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.

† February 17, 1994 - 9 a.m. - Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☐

A board meeting to conduct routine business will begin after the 9 a.m. public hearing on proposed regulations.

Contact: Marcia J. Miller, Executive Director, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9906.

† February 18, 1994 - 8:30 a.m. - Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☐

# Calendar of Events

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Informal conferences.

**Contact:** Marcia J. Miller, Executive Director, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9906.

† **February 19, 1994 - 9 a.m. – Open Meeting**  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎

Legislative/Regulatory Committee Meeting to discuss:

1. Duties of the dental assistant.
2. TENS Unit
3. Regulation to accept foreign trained dental students.
4. Other

**Contact:** Marcia J. Miller, Executive Director, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9906.

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

**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.

\* \* \* \* \*

**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 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.

**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.

## Calendar of Events

### 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 - 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 - ROANOKE VALLEY

**† February 23, 1994 - 9 a.m.** – Open Meeting

Salem Civic Center, Room C, 1001 Roanoke Boulevard, Salem, Virginia. ☎

A meeting to (i) receive public comment; (ii) receive report from community coordinators; and (iii) receive report from standing committees.

**Contact:** Chief Dan Hall, Fire Chief/Coordinator of Emergency Services, 105 S. Market Street, Salem, VA 24153, telephone (703) 375-3080.

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Waste Tire End User Reimbursement Advisory Committee

**† February 8, 1994 - 10 a.m.** – Open Meeting

**† March 8, 1994 - 10 a.m.** – Open Meeting  
Monroe Building, Conference Room C, 101 North 14th Street, Richmond, Virginia. ☎

A meeting to assist DEQ in developing regulations for reimbursing users of waste tire material, pursuant to §§ 10.1-1422.2 and 10.1-1422.3 of the Code of Virginia.

**Contact:** Allan Lassiter, Waste Tire Program Manager, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 762-4215.

### 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.

# Calendar of Events

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## 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.

**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 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.

## Calendar of Events

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.

### DEPARTMENT OF HEALTH (STATE BOARD OF)

† **April 8, 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 355-01-100. **Public Participation Guidelines**. These proposed amendments are identical to those contained within the emergency Public Participation Guidelines effective July 1, 1993, and promulgated to maintain the board's compliance with revisions to the Administrative Process Act effective on that same day. These revised guidelines clarify the actions to be taken by the staff of the Department of Health to ensure participation by the interested public in the process of regulation development as well as during the comment period that occurs after draft regulations are completed and published for review. The proposed guidelines also identify how the public may initiate consideration of regulations for development or

review.

Statutory Authority: §§ 9-6.14:7.1 and 32.1-12 of the Code of Virginia.

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.

### Food Service Advisory Committee

† **February 22, 1994 - 10 a.m.** – Open Meeting  
Department of Housing and Community Development,  
Jackson Center, 501 North Second Street, 2nd Floor  
Conference Room, Richmond, Virginia. ☎

A regular meeting. This committee meets at least once a year to discuss and recommend food service policy, regulation, and programmatic changes to the Commissioner of Health for implementation.

Contact: John E. Benko, Division Director, Division of Food and Environmental Health, 1500 E. Main Street, Suite 115, or P. O. Box 2448, Richmond, VA 23218, telephone (804) 786-3559.

# Calendar of Events

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## 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.

## 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

### Board of Historic Resources

† February 16, 1994 - 10 a.m. - Open Meeting

Pattern Building, 570 Tredegar Street, 3rd Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A general business meeting and a meeting to consider the following for listing in the Virginia Landmarks Register.

1. Aberdeen Gardens Historic District, Hampton
2. Kennedy-Wade Mill Historic District, Rockbridge County
3. Blenheim (Boundary increase), Campbell County
4. Ebenezer Church, Loudoun County
5. King-Lancaster-McCoy-Mitchell House, Bristol
6. Oakley Hill, Hanover County
7. Orange and Alexander Railroad Hooff's Run Bridge, Alexandria
8. Poplar Springs, Charles City County
9. St. Paul's Episcopal Church, Hanover County

10. Scott-Walker House, Smyth County
11. Wallacetown, Chesapeake
12. Weisiger-Carroll House, Richmond (city)

Contact: Margaret Peters, Information Director, 221 Governor Street, Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

## State Review Board

† February 15, 1994 - 10 a.m. - Open Meeting  
Pattern Building, 570 Tredegar Street, 3rd Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to consider nominating the following properties to the National Register of Historic Places.

1. Aberdeen Gardens Historic District, Hampton
2. Kennedy-Wade Mill Historic District, Rockbridge County
3. Blenheim (Boundary increase), Campbell County
4. Ebenezer Church, Loudoun County
5. King-Lancaster-McCoy-Mitchell House, Bristol
6. Oakley Hill, Hanover County
7. Orange and Alexander Railroad Hooff's Run Bridge, Alexandria
8. Poplar Springs, Charles City County
9. St. Paul's Episcopal Church, Hanover County
10. Scott-Walker House, Smyth County
11. Wallacetown, Chesapeake
12. Weisiger-Carroll House, Richmond (city)

Contact: Margaret Peters, Information Director, 221 Governor Street, Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

† March 1, 1994 - 9 a.m. - Open Meeting

† April 5, 1994 - 9 a.m. - Open Meeting

Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† February 15, 1994 - 11 a.m. - Open Meeting  
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☎

A regular meeting of the Board of Commissioners to

## Calendar of Events

(i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as deemed appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

### COUNCIL ON INFORMATION MANAGEMENT

#### Local Government Advisory Committee

† February 10, 1994 - 1 p.m. -- Open Meeting  
Washington Building, 1100 Bank Street, 9th Floor  
Conference Room, Richmond, Virginia. ☎

First official meeting of this new advisory committee.

Contact: Jerry Simonoff, Information Technology Manager, 1100 Bank Street, Suite 901, Richmond, VA 23219, telephone (804) 786-7711 or (804) 225-3624/TDD ☎

### DEPARTMENT OF LABOR AND INDUSTRY

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

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.

## Calendar of Events

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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

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.

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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 9-0.14:7.1 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

# Calendar of Events

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

### Public Library Development Committee

† March 14, 1994 - 9 a.m. - Open Meeting  
Virginia State Library and Archives, 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, 11th Street at Capitol Square, Richmond, VA 23219-3491, telephone (804) 786-2320, 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.

## MARINE RESOURCES COMMISSION

† February 22, 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 wetlands, 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 ☎

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† February 9, 1994 - 1 p.m. - Open Meeting  
Department of Medical Assistance Services, Board Room, 600 East Broad Street, Suite 1300, Richmond, Virginia. ☎

A meeting to discuss issues pertinent to medical assistance services and the Board of Medical Assistance Services.

Contact: Patricia A. Sykes, Policy Analyst, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7958 or toll free 1-800-343-0634/TDD ☎

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† April 8, 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. Amount, Duration, and Scope of Services; VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care: Durable Medical Equipment. The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations, which clarify the requirements and the process for providing durable medical equipment and supplies.

Durable medical equipment, supplies, and appliances are only available under the home health benefit. Services are available as prescribed by the home health regulations at Title 42, Code of Federal Regulations, Part 440, in the recipient's home on a physician's order as part of a written plan of care that is periodically reviewed.

## Calendar of Events

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DMAS previously required that a recipient who received durable medical equipment or supplies also receive skilled nursing visits provided by a home health agency. The purposes for making the nursing service a prerequisite for the receipt of medical equipment and supplies were 1) to assess the recipient's needs in the actual environment in which he would be using the items, 2) to determine the quantity of supplies needed to meet his current condition, 3) to assess the patient and/or caregiver's knowledge and appropriate utilization of the items, and 4) to assess the need for other services that may help to further reduce the risks associated with the limitations or conditions imposed by the recipient's current health status. Previously, DMAS never specified those services which will not be covered under home health services program.

In addition, a single skilled nursing follow-up visit was required after the recipient received the prescribed equipment or supplies to determine that it met the recipient's needs, that it was suitable for use in the home, and the recipient or caregiver was knowledgeable and comfortable in using the equipment.

Recently, HCFA has informed the department that it may no longer require nursing visits for the provision of durable medical equipment, supplies, and appliances. Consequently, this amendment allows for the provision of medically necessary supplies, equipment, and appliances for Medicaid recipients who meet home health criteria. Consistent with HCFA's directive that no type of prerequisite condition that predicates the receipt of one home health service on the receipt of another such service may be imposed, DMAS removed the requirement that the recipient who receives medical equipment and supplies also receive skilled nursing visits with an emergency regulation which was effective September 1, 1993.

Because physicians will no longer be required to order equipment and supplies through the home health plan of treatment, DMAS is seeking to replace the currently used plan of treatment with the certificate of medical necessity for those recipients who require durable medical equipment and supplies. The physician will be required to complete a written certificate of medical necessity (CMN) for all medical equipment and supplies. Therefore, the CMN will serve as the physician's authorization for equipment and supplies in lieu of the home health plan of treatment.

In addition to these changes, the population for which nutritional supplements will be covered is expanded under home health services. Coverage of oral administration does not include the provision of routine infant formulae.

These proposed regulations will supersede emergency regulations issued in June 1993. In FY 92, there were

10,795 total unduplicated recipients who received durable medical equipment and supplies. The total expenditures for durable medical equipment and supplies were \$10,613,116 in FY 92.

The revisions to the durable medical supplies and equipment program are effecting no new reimbursement methodology changes nor are they expected to result in an increase in service utilization. Therefore, there is no fiscal impact attached to either these changes or the incorporation by reference change regarding long-term care provider manuals.

For the changes to the provision of nutritional supplements, it is anticipated that additional FY 94 expenditures will be approximately \$200,000 to cover the cost of covering nutritional supplements for individuals who are able to take the supplement without special intubation. This change in coverage applies only to those individuals receiving nutritional supplements under the home health program. The cost of providing nutritional supplements for nursing facility residents is included in the cost report.

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

Written comments may be submitted through April 8, 1994, to Mary Chiles, 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 St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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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

## Calendar of Events

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.

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.

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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

## Calendar of Events

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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 habitative 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.

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**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.

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**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

## Calendar of Events

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 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.

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**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

## Calendar of Events

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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, 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.

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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.

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## Calendar of Events

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**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 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.

# Calendar of Events

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

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**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 instate 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**

## Calendar of Events

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

† March 16, 1994 - 10:30 a.m. - Open Meeting  
Sheraton Inn, Roanoke Airport, 2727 Ferndale Drive, Roanoke, Virginia. ☐

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Discipline, 6606 W. 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  
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.

### VIRGINIA MILITARY INSTITUTE

#### Board of Visitors

February 12, 1994 - 8:30 a.m. - Open Meeting

# Calendar of Events

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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

Room 319, P. O. Box 27412, Richmond, VA 23269-0001.

Contact: Clarence H. Bradbury, Policy Analyst, Department of Motor Vehicles, Room 314, P. O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-0408.

## DEPARTMENT OF MINES, MINERALS AND ENERGY

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 Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3200.

## BOARD OF NURSING

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 §

### Special Conference Committee

† February 8, 1994 - 9 a.m. — Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. §

† February 14, 1994 - 9 a.m. — Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. § (Interpreter for the deaf provided upon request)

A meeting to conduct an informal conference with certified nurse aides to determine if any action should be recommended to the Board of Nursing. Public comment will not be received.

Contact: M. Teresa Mullin, R.N., Assistant Executive Director, Board of Nursing, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909 or (804) 662-7197/TDD §

† February 17, 1994 - 9:30 a.m. — Open Meeting  
Hampton School of Nursing, William Freeman Hall, Corner of Emancipation Drive and Tyler Street, Hampton, Virginia. (Interpreter for the deaf provided upon request)

† February 22, 1994 - 9 a.m. — Open Meeting  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct an informal conference with certified nurse aides to determine if any action should be recommended to the Board of Nursing. Public comment will not be received.

Contact: Corinne F. Dorsey, Executive Director, Board of Nursing, 6606 West Broad Street, Richmond, VA 23230, telephone (804) 662-9909 or (804) 662-7197/TDD §

## DEPARTMENT OF MOTOR VEHICLES

† March 4, 1994 - 1 p.m. — Public Hearing  
Virginia War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia.

April 11, 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 Motor Vehicles intends to adopt regulations entitled: VR 485-50-9302. **Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card**. The regulation establishes the process and the documentation that will be required by the Department of Motor Vehicles for proof of residency in Virginia.

Statutory Authority: §§ 46.2-203, 46.2-323, 46.2-345, and 46.2-348 of the Code of Virginia.

Written comments may be submitted until April 11, 1994, to Simon J. Stapleton, Department of Motor Vehicles,

## Calendar of Events

### BOARD OF NURSING HOME ADMINISTRATORS

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.

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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 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.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3101 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

### BOARD OF OPTOMETRY

† February 16, 1994 - 1:30 p.m. - Open Meeting  
Department of Health Professions, Conference Room 4,  
6606 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Informal Conference Committee meeting. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910. or (804) 662-7197/TDD ☎

### Ad Hoc Regulatory Advisory Committee

† March 1, 1994 - 2:30 p.m. - Open Meeting  
Department of Health Professions, Conference Room 3,  
6606 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss potential amendments to the board's regulations regarding contact lens prescriptions. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

### VIRGINIA OUTDOORS FOUNDATION

† February 22, 1994 - 10 a.m. - Open Meeting  
James Monroe Building, Treasury Board Conference Room, 3rd Floor, 101 North 14th Street, Richmond, Virginia. ☎

A general business meeting. Agenda available upon request.

Contact: Leslie H. Grayson, Acting Executive Director, Virginia Outdoors Foundation, P. O. Box 322, Aldie, VA 22001, telephone (703) 327-6118.

### BOARD OF PHARMACY

† February 9, 1994 - 9 a.m. - Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

A board meeting and formal hearings.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9911.

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February 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 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.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Scotti Milley, Executive Director, Board of

# Calendar of Events

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Pharmacy, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9911.

## BOARD OF PROFESSIONAL COUNSELORS

**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 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.

Statutory Authority: §§ 54.1-113, 54.1-2400 and 54.1-3500 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912.

† **February 25, 1994 - 8:30 a.m. – Open Meeting**  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A formal hearing will begin at 8:30 a.m. A board meeting to conduct general board business, respond to board business, respond to committee reports and regulatory review will follow the formal hearing. Public comment will not be received.

Contact: Evelyn B. Brown, Executive Director or Joyce D. Williams, Administrative Assistant, Board of Professional Counselors, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

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† **April 11, 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 Professional Counselors intends to repeal regulations entitled: VR **560-01-01. Public Participation Guidelines** and adopt regulations entitled: VR **560-01-01:1. 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, 54.1-2400 and 54.1-3500 of the Code of Virginia.

Contact: Evelyn B. Brown, Board of Professional Counselors, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9912.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION (BOARD OF)

**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 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.

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.

## BOARD OF PSYCHOLOGY

† **April 11, 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 Psychology intends to repeal regulations entitled: VR **565-01-1. Public Participation Guidelines.** and adopt regulations entitled: VR **565-01-1:1. 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, 54.1-2400 and 54.1-3600 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 West Broad Street, Richmond, VA 23230, telephone (804) 662-9912.

## 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

# Calendar of Events

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.

† March 1, 1994 - 10 a.m. – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2039.

## Complaints Committee

† February 15, 1994 - 10 a.m. – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to review complaints.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2039.

## REAL ESTATE BOARD

† February 10, 1994 - 10 a.m. – Open Meeting  
Pembroke Four Building, Suite 440, 291 Independence Boulevard, Virginia Beach, Virginia.

A formal hearing in regard to Real Estate Board v. Triva D. Gregory and Sharon D. Gillespie, File Number 91-02040.

Contact: Stacie Camden, Legal Assistant, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-2393.

† February 15, 1994 - 9 a.m. – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A formal hearing in regard to Real Estate Board v. George H. Cosby, III, File Number 92-01388.

Contact: Stacie Camden, Legal Assistant, Department of Professional and Occupational Regulation, 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

## 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.

## 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.

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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 615-01-51. 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.

## Calendar of Events

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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 Friedenberg, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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**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 Friedenberg, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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**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 Friedenberg, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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**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 Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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**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.

## Calendar of Events

Contact: Margaret J. Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad Street, 8th Floor, Richmond, VA 23219-1849, telephone (804) 692-1821.

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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.

### BOARD OF SOCIAL WORK

† February 17, 1994 - 9 a.m. - Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☐

A formal administrative hearing. Public comment will not be heard.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-7328.

### 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.

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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

## Calendar of Events

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been made in the respective regulations.

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.

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**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

## Calendar of Events

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.

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**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.

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**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

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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.

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**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.

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**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.

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**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

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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.

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**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

## Calendar of Events

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

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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.

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**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

## Calendar of Events

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

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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 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

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**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.

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**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.

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**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.

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**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

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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.

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**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.

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**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.

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**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.

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**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.

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**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

## Calendar of Events

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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.

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**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.

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**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

## Calendar of Events

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.

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**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.

### COMMONWEALTH TRANSPORTATION BOARD

† **February 16, 1994 - 2 p.m. - Open Meeting**  
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Work session of the Commonwealth Transportation Board and the Department of Transportation staff.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-8032.

† **February 17, 1994 - 10 a.m. - Open Meeting**  
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.

Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: Robert E. Martinez, Secretary of Transportation,

# Calendar of Events

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1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-8032.

## 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 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, Richmond, VA 23219, telephone (804) 371-6011.

## BOARD OF VETERINARY MEDICINE

**† February 24, 1994 - 9 a.m.** – Public Hearing  
Williamsburg Lodge, 310 South England Street, Williamsburg, Virginia.

**April 8, 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 Veterinary Medicine intends to adopt regulations entitled: VR 645-01-01. **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.

Written comments may be submitted through April 8, 1994,

to Terri Behr, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717.

Contact: Elizabeth A. Carter, Executive Director, Board of Veterinary Medicine, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9915.

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

### Vocational Rehabilitation Advisory Council

**† March 5, 1994 - 10:30 a.m.** – Open Meeting  
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Council meets quarterly to advise the Department for the Visually Handicapped on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation Program Specialist, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140, toll free 1-800-622-2155 or (804) 371-3140/TDD ☎

## 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.

## 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

## Calendar of Events

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.

### STATE WATER CONTROL BOARD

**† March 10, 1994 - 7 p.m. - Public Hearing**  
Department of Environmental Quality, Board Room, Innsbrook Corporate Center, 4900 Cox Road, Richmond, Virginia.

**† March 15, 1994 - 7 p.m. - Public Hearing**  
Galax City Council Chambers, Municipal Building, Center Street, Galax, Virginia.

**† March 16, 1994 - 7 p.m. - Public Hearing**  
Washington County Public Library, Valley and Oak Hill Streets, Abingdon, Virginia.

**† March 17, 1994 - 7 p.m. - Public Hearing**  
Buchanan Town Council Chambers, Municipal Building, Main Street, Buchanan, Virginia.

**† March 22, 1994 - 7 p.m. - Public Hearing**  
Charlottesville City Council Chambers, City Hall, 7th and Downtown Mall, Charlottesville, Virginia.

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 680-21-00. Water Quality Standards (VR 680-21-01.3. Antidegradation Policy)**. The purpose of these amendments is to amend the antidegradation policy by designating five surface waters for special protection as exceptional waters. Applicable federal requirements: The EPA Water Quality Standards Regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish the exceptional waters category

and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the selection and designation of specific water bodies as exceptional waters. Locality particularly affected: While this proposal affects specific localities (Albemarle, Botetourt, Carroll and Washington Counties), the board does not believe any locality to be adversely affected. In addition, local governmental entities have not voiced any concerns about the discharge restrictions that would be imposed by the designations of these five waters. Informal question and answer period: An informal question and answer period will be held one-half hour before each public hearing. Accessibility to persons with disabilities: 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 at the address below, or by telephone at (804) 762-4379 or TDD (804) 762-4021. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, February 28, 1994. Opportunity for formal hearing: The board will hold a formal (evidential) hearing at a time and place to be established if a petition for such a hearing is received and granted. Affected persons may petition for a formal hearing concerning any issue of fact directly relevant to the legal validity of the proposed action. Petitions must meet the requirements of § 1.23 (b) of the board's Procedural Rule No. 1 (1980), and must be received by the contact person designated below by 4 p.m. on Monday, March 7, 1994. Request for comments: The board is seeking written comments from interested persons on the proposed regulation and on the costs and benefits of the proposal. Written comments should be directed to Ms. Doneva Dalton at the address below by 4 p.m. on Monday, April 11, 1994. Other information: 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 the contact person listed below.

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

Written comments may be submitted until April 11, 1994, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240.

**Contact:** Jean Gregory, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230, telephone (804) 527-5093.

### BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**February 9, 1994 - 9 a.m. - Open Meeting**  
Department of Professional and Occupational Regulation,

# Calendar of Events

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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.

## BOARD OF YOUTH AND FAMILY SERVICES

† February 10, 1994 - 8:30 a.m. - Open Meeting  
700 Centre Building, 4th Floor, 7th and Franklin Streets, Richmond, Virginia. ☐

Committee meetings will begin at 8:30, and a general meeting will begin at 10 a.m. to discuss legislative issues pertaining to youth and family, and to consider any other matters that might come before the board.

Contact: Donald R. Carignan, Policy Coordinator, Department of Youth and Family Services, P. O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

† March 10, 1994 - 8:30 a.m. - Open Meeting  
700 Centre Building, 4th Floor, 7th and Franklin Streets, Richmond, Virginia. ☐

Committee meetings will begin at 8:30, and a general meeting will begin at 10 a.m. to review programs recommended for certification or probation, to consider adoption of draft policies and other matters that may come before the board.

Contact: Donald R. Carignan, Policy Coordinator, Department of Youth and Family Services, P. O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

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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

#### February 7

† Alcoholic Beverage Control Board  
Barbers, Board for

#### February 8

† Environmental Quality, Department of  
- Waste Tire End User Reimbursement Advisory Committee  
Higher Education for Virginia, State Council of  
† Nursing, Board of  
- Special Conference Committee  
† Nursing Home Administrators, Board of

#### February 9

Chesapeake Bay Local Assistance Board  
- Southern Area Review Committee  
† Medical Assistance Services, Board of  
† Pharmacy, Board of  
Resources Authority, Virginia  
Waterworks and Wastewater Works Operators, Board for

#### February 10

Chesapeake Bay Local Assistance Board  
- Northern Area Review Committee  
† Child Day-Care Council  
† Information Management, Council on  
- Local Government Advisory Committee  
Fire Services Board, Virginia  
- Fire/EMS Education and Training Committee  
- Fire Prevention and Control Committee  
- Legislative/Liaison Committee  
Medicine, Board of  
† Real Estate Board  
Rehabilitative Services, Board of  
† Youth and Family 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  
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for  
- Board for Interior Design  
Medicine, Board of  
- Credentials Committee

#### February 12

Medicine, Board of  
Virginia Military Institute  
- Board of Visitors  
Medicine, Board of

#### February 13

# Calendar of Events

- Medicine, Board of
- February 14**
- † Cosmetology, Board for
  - † Nursing, Board of
    - Special Conference Committee
- February 15**
- † Historic Resources, Department of
    - State Review Board
  - † Housing Development Authority, Virginia
  - † Real Estate Appraiser Board
    - Complaints Committee
  - † Real Estate Board
- February 16**
- Aviation Board, Virginia
  - † Chesapeake Bay Local Assistance Board
    - Central Area Review Committee
  - † Corrections, Board of
  - † Historic Resources, Board of
  - Local Debt, State Council on
  - † Optometry, Board of
  - Social Services, Board of
  - † Transportation Board, Commonwealth
  - Treasury Board
- February 17**
- † Dentistry, Board of
  - † Nursing, Board of
    - Special Conference Committee
  - Social Services, Board of
  - † Social Work, Board of
  - † Transportation Board, Commonwealth
- February 18**
- † Conservation and Recreation, Department of
    - Falls of the James Scenic River Advisory Board
  - † Dentistry, Board of
- February 19**
- † Dentistry, Board of
- February 22**
- Agriculture and Consumer Services, Board of
  - † Health, Department of
    - Food Service Advisory Committee
  - † Marine Resources Commission
  - † Nursing, Board of
    - Special Conference Committee
  - † Outdoors Foundation, Virginia
- February 23**
- † Alcoholic Beverage Control Board
  - Agriculture and Consumer Services, Board of
  - † Emergency Planning Committee, Local - Roanoke Valley
  - Mental Health, Mental Retardation and Substance Abuse Services, State
- February 24**
- † Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
    - Board for Architects
  - Education, Board of
- February 25**
- Agriculture and Consumer Services, Department of
    - Dark-Fired Tobacco Board, Virginia
  - † Professional Counselors, Board of
- March 1**
- † Hopewell Industrial Safety Council
  - † Optometry, Board of
  - † Real Estate Appraiser Board
- March 3**
- Chesapeake Bay Local Assistance Board
- March 5**
- † Visually Handicapped, Department for the
    - Vocational Rehabilitation Advisory Council
- March 7**
- † Alcoholic Beverage Control Board
  - † Cosmetology, Board for
- March 8**
- † Agriculture and Consumer Services, Department of
    - Marine Products Board
  - † Environmental Quality, Department of
    - Waste Tire End User Reimbursement Advisory Committee
  - Higher Education for Virginia, State Council of
- March 10**
- † Youth and Family Services, Board of
- March 14**
- † Library Board, State
    - Public Library Development Committee
- March 16**
- Local Debt, State Council on
  - † Medicine, Board of
- March 17**
- † Chesapeake Bay Local Assistance Board
    - Central Area Review Committee
    - Northern Area Review Committee
  - Treasury Board
- March 18**
- † Conservation and Recreation, Department of
    - Falls of the James Scenic River Advisory Board
- March 21**
- † Alcoholic Beverage Control Board
- March 23**
- Contractors, Board for

# Calendar of Events

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<b>March 28</b> † Agricultural Council, Virginia	<b>March 14</b> Taxation, Department of
<b>March 29</b> † Agricultural Council, Virginia	<b>March 15</b> † Water Control Board, State Mental Health, Mental Retardation and Substance Abuse Services, Department of
<b>March 31</b> Voluntary Formulary Board, Virginia Mental Health and the Law, 16th Annual Symposium on	<b>March 16</b> † Water Control Board, State
<b>April 1</b> Mental Health and the Law, 16th Annual Symposium on	<b>March 17</b> † Water Control Board, State
<b>April 4</b> † Alcoholic Beverage Control Board	<b>March 18</b> Game and Inland Fisheries, Board of
<b>April 5</b> † Hopewell Industrial Safety Council	<b>March 22</b> † Water Control Board, State
<b>April 18</b> † Alcoholic Beverage Control Board	<b>March 24</b> Branch Pilots, Board for
<b>April 20</b> Local Debt, State Council on Emergency Planning Committee, Local - Henrico Treasury Board	<b>April 6</b> Criminal Justice Services, Department of

## PUBLIC HEARINGS

<b>February 8</b> Air Pollution Control Board, State Forestry, Department of Nursing Home Administrator, Board of
<b>February 9</b> Air Pollution Control Board, State Virginia Racing Commission
<b>February 10</b> Air Pollution Control Board, State
<b>February 16</b> Voluntary Formulary, Virginia
<b>February 17</b> Dentistry, Board of
<b>February 24</b> † Veterinary Medicine, Board of
<b>March 4</b> † Motor Vehicles, Department of
<b>March 10</b> † Water Control Board, State